

THE RELEVANCE OF POSTPONING THE 2024 GENERAL ELECTION FROM THE PERSPECTIVE OF THE STATE OF EMERGENCY

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ABSTRACT

Discourse on postponing the elections in 2024 was circulated amid the ongoing Corona Virus Disease 2019 (Covid-19) Pandemic, which conceptually could be classified as a civil emergency in Indonesia. The discourse was brought up by a certain group of political elites and received various responses in the community, from those who approved to those who rejected the idea. This paper describes the implementation of the 2024 elections in the context of the state of emergency, as a branch of the scientific study of constitutional law that discusses the state when it is faced with abnormal conditions, aka emergencies due to dangers that threaten the continuity of the nation and state. This paper uses normative legal research conducted using a statutory and conceptual approach which will later assess whether the postponement of the election can be justified from the point of view of the state of emergency, and by looking at the implications of the current danger of Covid-19 supported by policies that there is from the government, as well as the election management body itself, namely the General Elections Commission.

Keywords: Implementation; General elections; State of emergency

1. INTRODUCTION

The general election as the embodiment of the five-year democratic party in Indonesia, of course, is highly anticipated by the wider community because the general election is closely related to the figure of a leader who brings the nation to progress. The elected leaders or representatives of the people are expected to be truly worthy and in accordance with the interests of the general public, and to be able to represent the aspirations of the people well. The general election in Indonesia should be held again in 2024 considering that the last general election was held in Indonesia on 17 April 2019, where successfully won the pair of Joko Widodo as the President and also Ma'ruf Amin as the Vice President, while PDIP again won seats in the legislature with a percentage of 19.33% of the vote.¹

The implementation of the 2024 general election will be interesting because, this general election period, it will give birth to new figures in the next presidential election, because in this contestation period, there were no pairs from incumbent or ruling candidates. President Joko Widodo has run the government for the second time, so in this case, it is certainly very much anticipated regarding its continuity seeing that several political parties have carried out maneuvers such as forming coalitions with several parties, and there have also been those who will openly advance or declare candidates in the next general election contest.

The general election event in 2024 could also be different because, at this time, Indonesia is in the recovery phase after going through the endemic Covid-19 pandemic, as conveyed by Airlangga Hartanto as the Coordinating Minister for the Economy and also at the same time as the Coordinator of Community

¹ Komisi Pemilihan Umum, "Hasil Hitung Suara Legislatif DPR RI 2019 Tingkat Nasional," Komisi Pemilihan Umum, 2019, <https://pemilu2019.kpu.go.id/#!/dprri/hitung-suara/>, diakses pada 27 Maret 2023, Pukul 15.02 WIB

Activities Restrictions Enforcement (*Pemberlakuan Pembatasan Kegiatan Masyarakat / “PPKM”*) Outside Java-Bali, who said that as of 21 December 2022, Indonesia had been at level 1 for almost a year, so based on the classification from WHO, Indonesia could be said to be endemic.² This endemic status occurred due to the active handling of mass vaccinations as a whole for the community, carrying out health protocol controls, limiting mobilization, and adding various kinds of information regarding the development of Covid-19.³

The International Institute for Democracy and Electoral Assistance alias IDEA stated that 61% of countries in their handling of Covid-19 alluded to the process of democracy and human rights.⁴ This is very worrying if, in the end, the restrictions regarding the right to vote and be elected as a citizen's human rights guaranteed by the constitution are also subject to restrictions by the state under the pretext of benefit or efforts to save the country caused by this pandemic. Of course, this is still being debated in the public regarding the issue of its implementation and there is even discourse by the political elite for the postponement of the 2024 general election, of course, this creates an uproar in the wider community and there are also wild assumptions in society such as the parliament is trying to hasten to amend the constitution again until at the end, the issue of three periods for the presidency has returned to the surface amidst the ongoing pandemic issue.

Statements regarding postponing the general election were first made by various ministers in the cabinet of President Jokowi, such as the Minister of Investment/Investment Coordinating Board (*Badan Koordinasi Penanaman Modal / BKPM*) namely Bahlil Lahadalia who first proposed postponing the 2024 general election. Bahlil believes that efforts are being made to recover the national economy so that holding the general election in the near future is still considered inadequate, as is the case with Luhut Binsar Pandjaitan as the Coordinating Minister for Maritime and Investment Affairs, who claims that many people's aspirations have been conveyed to him to postpone the 2024 general election.⁵ The discourse regarding the postponement of the general election was also announced by various political party leaders such as Airlangga Hartanto, Zulkifli Hasan, and even Muhaimin Iskandar who as General Chairperson of the PKB and also the Deputy Chairperson of the People's Representative Council of Indonesia (*Dewan Perwakilan Rakyat / DPR*) of the Republic of Indonesia also raised concerns about postponing the election for a maximum of 2 (two) years in the future, he also revealed that the idea was based on big data claims, talks from a hundred million accounts on social media with a presentation of 60% agreeing to postpone the general election in 2024.⁶

Considering the unwillingness to get too carried away with the discourse on postponing the general election, President Jokowi also conveyed his stance to the public that simultaneous general elections and regional elections would still be held in 2024. This included the stages and schedule for implementation, until finally,⁷ the General Election Commission (*Komisi Pemilihan Umum - KPU*) took a stance based on the Decision of KPU No. 21 of 2022 that the General Election is set for Wednesday, 14 February 2024 to elect a President and Vice President, members of DPR of the Republic of Indonesia, Regional Representative Council (*Dewan Perwakilan Daerah / DPD*), Provincial Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah / DPRD*) and DPRD of Regency/Municipality, and whether this becomes strong

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- 2 Yefta Christopher Asia Sanjaya, “Indonesia Disebut Sudah Endemi Covid-19, Ini Bedanya dengan Pandemi,” *Kompas*, 2022, <https://www.kompas.com/tren/read/2022/12/23/110913365/indonesia-disebut-sudah-endemi-covid-19-ini-bedanya-dengan-pandemi?page=all>, diakses pada 27 Maret 2023 Pukul 15.02 WIB
 - 3 Widya Istanto Nurcahyo, “Pandemi ke Endemi Covid-19,” *Kementerian Kesehatan Direktorat Jenderal Pelayanan Kesehatan*, 2022, https://yankes.kemkes.go.id/view_artikel/1112/pandemi-ke-endemi-covid-19, diakses pada 27 Maret 2023, Pukul 15.02 WIB
 - 4 Rizki Bagus Prasetyo, “Pandemi Covid 19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM,” *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 329
 - 5 Fitria Chusna Farisa, “Gaduh Isu Penundaan Pemilu, di Kabinet Jokowi, dan Anomali “Tak ada Visi Menteri,” *Nasional Kompas*, 2022, <https://nasional.kompas.com/read/2022/03/17/17292931/gaduh-isu-penundaan-pemilu-di-kabinet-jokowi-dan-anomali-tak-ada-visi?page=all>, diakses pada 27 Maret 2023, Pukul 15.02 WIB
 - 6 Tim CNN Indonesia, “Cak Imin Soal Tunda Pemilu: Saya Hanya Usul, Penentu di Presiden,” *CNN Indonesia*, 2022, <https://www.cnnindonesia.com/nasional/20220301142545-32-765389/cak-imin-soal-tunda-pemilu-2024-saya-hanya-usul-penentu-di-presiden>, diakses pada 27 Maret 2023, Pukul 15.02 WIB
 - 7 Tim Detik.com, “Pernyataan Lengkap Jokowi Tegaskan Pemilu 2024 tidak Ditunda,” *Detik*, 2022, <https://news.detik.com/berita/d-6026058/pernyataan-lengkap-jokowi-tegaskan-pemilu-2024-tidak-ditunda>, diakses pada 27 Maret 2023 Pukul 15.02 WIB

legitimacy regarding the continuation of the general election in 2024.

Then, does the existence of this Decision of KPU guarantee that the general election will be held in 2024, or can the postponement of the general election still be carried out in various ways? It is interesting to examine at this time whether it is still relevant or not regarding the postponement of the upcoming 2024 general election, given that there is no longer any danger from Covid-19 which had become a pandemic in various parts of the world which was capable of claiming many lives and causing several countries to experience economic crisis to inflation. State of emergency is a scientific study that discusses a country in a state of danger, both the organizers and the legal regime that is enforced, there are elements of exceptions to overcome the existing dangers in order to save the country in an extraordinary way, so that the relevance of postponing the 2024 general election will be answered later with the lens of the state of emergency. Based on the existing background, the issues discussed in this research are: Can the postponement of the implementation of the 2024 general election be justified in the context of the State of Emergency? and Is the Discussion on Postponing the 2024 General Election Still Relevant in the Eyes of the State of Emergency?

2. RESEARCH METHOD

The type of research used in writing this journal is normative legal research which discusses the implementation of the upcoming general elections in 2024 from the perspective of the state of emergency. Normative Law Research is understood by Peter Mahmud Marzuki as a legal process, or also regarding legal doctrines to answer existing legal issues.⁸ It is said to be doctrinal research because the research is limited to existing legal regulations and legal materials, and is known as document research because it uses secondary data more frequently.⁹ This research focuses on the statutory approach or the statute approach and the conceptual approach, namely the conceptual approach by understanding the views that have developed from the notion of the state of emergency, as well as the sustainability of general elections.

The data used in this study uses secondary data consisting of primary materials, namely as materials in the form of binding legal products,¹⁰ in this case, the Constitution of the Republic of Indonesia and other regulations. Secondary Material namely; provides explanations regarding primary legal materials,¹¹ as is the case with what the authors use in this study including the opinions of legal scholars contained in books or journals regarding general elections, and the state of emergency. Non-legal / tertiary materials namely; in the form of materials that serve as an explanation of primary and secondary legal materials,¹² which are used later using the Big Indonesian Language Dictionary. Then related data collection techniques were carried out using library research studies using documents that support related research.¹³

3. DISCUSSION

3.1 General Election as a Democratization Effort as well as a Necessity in a Nation Based on the Rule of Law

The state of Indonesia is a nation based on the rule of law,¹⁴ this is what is regulated in our constitution which states that Indonesia chooses a system as a nation based on the rule of law. A nation based on the rule of law is a country that stands on a law that guarantees justice for its citizens. And the birth of a concept of a nation based on the rule of law was when the countries that were developing at that time used an absolute system or power that made the state leader or king as the leader who had authority over dictatorship actions

8 Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana 2009), 35

9 Muhaemin, *metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), 45-46

10 Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 2007), 52

11 Ibid

12 Ibid

13 Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum," *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 1, (2014): 30-31

14 Undang-Undang Dasar Negara Republik Indonesia Tahun (1945), art. 1 ayat (3).

and the king's orders as laws that had to be enforced.¹⁵

The birth of a nation based on the rule of law as the antithesis of state power, which later gave rise to the term supremacy of law, in the rule of law, the law becomes commander in chief in a country, not based on power over the will of the king or the government. The nation based on the rule of law provides limits to various branches of power such as the legislature, executive, and judiciary both in terms of authority and also regarding the periodization of terms of office, as well as the running of the wheels of state administration must also be regulated by law, and it is expected that from this circumstance, it will be able to create justice in the midst of society because people will get guarantees from the state regarding their rights regulated in law.

The nation based on the rule of law today also adheres to democratic elements because it refers to Jimly Ashiddiqie's opinion that democracy and nomocracy or a nation based on the rule of law are one and separate unit because the nation based on the rule of law requires democratic implementation, as well as in a country implementing a democratic system it must rely on legal norms.¹⁶ In the implementation of a democratic nation based on the rule of law, of course, there is the holding of the general election as a manifestation of people's sovereignty and also as a periodic need to run the administration of the state through its representatives both in parliament and also in government.

This is in line with the benchmark for a democratic state in the practice of world statehood. When the country implements an accountability system, the people provide legitimacy to represent them in government and also in parliament, the official must be responsible to the people as the giver of the mandate. There is a periodization period in the constitution so that there is no power that is carried out continuously, this is also to provide opportunities for those with the capacity and qualifications to lead the country. Today the state requires the continuity of general election that runs democratically as the state's guarantee for the freedom of citizens in terms of the right to vote and be voted for, as basic and universal human rights such as the right to life and freedom of association, press, and freedom of expression.¹⁷

The general election in Indonesia is held regularly every five years, this is done to create harmonious conditions and as a form of implementing the democratization process in society. Today's democratic system legitimizes government power which is determined based on the will of the people is an important matter with reference to the legal basis and the constitution, and today's government can be considered a democratic government if it gains people's legitimacy through general elections.¹⁸

Samuel P. Huntington, as quoted by Galuh Kartiko, is of the view that the country's transition period from an authoritarian phase to a direction that is considered democratic should have an endpoint after there have been two periodic general elections which were carried out democratically, in which the general elections were the ones that would later lead to a regime democratic, which runs based on a constitution that understands democratic values itself.¹⁹ Indonesia itself has gone through 12 general election periods to elect legislative members who are directly elected by the people since 1955, while the presidential election in Indonesia has various kinds of elections, starting from the general election chosen through the deliberations of the Indonesian Independence Preparatory Committee, then elected through the general assembly of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* – MPR) until the beginning of reform, and for the first time the election of the President and Vice President was directly elected by the people in 2004 until now.

The general election in Indonesia is held to elect a President and Vice President, then also members of the DPR, DPRD, and DPD.²⁰ Of course, in practice in various countries, there are differences regarding the implementation and also the period for which the general election is held, as in the United States, the general election is held every 2 years by the Federal Election Commission, but the presidential election is

15 Muntoha, *Negara hukum Indonesia: Pasca Perubahan UUD 1945*, (Yogyakarta: Kakuba, 2013), 1-2

16 Muntoha, "Demokrasi dan Negara hukum," *Jurnal Hukum* 16, no.3 (2009): 388

17 Indra Pahlevi, *Sistem Pemilu 2009: Upaya Penguatan Demokrasi Substansial*, (Jakarta: Pusat Pengkajian Pengolahan Data dan Informasi Sekretariat Jenderal DPR RI, 2008), 38-39

18 Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006), 171

19 Galuh Kartiko, "Sistem Pemilu dalam Perspektif Demokrasi di Indonesia," *Jurnal Konstitusi* II, no.1, (2009): 46

20 Undang-Undang Dasar Negara Republik Indonesia Tahun (1945), art. 22E ayat (2), dan (3).

still held every 4 years, then in Argentina, the general election is held by the *Camara Nacional Electoral* to elect the DPR and the senate every two years for a four-year term, whereas in the State of Bolivia, the general election is held by the Tribunal Supremo Electoral (Supreme Court of General Election) and its members have civil servant status.²¹ Meanwhile, our constitution stipulates that a general election is held once every five years which is held by the General Elections Commission, or KPU, and supervised by General Election Supervisory Agency (*Badan Pengawas Pemilihan Umum – Bawaslu*) and there is also the Election Organizer Ethics Council (*Dewan Kehormatan Penyelenggara Pemilu – DKPP*) as an ethical court that oversees the performance of the KPU and Bawaslu.

As referred to in Article 22E paragraph (1) of the 1945 Constitution, the general elections have several principles to serve as guidelines so that they can be carried out properly, these principles are:²²

1. Direct Principle

This principle explains that voters have the authority to exercise their voting rights without the intermediary of another person representing them unless their political rights have been revoked by a court decision.²³

2. General Principle

This general principle, as a form of equality of citizens, has the same rights and opportunities in voting or being elected regardless of religion, ethnicity, caste, or class, as long as he is an Indonesian citizen and fulfills the conditions regulated by law, he has the right to vote or chosen,²⁴ with general conditions, of course, such as minimum age or maturity of a person and followed by good behavior and being physically and spiritually healthy.²⁵

3. Free Principle

The state guarantees freedom in the use of the right to vote or be elected without coercion by any party, and the state guarantees the freedom to choose any pair of candidates who it feels represent what their aspirations are.

4. Confidential Principle

This principle provides an explanation that what is our preferred vote in general elections is guaranteed confidentiality by the state without fear of being leaked or known by anyone.

5. Honest Principle

This principle of honesty as a form of continuity of elections is carried out on the basis of applicable laws and regulations that are in accordance with the ethical behavior and morality of the nation.

6. Fairness Principle

As the goal of the enactment of a nation based on the rule of law, this fair principle is enforced as a guarantee of equalization regarding the right to vote and be elected.

The important point of holding the general election in Indonesia is as a form of rotation or transition from a change of government which is carried out in an orderly and also peaceful manner, meaning that it is expected that this election will be able to minimize the chaos that exists regarding the fanaticism of supporters of each candidate, then elections are also a form of effort the running of people's sovereignty and also as a

21 Muhammad Saihu dkk, *Penyelenggara Pemilu di Dunia: Sejarah Kelembagaan, dan Praktik Pemilu di Negara Penganut Sistem Pemerintahan Presidensial, Semi Presidensial dan Parlementer*, (Jakarta: Dewan Kehormatan Penyelenggara Pemilu, 2015), 80-96

22 Uu Nurul Huda, *Hukum Partai Politik dan Pemilu di Indonesia*, (Bandung, Fokus Media, 2018), 137-138

23 Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 tentang Pemilihan Umum & Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109 (2017), art. 198

24 Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 tentang Pemilihan Umum & Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109 (2017), art. 198

25 Didik Sukriono, "Menggagas Sistem Pemilihan Umum di Indonesia," *Jurnal Konstitusi* II, no.1, (2009): 19.

form of embodiment of the human rights of citizens.²⁶ Peaceful general elections can be carried out by inviting various parties to be involved in campaigning and providing election education, either by involving political elites, religious leaders, or local community leaders.

Jimly Asshiddiqie also added that holding general elections is also a form of selecting people's representatives who are able to represent their interests in representative institutions,²⁷ this is done as a form of implementation of the conception of representative democracy as outlined in the fourth principle of Pancasila. A representative democracy with the ideology of Pancasila is expected to be able to create a conducive and dignified political cycle, and it is expected that the people will also be able to play an active role in conveying their aspirations to those who represent them in order to create good governance.

So that the urgency regarding holding the general elections which are held routinely in the five-year event in a nation based on the rule of law becomes very important when in the end this becomes a common desire to produce leaders who are sensitive to the needs of the Indonesian people, and in accordance with existing criteria, and have a work program that is able to answer the nation's problems. The holding of general elections is also a moment of assessing how far democratization has gone well in the country, such as public participation in voting, as well as the maturity of voters in choosing the candidate according to their conscience because they already know the candidate's track record and work program well, or are still shackled by money politics or just being a voter who just goes along with it.

There are several reasons regarding political participation in choosing someone, including the receipt of political stimulus, this political stimulus can be achieved through active digging for information as in the mass media or direct involvement through political activities. Then participation can be determined regarding a person's social characteristics, such as economic conditions, age, gender, ethnicity, and religious factors greatly affect a person's political participation. Furthermore, regarding the political system as well as the party system, in this case, the democratic system greatly influences people's participation related to general elections, and regional differences also determine one's political participation in voting.²⁸ Political participation by citizens in voting can be increased in terms of supervision of the general election carried out by the public which can be campaigned through education to the wider community, which is supported by the help of community leaders in socializing and directly inviting the public to participate in general election matters.²⁹

The implementation of the General Election which is expected to be carried out in 2024, juridically still relies on Law Number 7 of 2017 concerning General Elections, the *a quo* law was born on the Decision of the Constitutional Court Number 14/PUU-XI/2013, resulting in general elections being held simultaneously which is periodically 5 years, thus, the next general election will take place in 2024 to elect the President and Vice President, members of the DPR, DPD, Provincial DPRD and Regency/Municipal DPRD. The Constitutional Court Judges' consideration of the *a quo* decision is the relation between the electoral system and the choice of the presidential system, this occurs because the implementation of the presidential election after the legislative election does not strengthen the presidential system, so it is not in accordance with the spirit of the constitution itself, then related to the original intent, as well as regarding the side effectiveness and efficiency regarding the holding of the general elections.³⁰

The *a quo* Constitutional Court's decision on holding simultaneous general elections indirectly provides side benefits such as efficiency in terms of time and implementation costs, and the holding of simultaneous general elections is estimated to save around 35% of the budget and narrow the space for transactional politics

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- 26 Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, (Jakarta: PSHTN-FHUI, 1998), 330
- 27 Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006), 176
- 28 Primandha Sukma Nur Wardhani, "Partisipasi Politik Pemilih Pemula dalam Pemilihan Umum," *Jurnal Pendidikan Ilmu-Ilmu Sosial* 1, no. 10 (2018): 60-61
- 29 Joko Riskiyono, "Kedaulatan Partisipasi Pemilih dalam Pengawasan Pemilihan Kepala Daerah dan Pemilihan Umum Serentak 2019," *Jurnal Politica* 10, no. 2 (2019): 162
- 30 Rubian Ariviani, Hasyim Asy'ari, Untung Sri Hardjanto, "Analisis Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013 Berkaitan dengan Pemilihan Umum Serentak di Indonesia," *Diponegoro Law Journal* 5, no. 4 (2016): 7-8.

because the general elections are not only used as transactions for those who have abundant money and ambition for them to a certain position so that it is expected to be an arena to produce quality leaders and in accordance with the will of the people.³¹ The holding of the 2024 general election has become a problematic topic of discussion in society when in the past a certain group of political elites wanted the general election to be postponed in 2024 due to the condition that Indonesia had just recovered from the Covid-19 pandemic which turned endemic so that post-covid-19 economic recovery is considered to be still incomplete. completed, and the existing budget is expected to be allocated for things that are more beneficial and beneficial to the wider community.

3.2 Theories and Concepts Regarding The State of Emergency

By definition, the word emergency is a word that is absorbed from Arabic which refers to the word *al-dlarurat* as a condition that cannot be avoided.³² Meanwhile, the Big Indonesian Dictionary defines the word emergency itself as a difficult condition that leads to a state of threatening danger and its presence itself is unpredictable so immediate countermeasures are needed to prevent its existence.³³

A state of emergency is theoretically interpreted as a condition that can threaten the stability of the state, including social, economic, defense, and security sector coherence. This state of emergency will later become the determining factor for imposing an state of emergency in a country. Theoretically, in a state of emergency, there are 2 (two) options, namely; a tendency that is in line with the rule of law approach which means that in any dangerous situation, one must obey and comply with constitutional rules and also existing laws, or there is also a different understanding that in an emergency as extra-judicial which is an approach from state sovereignty, which in In this case, the state can act in an extraordinary way from existing legal provisions to save the country.³⁴

The State of Emergency, in simple terms, is defined as the study of Constitutional Law that regulates the sustainability of the state in dangerous or abnormal conditions due to extraordinary characteristics. Herman Sihombing as an early-generation state of emergency expert defines state of emergency as an action and authority that is carried out by the state in an extraordinary manner because it is unusual in general under normal circumstances in a short time, and it is hoped that this effort will be able to remove the emergency status that threatens life as before through a juridical mechanism.³⁵

Many terms are used which lead to the definition of the state of emergency that is practiced in various parts of the world including; the state of emergency used by India, Pakistan, Ireland, and South Africa. Then the term State of civil emergency is used in the Netherlands, *stat of siege (etat d' siege)* is used in Belgium, France, Brazil, and Argentina. And there is also the term state of public danger which is regulated in the Italian Constitution.³⁶

Herman Sihombing classifies the elements of the state of emergency, namely: ³⁷

1. There is a condition where the country is in a state of danger, and requires extraordinary measures to be taken.
2. Government actions or state administration that is general are not sufficient to deal with extraordinary conditions.

31 Ashari, "Implikasi Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013 tentang Pemilihan Umum Secara Serentak," *Jurnal IUS IV*, no. 1 (2016): 103-104

32 Rizki Bagus Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan Ham", *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 331

33 Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), 319

34 Agus Adhari, "Ambiguitas Pengaturan Keadaan Bahaya dalam Sistem Ketatanegaraan Indonesia," *Jurnal Dialogia Luridica* 11, no. 1 (2019): 47-50

35 Herman Sihombing, *Hukum Tata Negara Darurat di Indonesia*, (Jakarta: Djambatan, 1996), 1

36 Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Rajawali Pers, 2007), 7-8

37 Herman Sihombing, *Hukum Tata Negara Darurat di Indonesia*, (Jakarta: Djambatan, 1996), 1

3. Through the extraordinary authority that is discretionary given to the government, it is used to resolve a dangerous situation to return to normal conditions as before.
4. The concept of extraordinary powers and state of emergency is only temporary or not permanent, so that when the country's condition returns to a stable condition and is not dangerous, then this extraordinary authority does not apply.

Vernon Bogdanor, as quoted by Janpatar Simamora, explained that there are 3 (three) conditions classified as an emergency state, namely; internal emergency, civil emergency, and war emergency.³⁸ Whereas in the Government Regulation in Lieu of Law Number 23 of 1959, the provisions concerning emergency conditions are categorized into 3 (three) types namely civil emergency, military emergency, and war emergency.³⁹ Civil Emergency, this condition is defined as a first-level emergency condition, which does not involve the role of the state defense apparatus in repressively controlling society in the face of danger. Military Emergency, is the second phase of a state emergency, in this condition, there are security disturbances caused by internal causes, such as when there are separatist groups who want to separate themselves from the Unitary State of the Republic of Indonesia. War Emergency, this condition is caused by a war with another country, or there is interference with the sovereignty of the territory of the Unitary State of the Republic of Indonesia by a foreign military.

Jimly Asshiddiqie interprets a civil emergency as an emergency condition at the lowest level in the classification of emergency conditions because it has a relatively small threat of danger compared to a military emergency and war emergency.⁴⁰ The Covid-19 pandemic that occurred in Indonesia which started in the People's Republic of China in late December 2019 was designated by WHO as a global health emergency because it had an impact on the entire world community.⁴¹ Covid-19 when it has the status of a pandemic and is still a health emergency, of course, can be categorized as a hazard or civil emergency caused by a disease or non-natural disaster, and it is not suitable if it is categorized as a military emergency or war, because there is no armed conflict nor involves the armed forces.

3.3 The Relevance of Postponing the 2024 General Election in the Perspective of The State of Emergency

In a nation based on the rule of law, of course, the law becomes a basis in administering a country, but the current problem is when in the end the law is only projected to run the country under normal circumstances, then what if in the end we are faced with an abnormal situation and the existing laws are considered unable to function as effectively as it should, the government may act in an exceptional manner based on the emergency legal regime. The civil emergency that occurred due to the Covid-19 pandemic at that time still had extraordinary dangers and gave rise to discussions among the people about the legitimacy of postponing the general election in 2024.

The postponement of the general election, as has been discussed by various political actors, who reasoned that due to the pandemic factor, which has not yet been resolved, is of course a problem in society, because the General Election as a venue for fulfilling people's sovereignty which is regulated constitutionally is highly anticipated by all Indonesian people in general. The postponement of the general election when applied under normal conditions will result in unconstitutionality because the constitution has stipulated that the state will hold a general election once every 5 years for presidential and legislative elections, but if applied under *staatsnoodrecht* conditions then the postponement of the general elections may be justified in the note that the danger is still can be felt by the public.

38 Janpatar Simamora, *Multitafsir Pengertian "Ihwal Kegentingan Yang Memaksa"* dalam Penerbitan PERPPU," *Jurnal Mimbar Hukum* 22, no. 1, (2010): 59

39 Peraturan Pemerintah Pengganti Undang-Undang nomor 23 tahun 1959 tentang pencabutan undang-undang No. 74 tahun 1957 & Lembaran Negara No. 160 Tahun 1957 dan Penetapan Keadaan Bahaya (1959).

40 Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Rajawali Pers, 2007), 306-307

41 Ririn Noviyanti Putri, "Indonesia dalam Menghadapi Pandemi Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 2, (2020): 705-706

The implementation of the general elections in Indonesia is a form of embodiment of the general elections that are aspirational and also democratic because they are routinely held every five years,⁴² so the reason for postponing the general election, after going through the Covid-19 pandemic, is irresponsible, because there is no harmful impact. Again, As Herman Sihombing said above, an emergency is temporary in nature, when the country is in a condition that is returning to normal due to an abnormal situation, then the reason for not holding the general elections cannot be justified, because it would be against the constitution.

The president in his capacity as the sovereign power when the country is faced with a dangerous emergency situation has the authority to take over all elements of state functions, this is done as an effort to save the country, including imposing limitations on what is the right of its citizens as well as mobilizing state apparatuses that are aggressive, based on certain conditions that are objective in nature.⁴³ However, some things cannot be limited by the state in an emergency situation that threatens and compels them, such as human rights which are included in the *non-derogable* category.

Several ways can be explored further to be able to assess the possibility of postponing the general election, such as through a government regulation in lieu of law (Perppu), a presidential decree, or also an amendment to the constitution. The use of the Perppu as a measure to postpone the general election, according to the author, cannot be carried out, even though the Perppu itself is a form of a compelling predicament and its presence, as meant by Ni'matul Huda, must have an element of crisis and urgency, and if not regulated immediately it will have a more negative impact on the course of government and people's lives.⁴⁴ Why can't the Perppu reach out in the context of postponing the general election, because the proclamation of a postponement of a general election is a form of action that is unconstitutional and outside the limits of the president's authority so in this case the president will be branded as having committed an abuse of power because it violated the constitution and has acted arbitrarily so that the president's authority to make a Perppu on postponing the general elections is considered very unreasonable.

Regarding the solution to the use of decrees in an unconstitutional way, this is a very risky and dangerous step, because it will make the face of the Indonesian government towards a dictatorial government, as was the case during the guided democracy period during the late Old Order regime. The decree itself is used as a constitutional deadlock, as interpreted by Logeman quoted by Ayon Diniyanto that the decree is a way for a legal revolution that has an *einmalig* nature so that its application is only once and cannot be revoked so that a presidential decree will have consequences for changing the order of the legal system in an instant. and thorough.⁴⁵ The use of the decree itself requires the full support of all people and includes all political elements, in the history of our state administration, the use of this decree has occurred twice, namely during President Soekarno's old order and also at the start of the reforms announced by President Abdurrahman Wahid.

Both had different impacts because the decree proclaimed by Soekarno had strong support from both the Indonesian people and also political forces and the Indonesian National Armed Forces (*Tentara Nasional Indonesia* – TNI), in contrast to the decree proclaimed during the Abdurrahman Wahid era, this decree did not receive full support from the majority of Indonesian people and the political elites and military forces, which resulted in this decree having no legitimacy and instead resulted in the removal of President Abdurrahman Wahid from the number 1 position in Indonesia through the MPR Special Session because he was unable to defend the decree.

The only solution to legally and legally postponing the general election is of course through amendments to the 1945 Constitution, but in practice, it is very vulnerable to the occurrence of political interests between individuals or certain groups that are not based on common interests. This will result in new political turmoil which will lead to uncertainty over the direction of national policies in the transitional period of the government

42 Rahmat Bijak Setiawan Sapii, Yoan Dwi Pratama, Axcel Deyong Appono, "Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontradiksi terhadap Supremasi konstitusi dan Demokrasi," *Jurnal APHTN-HAN*, (2022): 202

43 Calvin Epafroditus Jacob, "Tinjauan Yuridis terhadap Penetapan Keadaan Darurat Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Lex et Societatis* VII, no. 6 (2019): 63

44 Ni'matul Huda, "Pengujian Perppu oleh Mahkamah Konstitusi," *Jurnal Konstitusi* 7, no. 5 (2010): 75-76

45 Ayon Diniyanto, "Penundaan Pemilihan Umum di Negara hukum: Kajian Demokrasi Konstitusional," *Jurnal Negara hukum* 13, no. 2 (2022): 232

currently in the office which will end. In addition, the postponement of the general elections will also result in the breaking of a constitutional contract between citizens and government administrators who are elected through democratic political contestation so that the emergence of abuse of power becomes a concern for all parties.⁴⁶

Likewise, in the theory of the state of emergency that the continuation of the emergency itself is temporary, this aims to overcome a crisis situation and aims to return to a normal situation as before, so that it must be handled quickly while maintaining the basic nature of human rights.⁴⁷ Therefore, the continuation of the Covid-19 Pandemic if it no longer has a threat that endangers all aspects of citizens' activities, then the provisions that are of an emergency or extraordinary nature are no longer valid or cannot be enforced in an extraordinary manner, including in this case postponing the general election.

The government in its policy dated 30 December 2022, as stated through the Instructions of the Minister of Home Affairs Numbers 50 and 51 of 2022 took a step to revoke the PPKM, which was originally attempted to minimize the bad things from the Covid-19 pandemic which continues to hit across the country. This revocation policy was carried out because it was considered that the impact of the pandemic had been controlled in terms of cases per day, positive numbers, and those hospitalized, as well as people who died below the standard rate from WHO, this was due to increased population immunity which had been facilitated by the good vaccination facility.⁴⁸

The instruction of the Ministry of Home Affairs has also allowed the practice of working in a Work From Office manner for the non-essential sector with the condition that employees have carried out vaccinations and are also required to use the care-protect application to carry out controls for all regions in Indonesia while continuing to adopt a healthy lifestyle such as wearing masks, washing hands using soap or hand sanitizer while paying attention to air ventilation circulation, duration, distance and interaction as a form of prevention of risks in activities.⁴⁹ The existence of this policy indicates that Covid-19 no longer has a threatening risk of danger, so there is no longer any reason to postpone the 2024 general election, this is also based on the fact that we have conducted 270 simultaneous regional elections in 2020, at that time the Covid-19 pandemic was still it can be said that it is getting worse because there are still high numbers of people who have tested positive for the virus and many who have died, but the elections are taking place and can be carried out smoothly and safely with the implementation of a very strict prokes. Based on survey data from Y-Publica, at least 80% of citizens still want the general elections to take place in 2024, this is the case with survey data from Saiful Mujani Research and Consulting that 78.9% of people still want the 2024 general elections to take place.⁵⁰

Constitutionally regulated in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia, the General Election Commission (KPU) as an independent institution has authority in terms of holding general elections. As an independent state institution, the KPU has the authority to make *regeling* or regulations and *beschikking* or decisions within the scope of the phases or stages of holding the general elections, starting from the period before voting or what is known as the pre-electoral period, then the electoral period or the period when voting takes place, and during the post-electoral period or after voting is held. The implementation of these stages must be in accordance with juridical and also the General Principles of Good Governance or AUPB (*Asas-Asas Umum Pemerintahan yang Baik*). The decision to organize the election is included in *administratieve beschikking* and is identified as a one-sided public legal action, also known as

46 Abdhy Walid Siagian, Habib Ferian Fajar, Rozin Falih Alify, "Konstitusionalitas Penundaan Pelaksanaan Pemilihan Umum Tahun 2024," *Jurnal Legislatif* 5, no. 2 (2022): 109

47 Oskar S. Matompo, "Pembatasan terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat," *Jurnal Media Hukum* 21, No. 1 (2004): 62

48 Humas Sekretariat Kabinet Republik Indonesia, *Presiden Umumkan Pencabutan Kebijakan PPMK*, Sekretariat Kabinet Republik Indonesia, 2023, <https://setkab.go.id/presiden-jokowi-umumkan-pencabutan-kebijakan-ppkm/>, diakses pada 27 Maret 2023, Pukul 15.02 WIB

49 Intruksi Menteri Dalam Negeri Nomor 50 Tahun 2022, dan Intruksi Menteri Dalam Negeri Nomor 51 Tahun (2022).

50 Yudi Widagdo Harimurti, "Penundaan Pemilihan Umum dalam Perspektif Demokrasi," *Jurnal Rechtsidee* 17, no. 1 (2022): 19-21

eenzijdigepublicrechtelijke handeling.⁵¹

The decision of KPU No. 21 of 2022, the general election for the next period provides certainty that comes from an agreement on state or government administrators and the authority in terms of holding the general elections, in this case, the KPU, that there is no postponement of the general election that will occur in the upcoming 2024, so this is expected to be able to resolve problems and commotion in the community regarding the operation of democracy in Indonesia. As with the concept of a nation based on the rule of law itself, it should aim to provide guarantees for legal certainty, because uncertainty about the law creates a chaotic effect and creates new problems.⁵²

Legal certainty is also a form of understanding that the law must be obeyed as well as containing the basic principles of law.⁵³ The Presence of the Decision of KPU No. 21 of 2022 is a mandatory form as mandated by the general elections law as stated in Article 167 paragraph (2). The *a quo* KPU decision provides an understanding that the country is ready to succeed in the 2024 general election, and what is feared and becomes the reason for certain parties to postpone the general election such as the post-covid-19 economic recovery is not entirely true, because the Ministry of Finance itself has budgeted funds of 25.01 trillion from the State Budget for the 2022 and 2023 fiscal years,⁵⁴ and it seems that the parties participating in the general election are now ready to face contestation in the upcoming 2024 year.

Of course, this can also be said as proof that the state still adheres to the principle of a nation based on the rule of law which is in line with the running of the principles of good democracy in Indonesia, by being able to accommodate common interests and avoid the interests of certain groups or political elites who are not responsible for achieving an individual or group goal. Certainly, we will look forward to the next general election being run democratically, and avoiding frauds that are not in accordance with the principles of the general election itself, namely direct, general, free, confidential (*langsung, umum, bebas, rahasia* – “luber”), and honest and fair (*jujur dan adil* – “jurdil”), carried out optimally by election organizers namely KPU, Bawaslu, and DKPP, and supported by good and enthusiastic community participation.

The continuity of the 2024 general election must also be carried out as well as possible, supported by transparency from the general election management body regarding voting, counting, and recapitulation of votes, to the monitoring side. It is also expected that in future general elections, there will be special attention regarding increasing general election law enforcement itself in relation to black campaigns and negative campaigns, which lead to division and disintegration of the nation, strict enforcement of the code of ethics of general election organizers, and unfair competition which is not in accordance with the principles of elections, so that general elections can run fairly and avoid fraud by irresponsible parties.

4. CONCLUSION

The holding of general elections is a consequence of the state’s responsibility as a form of the arena for people’s sovereignty which is carried out periodically every five years, and of course, its continuation is highly anticipated, with due regard that it is from these general elections that the people will give legitimacy to the head of government and also give a mandate to those who represent them. in parliament. The implementation of the general elections in 2024 in the context of the state of emergency must still be carried out because there is no longer any threatening side from the Covid-19 pandemic because the status has changed to endemic, and also considering that there is legal certainty and readiness from the general election organizers themselves, namely the KPU based on its Decision Number 21 of 2022 which will be held on 14 February 2024.

The postponement of the continuation of the General Election in 2024, as discussed by a number of political elites, cannot be justified, because there is no longer any danger from the presence of Covid-19. This

51 Novianto M. Hantoro, “Pelanggaran Administrasi Pemilu dan Sengketa Tata Usaha Negara Pemilu Anggota DPR, DPD, dan DPRD Tahun 2014,” *Jurnal Negara hukum* 5, no. 2, (2014): 111

52 Kamarusdiana, *Filsafat Hukum*, (Jakarta: UIN Jakarta Press, 2018), 110

53 Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, (Jakarta: Kanisius, 1982), 162

54 Antara, *Sri Mulyani Siapkan Rp 25,01 Triliun dari APBN untuk Pemilu Serentak 2024 ini rinciannya*, 2023, <https://bisnis.tempo.co/read/1687456/sri-mulyani-siapkan-rp-2501-triliun-dari-apbn-untuk-pemilu-serentak-2024-ini-rinciannya>

is supported by government policies through Instruction of the Minister of Home Affairs No. 50 and 51 of 2022 that the government revoked the policy regarding Imposing Restrictions on Community Activities throughout the Archipelago so that the postponement of the general elections is a form of deviation from the running of a country which of course harms democratic values and the principle of a nation based on the rule of law, for this reason, discussions about postponing the general elections are very irrelevant.

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