

# ELECTION DESIGN FOLLOWING CONSTITUTIONAL COURT DECISION NUMBER 14/PUU-XI/2013

**Fajar Laksono**

The Constitutional Court of the Republic of Indonesia  
Jalan Medan Merdeka Barat Number 6 Center of Jakarta Indonesia  
fajarlaksono@yahoo.com

and

**Oly Viana Agustine**

The Constitutional Court of the Republic of Indonesia  
Jalan Medan Merdeka Barat Number 6 Center of Jakarta Indonesia  
olyve\_lovelaw@yahoo.co.id

## **Abstract**

The major implication from Constitutional Court Decision No. 14/PUU-XI/2013 is that the Constitution promotes fundamental changes to the design of the general election regarding both process and substance. Therefore, in order to uphold the Constitution, efforts are required to reconstruct the design of the general election, particularly so that elections are conducted in accordance with Decision No. 14/PUU-XI/2013 as a representation of the spirit and the will of the 1945 Constitution. Essentially, the current norm regarding the implementation of general elections following the election of members of the representative institution is not consistent with the stipulations in Article 22E Paragraph (1) and Paragraph (2) and Article 1 Paragraph (2) of the 1945 Constitution. Constitutional Court Decision No. 14/PUU-XI/2013 aims to realign the implementation of the elections with the intentions of the 1945 Constitution. Through implementation of the original intent method and systematic interpretation, the Constitutional Court offered its interpretation that the framers of the amended Constitution intended that general elections have five ballot boxes, with the first for the People's Representative Council (*Dewan Perwakilan Rakyat, DPR*), the second for the Regional Representative Council (*Dewan Perwakilan Daerah, DPD*), the third for the president and vice president, the fourth for the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah, DPRD*) at the provincial level and the fifth for the DPRD at the regency level. Thus, it can be concluded that the presidential elections should be conducted simultaneously with elections of members of the representative bodies. Through this decision,

the Constitutional Court revoked the prevailing norm, such that Presidential Elections and Elections of members of representative bodies were no longer valid because they violated the 1945 Constitution. The Constitutional Court introduced a new legal condition that obligated General Elections to be held simultaneously.

**Keywords:** General Elections, Constitutional Court

## I. INTRODUCTION

### A. Background

If we are to accept that Constitutional Court decisions are manifestation of the constitution, then it follows that they should be upheld in the same way that the constitution itself is upheld. This concept is consistent with the doctrine of constitutional supremacy, which assures the constitution as the supreme law of the land. Therefore, the greatest and most important implication from Constitutional Court Decision No. 14/PUU-XI/2013 is that the 1945 Constitution wills a foundational change to the design of the general elections as it has been implemented thus far.

Through Decision 14/PUU-XI/2013 on 23 January 2014, the Constitutional Court granted a petition to review the contents of Law No. 42, 2008 concerning Presidential and Vice-presidential General Election (Presidential Election Act). The petition was brought before the Court by the People's Coalition for Simultaneous Elections. The Constitutional Court revoked Article 3 Paragraph (5), Article 12 Paragraphs (1) and (2), Article 14 Paragraph (2) and Article 112 of the Presidential Election Act. These provisions regulated the conduct of the presidential and vice-presidential elections separately from the elections of members of the representative bodies. This was determined contrary to the Constitution concerning general elections, as regulated in Article 22E Paragraphs (1) and (2) and Article 1 Paragraph (2).

Through the original intent method and systematic interpretation as one of the bases for the decision, the Constitutional Court made the interpretation that the authors of the Constitution intended for an election of five ballot boxes with the first for the People's Representative Council (*Dewan Perwakilan Rakyat*,

DPR), the second for The Regional Representative Council (*Dewan Perwakilan Daerah, DPD*), the third for the president and vice president, the fourth for the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah, DPRD*) at the provincial level and the fifth for the DPRD at the regency level. It can be understood, therefore, that the presidential elections should be held simultaneously the other elections of members of the representative bodies.

Through this decision, the Constitutional Court revoked the prevailing norm, such that Presidential Elections and Elections of Members of Representative Bodies were no longer valid because they violated the 1945 Constitution. However, this provision was not immediately implemented for the 2014 elections, but rather it was to be implemented from the 2019 elections and all elections thereafter.

Based on the description above, there are two things that need attention. First, the Constitutional Court decision must be implemented in the spirit of Decision as intended by the decision itself. Therefore, it is important to think about how the decision has been followed up on. If the addressee of Constitutional Court Decision No. 14 / PUU-XI / 2013 were the legislators, it is 'homework' for the legislators to formulate regulation within the legislation by reference to the Decision. Secondly, the implication supposes the first simultaneous elections in the context of the Indonesian political system and Indonesian democracy. Since the first elections in 1955 up to the 2014 general election, elections have never been conducted simultaneously, so that the country has absolutely no experience with such a system. If the election is understood as a long process beginning with the nomination stage and continuing through the campaigns, voting, determination of voting, dispute resolution, election results and finally ending with the determination of the election results, it is clear, in order to successfully hold elections simultaneously requires thorough preparation in all aspects, both regulation substance and technical administration, which requires effort and necessitates the participation of from components of the state.

These two points make this study both very urgent and interesting. The study is focused on two things, namely (1) the design of the electoral system for simultaneous elections, which includes the implementation of simultaneous

elections, the time of execution, the participants in the election, and the selection of the electoral system that is considered most appropriate and efficient; and (2) the mechanism for settling disputes over the results of simultaneous elections within the jurisdiction of the Constitutional Court, which also includes a discussion of how the mechanism will be implemented, considering completion period, procedural law, and other technical matters. Thus, reflecting on the experience from previous elections, including the practical experience of several different countries in conducting simultaneous elections, is a very important part of this research.

## **B. Research Question**

Based on the above, the problem is how to reconstruct the format of the general elections in light of Constitutional Court Decision No. 14/PUU-XI/2013?

## **II. DISCUSSION**

### **A. Format of General Elections In Light of Constitutional Court Decision No. 14/PUU-XI/2013**

#### **1. Variants of Simultaneous Elections**

Simultaneous elections can be simply defined as an electoral system that conducts multiple elections at one time simultaneously.<sup>1</sup> These elections include executive and legislative elections from the national, regional and local levels. In the member countries of the European Union, simultaneous elections even include elections at the supra-national level, namely the European parliamentary elections, which are held concurrently with the national regional and local elections. With the variety of factors affecting the implementation of simultaneous elections, there are several variants, some of which have already been implemented and some that are still hypothetical. A simultaneous electoral system has been applied in many democracies; not only those countries who have long implemented a democratic system, such as the United States and some Western European countries,<sup>2</sup> but also many

<sup>1</sup> Benny Geys, Explaining Voter Turnout: A Review of Aggregate-Level Research, *Electoral Studies* 25 (2006): 652.

<sup>2</sup> David J. Andersen, *Pushing the Limits of Democracy: Concurrent Elections and Cognitive Limitations of Voters*. PhD Dissertation, (New Jersey: The State University of New Jersey, 2011). See also Benny Geys, —Explaining Voter Turnout: A Review of Aggregate-Level

relatively younger democracies, such as those in Latin America<sup>3</sup>, and Eastern Europe<sup>4</sup>. However in Southeast Asia, the simultaneous electoral system is not yet widely known. Of the five countries that implement election—though not entirely democratic—only The Philippines conduct simultaneous elections for elections of the president and legislators, while Indonesia, Malaysia, Singapore and Thailand do not use simultaneous elections.<sup>5</sup>

In the implementation of simultaneous elections, executive elections have commonly been combined with legislative elections. In Latin America, Jones noted that presidential and legislative elections are conducted simultaneously in Bolivia, Columbia, Costa Rica, Guatemala, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela. In some countries, simultaneous elections also combine national and regional or local elections. In the United States, for example, some states incorporate not only the presidential election and members of Congress and the Senate at the central level, but at the same time also hold elections for governors and legislators at the state level.<sup>6</sup> In Latin America, Brazil also implements a similar model. Elections are conducted simultaneously by combining the presidential and parliamentary elections at the national level, and elections for governors and legislators at the state level.<sup>7</sup>

Variants of simultaneous elections can be distinguished by the implementation time and the level of government that can affect voters' perceptions of the importance of the elections. Theoretically, the holding of multiple elections at the same time—such as legislative elections with presidential elections, legislative elections with a referendum on public

---

Research, *Electoral Studies* 25 (2006): 637-663.

<sup>3</sup> David Samuels, —Concurrent Elections, Discordant Results: Presidentialism, Federalism, and Governance in Brazil, *Comparative Political Studies* 33 (1): 1-20.

<sup>4</sup> Tatiana Kostadinova and Timothy J. Power, —Does Democratization Depress Participation? Voter Turnout in the Latin American and Eastern European Transitional Democracies, *Political Research Quarterly* 60 (3) 2007: 363-377. See also Thomas Sedelius, *The Tug-of-War between Presidents and Prime Ministers: Semi Presidentialism in Central and Eastern Europe*, (Orebro University: Orebro Studies in Political Science 15, 2006).

<sup>5</sup> Schraufnagel, Scott, Michael Buehler, dan Maureen Lowry-Fritz, —Voter Turnout in Democratizing Southeast Asia: A Comparative Analysis of Electoral Participation in Five Countries, *Taiwan Journal of Democracy* 10 (1) 2014: 1-22.

<sup>6</sup> David J. Andersen, *Pushing the Limits of Democracy: Concurrent Elections and Cognitive Limitations of Voters*. PhD Dissertation, (New Jersey: The State University of New Jersey, 2011). See also Benny Geys, —Explaining Voter Turnout: A Review of Aggregate-Level Research, *Electoral Studies* 25 (2006): 2.

<sup>7</sup> David Samuels, —Concurrent Elections, Discordant Results: Presidentialism, Federalism, and Governance in Brazil, *Comparative Political Studies* 33 (1): 1-20.

issues, as well as all sorts of elections for public positions and important policy issues—is usually closely linked to the electoral cycle, mechanical effect utilities of the election, oppressive regimes, and also the existing party model. Elections might be held simultaneously if the fixed terms for multiple political offices coincide, so that at certain times elections will be held in unison for a variety of public positions even though the respective term of office for each position is different. An example of this is in America, where the president's term is four year, senators' six years, and board members two years. The term of office for public positions at the state level, districts, and cities are also similar to those applied in the federal government so that simultaneous elections occur in cycles that can affect political constellation. However, simultaneous elections can also be held when the government gets a parliamentary no-confidence motion and must hold an election to fill a public office at the national or regional level.<sup>8</sup>

Simultaneous elections can also be designed such that one election has an impact on another election. Usually the consideration is to influence the outcome of the presidential election with the results of legislative elections as a basis for determining the winner. Under certain rules, it is possible to influence the vote a particular party on the condition that the party's presidential candidate wins, so that one type of election will have a mechanical effect on the results of other elections. The party with the most votes, it can deliver the presidential candidates for the presidency even though the result in the presidential election is not necessarily the best result. In some variants, mechanistic effects are expected to occur within a certain timeframe, which is commonly referred to as the coattail effect. For example, legislative and presidential elections are expected to affect the outcome of mid-term elections, or elections to be held thereafter. In the context of Indonesia, based on empirical and hypothetical variants, there are at least six models of simultaneous elections. First, simultaneous elections held once every five years for all public positions at the national level down

<sup>8</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 18-19 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

to the district/city level. This election includes the election of the legislature (DPR, DPD, Provincial and District/City), the presidential election, and the local leaders election. It is often called seven box election or bulk election. Second, simultaneous elections for legislative positions only (central and local), followed by the simultaneous elections for executive positions (central and local). In this clustered simultaneous model, DPR, DPD, Provincial and District/City elections are implemented at the same and are then followed by the presidential election and elections for the governor and regent/mayor a few months later.<sup>9</sup>

Third, simultaneous elections with by-election based on government level, where the national elections and local elections are separated (simultaneous election concurrent with mid-term election). In this model DPR and DPD elections are concurrent with the presidential election, and the elections of Province and district/city councils are concurrent with elections for governors and regents/mayors two or three years after the general elections. Fourth, simultaneous elections at the national and local levels that are distinguished by intervals of time (simultaneous election with regionally-based simultaneous elections). In this model, the presidential election and the legislative elections for the DPR and DPD are conducted at the same time. Then in the second year the local level simultaneously holds elections to choose the provincial and Regency/City DPRD and as well as the election of Governor and Regent/Mayor by grouping certain regions or island areas. For example the second year on the island of Sumatra, the third year for the island of Java, and the fourth year for Bali and Kalimantan, and the fifth year for the remaining areas. With this model, every year all parties have to work to gain voter support, and the government and political parties can be evaluated by voters annually. Fifth is simultaneous national elections followed by simultaneous elections in each province at an agreed time or based on the local election cycle in their respective provinces. This model, simultaneous elections with flexible simultaneous local elections, the Presidential election is combined

<sup>9</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 19-20 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

with the legislative elections for the DPR and DPD. Then after that depends on the local elections cycle schedule for simultaneous elections at the local level to choose governors, regents, and mayors as well as select members of the Provincial DPRD and Regency/City, and later followed by simultaneous elections in the same locale across other provinces, such that in one year there could be several simultaneous local elections in certain provinces.<sup>10</sup>

Sixth, are simultaneous elections for members of the DPR, DPD and DPRD as well as the President and Vice-President, followed after a certain time interval by simultaneous elections for the province. In this election, the local level simultaneous elections are for selecting governors, regents and mayors simultaneously in a province, and the schedule depends on the agreed cycle of local elections in each province. In the first, second, and third models, if the goal of simultaneous elections is simply cost saving, it has certainly been achieved. However, the administration of the elections becomes more complex; the political configuration becomes erratic; it may even result in obscured political blocking and encourage transactional politics because of the need for electoral support to win the election. On the other hand, the simultaneous elections in the third, fourth, and fifth models is believed to make the electoral system more simple. With the concurrent implementation of elections for members of Parliament and for the president, the tendency is that there are only two major blocks of a coalition of political parties, which both nominate presidential and vice presidential candidates. Blocking politics created by the executive and legislative election results at the national level are likely also to manifest itself also in the region. If the national elections provide good results from the president and the legislative members, then voters will also choose a partner and regional head of Parliament from the candidate of the governing parties of national elections. Thus congruence be created not only in the executive–legislative level, but also central and local.<sup>11</sup>

<sup>10</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 19-20 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

<sup>11</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 20-21 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

## **2. Time of Execution of Simultaneous Elections**

When referring to the norms of simultaneous election administration, the Constitutional Court decision refers to Article 22E Paragraph (1) of the 1945 Constitution, which states, “The general election is held directly, public, free, confidential, honest, and fair once in every five years “. It is understood that the constitution mandates that there is only one election in five years. This is immediately followed by Paragraph (2) stating, “The elections are held to elect members of the House of Representatives, Regional Representatives Council, the President and the Vice President and the Regional Representatives Council.” It is understood, therefore, that the direct, public, free, confidential, honest, and fair elections held once every five years are intended to elect members of the House of Representatives, Regional Representatives Council, the President and the Vice President and the House of Representatives Area all at one time, simultaneously. However, the argument for a five-box simultaneous election has drawn criticism for several reasons:<sup>12</sup>

### **a) Lack of Coattail Effect**

The desire to strengthen the presidential system brings about a mutually supportive relationship between the executive and the legislature, thus creating strong governance. This is not so easy to create if all five elections are administered simultaneously because the separate ballot papers allow voters to make inconsistent choices. Voters may vote for a party A to the legislature, and party B’s candidate for president; thus there is no coattail effect.

### **b) The Possibility of W**

So far in Indonesia’s experience holding elections, it can be seen that voter behaviour in Indonesia is still heavily influenced by campaign materials or affiliation with potential proximity reasons, for example because of shared ethnicity, physical performance or other such instant factors. Therefore, based on recent elections in Indonesia, there have been many cases of money politics, but new jargon has developed

<sup>12</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 103 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

within the community, creating a perception that such cases are normal and not problematic. As such, there must be engineered an electoral management and a tightening of legal sanctions for those involved in money politics. Provisions in the electoral law that prohibit giving, receiving or promising goods and services during the elections need to be enforced. In addition, the voters' ability to make rational, informed decisions based on the parties's programmes is minimal. Parties fail to socialise their programmes to prospective voters and candidates efforts to drive the success of their respective party programmes are weak. Hence the necessity for a formula to systemically to address the issue.

**c) Security Factors**

In recent experience of legislative elections held simultaneously nationwide, there have not been any high security risks. However, it should be noted that the escalation of friction amongst supporters during contestation of the legislative elections and the presidential elections are significantly different. For example, because there were only two pairs of candidates in the 2014 presidential elections, the friction between supporters of each candidate was considerable, which has implications for public security. If five elections are combined into one simultaneous election, then the question of security is necessary to draw greater attention due to the potential compounding of friction amongst the supporters of different presidential candidates with the interests of the supporters of contesting parties.

**d) Logistical Arrangements**

Thus far, logistic arrangements have used a centralised logistics and distribution system to implement zoning with enforced zones arranged in a way to get closer to the winning bidder's plant and logistics distribution area. With simultaneous elections across diverse regions, it remains to be seen whether the election organisers (KPU) will apply the same systems and mechanisms or find a new approach. The complexity of a five-way simultaneous election requires more thoroughness from the organisers.

Thus, a national-local model for simultaneous elections has been proposed, which must pay consideration to the following:

- a. the end-of-term for the president, DPR and DPD for the national elections;
- b. the end-of-term for the governor, regent/mayor, provincial DPRD and district/municipal DPRD for the local elections.

Historically, the president and vice president have been inaugurated on 20 October, and the DPR and DPD are inaugurated on 1 October. Since the legislative elections are held on the 9 April, the time between the election and the inauguration is 5 or 6 month, which allows for the emergence of ineffective legislation, particularly for those who are not reelected. Therefore, if there is to be a simultaneous election, it is best if the time between the election and the inauguration is reduced, though with consideration to the time needed for recapitulation, which is one month, as well as the time needed for the settlement of claims with the Constitutional Court. In light of these matters, May 2019 was suggested as an appropriate time for the first simultaneous national election because it does not interfere with the ending of the president's term. If local simultaneous elections are to follow two and a half years later, then they will be held in November 2021. Regarding budgeting responsibilities, finances can be accounted for in December.

### **3. Possible Systems for Simultaneous Elections**

Systems in this case refer to the procedures involved in conducting a simultaneous election, consisting of the mechanism and procedures for directly electing the president and vice president and for electing the members of the DPR and DPD. Procedures for local elections are not considered a part of the national system. The national system is concerned with how the presidential and vice presidential candidates as well as candidates for the DPR and DPD will be elected directly by the people. Meanwhile, the choosing of presidential and vice presidential candidate will not experience a change of system. The system for electing the president and vice president is a plurality system, not a majority system (50% + 1), as

regulated by the Constitution. Meanwhile, the Multi-member district system is used to elect members of the DPD for each region, whereby multiple members are chosen based on the top largest votes relative to the number of chairs available, e.g. for regions with three chairs, the top three candidates with most votes in that region are elected.

As for selecting candidates for members of DPR, there are two main types of system available, namely, proportional and majoritarian. Some countries have developed from these two systems a mixed system that combines the two mechanisms. In the context of simultaneous elections, this option requires that there be a presidential coattail and political efficacy, such that the choice of candidates for president / vice president will have an impact on the choice of a political party or candidates for Parliament nominated by political parties. The presidential coattail effect and political efficacy, can be influenced by whether the choice of candidate for president/ vice-president and for members of DPR/parties are on a single ballot paper or separate ballot papers. Although there are different mandates for each, preventing them from being combined as one, some countries unite the electoral process in a single ballot nonetheless. Aside from efficiency, this is done in the context of simultaneous elections in order to magnify the impact of the presidential and vice-presidential election on the election of party members and members of DPR/parties.<sup>13</sup>

However, the technical implementation must also be considered in order to find the electoral system that is most convenient. Furthermore, the system should be tailored to the specific goals, particularly regarding efforts to realise a simple multi-party system. To that end, there are several options for combining systems with technical implementation. First, continue to use the open proportional system (Open PR) to elect the members of the DPR. The advantages of using Open PR include reducing party oligarchy in the recruitment and nomination of members of Parliament and allowing voters to vote for representatives directly. However drawbacks are that the political

---

<sup>13</sup> Electoral Research Institute – LIPI, 2014, *Position Paper Pemilu Nasional Serentak 2019*, Jakarta, page: 71-72 ([www.eri-indonesia.org](http://www.eri-indonesia.org)) access on Oktober 2015

parties lose control over the candidates for the people's representatives, the widespread use of money politics in the search for support, the unhealthy intra-party and inter-party competition and *pencurian suara antarkandidat*. Regarding technical implementation, voters are given the opportunity to elect a party and/or to select individual candidates from an open list. In practice, voters are often confused when selecting a candidate as there are so many to choose from. Often many voters who do not have an individual preference end up choosing a political party rather than choosing candidates. In a simultaneous election, the use of an open proportional system is technically very difficult to combine on one ballot paper the prospective presidential/vice-president with the open list of candidates and political parties. Consequently, if the open PR system is used, there will still be three boxes in the administration simultaneous elections, namely box 1 the presidential/vice-presidential candidate; box 2 for members of Parliament/political parties; and box 3 for members of the DPD.

The second option is a closed proportional system, though this can be considered a step backwards. Nevertheless, there has not been any evaluation using the Open PR system of how many voters opt to elect a party rather than an individual candidate. At a glance, results from polling stations suggest that there is still a tendency towards voters choosing a party rather than selecting from the open list of candidates. The effectiveness of using an Open PR system, as well as the shortcomings mentioned above, is not yet an option for voters. If the Closed PR system is used, the elections can be conducted more efficiently, and the effects of presidential coattail and political efficacy will be significantly higher because the voters can directly compare the presidential/vice-presidential candidates with the political parties upon the same ballot paper. With the presidential/vice-presidential candidates placed so close to the party logos, the coattail effect will be much higher than with two separate papers.

A third option is holding simultaneous elections at the same time by changing the system of parliamentary/party elections from a proportional

electoral system to a mixed system, specifically a parallel election. This is a valid option, considering the trials conducted by the LIPI Political Research Centre (P2P LIPI) on the effectiveness of the parallel electoral system to produce a moderate multiparty system. The results of simulations conducted by P2P LIPI based on data from the 2009 and 2014 Elections showed acceleration in producing a moderate political party composition (moderate) in parliament without parliamentary threshold. The parallel electoral system is a system where most members of the DPR are elected through a proportional system (closed) and others are selected through a majoritarian system.

In the context of technical administration, it is more feasible to conduct a simultaneous presidential and vice-presidential elections with a parallel electoral system using a single ballot paper rather than the Open PR system. Tingkat kemungkinan teknis penyelenggaraanya hampir sama dengan simultaneous elections combining the plurality system with closed lists and/or parallel election, because each party only presents the party logo and a single name for a majoritarian election. Thus, it is technically easier to implement than the open list, which would require three ballot papers, while the combination of closed list and parallel system requires only two papers: one for the president/vice-president and the party/candidate and one for members of the DPD. One major benefit of the parallel election is that it solves the problem of spread results in a proportional system caused by a fragmented multiparty system. From the three variants offered, this paper suggests a change in the system used for electing members of DPR in order to realise the goal of simplifying the multiparty system.

#### **4. Settlement of Disputes in Light of Constitutional Court Decision No. 14/PUU-XI/2013**

##### **a. Violations and Disputes**

In matters of election law, we can refer to Law No. 8, 2012 concerning General Elections for Members of the People's Representative Council, Regional Representative Council and Regional People's Representative

Council because it is more complete than Law No. 42, 2008 concerning General Election for the President and Vice-president, Law No. 15, 2011 concerning Administration of General Elections and Government Regulation in Lieu of Law No. 1, 2014 regarding Elections for Governor, Regent and Mayor. Law No. 8/2012 recognises two legal problems: violations and disputes. Violations refers to criminal acts related to general elections, and disputes refers to electoral disputes, and disputes over the administration of elections and results of elections. There are three kinds of election violations: Electoral violations are misdemeanours or felonies under electoral law. Unlike the laws before, Law No. 8/2012 differentiates between misdemeanours and felonies. Said Law determines 19 articles of misdemeanours, from giving false information on the electoral roll to announcing survey results during the cooling-off period. There are also 29 articles of felonies determined by Law 8/2012, including depriving another of the right to vote to election officials not taking action or reporting when discovering violations.

Electoral administration violations are violations that relate to the methods, procedures and mechanisms in each stage of the election other than violations of the electoral administration code of ethics. Because these violations are related to the administration of elections, they constitute violations of KPU regulations. Law No. 8/2012 does not specify the type or form of sanctions for such violations. Sanctions are directly related to the administration process, starting from verbal warning, written warning to revocation of position as a voter or candidate.

Violations of the election administration code of ethics are violations of the ethics of election administration in accordance with the oaths taken before the commencement of the elections. According to Law No. 15/2011, the election administration code of ethics is compiled and implemented by the DKPP with a view to protecting the independence, integrity and credibility of the administration of elections. Penalties for violators of the election administration code of ethics of consist of written warning, suspension, and permanent dismissal. There are also

three types of electoral dispute: Disputes amongst participants of the election and disputes between participants and administrators of the election as a result of decisions issued by KPU at the national, provincial or regency/city level. According to Law No. 15/2011, in the administration of elections, KPU at the national level can issue KPU Regulations and KPU Decisions, while KPU at the province and lower levels can issue decisions with reference to the KPU at the national level. Regarding legislative elections, there have been many decisions issued by KPU at all levels, consistent with the procedures and stages of administering the elections, and all of which are results of disputes, whether amongst participants or between participants and administrators.

State administrative electoral disputes arise between candidates for members of DPR, DPD, DPRD and parties on the one hand and KPU on the other as a result of decisions issued by KPU. These disputes arise when a party candidate does not pass verification as a result of a KPU Decision concerning the determination of participant political parties; and a candidate for membership to the DPR, DPD or DPRD is stricken from the candidate list as a result of a KPU Decision concerning the determination of the candidate list. Disputes over election results arise between KPU and the participants regarding the national determination of votes. Disputes over the determination of votes in the national election may affect the number of seats for participants of the election. The Constitution affirms that such disputes are handled by the Constitutional Court. Originally, disputes over regional election results were also addressed the Constitutional Court, but recently a Constitutional Court Decision handed these cases off to the Supreme Court.

### **III. CONCLUSION**

#### **A. Summary**

The format of the election after Constitutional Court Decision No. 14/PUU-XI/2013 is a five-box election, where box 1 is for the DPR, box 2 is

for the DPD, box 3 is for the president and vice-president, box 4 is the DPRD at the province level, and box 5 is for the DPRD at the regency/city level and is conducted simultaneously. Aside from changes to the time of administration, there are also changes to the candidacy system, electoral system, campaign models and the election area and presidential threshold in simultaneous elections.

## **B. Recommendations**

1. All stakeholders in the simultaneous elections—the government, DPR, DPD, administrators—must share a common understanding of simultaneous elections;
2. This shared understanding will ease the formulation of laws for the simultaneous national general elections for president/vice-president, members of DPR and DPD and for the local simultaneous general elections for Governor and DPRD at the province level and Regent and Regency DPRD as well as Mayor and City DPRD;
3. At least two laws pertaining to simultaneous elections must be made:
  - i. law on Simultaneous National General Elections;
  - ii. amendment to the law on General Elections for Regional Leaders to cover Simultaneous Local General Elections at the Provincial Level.

## **BIBLIOGRAPHY**

### **Books and Articles**

- Affan Ghaffar, *Politik Transisi Menuju Demokrasi*, Yogyakarta: Pustaka Pelajar, 2005.
- Arend Lijphart, *Electoral System and Party Systems: A Study Twenty-Seven Democracies 1945-1990*, New York: Oxford UP, 1995.
- Daniel S. Lev, *Hukum dan Politik di Indonesia, Kesenambungan dan Perubahan*, Cet. I, Jakarta: LP3S, 1990.
- Dede Rosyada, dkk, *Pendidikan Kewargaan (Civic Education): Demokrasi, Hak Asasi Manusia, dan masyarakat Madani*, Jakarta: Prenada Media, 2003.
- Doel, J, van den, alih Bahasa R.L.L Tobing, *Demokrasi dan Teori Kemakmuran*, Jakarta: Gelora Aksara Pratama, 1998.

- Jayanti Puspaningrum, *Tinjauan Teoritis Sistem Pemilu (Memotret Sistem Pemilu 2009)*, dalam Jurnal Konstitusi Vol. II 1 Juni 2009.
- Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid 2*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006.
- Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia*, Jakarta: Bhuana Ilmu Populer, 2007.
- Konrad Zweigert dan Hein Kotz, *An Introduction to Comparative Law* (Third Edition), New York: Oxford University Press, 1998.
- Lyman Tower Sargent, *Contemporary Political Ideologies*, alih bahasa Sahat Simamora, *Ideologi Politik Kontemporer*, Jakarta: PT. Bina Aksara, 1986.
- Mauvty Makaanim al-Akhlaq, *Makalah Relasi Politik dan Hukum di Indonesia* dalam Merdi Hajiji, *Relasi Hukum dan Politik dalam Sistem Hukum Indonesia*, Jurnal RechtsVinding, Vol. 2 Nomor 3, Desember 2013.
- Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Edisi Pertama), Jakarta: PT. Gramedia Pustaka Utama, 2008.
- Otje Salman, *Teori Hukum Mengingat Mengumpulkan dan Membuka Kembali*, Bandung: PT Refika Aditaman, 2014.
- Peter de Cruz, *A Modern Approach to Comparative Law*, Deventer-Boston: Kluwer, 1993.
- Ramlan Subakti, *Memahami Ilmu Politik*, Grasindo, Jakarta, 1992.
- Ronald Dworkin, *Legal Research*, Daedalus: Spring, 1973.
- Ruslan Abdulgani, *Beberapa Catatan tentang Pengamalan Pancasila dengan Penekanan kepada Tinjauan Sila ke-4 yaitu Demokrasi Pancasila*, dalam *Demokrasi Indonesia Tinjauan Politik, Sejarah, Ekonomi-Koperasi dan Kebudayaan*, Yogyakarta: Yayasan Widya Patria, 1995.
- Sigit Pamungkas, *Perihal Pemilu*, Yogyakarta: JIP.UGM, 2009.
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: CV. Rajawali, 1985.
- Sukarna, *Sistem Politik*, Bandung: PT Citra Aditya Bakti, 1990.
- Trubus Rahardiansah P, *Pengantar Ilmu Politik, Paradigma, Konsep Dasar, dan Relevansinya untuk Ilmu Hukum*, Jakarta: Penerbit Universitas Trisakti, 2008.