

THE IMPLEMENTATION OF SIYASAH SYAR'YAH PRINCIPLES IN THE CONSTITUTIONAL COURT DECISION REGARDING TO THE SIMULTANEOUS ELECTION 2019

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Abstract

This study aims to examine the Constitutional Court's Decision which carries out General Elections simultaneously from the Siyasaah Syar'iyah perspective, especially on the principle of justice. This research is a doctrinal research and uses two approaches namely the statutory approach and the concept approach. Based on Siyasaah Syar'iyah's perspective, the decision of the Constitutional Court is fair for political parties participating in elections for people who are willing to become candidates/vice presidents, and for people who want to test their electability. This decision also aims to reduce the number of non-voter groups. The Constitutional Court's decision also contains the principle of unity and alliance, because it aims to stop the practical political interests that lead to the collapse of unity.

Keywords: *Siyasaah Syar'iyah Principles; General Election; Constitutional Court Decision*

Abstrak

Penelitian ini bertujuan untuk memeriksa Putusan Mahkamah Konstitusi yang melaksanakan Pemilihan Umum secara serentak dari perspektif Siyasaah Syar'iyah, terutama pada prinsip keadilan. Penelitian ini merupakan penelitian doktrinal dan menggunakan dua pendekatan yaitu pendekatan perundang-undangan dan pendekatan konsep. Berdasarkan perspektif Siyasaah Syar'iyah, keputusan Mahkamah Konstitusi itu adil bagi partai politik yang berpartisipasi dalam pemilihan untuk orang-orang yang bersedia menjadi kandidat/wakil presiden, dan untuk orang-orang yang ingin menguji keterpilihan mereka. Keputusan ini juga bertujuan untuk mengurangi jumlah kelompok non-pemilih. Putusan Mahkamah Konstitusi ini juga memuat prinsip persatuan dan aliansi, karena bertujuan untuk menghentikan kepentingan politik praktis yang mengarah pada runtuhnya persatuan.

Kata Kunci: *Prinsip Siyasaah Syar'iyah; Pemilihan Umum; Putusan Mahkamah Konstitusi*

A. Introduction

Election is a democracy tool to elect the people representative as well as leader to run the government authority in the name of the people. The election in Indonesia has been implemented since 1955. This implementation is the actualization of Article 1 Section (3) of the Indonesian Constitution 1945 that is the principle of sovereignty and that it is in hands of the people, therefore the people have to be given the right to elect the authority in this country.

In 2014, Indonesia conducted the 11th legislative election and the third presidential election. It was agreed by the House of Representative and the government that the presidential election was based on the election law in 2009 that was Law No. 42 Year 2008. The election in 2014 theoretically had to use the new law, yet the presidential election in 2014 was based on the Law No. 42 Year 2008.

On 23 January 2014, the Constitutional Court announced the result of judicial review on Law No. 42 the year 2008 on President and Vice-President Election, Article 3 Section (5), Article 9, Article 12 Section (1), Section (2), Article 14 Section (2), and Article 112. The complainant, that was Community Coalition for Simultaneous Election (*Koalisi Masyarakat untuk Pemilu Serentak*), requested the Constitutional Court to decide the legislative election and presidential election to be conducted simultaneously. The Constitutional Court granted the judicial review on Law No. 42 the year 2008 on President and Vice-President Election requested by Community Coalition for Simultaneous Election. The decision from the Constitutional Court will be implemented in the next Presidential Election in 2019. The requested articles to be reviewed were Article 3 Section (5), Article 9, Article 12 Section (1), Section (2), Article 14 Section (2), and Article 112. The implementation on legislative election and president and vice-president election are to be conducted simultaneously. The presidential threshold to nominate the president and vice-president candidate is even no longer applied.

The decision by the Constitutional Court was somewhat peculiar considering that the decision will be implemented for the presidential election in 2019, and that the justifications given by the Constitutional Court were technical issues which were the scheduled implementation of the General Election in 2014 and that the General Elections Commission (KPU) would be in hassle given that the general election in 2014 was conducted simultaneously.

This is a shallow justification viewed from the performance of the Constitutional Court so far. Moreover, one of the judges of the Constitutional Court, Judge Hardjono, allowed the complainant to file a judicial review. This is not in line with the Constitution NRI 1945 Article 24C (1) stipulating that the Constitutional Court shall possess the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections.

The focus of this research is a form of the suspension of verdict implementation, for example the Constitutional Court Decision No.14/PUU-XI/2013 on Judicial Review of Law No.

42 the year 2008 on the President and Vice-President Election which mentions that the articles reviewed were Article 3 Section (5), Article 9, Article 12 Section (1), Section (2), Article 14 Section (2), and Article 112 Law No. 42 the year 2008 on the President and Vice-President Election that were against the Constitution 1945 and had no legal binding. Nevertheless, this verdict is to be implemented for the general election in 2019 and the next elections. (4) The formulation of norms in the decision, which means that the Constitutional Court declared that the legal norm of the reviewed articles is against the Constitution, and that it formulates new norms that are different to the previous ones (reviewed norms)¹. Besides, there are retroactive decisions for the sake of value of benefit which becomes the universal principle and goal of law.

The problem studied in this research is “How the principles of *siyasaḥ syari'ah* were implemented in the Decision of the Constitutional Court No. 14/PUU-I/2013. The focuses of this research include:

1. How were the principles of *siyasaḥ syari'ah* implemented in the verdict of the Constitutional Court?
2. Were the principles implemented in the verdict of the Constitutional Court No. 14/PUU-I/2013 in accordance with the principles of Islamic state administration principles (*siyasaḥ syari'ah*)?

B. Research Method

a. Type of Research

This is a doctrinal research since the object or target of the research is a verdict, that is the Decision of Constitutional Court No. 14/PUU-I/2013 on the Judicial Review on the Law No. 42 Year 2008. The study on this verdict was sharpened by studying other laws related to the verdict as well as relevant law principles with the verdict. This research is categorized as juridical normative research which is a juridical research that studies the literature or secondary data.

This research is to identify the concepts and principles of *siyasaḥ syari'ah* used to regulate Islamic governmental system, especially the implementation of justice principle in the Decision of the Constitutional Court. Related to the normative research, there were two approaches used in this research that were statute approach and conceptual approach. Statute approach is an approach to address laws and regulations related to the authority of Constitutional Court in decision on a law review such as the Law No. 24 Year 2003 on the Constitutional Court, and

¹ Procedural Law Drafting Team of the Constitutional Court, 2010, *Hukum Acara Mahkamah Konstitusi*, Sekretariat Jendral dan Kepaniteraan MK, Jakarta, pg.142-147

other organic laws related to the research object. Conceptual approach was used to understand the concepts of *siyasaḥ syari'ah* principles.

The data collected from the documentation study were then analyzed using content analysis method. The data from the library research and documentation study to the primary, secondary and tertiary data were supported or complemented by the result of interview and/or questionnaire from the informants and then analyzed using content analysis and synchronization method. All collected data were then categorized and systemized, studied, and analyzed in their relation to the focus of the study.

The final analysis in this research was synchronization method. The data of which content was studied and compared in order to scrutinize the differences and similarities as well as the strengths and weaknesses were then studied and analyzed on the data conformity (synchronization). It included the content of each data. Using these three analysis methods, this research aimed to shed or find the principles and the legislative foundation. Besides, the analysis method was also used to find out the factors contributory to the decision making in the Constitutional Court.

C. Result and Discussion

1. General Description of the Constitutional Court Decision

The Constitutional Court No.14/PUU-XI/2013 is the decision on the juridical review on the Law No. 42 the year 2008 on the President and Vice-President Election (Presidential Election Law) against the 1945 Constitution. The major issues in this verdict are categorized into two main issues that are:

- a. The issue on legal norm regulating that Presidential Election is conducted after the Election of House of Representative, Regional Representative Council, and Regional House of Representative (legislative election), that was Article 3 Section (5) of Presidential Election; and
- b. The issue on legal norm related to the procedures and requirements to nominate President and Vice-President candidates that are Article 9, Article 12 Section (1) and Section (2), Article 14 Section (2), and Article 112 of Presidential Election.

Related to these two issues, the Constitutional Court has considered, reviewed and decided the verdict to grant part of the complainant's requests, that are:²

² The Decision of Constitutional Court No.14/PUU-XI/2013, pg.79-80, pg.87-88

- a. Article 3 Section (5): “President and Vice-President Election is conducted after the election of House of Representative, Regional Representative Council, and Regional House of Representative”
- b. Article 12 Section (1) and Section (2): Section (1) Political Party or Coalition of Political Parties may announce the President and/or Vice-President Candidate in the general election campaign for House of Representative, Regional Representative Council, and Regional House of Representative; Section (2) the President and/or Vice-President candidates as mentioned in Section (1) have to pass through a written approval from the respective candidates.
- c. Article 14 Section (2): “The registration period as mentioned in Article 13 is 7 (seven) days from the national announcement of the election result of the House of Representative”;
- d. Article 112, “The polling for President and Vice-President election have to be conducted maximally 3 (three) days after the declaration of the elected House of Representative, Regional Representative Council, Provincial Regional House of Representative, and Municipal Regional House of Representative”.

The Law No. 42 the year 2008 on President and Vice-President Election (the Indonesian Republic Gazette Year 2008 No. 176, Additional Gazette of Indonesian Republic No. 4924) is declared against the 1945 Constitution and is not legally binding. This verdict will be applicable for the general election in 2019 and the next elections. This verdict, basically, impacts to the revoking of non-simultaneous National Election and lead to the constitutional new system “Simultaneous General Election”.

This means that non-simultaneous election based on the Law on Presidential Election is against the 1945 Constitution. The Constitutional Court in its consideration, on the other hand, mentions that the implementation of non-simultaneous Presidential Election and Legislative Election in 2009 and 2014, with all legal impacts, are valid and constitutional. The arguments given by the Constitutional Court that Article 3 Section (5), Article 12 Section (1) and Section (2), Article 14 Section (2), and Article 112 in the Law No. 42 the year 2008 are against the Constitution are based on three main considerations that are the relation between the election system and presidential government system election, original intent of the creation of the 1945 Constitution, effectiveness and efficiency of general election implementation, as well as the people’s right to elect smartly. Nevertheless, simultaneous election is possible to be conducted in the next election (general election 2019 and the next elections). It is to consider the arrangement of electoral system and the legal culture of the general election that is not yet ready for simultaneous general election.

2. The Implementation of Siyasaḥ Syari'ah Principles in the Constitutional Court Verdict

In the perspective of Islamic state administration, the Constitutional Court verdict has implemented *Siyasaḥ Syari'ah* in which through many verdicts by the Constitutional Court, the people of Islam in Indonesia are made possible to contest the validity of the interpretation of Islamic law from the perspective of the government. The Constitutional Court shifts as a media to determine in which level the Islamic law should be implemented, facilitated or enforced by the national institution.³ *Siyasaḥ Syari'ah* is a prudence to manage public affairs based on sharia norms both in reinforcing the law or regulation and in deciding a case in the court. Ibn Taimiyah mentioned that the concept of *Siyasaḥ Syari'ah* could be utilized to justify the implementation and reinforcement of law/regulation/verdict by the nation provided that the law/regulation/verdict is used to accelerate people's welfare. The idea by Ibn Taimiyah related to *Siyasaḥ Syaria'ah* is both logical and pragmatic to answer the dichotomy issue on the legal authority between Islam and the nation since *Siyasaḥ Syari'ah* could limit the excessive impacts of the ruler's policy and that the legitimation of sharia norm could be expanded to the level of state administration. *Siyasaḥ Syari'ah* equips the ruler with sharia legitimation to the policy products by replacing parts of his power in the field of law/regulation reinforcement that are divided to the ulema. In the other hand, *Siyasaḥ Syari'ah* improves the effectivity of the goal that would like to be achieved by the sharia in the life (that is the benefit to the people) with the consequence of ulama independency since they are involved further in the state administration.⁴

Indonesia is not an Islam country, yet it is a Moslem country in which most people living in Indonesia are Islam. The first principle of Pancasila (Indonesia's foundational philosophical theory) "Belief in the One and Only God" could be interpreted as identical with *tawhid* which is the core principle of Islam. It is defined that in Islamic teaching tolerance, freedom and vast opportunity are given to other believers to do their religious activities. Besides, there are similarities between the Islamic nomocracy with the nation with Pancasila values. The principles in Islamic democracy (discussion, justice, equity, and freedom) constitutionally both explicit and implicit could be found in the 1945 Constitution. For example, Indonesia democracy relies heavily on the principle of unity of the nation. The idea of unity is one idea often taught in Al

³ Alfitri, in "Putusan Mahkamah Konstitusi sebagai Tafsiran Resmi Hukum Islam di Indonesia", *Jurnal Konstitusi*, Volume 11, No 2, June 2014, pg.298

⁴ *Ibid.*, pg.301

Qur'an and sunnah of Rasul; thus, the goal of democracy is for the benefits for the people and to maintain the unity of humans.⁵

The principles of *Siyasaḥ Syari'ah* constitutional state in Islam (Islam nomocracy) is an ideal state law and is closely related to Indonesia considering that majority of its people is Moslem. The research result conducted by Muhammad Tahir Azhary showed that Pancasila state has similarities with the Islam nomocracy meaning that the important principles in Islam nomocracy has been accommodated in the Preamble of 1945 Constitution and in its body, for example in the Principle 1 "Belief in the One God and Only God" reflects the similarities of tawhid in Islam nomocracy.

Referring to the view by Jimly Asshiddique, there are several measurement tools or benchmark to review and test the laws that are:⁶

- a. Written constitution paper; with
- b. Written documents that are closely related to the constitution such as treatises, the decision by the People's Consultative Assembly (MPR), specific regulations, and others;
- c. Constitutional values that live in the practice of state administration that have been considered as inseparable part of the obligation and habit in implementing the state activities;
- d. The values that live in the people's cognitive awareness as well as the fact of people's politic and behavior that are considered as habits and ideal condition in the life of nation and state.

These four tools are included in the definition of the source of all orders of constitutional law which may serve as a benchmark or tool to assess the constitutionality of a law. Maruarar Siahaan views that a judicial review on 1945 Constitution is not only implemented to particular articles, instead the constitution has to be viewed as a unity consisting of the Introduction and the Body (the articles). The body is the explanations of the articles of 1945 Constitution that are formulated based on the principles embodied in the introduction. A textual explanation of an article is possible to be ambiguous, vague and understandable. Therefore, in order to elucidate the meaning, an interpretation of the law, in general, and the constitution, in particular is needed; in which the articles are seen as a unity instead of a separate part.⁷

Referring to the above view, one of the benchmarks to review a law is *Siyasaḥ Syari'ah* since it is the values living in the cognitive consciousness of the people as well as the political practice and the law that are considered as an ideal habit and obligations in the life of nation and state. Besides, it can also be interpreted as the constitutional values living in the practice of state

⁵ Muhammad Tahir Azhari, *Op.Cit.*, pg.199-201

⁶ Jimly Asshiddique, 2006, *Hukum Acara Pengujian Undang-undang*, Yasrif Watampone, Jakarta, pg.7-8

⁷ Maruarar Siahaan, 2005, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Konstitusi Press, Jakarta, pg.29

administration that has been considered as an inseparable part of the obligation and habit in organizing state activities. Another view mentions that *Siyasaḥ Syari'ah* is a living law and there is no doubt on the legitimation of the ruler (Imam or Khalifah) who enforces the rule. Along with the decline of khalifah political authority in Islamic countries and the emergence of states, the authority to enforce the law is under the state. Wael B. Hallaq, an expert on Islamic law concludes that there is no way to enforce the law in the modern era except by becoming a government agent. *Siyasaḥ Syari'ah* as one of law sources that has bound the people in Indonesia both before and after the independence is a living law for the people. The Islamic law, accordingly, has the opportunity (to influence) in the development of our national law.⁸ Basically, the law living within the people is the true *Siyasaḥ Syari'ah* since the people of Indonesia live with the culture imbued with Islamic values. The involvement of *Siyasaḥ Syari'ah* in the development of the national law can be regarded as, at least, an effort to constitutionalize Islamic law. In order to analyze the real contribution of *Siyasaḥ Syari'ah* in the national law, there are two categories of its implementation:

1. In a formal juridical manner through the laws of which implementation are assisted by the state actors to reinforce Islamic Law.
2. In a normative manner of which implementation is highly depending on the faith quality and law awareness of each individual and Islamic people themselves.⁹

This view can be understood that the values of *Siyasaḥ Syari'ah* can be formalized in a form of laws applicable in Indonesia. In the other words, this means that the laws are indeed the crystallization of *Siyasaḥ Syari'ah* values that has been long lived and developed in Indonesia. Besides, the implementation of *Siyasaḥ Shari'ah* may also be based on the quality of faith and thought of the individuals which means that the constitutional justice that majority are Moslem certainly have a thinking framework related to *Siyasaḥ Syari'ah*, for example the value of justice and equity as written in Al Qur'an and As Sunnah. In the explanation of Article 2 Law No. 48 the year 2009 on the Judicial Powers, it is mentioned that justice implemented based on "Belief in the One and Only God" is according to Article 29 of 1945 Constitution regulating that the state is based upon the belief in the One and Only God and that the state guarantees the freedom of the people to worship their religion according to their own religion and belief.

⁸ Muhammad Irfan Idris, in "Konstitusionalisasi Hukum Islam Ke Dalam Hukum Nasional (Tinjauan Perspektif dan Prospektif)", *Jurnal Konstitusi* Volume 3 No 2 May 2006, pg.147

⁹ *Ibid.*

In the Constitutional Decision No.14/PUU-XI/2013, the principles of *Siyasaḥ Syari'ah* that serve as the benchmark are the justice principle which is part of the principle of Islamic democracy. In Islamic doctrine, justice is the central principle that is essential in Al Qur'an. There are five verses in Al Qur'an instructing the people to uphold the justice among the people that are surah an-Nisa'/4:58; surah an-Nisa'/4:135; surah al-Maidah/5:8; surah al-An'am/6:90; and surah asy-Syura/42:15. Justice is an essential principle in Islam because: (1) Allah's justice is a form of love to His creation, (2) Justice is truth, and truth itself is one of His names, and (3) justice reflects balance or in the middle position. Virtue is middle.

The principle of justice is the equal right and treatment between one to the other. In the other context, moreover, justice is functioned to prevent dispute and revenge to continue between the parties so that their social relationship and fellowship is always in harmony. The principles of justice are very essential in the law, all people both Moslem and those who are not Moslem have to be protected and treated fairly and receive protection and right in social and political life. This principle of justice in Islam has been implemented in the Constitutional Court such as: (i) the obligation to use the state power honestly, fairly and wisely; (ii) the obligation to implement the judicial power as fair as possible, and (iii) the obligation of state actors to achieve just and prosperous society under the mercy of Allah SWT.

The principle of unity and fellowship is a principle in Islam aiming at accomplishing cooperation and loving each other to develop the nation and the state. In the Constitutional Court decision, the principle of unity and fellowship has been put in priority by deciding to hold a simultaneous election that is more fair to cease the practice of practical politics leading to the collapse of the unity. Besides, the principle of unity and fellowship is also used by the Constitutional Court to strengthen the position of simultaneous election since non-simultaneous election most often creates horizontal conflict among the society.

3. The Conformity of the Constitutional Verdict to the Principles of Siyasaḥ Syari'ah

The 1945 Constitution does not mention *Siyasaḥ Syaria'ah* as the source of national legislation that has to be obeyed and that the judges of the Constitutional Court are not traditionally educated to conduct *ijtihad*. As a result, a hybrid method has been adopted by the Constitutional Court to accommodate the authority of textual source of Islamic law in Indonesia that has been stipulated. The Constitutional Court verdict, therefore, consists of Islamic and non-Islamic law that reflect the respect from the judges to the norms of Islamic law and the transformation of Sharia principles in the framework of human rights reinforcement. In the

process, the Constitutional Court admits itself that it is not bound to any Islamic law actors and to any of their opinion about the interpretation of which Islamic law that is legitimate. This is because the Constitutional Court claims itself to hold the power to interpret and limit the Islamic law to what is in accordance to the state agenda (such as human right reinforcement). Nevertheless, the Constitutional Court still uses the concept and principle of Islamic law to justify its verdict in that the decision is still in the corridor of Islam. Therefore, the verdict by the Constitutional Court can be included in the scope of *Siyasaḥ Syari'ah*, at least based on the modern concept of *Siyasaḥ Shari'ah* that is developed by Abd al-Razzaq al-Sanhuri, and the interpretation of the Constitutional Court toward the norms of Islamic law that are applicable in Indonesia that can also be justified based on the concept of *Siyasaḥ Syari'ah*.¹⁰

This means that the verdict by the Constitutional Court can be categorized as *Siyasaḥ Syari'ah* so that its interpretation toward the norms of Islamic law applicable in Indonesia can be regarded as the legitimate interpretation of Islamic law in Indonesia. By applying the concepts in Islamic law, even more, the justification of the verdict that it is according to Islamic law can be done. Therefore, the verdict by the Constitutional Court is within the scope of *Siyasaḥ Syari'ah* and that its interpretation to the norms of Islamic law applicable in Indonesia can be justified.¹¹ In the Constitutional Court Decision No.14/PUU-XI/201, the Constitutional Court has applied the principle of *Siyasaḥ Syari'ah* particularly the principle of justice and the principle of unity and fellowship. The principle of justice and the principle of unity and fellowship is explained below:

a. The Principle of Justice

The principle of justice in Islamic government contains a concept that is highly valued since it places human in a fair position and that it does not alienate the value of justice from transcendental values. Human is not a central point, but is “the servant of Allah” of which value depends on his relation to Allah and his relation to the other humans. In Islamic doctrine, it is only Allah who becomes the central therefore justice in Islamic humanity is always theocentric which means that it is centralized to Allah SWT. This means that *Siyasaḥ Syari'ah* becomes the assessment standard (social judgment) to the actions whether the actions have moral values, been fair, been good, etc. *Siyasaḥ Syaria'ah* is even possible to be used as the judgment to a concept and administration of a state (the formation of the state, implementation and law enforcement). Some of justice principles in Al Qur'an are QS. An-Nisa verse 135, QS. AL Maidah verse 8, and QS An-Nahl verse 90.

¹⁰ Alfitri, Op.Cit., pg.312-313

¹¹ *Ibid.*, pg.299-300

The verses on justice become the foundation of Islamic government. The principle of justice is always seen in the function of state power. This function is related to three main obligations for the state actors or the government as the power holder that are: *first*, the obligation to use the state power honestly, justly, and wisely; *second*, the obligation to use judicial power as fair as possible. Simply put, the decision made by the Constitutional Court has been in accordance to the justice principle in Islam particularly in the obligation to use the judicial power as fair as possible. The decision to hold simultaneous election in 2019 is a fair decision since the law has been enforced as it has to be. *Third*, the obligation to the state actors to achieve prosperous society under the mercy of Allah SWT. The details of these obligation are not applicable to the presidential institution but also the judicial institutional and others. This rule implies that all people without exception has to gain the benefit of the just as the result of state power.¹²

1) Interpretation of Just

In a further study, the perception of the Constitutional Court on the perspective of original intent and systematic interpretation of the formulator of 1945 Constitution amendments, it can be concluded that the Presidential Election is to be conducted simultaneously with the Legislative Election. It is explicitly mentioned by Slamet Effendy Yusuf as one of the Ad Hoc Committee I of the Indonesian People Consultative Assembly Working Body (*Badan Pekerja MPR RI*) that prepares the draft of 1945 Constitution amendment suggesting that People Consultative Assembly members responsible to discuss the amendment of 1945 Constitution have arrived to a decision that "...the election is defined as the election for House of Representative, election for Regional Representative Council, election for President and Vice-President, and Regional House of Representative, and is conducted in one reign of election". Further explained, technically there will be five boxes during the election that are "...Box 1 is House of Representative box, Box 2 is Regional Representative Council box, Box 3 is President and Vice-President Box, and Box 4 is provincial Regional House of Representative, Box 5 is municipal Regional House of Representative." (vide Comprehensive Gazette of Indonesian 1945 Constitution Amendment, Background, Process, and Discussion Result 1999-2002, Book V of General Election (2010), page 602 quoting the second Treatise of Commission A on the Assembly in MPR Annual Session year 2001 on 5 November 2001.¹³

The interpretation by the Constitutional Court is in accordance with the principle of justice in Islam. Interpretation (*penafsiran*) itself is derived from Arabic word "*tafsir*" that means to

¹² Muhammad Tahir Azhary, *Op.Cit.*, pg.122 and 124

¹³ Putusan MK No.14/PUU-XI/2013, hlm.83-84

explain or to state. This word is taken from the word *tafsirrah* that is the tool used by a physician/doctor to examine one's illness. The use of the word *tafsir* is attached to the search of meaning over text in Al Qur'an. In interpreting the meaning in Al Quran, the classical ulemas (Syafi'i, Maliki, Hanafi, Ahmad bin Hanbal, Al Ghazali, Ibn Taimiyyah, Muhammad Abduh, Rasyid Ridha, and others) use supplementary books that are *Lughat, Nahwu, Tashrif, Balaghah, Ushul Fiqh* and *Asbabun Nuzul*.¹⁴ According to Jimly Asshiddiqie, interpretation is a process where a court is in a search for an exact definition on particular rule in a law. Interpretation is an effort, through a court, to find out what is the original intent of the law maker.¹⁵ This means that in this context, the Constitutional Court has found the *ashabun nuzul* in the context of law interpretation referred as original intent derived from Article 22E Section (2) of 1945 Constitution that implicates to the simultaneous election so that the original intent of the law as intended by the formulator can be interpreted from the *ashabun nuzul*; therefore, the simultaneous election will be intended to give justice to the people.

2) Cost Saving and People Constitutional Right Optimization

In the point of view of cost, simultaneous election will save the election cost so that it will not burden the people. If the election for House of Representative, Regional Representative Council, President and Vice-President, and Regional Representative Council is conducted simultaneously, it will be effective and efficient at least in seven aspects: voters data updating, socialization, Polling Station logistic distribution, official travel, allowance, and overtime payment. The total cost can be saved and used to fulfill the other constitutional rights of the people that ranges 5 to 10 trillion rupiah. This also means that the money allocated to conduct the non-simultaneous Presidential and Legislative Election of which fund derived from the National Revenue and Regional Revenue that is in fact originated from the tax paid by the people and the exploitation of the natural resources as well as other economic resources, can be maximized to improve state capability to improve public welfare and people prosperity.

At least there are some urgencies of the simultaneous election that are *first*, cost saving is possible through simultaneous election so it reduces the state burden. This cost saving will principally help the government to realize and fund other programs for the people. If there is no balance in running the democracy between the cost and the benefit, it will lead to deficit of democracy. *Second*, from the effectivity in organizing the general election, simultaneous election

¹⁴ Tim Peneliti dari Pusat Kajian Konstitusi Fakultas Hukum Universitas Jenderal Soedirman, dalam "Nilai Undang-Undang Dasar 1945 dalam Penafsiran MK (Studi terhadap Putusan *Judicial Review* MK)", *Jurnal Konstitusi* Volume 3 Nomor 3 September 2006, hlm.197

¹⁵ Jimly Asshiddiqie, 2011, *Perihal Undang-Undang*, Rajawali Pers, Jakarta, hlm.175

will be effective in terms of needed time and energy. Non-simultaneous election is perceived to be time consuming and requires a lot of work. *Third*, simultaneous election reduces the practices of money politic. The fact has shown that non-simultaneous election does not only require huge cost, but also creates the increasing cost politic both for the political parties and other parties involving in this party of democracy.¹⁶ As a result, the constitutional right of the people of Indonesia to gain the benefit from the tax paid by the people for the development in all aspects such as infrastructure development and public service, as well as just and sustainable economic system that are congruent with Article 28H and Article 33 Section (4) of 1945 Constitution can be manifested soon and optimally.

3) Presidential Threshold Irrelevancy in Simultaneous Election: The Implementation of fair Principles

In the perspective of Islamic state administration, the Constitutional Court decision is considered fair for all elements of the nation, for the political parties joining the election, and for the people who become the President and Vice-President Candidate. It is also to fulfil the justice for the voters and to reduce the percentage of non-voters in the election.

First, the Constitutional Court decision is fair for the political parties joining the election. The design of non-simultaneous general election (the year 2004-2009-2014) showed an unfairness for the arties joining the election. For example, there were only two candidates of President and Vice-President in the Presidential Election 2014 (9 July 2014). The first candidates of the president and the Vice President Prabowo Subianto-Hatta Rajasa were supported by Gerindra Party, Partai Amanat Nasional, Partai Keadilan Sejahtera, Golongan Karya Party, Partai Persatuan Pembangunan, dan Partai Bulan Bintang. Meanwhile, the second candidates of Joko Widodo and M. Jusuf Kalla were supported by Partai Demokrasi Indonesia (PDI) Perjuangan, Nasional Demokrat Party, Partai Kebangkitan Bangsa, dan Hanura Party.

This means that during the non-simultaneous election, there was a political party coalition supported the president/vice-president candidates. This was due to the presidential threshold that limited the movement of political parties to nominate president/vice-president candidate resulting in a bad coalition practice as disclosed by the Constitutional Court that “in the implementation of Presidential Election on 2014 and 2009 after the legislative election, there was a political fact that in order to gain support for the electability as President and House of Representative supported in managing the government, the elected President had to conduct

¹⁶ Janpatar Simamora, dalam “Menyongsong Pemilu serentak”, *Jurnal Rechtsvinding*, Volume 3 Nomor 1 April 2014, hlm.10-12

political negotiation and bargaining with the political parties that in the end influenced the government in running the national policies. The negotiation and bargaining were, in fact, more practical and temporary rather than strategic and long-term, for example, because of the long-term line of the political party struggle.¹⁷ The practice of coalition was not in line and contradictory to the justice principle in Islam since the coalition prioritized the elites who got the support from political parties and left out the transcendental values of the general election in which an election is a mechanism to make oneself closer to Allah SWT, thus, the candidates are not merely individual beings but also social beings who have responsibility of *hablun mina Allah wa hablum min al-Nas*. Besides, empirically, there was a legal fact that Demokrat Party as a big party that did not have the opportunity to nominate a president/vice-president due to the insufficient presidential threshold required to nominate a president/vice-president.

By having a simultaneous election in 2019 through the Constitutional Court decision, the justice for political parties joining the election can be realized since they may nominate their President/Vice-President Candidate. As stated by Saldi Isra, the Constitutional Court does not revoke the presidential threshold to nominate the president and vice-president candidates, on a normative logic, restoring the meaning of simultaneous election in Article 22E Section (1) and (2) of 1945 Constitution, the threshold has lost its relevance. It means that all political parties declared as eligible to join the election have the opportunity to nominate President and Vice-President Candidate as stipulated in Article 6A Section (2) of 1945 Constitution. In relation to this, by using maximum assumption, if all political parties involving in the general election nominate their own candidate, the number of candidate pair will increase. In order to prevent the illogical number of candidates, the requirements for political parties to join the election should not be easier than the existing requirements. It means that by using the number of political parties in General Election 2014, at least there will be twelve candidates of the President and Vice President in the first round of the Presidential election. This number is said to be more than sufficient to provide alternative candidates for the voters¹⁸. Besides, the simultaneous election in 2019 implicates to the maximum function of the political parties joining the election in terms of “the function of political recruitment”. The function of political recruitment is a party function to be involved in fulfilling the political position including President through a political appointment.¹⁹ This means that political parties joining the election could position the political

¹⁷ Putusan MK No.14/PUU-XI/2013, hlm.80-81

¹⁸Saldi Isra, in “Jalan Panjang menuju Pemilu Serentak, http://www.saldiisra.web.id/index.php?option=com_content&view=article&id=563:jalan-panjang-menuju-pemilu-serentak&catid=2:mediaindonesia&Itemid=2, accessed on 15 July 2014, at.21.00

¹⁹ Septi Nurwijayanti and Nanik Prasetyoningsih, *Op.Cit.*, pg.17

party cadres who have met the requirements as President/Vice-President candidate to compete in the Presidential Election.

The other view mentions that the simultaneous election for both legislative and executive election will force the political parties to build an early coalition. They are aware that the electability of the executives they nominate will influence the legislatures candidates. This encourages the political parties to build a big coalition so that after the election will create a blocking politic in one side. There is a big coalition winning the executive position as well as dominate the parliamentary chairs. On the other hand, there is a fail coalition to win the executive positions who becomes the minority group in the parliamentary, thus becomes the opposition. Therefore, the idea of simultaneous election is expected to be an effort to develop the quality of the democracy consolidated so that will simultaneously impact to the strengthened Presidential system in Indonesia.²⁰

Second, it is just for the people who are willing to nominate him/herself as President/Vice-President candidate. This Constitutional Court decision is for those who have fulfilled the requirement as the President/Vice-President to register and compete in the Presidential Election contestation. This is of course due to easy requirements and that it needed a huge support from the political parties (20% of the total chairs in House of Representative or gains 25% of the valid national votes). In a simultaneous election, there is a huge opportunity for alternative president/vice-president candidate from small parties and from community figures to receive their rights fairly without discrimination. With this decision, the small party has the opportunity to nominate alternative president/vice president candidate both from party cadre and public. It means that the Constitutional Court decision fulfill the justice for the people's political right. Based on Abdul Karim Zaidan, the political right in Islamic conception is the rights held by all people as the member of a political institution such as the right to vote, right to nominate and sit in political positions, right to be elected, right to get general position in the state or the rights to make others involved in managing the state interests.²¹

Third, just for the voters, which means that the voters may choose the president/vice-president candidates. Having more choices of president/vice-president candidates, it opens the opportunity for leader from the public who has the capability to emerge and that the voters may vote their alternative president/vice-president candidate. The justice that the people feel will reduce their motivation to be non-voters since non-voters mostly emerge due to several factors

²⁰ Ria Casmi Arrsa, *Op.Cit.*, pg.533

²¹ Abdul Karim Zaidan (terj.Abd Aziz), 1984, *Masalah Kenegaraan Dalam Pandangan Islam*, Yayasan Al Amin, Jakarta, hlm.18

such as people distrust to political party (including the president/vice-president candidates), no facility to accommodate their aspiration due to their failed parties in the election, and public perception that the general election is only an obligation to choose and a merely political ceremonial. Non-voters are also a reflection of disappointment, on the ruling reign of the government and the election system that is considered not democratic.²² Besides, the justice that the people feel will reduce their disappointment on the election system so that it is expected that the people will elect the ideal president.

b. The Principle of Unity and Fellowship

The principle of unity and fellowship is an Islamic principle that aims to achieve cooperation and love of each other's to develop the nation and state. The verse in Al Quran that becomes that foundation on the principle of unity and fellowship is QS Al Imron: 103. In the Constitutional Court decision, this principle has been prioritized by deciding on the simultaneous election that is fairer and stops the practical politics interest that lead to the collapse of the unity. Besides, the principle of unity and fellowship is used to strengthen the Constitutional Court position in the simultaneous election since non-simultaneous election often leads to horizontal conflict among people.

1) Simultaneous Election to Strengthen the Presidential Election: Based on the Principle of Unity and Fellowship

According to the Constitutional Court the implementation of presidential election has to be closely related to the governmental system framework as stipulated in the 1945 Constitution, that is the presidential government system. One of the decisions of the People Assembly Council during its discussion on the amendment of 1945 Constitution (1999-2002) was to strengthen the presidential system. Giovanni Sartori emphasizes that the political system is a presidential government, if the: (i) result from popular election, (ii) during his or her pre-establish tenure cannot be discharged by a parliamentary vote, and (iii) heads or otherwise directs the government that he or she appoints.²³ In a pure presidential system, it is even characterized by the president that is directly elected by the people.²⁴ This means that the framework based on the 1945 Constitution mentions that presidential system has to be built by the mechanism of direct election for the president and that it has to be implemented simultaneously.

²² Muntoha, in "Fatwa Majelis Ulama Indonesia (MUI) Tentang *Haram* "Golput" Dalam "Timbangan" Hukum Islam dan Hukum Tata Negara (HTN) Positif, *Jurnal Konstitusi*, Vol. II, No. 1, June 2009, pg.60

²³ Saldi Isra, in "Hubungan Presiden dan DPR", *Jurnal Konstitusi*, Volume 10, No. 3, September 2013, pg.405

²⁴ Sulardi, in "Rekonstruksi Sistem Pemerintahan Presidensiil Berdasar Undang-Undang Dasar 1945 Menuju Sistem Pemerintahan Presidensiil Murni", *Jurnal Konstitusi* Volume 9, No. 3, September 2012, pg.520-521

An election system is a system of which government stability depends on a direct support from the people²⁵ because of several foundational reasons (*raison d'être*), that are *first*, the elected President through election will receive mandate and more real support; *second*, the Presidential election will automatically avoid political intrigues in the selection process using representative system. *Third*, the Presidential election will provide vast opportunity for the people to choose their candidate directly without any representative. *Fourth*, the election may create a balance among many powers in running the government especially the creation of check and balance system between the President and the representative bodies since both of them are chosen by the people.²⁶ Referring to the development of democracy in Indonesia, the urgency of Presidential Election is not sufficient to strengthen the presidential system. Therefore, the ideal management that presidential election is to be carried out directly and simultaneously with the Legislative Election is needed. For example, the result of Presidential Election in 2009 was bitter due to many weaknesses and flaws during the ceremonial. There were too many regulations that were not implemented as needed and what demanded by the people as well as the contradiction with the principles of democracy and human rights.²⁷

Based on Jimly Asshiddiqie, the mechanism of Simultaneous National Election has many benefits in terms of strengthening the governmental systems, among others: (a) the governmental system is strengthened through “political separation” (decoupled) between executive and legislative function of which has to be balancing one to another. The elites in both sides of powers are developed separately at the same time so that there is no conflict of interest or potentials on hostage that spurs the transactional politics; (b) One of the weaknesses of “decoupling” system is the potentials of “divided government” symptom or “split government” as a result of the head of the government who does not hold majority vote in the parliament. Nevertheless, it has to be accepted and balanced with the implementation of the principles where the parliament and government do not assault one to another; (c) “impeachment” system can only be implemented with a very stringent regulation that is the occurrence of criminal act, not political reason; (iv) to maintain the climate and dynamics of “public policy debate” in the parliament. Different arguments along political party members in fighting for people’s interest has to be made possible and that the policy of “party recall” has to be revoke and replaced by “constituent recall”. Therefore, the decision to implement simultaneous election starting from

²⁵ Abdul Latif, in “Pilpres dalam Perspektif Koalisi Multipartai”, *Jurnal Konstitusi* Volume 6, No. 3, September 2009, pg.40

²⁶ Saldi Isra, in “Pemilihan Presiden Langsung dan Problematik Koalisi Dalam Sistem Presidensial”, *Jurnal Konstitusi Pusako Universitas Andalas*, Volume II, No. 1, June 2009

²⁷ Sudi Prayitno, in “Refleksi Yuridis Pilpres 2009”, *Jurnal Konstitusi* Volume 6 No. 3, September 2009, pg.79

2019 can be made as a momentum to strengthen the presidential system. This has to be designed as a main agenda after the formation of the new government based on the election 2014 result so that the 2014-2019 period can be used to consolidate a more productive and efficient democracy as well as strengthening presidential system.²⁸

For this reason, President is in fact becomes highly dependent to political parties that in the end may reduce its position in running his power in the government based on the presidential system. In the other words, the state administration practice until present day by conducting presidential election after the legislative election in its development cannot serve as a transformation tool for social change to the aimed direction. More, the non-simultaneous election ironically often creates conflict or horizontal friction among the people. The condition explained by the Constitutional Court is the condition that may lead to the collapse of the principle of unity and fellowship in Islam since this principle may never be enforced when there is no spirit of unity and fellowship among the people. Unity and fellowship will not be created without cooperation and love. Each *jamaah* (follower) who is not bound by the cooperation and love as well as a true unity will never be united to achieve one principle at a shared goal since unity and fellowship are the foundation and the factor to attach in the formation of a country.²⁹

Besides, the idea of simultaneous election may prevent the politic of dynasty because when legislative and executive election are conducted at the same time, every one including the elites in tenure and their relatives have limited opportunity to nominate themselves. They have to choose either one position to aim: either legislative or executive position. Both elected and failed parties have similar position in the next five years. Compared to the current situation, during the legislative election, everyone aimed at House of Representative, Regional Representative Council, and Regional House of Representative position. Within the next one or two years they would have obtained parliamentary chair and those who failed would compete in an executive arena at the regional head in the regional election. Those with parliamentary chairs who failed could regain the chair; while those who were elected would leave the chair to someone else, who were possibly their relatives.³⁰

This means that simultaneous election is in line with the principle of unity and fellowship because if the non-simultaneous elected is applied for the next elections, it will create the foundation of Indonesia to collapse due to the interest of practical politics in the presidential election that tends to accommodate the interest of particular political parties. The collapse of the

²⁸ Jimly Asshiddiqie, "Pemilihan Umum Serentak dan Penguatan Sistem Pemerintahan", retrieved from http://www.jimly.com/makalah/namafile/173/Pemilihan_Umum_Serentak.pdf.hlm.1

²⁹ J Suyuthi Pulungan, *Op.Cit.*, pg.142

³⁰ Ria Casmi Arrsa, *Op.Cit.*, pg.532

state foundation is caused by the coalition of political parties and the president candidates who perform a one-sided act of “pragmatic politic interest” and do not show the attitude of unity and fellowship. These actions will cause the dispute and fight among the people of Indonesia that will lead to the broken principles of fellowship and divide the unity. Moreover, this condition will cause the people to feel injustice; the people justice is sold for the sake of practical politics by the elected president and the elites of the supporting parties.

More, the Presidential election that is conducted simultaneously with the legislative election will also reduce the time consumption and decrease the horizontal conflict or friction among the people.³¹ This condition is clearly in accordance with the principles of unity and fellowship since the aim of the simultaneous election is to unravel the conflict within the people and to make the election cost effective. In the principle of unity and fellowship, the priority is the spirit of understanding and respecting among all elements of the nation. Besides, the disputes both among Moslem and non-Moslem are not preferable.

2) The postponement of the Implementation of the Decision (General Election 2019) for the Principles of Unity and Fellowship

In the perspective of Islam state administration, the Constitutional Court consideration to postpone the application of the decision is to manage the social system so that the unity and fellowship can be maintained. The postponement is the representation of limitation due to the law in a form of suspension and the non-legally binding norms of law that has been declared against the 1945 Constitution by giving enough time to the law makers to amend the law so that it is according to the Constitution. This means that the decision is the solution since to postpone for organizing the simultaneous election provides enough time so that the participants of the general election will have prepared themselves to contest on the simultaneous election in 2019.

If the simultaneous election was implemented in 2014, it would have been chaotic which would be resulted in more political conflicts that destroy the principles of unity and fellowship of which condition was not favorable in Islamic state administration. Moreover, it may destroy the order of “Bhineka Tunggal Ika” as the national foundation to unite Indonesia, a national conception that expresses the unity in diversity and diversity in unity. The postponement of this decision is done since all systems, starting from the device laws to the infrastructure and mechanism will have to be formulated according to the will and justice of the people. Along with this opinion, Lukman Hakin Saifuddin sees that the Constitutional Court has its own wisdom in considering the readiness of all parties, not only General Election Committee (KPU) as the

³¹ MK Decision No.14/PUU-XI/2013, *Loc. Cit.*

election organizers, but also the readiness of the political parties and more importantly is the readiness of the people to participate in the general election.

D. Conclusion and Recommendation

The Constitutional Court Decision has implemented the principles of *Siyasaḥ Syari'ah*. The principle of justice has been in accordance with the principles of *Siyasaḥ Syari'ah* in QS An Nisa verse 135, QS. AL Maidah verse 8, QS An Nahl verse 90; and unity and fellowship as seen in QS Al Imron: 103. Political recommendation according the implementation of simultaneous election in 2019, are: The General Election Commission (KPU) is better to work with the Corruption Eradication Commission (KPK) to enforce the law clearly and explicitly on the use of campaign fund, and report on election fund as well as donations received by the general election participants to avoid violation and corruption.

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