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Postponement Of Elections Perspective Of Constitutional Law In The Indonesian Constitution

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Abstrac

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Elections are a democratic party for the people as the holder of the highest sovereignty, namely electing members of the DPR, DPD, president, and vice president by the 1945 Constitution article 22E paragraph "general elections are carried out directly, publicly, freely, secretly, honestly and fairly every five once a year." However, due to recent issues saying that the 2024 election will be postponed, which was proposed by several political party leaders and one of President Joko Widodo's ministers for reasons of maintaining national economic stability, the author tries to divert research on the issue of postponing elections from maintaining financial stability to the realm of state administration and constitution. The author uses qualitative research methods because the data source and results of this research are from library research in the form of descriptions of words. In this research, secondary data sources are used where data sources include books, articles, and journals. Data collection techniques are generally carried out by looking for data sources so that this research is carried out only based on written works, including research results that have been published, and that still need to be published. With the discussions and the results of the research, the author can conclude that if the issue of postponing the election is implemented, then it is unconstitutional or a violation of the Indonesian constitution and state administration; if this discourse is implemented by the government unilaterally without considering the will and opinion of the people.

Keywords: *elections; state administration; constitution.*

Abstrak

Pemilu adalah pesta demokrasi bagi rakyat sebagai pemegang kedaulatan tertinggi, yaitu memilih anggota DPR, DPD,

presiden, dan wakil presiden berdasarkan UUD 1945 pasal 22E ayat "pemilihan umum dilaksanakan secara langsung, umum, bebas, diam-diam, jujur, dan adil setiap lima kali setahun." Namun, karena isu-isu baru-baru ini mengatakan bahwa Pemilu 2024 akan ditunda, yang diusulkan oleh beberapa tokoh partai politik dan salah satu menteri Presiden Joko Widodo dengan alasan menjaga stabilitas ekonomi nasional, penulis mencoba mengalihkan penelitian tentang masalah penundaan pemilu dari menjaga stabilitas keuangan ke ranah administrasi negara dan konstitusi. Penulis menggunakan metode penelitian kualitatif karena sumber data dan hasil penelitian ini berasal dari penelitian kepustakaan (library research) berupa deskripsi kata. Dalam penelitian ini, sumber data sekunder digunakan dimana sumber data meliputi buku, artikel, dan jurnal. Teknik pengumpulan data umumnya dilakukan dengan mencari sumber data sehingga penelitian ini dilakukan hanya berdasarkan karya tulis, termasuk hasil penelitian yang telah dipublikasikan, dan yang masih perlu dipublikasikan. Dengan pembahasan dan hasil penelitian, penulis dapat menyimpulkan bahwa jika isu penundaan pemilu dilaksanakan, maka itu inkonstitusional atau melanggar konstitusi dan tata usaha negara Indonesia; Jika wacana ini dilaksanakan oleh pemerintah secara sepihak tanpa mempertimbangkan kehendak dan pendapat rakyat.

Kata Kunci: Pemilihan; administrasi negara; konstitusi.

Introduction

Elections hold immense significance in the Republic of Indonesia, as they provide an avenue for citizens to exercise their sovereignty and elect representatives to various offices (Aspinall and Berenschot 2019). These offices include members of the DPR (People's Representative Council), DPD (Regional Representative Council), President, Vice President, and members of the DPRD (Regional People's Representative Council) (Suparto 2021). It is crucial that these elections are conducted with utmost transparency, freedom, confidentiality, honesty, and fairness, in line with the nation's guiding principles of Pancasila and the Constitution of the Republic of Indonesia.

As per article 1 number 1 UU no. 15 of 2011, general elections are a direct and public expression of the people's sovereignty. The elections are held with confidentiality and honesty, ensuring citizens can vote freely and express their opinions without fear of retribution. The elections are held in the unitary State of the Republic of Indonesia, with Pancasila and the 1945 Constitution of the Republic of Indonesia forming the basis of the election process. The Indonesian government is committed to ensuring that the election process is transparent, fair, and free from any form of malpractice (Noor and Marlina 2023). The government has implemented various policies and measures to ensure that

elections are conducted smoothly and efficiently. These measures include strict enforcement of election laws, ensuring access to information, and conducting voter education campaigns to increase awareness of the electoral process (Lubis et al. 2023).

Overall, the Indonesian government strives to uphold the principles of democracy and ensure that the election process is conducted in a way that reflects the will of the people (McLeod 2005). Citizens can rest assured that their voices will be heard and that their votes will contribute to shaping the future of their nation. Elections in the Republic of Indonesia serve as a way for the people to exercise their sovereignty by electing members of the DPR, DPD, president and vice president, and members of the DPRD. These elections are conducted with transparency, freedom, confidentiality, honesty, and fairness, in accordance with Pancasila and the Constitution of the Republic of Indonesia. According to article 1 number 1 UU no. 15 of 2011, general elections are a direct and public expression of the people's sovereignty, held with confidentiality and honesty, in the unitary State of the Republic of Indonesia, based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Budi 2022).

According to Harmaily Ibrahim, elections are a way to determine the people's representatives who will sit in the people's representative body (Mustafa and Warka 2019). Elections in Indonesia are held once every five years according to Article 22E of the 1945 Constitution, paragraph 1. General elections are held directly, publicly, freely, secretly, and honestly. Reasonably once every five years, but recently, what has been hotly discussed is the most muscular discourse or issue of the proposed postponement of the 2024 general election, which shocked the public, was conveyed by several party leaders and one of President Joko Widodo's ministers for reasons of economic interests. This statement received a lot of criticism, especially from political law experts and various elements. One example of Indonesian society is from an expert in Constitutional Law (HTN) at Sebelas Maret University (UNS) Surakarta, Agus Riwanto, who said that postponing elections must also consider the people's wishes (Riwanto et al. 2023). Because to postpone the election, the steps taken need to be to amend the 1945 Constitution. Amendments to the Constitution must not be forced but must be based on the people's agreement, and for what reason? Because the Constitution is a fundamental problem.

It is interesting to read comments stated by party chairpersons and one of President Joko Widodo's ministers that the postponement of this election is to maintain the interests of economic stability. The author here tries to move the flash point of the confusion over the idea of postponing the election from the narrative of delaying the election for the sake of economic stability and the issue of high levels of satisfaction with the current president to the pendulum of the issue of state administration and the Indonesian Constitution. Whether or not the problem of postponing the election is by the Indonesian constitution and state administration, the author will explain the hope that anyone who reads this article finds it easier to understand the issue.

Methods

The research in question primarily employs qualitative methods, which are commonly used in studies that aim to investigate complex phenomena (Tracy 2019). The data sources and outcomes obtained from library research are presented in the form of descriptive language, which provides a holistic understanding of the research topic. As a result, secondary data sources such as books, articles, and journals are relied upon to extract relevant information and insights. The data collection techniques involved in this

research predominantly involve scouring written works, both published and unpublished. This approach allows for a nuanced analysis of the textual data obtained from these sources. However, this also means that the scope of the study is limited to the analysis of textual data, and other forms of data such as audio or visual sources are not included. Qualitative methods are employed in this research type, as the data sources and results obtained from library research are presented in the form of descriptive language. Consequently, secondary data sources such as books, articles, and journals are relied upon. Data collection techniques primarily involve scouring written works, both published and unpublished, thereby limiting the scope of this research to the analysis of textual data (Tegor et al. 2020).

Discussion

History of Elections in Indonesia

1955 Election (Parliamentary Period) The first election in Indonesia was in 1955 (Ruhdiara, Junaidi, and Fatimah 2022). This year, the first election was held by the Indonesian nation, which was only ten years old; the 1955 election was held during the period of parliamentary democracy in the Burhanuddin Harahap cabinet; voting was carried out twice, namely for to elect members of the DPR on September 29, 1955, and to elect constituent members on December 15, 1955.

The second election was in 1971-1997 (New Order Period). the Indonesian nation held the 1971 Election, born on July 5, 1971, to elect members of the DPR. 1977 Election The second election during the New Order era was held on May 2, 1977. 1982 Election This election was the third election during the New Order era, born on May 4, 1982. 1987 Election This was the fourth election held on April 23, 1987. The 1992 election was on June 9, 1992. The 1997 election was on May 29, 1997. The election during the New Order era had the same system, namely adhering to a balanced representation (proportional) system, and participants elections, United Development Party (PPP), Golongan Karya, and Indonesian Democratic Party. 1999-2009 Election (Reformation Order Period) (Suwarso 2016, 1999–2009). 1999 was the first election during the reform period; voting was held on July 7, 1999, simultaneously throughout Indonesia. This year's election participants were 48 political parties. The 2004 election was the first election that allowed people to vote directly, held on April 5, 2004, and the 2009 election was held simultaneously on April 9, 2009. The holding of the 2004 Presidential and Vice Presidential Elections directly inspired the implementation of regional head elections. And their representatives (pilkada) now, which is why, since 2005, direct regional elections have been held at both provincial and district/city levels. This implementation is regulated in Law No. 32 of 2004.

Political Aspects in Election Postponement

Politics according to Harold Dwight Lasswell (1936) in his book entitled "Politics: Who Gets What, When How" provides a brief description of politics that politics is "who gets what, when and how," which means that politics is related to who gets what, when and how. Based on this understanding, Harold Dwight Lasswell emphasized that politics is related to "influence and influencing." Furthermore, Paul H. Conn (1971), in his book entitled "Conflict & Decision Making: An Introduction to Political Science" also emphasized that the essence of politics is conflict. In this case, it is understandable if Paul H. Conn considers conflict an essential aspect of politics. The ideas of Harold Dwight Lasswell and Paul H. Conn were also echoed by Ramlan Surbakti (2007) in his book

entitled "Understanding Political Science" in which Ramlan Surbakti provides three ways of understanding the meaning of politics, namely: first, identification of the activities that shape politics. This first understanding is closely related to the opinion of Paul H. Conn, who emphasized that the essence of politics is conflict. Second, formulate everything that can summarize various things categorized as politics. In this second understanding, politics is related to the knowledge of Harold Dwight Lasswell, who identified politics as who gets what, when, and how. Third, an effort to compile a list of questions that need to be answered in understanding politics. From these three understandings of politics, Ramlan Surbakti provides an experience that politics is broader than what Harold Dwight Lasswell and Paul H. Conn proposed. Even so, in compiling the book "Understanding Political Science," Ramlan Surbakti used Harold Dwight Lasswell's views on understanding politics more (Syarif 2019).

Slightly different from Ramlan Surbakti's understanding, Miriam Budiardjo (2007), in her book entitled "Basics of Political Science," provides a more detailed understanding of politics even though it is limited to the scope of "state politics" so that a country's politics are related to issues of power (power) decision making, public policy, and allocation or distribution (Sartono 2009). Based on various views and opinions regarding politics, the author believes that efforts to understand politics must be seen by distinguishing (not separating) three related aspects of politics: politics, practical politics, and political science. According to the author, politics is a method, process, procedure, or mechanism aimed at realizing a common goal (common good) based on specific values that grow, develop, and are recognized by society. In the author's opinion, practical politics is the concretization of politics so that practical politics relates to specific political phenomena that occur in a particular society or institution. According to the author, practical politics is synonymous with "power" and is relevant to the views of Harold Dwight Lasswell, who identified politics as who gets what, when, and how. Political science is based on social scientific methods with "certain characteristics" that seek to describe, provide understanding, and apply political aspects, including values, strategies, and goals. Thus, political science discusses politics and practical politics at the same time and need diplomacy by qolbu (Supriadi and Alisyahbana 2020).

Postponement of Elections from a Constitutional Law Perspective

From the perspective of Constitutional Law, postponing elections must first refer to the basis and foundation of elections, namely in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia has locked in the periodic aspect of elections with the phrase "every five years very." The argumentum a contrario is that if it is not held every five years (periodically), the election can be said to be invalid according to Law. This also applies to postponing elections; if they are not held every five years (periodically), then the elections can be said to be invalid. The next question is, what is the mechanism for postponing elections according to Constitutional Law? The author believes there are two legal mechanisms if the election is still delayed (James and Alihodzic 2020). The first mechanism is formal changes to the 1945 NRI Constitution (formal amendment), and the second is informal changes to the 1945 NRI Constitution through judicial interpretation. Why these two mechanisms? The author argues that even though the 1945 Constitution of the Republic of Indonesia has an "emergency door" in Article 12 and Article 22 of the 1945

Constitution of the Republic of Indonesia, according to the author, these two "emergency doors" cannot be applied in postponing elections.

According to Susi Dwi Harijanti (2020), Article 22 of the 1945 Constitution of the Republic of Indonesia with the Perpu legal product is an extraordinary rule, which means that its position is the same and equal to the Law but is temporary because of a compelling emergency (Harijanti et al. 2020). This is reinforced by Constitutional Court Decision No. 138/PUU-VII/2009, which confirms that a Perpu is needed if: There is a situation, namely, an urgent need to resolve legal problems quickly based on the Law. The required Law still needs to exist so that a legal vacuum occurs, or there is a law that is inadequate. The legal vacuum cannot be overcome by making a law using standard procedure because it will take quite a long time, while urgent situations need certainty to be resolved (Palermo 2011). Furthermore, related to Article 12 of the 1945 Constitution of the Republic of Indonesia, it is the determination of a state of danger (extraordinary measures). The authority to determine rests with the President with the legal product Presidential Decree (Keppres). In the author's opinion, the "emergency door" in Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia cannot postpone elections because periodic elections are expressly regulated in the 1945 Constitution of the Republic of Indonesia. Meanwhile, the "emergency door" in Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia can only be done on products through laws or by filling legal gaps in laws. Because it is regulated in the 1945 Constitution of the Republic of Indonesia, the postponement of the elections cannot be done through the "emergency door" as in Article 12 and Article 22 of the Constitution of the Republic of Indonesia 1945. The author offers two mechanisms: formal changes to the Constitution of the Republic of Indonesia 1945 (legal amendments) and informal changes to the Constitution of the Republic of Indonesia 1945 through interpretation of court institutions (judicial interpretation).

The author believes this can be done regarding the first mechanism, namely formal changes to the 1945 Constitution of the Republic of Indonesia (legal amendments). Still, there is a risk that the proper amendments will spread everywhere. In fact, in 2021, the Chairman of the MPR emphasized that the orientation of the legal amendment to the NRI Constitution was to include the Principles of State Policy (PPHN) in the 1945 NRI Constitution as Directive Principles of State Policy. However, apart from the discourse on the Principles of State Policy (PPHN), there has yet to be any other discourse on formal amendments to the 1945 Constitution of the Republic of Indonesia, including making legal amendments to postpone the elections. In this regard, the author thinks that making formal amendments to the 1945 NRI Constitution to facilitate the postponement of the polls is quite risky because it has the potential to become a "wild ball" that could even carry out formal amendments to the 1945 NRI Constitution against various provisions that only provide benefits for political elites such as discourse Three-term President and various other issues, regarding the second mechanism, namely through the interpretation of a court institution (judicial interpretation) where the postponement of the election can be carried out in a manner and way through the interpretation of a court institution, in this case, the Constitutional Court. This is stated in Constitutional Court Decision No. 008/PUU-II/2004, which indirectly also changed the text in Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Of course, this constitutional innovation can be tried by testing the Election Law with the 1945 Constitution of the Republic of Indonesia in the Constitutional Court regarding certain conditions that legally allow the postponement of elections. Of course,

suppose you quote Agus Riewanto (2022) in the daily Kompas with an article entitled "Election Postponement Law," which confirms that postponing elections during the COVID-19 pandemic was carried out by 48 out of 193 countries or around 53.79% of countries in the world based on data Institute for Democracy and Electoral Assistance (IDEA) In 2020. In that case, this is not impossible to implement in Indonesia, but is it right that the elections continue to be postponed for "still unclear" reasons only oriented towards practical political interests? Based on the explanation above, the author believes that postponing the Election is inappropriate and irrelevant from a political aspect, so delaying the Election will only reduce the legitimacy of the people's sovereignty manifested in the Election. Regarding Constitutional Law, postponing elections also requires relevant legal products. In the author's opinion, this can only be done through formal amendments to the 1945 Constitution of the Republic of Indonesia (proper amendments), of course, with the risk that the legal amendments will spread everywhere and through the interpretation of judicial institutions. interpretation) in this case, the Constitutional Court examined the Election Law against the 1945 Constitution of the Republic of Indonesia, accompanied by relevant legal reasons for postponing the Election. Of course, the author is more inclined towards judicial interpretation regarding the legal product of delaying elections. In general, the author believes postponing elections is not appropriate.

Constitutional message regarding postponement of elections

The 1945 Constitution does not explicitly regulate the mechanism for postponing elections. However, this does not mean it can be interpreted as whether a delay is permitted or prohibited. Both options are considered constitutional. It is essential to analyze and trace the original intent of why postponing the election is prohibited or permitted. One of the reasons why delaying the election is deemed inappropriate is because the idea of the status quo today is contrary to the form of the Unitary State of the Republic of Indonesia (NKRI). The spirit of a unitary state and a republican form of government must be interpreted in one breath, namely the choice of the founding fathers and mothers to choose a unitary state and a republican form of government. In a republican form of government, the process of changing state leaders is carried out openly through an election process. It has term limits, not behind closed doors, like elections based on hereditary rule in a monarchical government. The consequence of an open transfer of power process has given birth to an election system carried out regularly.

Therefore, within the limits of reasonable reasoning, elections are the only legal and constitutional way of succession to the leadership of a republic-shaped country like Indonesia (Hendrianto 2016). Thus, elections must be held to ensure that the spirit of constitutionalism in the republican form of government is maintained. Article 37 Paragraph (5) of the 1945 Constitution of the Republic of Indonesia mandates that the mechanism for formal constitutional changes, precisely the form of the Unitary State of the Republic of Indonesia, cannot be changed. In other words, encouraging the postponement of elections leads to non-compliance with the Constitution (constitutional disobedience) with the provisions contained in the Constitution itself. It leads to changing it to a monarchical state where the country's leader in power does not have a specific term limit.

The basic agreement, tracing the history of constitutional changes in 1999-2002, established five basic contracts in the change agenda. The five agreements became guidelines (agenda-setting) when the framers of the 1945 Constitution (the framer's Constitution) made changes. The basic deal drawn up by Ad Hoc Committee 1 is: not to

change the preamble to the 1945 Constitution, 2) to maintain the Unitary State of the Republic of Indonesia, 3) to emphasize the presidential system of government, 4) an explanation of the 1945 Constitution which contains normative matters will be included in articles (torso), 5) make changes using supplement.

According to Cheryl Sauder, these five points are referred to as the agenda for constitutional change (agenda setting), which is accommodated in constitutional changes (Sauder, Lynn, and Podolny 2012). Constitutional changes always have a background and purpose. Changes to the Indonesian Constitution indeed depart from historical aspects that occurred and were experienced in the past and form reactions to constitutional practices, so the agreement to amend the 1945 Constitution became a starting point for correcting weaknesses in constitutional practices in the past. One of the weak points of constitutional practice in the past was the flexibility of interpretation during the president's term of office. It is commonly known that in the 1945 Constitution, term limits had multiple interpretations before the amendments. This situation then gave birth to MPRS Decree Number IX/MPRS/1966 concerning the Appointment of President Soekarno as the great leader of the revolution and president for life, and this was repeated when President Soeharto made sacred the interpretation of the absence of strict limitations in the presidential term so that he was in power for approximately 32 years.

Conclusion

According to the Indonesian constitution and state administration, delaying elections is considered a violation of the people's fundamental right to participate in a democratic process. Such a delay is also contrary to the principles enshrined in the 1945 Constitution, which emphasizes the importance of upholding constitutionalism, as stated in Article 22E, Paragraph 1. The Constitution requires that general elections be held directly, publicly, freely, secretly, honestly, and relatively every five years or less. As a result, the organizers must abide by these regulations. Any attempt to postpone elections is, therefore, a clear violation of the constitution and demonstrates an unethical attitude towards the state.

If you refer to Article 1, paragraph 2, which reads, "sovereignty is in the hands of the people and is carried out entirely by the MPR," then if the conditions for holding elections are deemed impossible to carry out under the pretext of the government to maintain national economic stability and even until the government amends the constitution, that must not force and decide unilaterally but must be with the agreement of the people as the holder of supreme sovereignty as a whole. For example, suppose the holder of sovereignty, namely the people as a whole, wants the conditions to be impossible for elections to be held. What is known as state emergency law can be implemented. However, if all the people reject the issue of postponing the 2024 election, then this issue is just a mere discourse that must be thrown around and does not have to be realized or implemented.

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