



# Juridical Analysis of the Impact of Postponing the 2024 Election from Constitutional Perspective Indonesia

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**Abstract.** The constitution which is domiciled as the highest legal source of a country makes the UUD 1945 the written constitution of the Indonesian state. The UUD 1945 states that the state as an organization of power must be limited in exercising its power so that arbitrariness does not occur. Elections are part of the embodiment of power restrictions which are carried out democratically and periodically every 5 (five) years as mandated by the UUD 1945. Consistency in the implementation of elections manifests changes in power aimed at forming a representative government. However, the discourse of postponing the 2024 elections has become a phenomenon of the weak meaning of Indonesian democracy towards constitutional values. This research was conducted using analytical descriptive legal specifications with a comparative approach method through secondary data sources, library research techniques, and data analysis using descriptive methods. The results show that postponing the 2024 election is a violation of the constitution that harms Indonesia's democratic system and can pave the way for the power of a coup. A good general election must follow the socio-political context of a country, while the proportional election system is the best choice for Indonesia as a democratic and multi-cultural country.

**Keywords:** Constitution, UUD 1945, Postponement of Elections, Electoral System, Democracy

## 1 Introduction

The constitution is the basic norm that regulates the state as a whole which includes the form of the state, state institutions, state power, form of government, and also the mechanism for sharing power between state institutions, citizens, and human rights. In general, the constitution is the basic law of a country. K.C. Wheare defines the constitution as the entire administrative system of a country in the form of a collection of regulations that form, regulate, or govern the government of a country. The constitution serves to provide limits for state authorities in carrying out and administering the government to guarantee the rights of the people in the life of the state. Therefore, the constitution becomes a sublime agreement that is domiciled as the highest source of law for a country.

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The constitution in the state is a norm of the political and legal system which is generally codified and contains the rules for running a state government organization. The constitution aims to provide limitations as well as control over political power. Therefore, a country that adheres to the notion of constitutionalism will make the constitution the highest embodiment of the law. In the Indonesian state system, the founding fathers formed the UUD 1945 as the constitution of the Indonesian state. UUD 1945 was born through a democratic mechanism that was the result of an agreement between the founders of the Republic of Indonesia who departed from various regional backgrounds and various disciplines. As a written constitution, UUD 1945 implements an idea of constitutionalism which states that the state as an organization of power must be limited in exercising its power so that there is no arbitrariness by the state against the people.

The principle of constitutionalism emphasizes the absolute necessity of limiting the powers of state bearers and administrators because in principle every power will tend to develop into arbitrary. As Lord Acton put it that "Power tends to corrupt, and absolute power corrupts absolutely" (Power tends to be arbitrary, and in absolute power, arbitrariness is also absolute). Therefore, power must be limited through the principles of separation or division of power to limit the power of the state which may be a source of oppression and arbitrary actions against the authorities. It is these arrangements and restrictions that later characterize constitutionalism which is also the main task of the constitution so that in the end the possibility of arbitrary power can be minimized and controlled.

Limiting power is a pillar of democracy which is also the foundation for long-term political stability. Therefore, putting the constitution in the democratic process and elections are the main thing in the process of accumulating the will of the people. Elections are considered a form of implementation of democracy that functions as a forum to screen candidates for people's representatives or state leaders who have the capacity and capability to be able to act on behalf of the people. Elections can be regarded as a political activity which is an institution as well as a political practice that allows the formation of a representative government. Elections are a means of implementing people's sovereignty which is carried out directly, publicly, freely, confidentially, honestly and fairly based on the UUD 1945. Through the fourth amendment to the UUD 1945 in 2002 it was agreed that elections were conducted directly by the people and in the sense that the people's representatives who later occupy the seat of government are elected by the people, come from the people, and will work for the interests of the people.

The realization of elections is one form of the implementation of constitutional democracy. Through the election mechanism, the distribution of people's opinions regularly can become a main pillar in a democratic system. In general, elections aim to form a new government and people's representatives who work to improve people's welfare. There are at least three objectives of the election, namely, (1) an orderly change of government, (2) maintaining state institutions to function by the intent of the 1945 Constitution, and (3) implementing the human rights of citizens. The election objectives formulated by Jimly Asshiddiqie are, (1) to enable an orderly and peaceful transition of government leadership; (2) to enable the change of officials who will represent

the interests of the people in the representative institutions; (3) to implement the principle of popular sovereignty; and (4) to implement the principle of citizens' human rights. Therefore, the implementation of elections is very important because elections are an instrument to determine the direction of a country's public policy.

To realize the sovereignty of the people in the state government following the mandate of the UUD 1945, elections are carried out directly by the people through democratic and civilized administration with the widest possible participation of the people, which are carried out based on direct, general, free, confidential, honest and fair principles. Article 22E of the 1945 Constitution mandates that elections be held periodically every 5 (five) years. The five-year election cycle is a constitutional mechanism in which there is a delegation of legitimacy from the people to the government which is part of a democratic state administration system to ensure consistency and legal certainty. Elections are a clear and accurate measure that a country applies democratic principles. Through the implementation of elections, it can be seen the extent of citizen participation in politics and how the change of power can take place in a democratic manner.

In principle, there is no democracy without providing opportunities for systematic and periodic general elections. Meanwhile, if the implementation of democracy is not carried out consistently and consistently, then the rules outlined by the constitution will be far from normative values which in the end the constitutional norms are only semantic values or are only appreciated on paper which is used as a slogan as a mere justification tool. Nowadays, constitutional values have been sidelined as a result of the phenomenon of postponing the 2024 election which is a chronic symptom of the weakening of the meaning of the people in Indonesian democracy. The discourse on postponing the election is considered to have turned its back on the constitution which also shows the direction of an antagonistic orientation between the people and the elite. If this continues, it is predicted that it could lead to various potential impacts.

## 2 Method

This type of research is descriptive-analytical legal research where the research is intended to provide an overview of the object of the problem through processing and analyzing data to then obtain materials or suggestions on what to do to solve the problem. The legal research method uses a comparative research approach through research data sources derived from secondary data as the main focus. Sources of research data are carried out by examining library materials with the scope of research on principles, systematics, comparisons, and legal history, and research on the level of vertical and horizontal synchronization. Then the data collection techniques used are document studies or literature studies (library studies) by conducting searches on legal documentation or formal legal sources with research data analysis using descriptive methods.

### **3 The Impact of Postponing the 2024 Election from the Perspective of the Constitution of the Republic of Indonesia**

As a process of change in creating a democratic political life, sometimes the realization of democratization is faced with a conflicting political culture. Politics brings interaction between government and society in the framework of the process of making binding policies and decisions about the common good of the people who live in a certain area. In principle, political culture has an important influence on the development of democracy because democratization will not work well if it is not supported by the development of a political culture that is following democratic principles. In response to the demands for change, the possibility of the emergence of two opposed attitudes, namely "support" (positive) and the possibility of "against" (negative). As the conflict occurred due to the presence of the idea of postponing the 2024 election which became a crucial issue.

The problem of postponing the election creates legal uncertainty which is also an indication of the decline in the nation's political life, In addition, economic and political instability has an impact on the democratic order that has been built by the nation so that it is certain that the postponement of elections will disrupt the democratic climate to damage the constitution which has set the rules that form the basis of the life of a democratic country. Because political stability is one of the supporting factors of the nation's economic growth, so when political instability occurs, it can cause an economic contraction which in the end can disrupt the Indonesian economy.

UUD 1945 does not explicitly regulate the mechanism for postponing elections. However, one of the reasons why the postponement of the election is deemed inappropriate is that the idea of the status quo today is contrary to the form of the Unitary State of the Republic of Indonesia. Article 37 Paragraph (5) of the UUD 1945 mandates that in the mechanism for formally changing the constitution, the form of the Unitary State of the Republic of Indonesia cannot be changed. In other words, pushing for the postponement of elections leads to constitutional disobedience to the provisions contained in the constitution itself and leads to the form of a monarchy in which the ruling state leader does not have a certain time limit. While Indonesia is in the form of a republican government, the process of changing state leaders must be carried out openly through an election process that is carried out regularly and regularly as mandated in Article 22 E Paragraph (1) of the UUD 1945 that elections are carried out directly, publicly, freely, confidentially, honest and fair every five years. Therefore, elections are the only legal and constitutional means of succession to the leadership of a republic in the form of Indonesia.

However, the emergence of the discourse to postpone the 2024 elections will have an impact and hurt the Indonesian democratic system if it is implemented. The impact that occurs formulates 3 (three) major points, namely, First; delaying elections violates the constitution. Second; postponing elections hurts Indonesia's democracy. Third; postponing elections coup power.

### **3.1 Postponing Elections Violates the Constitution**

The constitution which is the basic law that is used as the basis for the administration of a country stipulates the UUD 1945 as the written constitution of the state. The provisions regarding the implementation of elections have been clearly stated in the UUD 1945. The emergence of the proposed postponement of the 2024 election is a fundamental problem that violates the constitution. There are at least 3 (three) things that are violated, namely: 1). Violation of the principle of popular sovereignty which is practiced through the holding of free and fair elections. Through the postponement of elections accompanied by unusual reasons and there is no strong precedent, the people's sovereignty cannot be applied. 2). The obligation to hold elections periodically is violated through the narrative of postponing elections. As stated in Article 22E paragraph (1) of the UUD 1945 that the obligation to organize elections should be carried out periodically or every five years. 3). That is related to the term of office. If the election is postponed, the possibility of an extension of the term of office may occur which in the end will tarnish the spirit of democracy. Article 7 of the UUD 1945 explains that the president and vice president hold office for five years and can be re-elected in the same office for only one term. This means that the term of office of the president is set for a maximum of 2 terms. In this case, the president of the Republic of Indonesia has served two terms, which means that the president cannot be re-elected or extended unless there is an amendment to the UUD 1945 which regulates the powers of the government, in particular the term of office of the president.

### **3.2 Postponing Elections Hurt Indonesia's Democratic System**

The concept of purpose of democracy in the life of the state is to include freedom of opinion and also the sovereignty of the people. Democracy emphasizes that real power is in the hands of the people, therefore the legitimacy of government power comes from the people. A state that conducts elections to form its government based on the will of the people is an indicator of a democratic election because election activities are one of the most important distributions of human rights. Jimly Asshiddiqie argues, the election is not only a manifestation of democracy and human rights (HAM) but also aims to fill and carry out the succession of leadership in an orderly manner. However, interpreting democracy in the sense of allowing anyone to propose a discourse on postponing the 2024 election concerning freedom of expression is a mistake because postponing the election is the same as reflecting a clear attitude that violates the articles of the UUD 1945, including article 1 paragraph (3) concerning Indonesia as a state of law. Postponing the election, makes Indonesia prioritize the state based on mere lust for power (*machstaat*) and far deviate from the state based on the law (*rechstaat*). The proposed postponement of the election ultimately contained a desire to extend power without an election which could violate the principle of limitation of powers. Because of this, democracy which has been considered a system that guarantees the freedom of citizens through general elections as a form of broad public participation cannot be realized due to the delay in the implementation of elections.

### **3.3 Postponing Elections Paves the Way for a Coup of Power**

One of the authoritarian conditions is the strengthening of the coup culture in maintaining power through all the policies of political investors in dictating democratic policies. postponing elections without the consent of the people will only lead this nation to slip into chaos and protracted chaos. The postponement of the 2024 election due to the Covid-19 Pandemic is considered to have fulfilled the elements of the occurrence of "matters of compelling urgency" as referred to in Article 22 of the 1945 Constitution, and "a state of danger" as referred to in Article 12 of the 1945 Constitution these are only part of the from the events of authoritarian conditions that ultimately weaken the democratic system. With the 2024 election not held, there will be no transition of government and the people will not be able to exercise their sovereignty to elect leaders regularly. As a result, the democratic civilian government will be paralyzed and will not be able to serve its interests and protect the security of the people. If this condition occurs, it will open a wide way for the military to take over or coup power in the name of stability. In these conditions, the validity of the leading power will not be based on legal legitimacy but on political support, because the takeover of power occurs not by the constitution and applicable law.

## **4 Comparison Between the District Election System and the Propotional Electoral System to Determine the Ideal Electoral System of the Republic of Indonesia**

Elections as a major national project that has a strategic goal of building the credibility and image of the Indonesian nation, are not only used as an event to elect members of parliament and the president or form a new parliament and government, because elections can be an entry point in solving national problems such as economic problems. In principle, the implementation of elections with integrity refers to international standards through the implementation of the stages of elections in a correct, professional, transparent, accountable and timely manner so that the implementation of elections is of high quality. In addition, the benchmark for the success of the election can also be seen from the quality of the process which runs in a fair, democratic, orderly, and peaceful manner. For this reason, in determining the formulation of the ideal electoral system, it is necessary to compare the electoral system so that it can then be used as a reference to find the ideal electoral system for the Republic of Indonesia in the future.

In general, elections are born from the big idea of democracy as referring to John Locke and Rousseau's conception of justice, security, freedom, and equality for individuals in all fields, which means that in a democracy there are participatory values and sovereignty that are upheld and must be carried out by citizens. state and state instruments at the legislative, judicial, or executive levels. Through elections, democracy is considered a system that guarantees the freedom of citizens which is realized through the absorption of votes as a form of broad public participation. As for Pancasila democracy as in Indonesia, elections are a means to establish power based on people's sover-

eignty which is carried out directly, publicly, freely, honestly, and fairly by guaranteeing the principles of representation, accountability, and legitimacy. Therefore, community involvement through democratic principles in elections is an absolute thing that is fundamental which then raises the principles of electoral integrity which requires independent community monitoring and also transparent and accountable election administration.

The electoral system in political science generally revolves around two main principles, namely: (1) the district system (single-member constituency) in which one electoral district elects one representative, (2) the proportional system (multi-member constituency) in which one electoral district elects several representatives.

#### **4.1 District System (Single Member Constituency)**

In practice, the district system is the simplest way to determine election results. Previously, several political scientists in Indonesia had suggested that in the context of Indonesian elections, the district system is ideal because district system is implemented based on the location of the electoral district without basing it on population quantity, especially if the context of urgency is strengthening people's control, regional autonomy, accountability, government and equitable distribution of development. In the implementation of the district system, an area of the country will be divided into several districts, then the candidate in the district with the highest votes will be the winner. In this system, the votes of candidates who do not reach the highest vote will be considered lost and not taken into account even though the difference in the votes is thin. In principle, in this district system the phrase (the winner takes all) applies which means that the candidate who is elected is the candidate who gets the most votes without taking into account the difference in vote acquisition as the characteristics of the district election system, namely; 1). There is only one seat of the representative body that is contested in one electoral district, 2). The people's representative who gets the most votes is the winner who will win one seat in the representative institution.

The district system is relatively easy and simple to administer. Through this system simplification of parties can occur naturally, besides that the district system can also encourage the integration of political parties and reduce party fragmentation and the tendency to form new parties because only one seat is contested. Therefore, the district system will better guarantee political accountability and government stability because there are not too many parties. In addition, the advantages of this system will bring a relatively close relationship between members of the legislature and voters or constituents. However, apart from that, the district system also has weaknesses that are often used as the basis for groups who are against the district system, namely minority voices in this system are not respected and small parties will disappear, and people's representatives will tend to prioritize blood interests. election rather than the national interest which will eventually widen group differences such as ethnicity and religion which is also possible for the practice of money politics to occur.

Referring to the strengths and weaknesses of the district system, it seems that this system will be more suitable to be applied in developed countries where the strength of political parties has balanced support. For developing countries with a large variety of

political parties, this system seems inappropriate, because it can lead to minority democracy. In Indonesia itself, the district election system has the opportunity to have a positive impact on the quality of democracy, as well as the opportunity to solve problems resulting from the proportional electoral system. However, the obstacles in implementing this district system will be related to traditional, historical reasons and concerns about changes to the status quo, especially if it is related to the fact that no country in the world is known to switch from a proportional system to a district system.

#### **4.2 Propotional System (Multi-Member Constituency)**

The proportional electoral system or commonly referred to as a balanced representation system is a general election system that fights for available seats in the central parliament where the seats are divided up among political parties or groups that participate in the election by the balance of votes obtained in the election. It can be concluded that in this proportional system the seats available in parliament will be divided among election participants, namely political parties and also political groups, then the political parties will have control over the determination of someone who will later sit in a representative institution. In this system, the determination of representatives is dominated by political forces which will then create a strong relationship between the representatives and the political party or group that is the parent of the organization. The main idea in this system is that the proportion of seats won by a party in an electoral area will be proportional to the proportion of votes obtained by that party. Therefore, the level of proportionality of votes in the acquisition of seats indicates that in this proportional system not many votes are wasted.

In practice, there are two types of proportional systems, namely, open proportional systems and closed proportional systems. Historically, Indonesia has used both systems, namely in the 1955-1999 elections with a closed proportional system, and the 2004-2019 elections with an open proportional system. The differentiating points between an open proportional system and a closed proportional system refer to four things, namely; (1). Implementation, (2). Voting method (3). Determination of the elected candidates, and (4). The degree of representativeness. In its implementation, the proportional system is more representative because the number of seats obtained is following the number of votes obtained from the election results. In addition, the proportional system is democratic because in the election no votes are lost so all groups will have the potential to be represented. Because of this, the people's representative institution or the legislature will truly become a forum for the aspirations of all the people. But behind that, the proportional system can potentially divide political parties, because this system can lead to a lot of competition in the number of political parties which in the end political parties will tend to increase and result in cooperation and integration of political parties tend to sharpen differences from one another.

Referring to the description of the two electoral systems above, in essence, every country will need an electoral system that is by its social and political context, therefore what might be done is an inventory of various requirements that must be met so that the electoral system can approach the ideal. In terms of determining the ideal Indonesian electoral system, theoretically, the choice of the electoral system by each country



will be based on several reasons that will be considered why the electoral system was chosen, namely: First, it relates to the degree of proportionality. Second, the electoral system will give birth to an established party system. Third, the electoral system will have an impact on the type of cabinet formed. Fourth, the electoral system affects accountability. Meanwhile, in the context of the need for an electoral system that is suitable for Indonesia's socio-political conditions, the proportional system is the best choice at this time, as considering that Indonesia is a multicultural country the proportional system is considered legitimate to accommodate the euphoria of democracy so that it can continue as a policy of determining a suitable electoral system for Indonesia. However, the obstacles in the implementation are not yet fully perfect which tends to be trial and error which results in system chaos, giving rise to recurring problems in its implementation. Therefore, it is necessary to improve the system and also the mechanism to be able to create an accountable electoral system as the state's goal in achieving people's welfare.

Some experts argue that there is no ideal general election system, but considerations that can be taken into account for the design of an electoral system that can be used as a foothold, such as the merger of opinions between Donal Horowitz and Andrew Raynold are:

1. The electoral system must be able to produce a balanced ratio of votes and seats;
2. The electoral system must be able to create a representation, be it ethnically/group, minority groups, geographically, or ideologically;
3. The electoral system must be easy to implement;
4. The electoral system must result in the formation of an effective, strong and stable government;
5. The electoral system must be peaceful or relatively non-conflict;
6. The electoral system must be able to encourage parties to work better;
7. A good electoral system will not change because the electoral system is a continuous process.

## **5 Conclusion**

The problem of postponing the implementation of the election creates legal uncertainty which then becomes an indication of the decline in the nation's political life so that in the end the postponement of the election will damage the constitution which already regulates the rules that form the basis of the life of the Indonesian democratic state. Delaying the election is the same as violating the constitution which also opens up opportunities for a coup d'état which in turn will hurt Indonesia's democratic climate. The 1945 Constitution which is the written constitution of the state is the embodiment of the highest law of the State of Indonesia which has mandated that elections be held in a direct, general, free, secret, honest, and fair manner and periodically every 5 (five) years. Therefore, elections must continue to be carried out on an ongoing basis as mandated by the 1945 Constitution because the implementation of elections is the only legal and constitutional way to the succession of state leadership.

In terms of determining the formulation of an ideal electoral system, in essence, every country will need an electoral system that is following its social and political context. Like the electoral system that has been implemented in Indonesia, the proportional system is the right electoral system to be implemented in the Republic of Indonesia, which is a country that prioritizes democracy. The advantages of the proportional electoral system are considered suitable to be applied in the multi-cultural country of Indonesia. However, in terms of the implementation of the proportional electoral system that has not been maximized, it is necessary to improve the system and mechanism so that the implementation of the proportional electoral system in Indonesia becomes quality and accountable.

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