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A CONSTITUTIONAL
DEMOCRACY PERSPECTIVE

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EXTENSION TIME PRESIDENTIAL OFFICE THROUGH DELAY GENERAL ELECTIONS IN A CONSTITUTIONAL DEMOCRACY PERSPECTIVE

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Abstract: A democratic system in the state, which uses the rule of law system (*rechtstaat*), is a constitutional democracy. Constitutional democracy is a system which respects and implements the mandate of the Constitution and applicable laws. Constitutional law aims to create discipline, peace and welfare in a country based on applicable law. Constitutional democracy is a system applied in many countries worldwide, without exception in Indonesia. In Indonesia, an applied system is a presidential one. Thus, the leader of the government is the president and vice president. The regulation on the terms of office for the president and vice president was written in Article 7 of the 1945 Constitution of the Republic of Indonesia. Meanwhile, the general election mechanism is written in regulated law number 7/2017. Regarding the terms of office for the president and vice president, minister of Coordinator for Maritime Affairs and Investment Luhut Binsar Pandjaitan made a public opinion that postponing the 2024 elections would have consequences in prolonging the terms of office for the president and vice president. Thus, this statement makes a public outreach because the opinion is based on big data of public opinion from social media and is not strengthened by the legally applied basis in Indonesia. This statement has violated the code of ethics of a minister based on the general principles of good governance (AAUPB) in Article 10 of Law Number 30/2014 concerning Government Administration. In addition, this statement caused public uproar and had implications for upholding the 1945 Constitution of the Republic of Indonesia and violating the values of constitutional democracy in Indonesia.

Keywords: Constitutional democracy; President and Vice President; General Election

INTRODUCTION

Democracy is a state system that is currently the most widely used by countries in the world. The word democracy is a combination of two Greek words, namely *demos* and *kratos*. The etymological definition of *demos* is the people, while *kratos* is the government (Harper, n.d.). In a narrow sense, democracy is a system of government run by the people and returned to the people. The concept of democracy over time has experienced rapid development following the legal

system adopted by a country. One of the concepts of democracy in the state system that adheres to *rechtstaat* (rule of law), namely constitutional democracy.

The definition of constitutional democracy according to Affan Gaffar (Sirajuddin & Winardi, 2016), namely democracy that is subject to and obedient to applicable law and there must be restrictions on the concept of power. The concept of democracy has 5 main characteristics, namely: 1) Accountability. The concept of accountability in democracy is that every person who is elected by the people must be able to account for the mandated position; 2) Power rotation. The concept of rotation of power in democracy is that in democratic values there is a process of changing power that is carried out systematically and responsibly; 3) Transparent political recruitment. The concept of transparent political recruitment in democracy, namely, political recruitment is a process of placing a person in political institutions including in a political party or in an administrative or bureaucratic agency by a person or group of people who will exercise political power (Suharno, 2004: 117).

This means that there must be transparency to the public regarding political recruitment, both political parties and government bureaucracy. 4) General elections. The concept of general elections in a democratic system is related to the rotation of power and open political recruitment. This means that this general election must be accompanied by a systematic and responsible change of power as well as transparent political recruitment. (*Pengertian Rekrutmen Politik*, n.d.); and 5) Recognition of basic rights. The concept of recognition of basic rights in a democratic system implicitly applies the concept of human rights to the people. The application of these human rights is the right to express opinions, to assemble, and to have free access to the press.

Based on the definition of constitutional democracy presented by Affan Gaffar, constitutional democracy is democracy that is submissive and obedient to applicable law; holding general elections (elections) to implement an orderly and peaceful rotation of powers accompanied by political recruitment that is open and transparent to the public; fulfill, respect, and protect human rights in any aspect, including the election process. The hallmark of a democratic system is the implementation of elections. The definition of elections according to Sarbaini (2015: 107) elections are a competitive arena to fill a position in the government system which is carried out by voting by eligible citizens. General election is a solution implemented by the people in considering and deciding who is the leader of a group of people whose aim is to fill government positions and it becomes a right of the people with status as citizens to decide who is the leader in the government system. Implementation election in Indonesia is based on people's sovereignty mandated in the state constitution, namely article 1 paragraph (2) The 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which reads: "Sovereignty is in the hands of the people and implemented according to the Constitution." (Undang-Undang Dasar 1945, 1945)

Then, the elections are arranged regularly details on the Act Number 7 of 2017 (UU No.7/2017) about General Elections. The definition of elections is written in article 1 point 1 of Law No.7/2017 which reads: election General, hereinafter referred to as Election, is a means of

people's sovereignty to elect members of the People's Legislative Council, members of the Regional Representatives Council, President and Vice President, and to elect members of the Regional People's Representative Council, which is carried out directly, publicly, freely, confidentially, honestly and fairly. in The Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia."(*Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum*, 2017)

For the technical implementation of the election, regulated in article 167 paragraph (1) of the Law Number 7 of 2017 namely: "Elections are held every 5 (five) years." The purpose of holding elections every five years is to implement state compliance with the constitution and applicable laws and regulations, regularity in the rotation of democratic power, and avoiding abuse of power in the ruling government. One of the provisions regulated in the definition of elections according to Law No.7/2017 is the presidential election. The powers of the president are regulated in Article 4 paragraph 1 of the 1945 Constitution of the Republic of Indonesia which reads: "The President of the Republic of Indonesia holds the power of government according to the Constitution." If you look at the elements of the definition of constitutional democracy presented by Affan Gaffar, there is a change in position/power. That is, in order to realize an ideal constitutional democracy, it is mandatory that there be a regulation in the law for limiting the term of office of the president. Provisions governing presidential term limitations are regulated in Article 7 of the 1945 Constitution of the Republic of Indonesia, which reads: "The President and Vice President hold office for five years, and after that they can be re-elected in the same position, only for one term." This means that the presidential term is limited to five years and the term of office of the president who has been elected is 2x (twice) term of office.

Regarding the term of office of the president, a few months ago, Coordinating Minister maritime sector and Investment Coordinating Minister for Maritime Affairs and Investment) Luhut Binsar Pandjaitan expressed the discourse on postponing the 2024 general election on the basis of around 110 million big data originating from public opinion on social media held by Luhut Binsar Pandjaitan. The big data talks about public support for the extension of Jokowi-Ma'ruf Amin's term of office for three years, so that the general election is postponed in 2027. Apart from big data, Luhut Binsar Pandjaitan's reason for the discourse on postponing the election is none other than to stabilize the post-pandemic economy Corona Virus Disease (COVID-19) which has an impact on the national economy, thus, Luhut believes that if the general election is held in 2024 it has the potential to waste a state budget of 110 trillion (Paat, 2022).

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The statement by the coordinating minister for Maritime Affairs and Investment reaped a public polemic, because the statement on postponing the general election was a statement that violated the provisions in article 7 of the 1945 Constitution of the Republic of Indonesia which regulates the term of office of the president and vice president which is limited to five years and a maximum of two terms for the term of office of the elected president and vice president. The statement by the coordinating minister for Maritime Affairs and Investment regarding the postponement of the elections has the pretext of using freedom of expression in a democracy. However, this statement caused public uproar because the statement was made by a public official who had the potential to violate the constitution.

Based on the statement of the Coordinating Minister for Maritime Affairs and Investment regarding the postponement of the presidential and vice-presidential elections, if it is related to the implementation of constitutional democracy, the Coordinating Minister for Maritime Affairs and Investment has violated the public official's professional code of ethics regulated in article 10 of Law No.30/2014 concerning Government Administration which contains the Principles General Good governance, which consists of: a. legal certainty; b. expediency; c. impartiality; d. meticulousness; e. not abuse authority; f. openness; g. public interest; and h. good service(*Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Publik*, n.d.).

Related to the description above, the statement by the Coordinating Minister for Maritime Affairs and Investment regarding the discourse on postponing the presidential and vice-presidential elections which resulted in an additional term of office for three years, has violated the provisions of Article 7 of the 1945 Constitution of the Republic of Indonesia which regulates the term limits for the president and vice president, as well as a statement which stated by the Coordinating Minister for Maritime Affairs and Investment regarding the discourse on postponing the presidential and vice-presidential elections, it has violated the provisions of article 10 of Law no. 30/2014 which contains the General Principles of Good Governance (AUPB). Based on the background description, the authors add comparative data from various countries that have implemented the extension of the term of office of the president and vice president.

Table 1: Presentation the Data of State Who Extending the Term of Office the President and Vice President

No	Country name	Policy Regarding the Extension of the Term of Office of the President and Vice President	Conclusion
1.	China	In the constitution of the People's Republic of China, the term limit for the president and vice president is five years and two terms. During Xi Jinping's leadership, as President and concurrently serving as Chairman of the Chinese Communist Party as well as leader of the Central Military Commission held a joint congress with the legislative deputies in the National People's Congress which is held every five years. China's Deputy Legislature is overseen by three institutional elements. The agencies are the Executive agency, the Central Military Commission, and the Chinese Communist Party. Every five years, China holds a meeting called the National People's Congress, to discuss the effectiveness of an existing law, discuss and	China succeeded in extending Xi Jinping's term of office for the third term as President of China, as well as holding concurrent positions as Chairman of the Chinese Communist Party and Head of the Central Military Division based on the agreement of the National People's Congress forum which is held in Beijing, China every five years, and the arrangement of presidential terms and vice president in the Chinese constitution, namely the term of office for president and vice president for five

		<p>approve draft laws, to discuss the single candidate for president and vice president. In 2018 the discussion at the National People's Congress not only discussed the people's economic conditions and the effectiveness of laws and regulations, but Xin Jinping as Chairman of the Chinese Communist Party and chairman of the Central Military Commission submitted a clause proposing a revision to the Constitution regarding the term of office of the president and vice president. Thus, in the congress forum it was agreed by the congress participants to change the positions of president and vice president to positions for life (Backgrounder, 2018).</p>	<p>years and two terms amended to be lifelong.</p>
2.	Russia	<p>The term of office of the president and vice president in Russia as written in the Russian constitution has been amended twice. The first amendment was the result of the adoption of the Soviet Union's constitution in 1990, namely the presidential term was two terms, of which one term was four years (Celestine, 2000). Then, in 2008, under the leadership of President Vladimir Putin, Russia again amended the constitution, specifically the presidential term was divided into two terms, of which one period was a six-year term. Then in 2020, President Vladimir Putin proposed to amend the constitution through a referendum involving civilians for decisions on amending the constitution. The added rules include: the prohibition of same-sex marriages, the obligation to defend the state in Russian schools (Alexandra, 2021). This has an impact on the presidential term of office regulated in the previous constitution. In connection with the enactment of the new constitution that has been ratified, President Vladimir Putin can legally seek re-election in the next general election for up to two</p>	<p>Russia succeeded in extending the presidential term through a constitutional amendment in 2008, namely four years and two terms of office to six years and two terms of office. In 2020 President Vladimir Putin proposed an amendment to the Russian constitution to add several articles and then it was approved by the people through a referendum. The impact of the ratification of the Russian constitution in 2020 is the presidential term starting from the entry into force of the new constitution. Thus, President Vladimir Putin can run for president again in the next general election.</p>

		terms, based on the enactment of the previously amended constitution.	
3.	Egypt	The terms of office of the president and vice president of Egypt based on the Egyptian Constitution in 2014 are two terms. One term of office is four years (<i>Constitutional History of Egypt</i> , n.d.). During the presidency of Abdel Fattah Al Sisi in 2019, the Egyptian government held a referendum to amend the Egyptian constitution, specifically extending the terms of office of the president and vice president to two six-year terms. The constitutional amendment referendum was successful with the ratification of the Egyptian constitution in 2019 (<i>Egypt Constitutional Changes Could Mean Sisi Rule until 2030</i> , n.d.). Thus, President Abdel Fattah Al Sisi can run for president in the next period based on the enactment of the latest constitution.	Egypt succeeded in extending the term of office of president and vice president for six years and two terms through a referendum held to amend the constitution. The referendum succeeded in getting the people's vote to amend the constitution, in particular to increase the term of office of the president and vice president of Egypt. Thus, the enactment of the new constitution had an impact on the president of Egypt who was in office before the amendment to the constitution, could run again in the next election after the enactment of the new constitution.

Related to the description of the background which contains the problems that occur, then the problem formulation in this study is: 1) How arrangement period position president And representative president in the Indonesian constitutional legal system? 2) What are the legal consequences extension period position president through delay election in Indonesia in the perspective of constitutional democracy?

RESEARCH METHOD

This legal research method uses a normative juridical approach. According to Peter Mahmud(Marzuki, 2011), Legal research is a way with the aim of finding and analyzing a rule of law, legal principles, and legal doctrine that is useful as an analytical knife in solving and answering a legal problem. The legal research method is a systematic way of examining a legal issue that occurs. Literally, the method is defined as a step that must be taken to become a systematic within the framework of investigation and/or research that takes place according to a certain time and plan.(Ibrahim, 2005).

As for the way to examine the author's use of the method mentioned above is to examine a law (Statute Approach) and examine the conceptual (Conceptual Approach). This legal research uses primary and secondary legal materials which are described as follows:

- 1) Primary legal material

The primary legal principles in this study are as follows:

- a) Legislation
- 2) Secondary legal materials

Secondary legal materials function as translations and explanations of primary legal materials, including:

- a) Legal literature books
- b) Law journal
- c) Legal scientific work (Thesis, Thesis and the like)

The legal material analysis technique in researching this legal research is an analytic prescriptive technique. Analytic prescriptive technique is a technique of understanding and studying a legal purpose, values of justice, seeking and analyzing a validity of legal rules, legal concepts and legal norms. Thus, relevant analytic prescriptive methods are used to dissect and comprehensively analyze related legal issues that are currently occurring, which are related to the title of this legal research.

RESULTS AND DISCUSSION

1. Setting The Term Of Office For The President And Vice President In The Indonesian Constitutional Law System.

Regarding the regulation of the term of office of the president and vice president, it is expressly regulated only in the constitution, namely the 1945 Constitution of the Republic of Indonesia. The terms of office of the president and vice president in Indonesia have changed from time to time. Factors changing the term of office of the president are none other than changes to the state constitution and changes to the Constitution. History records that Indonesian constitutional law has undergone several constitutional changes, namely from one constitution to another and has always placed most of the presidential powers, starting from the 1945 Constitution (Period 18 August 1945-27 December 1949), the constitution of the Unitary State of the Republic of Indonesia (Constitution RIS). (Period 27 December 1949-17 August 1950), UUD 1950 (Period 17 August 1950-5 July 1959), returned to the 1945 Constitution by Presidential Decree (Period 1959-1971), the 1945 Constitution (1971-1999 Period), the 1945 Constitution (1999-2002 Period), the 1945 Constitution of the Republic of Indonesia (2002-present).

One form of presidential power includes the term of office of the president and vice president. If viewed historically, arrangements regarding the term of office of the vice president are only regulated in the 1945 Constitution and the 1945 Constitution of the Republic of Indonesia. Meanwhile, the constitutions that have been implemented in the Indonesian state administration system, such as: the RIS Constitution, the 1950 Constitution, do not regulate presidential terms. and vice president, but only regulates the duties and powers of the president. and vice president. One of the factors that led to changes in the constitution and government system was the military aggression carried out by the Dutch in the period 1945-1949. After the end of the military aggression with the Round Table Conference in The Hague on December 27, 1949, an agreement emerged that the form of the Indonesian state was to become a united states. So that the system of government and state power in the RIS Constitution adheres to a parliamentary system of government (Ahmadianti et al., 2021).

Based on the agreement from the Round Table Conference held in The Hague, The Netherlands, the application of the RIS constitution raises many problems in aspects of the implementation of constitutional law in Indonesia, especially in the division of state territories. So on August 17, 1950, based on a charter drawn up by the RIS Government and representatives from the states of Eastern Indonesia, they agreed to form a unitary state by drafting a new constitution, namely the Provisional Constitution of 1950 and appointing a president and vice president. The substance of the 1950 Constitution only regulates the powers and duties of the president and vice president. The terms of office for the president and vice president are not clearly defined. The 1950 UUDS changed the form of the Indonesian state, in the RIS constitution the form of the Indonesian state was the United Republic of Indonesia. Whereas in the 1950 UUDS, the form of the Indonesian state was the form of a unitary state. The dynamics of constitutional law in the implementation of the 1950 Constitution which still adheres to a parliamentary system of government experienced political upheaval and also created instability in the country of Indonesia, with the changing government cabinet at that time. So, to reduce the prolonged parliamentary political conflict, the 1945 constitution was re-enacted in Indonesia based on Presidential Decree 5 July 1959 (Risdiarto, 2018). This decree confirms the re-enforcement of the 1945 Constitution as the Indonesian constitution.

The substance of the term of office of the president and vice president in the 1945 Constitution before the amendment has been regulated even though it is not concrete in the aspect of limiting power. Arrangements relating to the term of office of the president and vice president are regulated in article 7 of the 1945 Constitution which reads: "The President and Vice President serve for a term of five years, and henceforth they can be re-elected." (Undang-Undang Dasar 1945, 1945) Provisions regarding the term of office of the president in the 1945 Constitution before the amendment, also regulates the election of the president and vice president to be conducted by the People's Consultative Assembly (MPR), which is regulated in article 6 paragraph (2) of Law no. The 1945 Constitution.

The substance of articles 6 and 7 of the 1945 Constitution before the amendment did not stipulate limitations on the term of office of the president and vice president and the rotation of powers in the form of general elections, particularly the positions of president and vice president. Thus, giving rise to authoritarianism in the government during President Soekarno's time by appointing himself as President for life based on the Decree of the People's Consultative Assembly of the Republic of Indonesia Number III/MPRS/1963 of 1963 (KETETAPAN MAJELIS PERMUSYAWARATAN RAKYAT SEMENTARA REPUBLIK INDONESIA NOMOR III/MPRS/1963 TAHUN 1963*) TENTANG PENGANGKATAN PEMIMPIN BESAR REVOLUSI INDONESIA BUNG KARNOW MENJADI PRESIDEN REPUBLIK INDONESIA SEUMUR HIDUP, 1963). This is very contrary to the values of constitutional democracy which is based on the constitution in the concept of a rule of law *rechtstaat*. The MPRS decision violated Article 7 of the 1945 Constitution before the amendment, and reflected that the substance of the 1945 Constitution before the amendment was a constitution which emphasized the integration of powers of state institutions. (Sirajuddin & Winardi, 2016).

The integration of state institutions has led to abuse of power in the implementation of Indonesian constitutional law, and concepts related to the division of powers as stipulated in the

1945 Constitution before the amendment cannot be carried out objectively and precisely, due to the superior authority of state institutions in the 1945 Constitution and it has not yet comprehensively regulated the authority of other state institutions. The integration of the authority of state institutions, one of which is manifested in the authority of the MPR in electing and appointing the president and vice president, so that the MPR is directly the institution that absolutely oversees and determines the head of government.

This is because the substances related to limiting the authority of state institutions have not been comprehensively regulated, and the concept of people's sovereignty in the 1945 Constitution is only a formality. This is proven in Article 1 paragraph (2) of the 1945 Constitution which reads: "Sovereignty is in the hands of the people, and fully implemented by the MPR". This shows that the MPR's power is fundamental in making decisions and also in determining the direction of state policy in the name of people's sovereignty. This has an impact on the power of the MPR in appointing and having absolute power to determine the term of office of the president and vice president. Thus, the implementation of the 1945 Constitution, especially the term of office of the president and vice president during the Old Order era, had violated the 1945 Constitution.

As a result, during the New Order phase with President Suharto, abuses related to the term of office of the president and vice president were repeated. Because the substance is related to Articles 6 and 7 of the 1945 Constitution which do not regulate the substance of the limitation and division of powers of state institutions, it is used as a tool for abuse of power in terms of the terms of office of the president and vice president. Based on the words of Article 6 and Article 7 of the 1945 Constitution, the New Order government interpreted that in relation to the term of office the president and vice president could serve for five years and could be re-elected after the term of office of the president and vice president had ended, which was based on deliberation and consensus by MPR. Thus, the Suharto regime served as president for 32 years, with the results of deliberations and consensus of the MPR (Huda, 2005). This created problems and violations in the Indonesian constitutional system which was based on the 1945 Constitution. During the Soeharto regime, the democracy adopted in the government system at that time was authoritarian democracy. This meant that people's sovereignty was taken over and fully controlled by the government in power at that time and the term of office of the president and vice president during the New Order era was a representation of the weaknesses in the substance of the 1945 Constitution.

When the Soeharto regime collapsed on May 21, 1998, which was caused by the monetary crisis that befell countries in Southeast Asia and also the political dynamics implemented by the Suharto regime in the form of implementing the dual function of ABRI and the merger of political parties, which represented the authoritarianism of the Soeharto regime in running the government, and the president's power drew protests from academics and the public which resulted in massive riots in various regions. So that the momentum of the collapse of the Suharto regime was an important momentum, in the form of reforms in the aspects of government, economy, and law at that time. due to the insistence of jurists and activists with the aim of improving the system of government and efforts to uphold the law for the survival of society based on applicable law and constitutional democracy. Thus, the reform momentum was used to amend the 1945 Constitution. Amendments to the 1945 Constitution were carried out and amended up to four times. The time period for the amendment to the 1945 Constitution is as follows (Syah, 2009): 1) The first amendment to the 1945 Constitution was carried out and stipulated on October 19, 1999, resulting

in a total of 9 articles that were successfully amended; 2) The Second Amendment to the 1945 Constitution was carried out and enacted on 18 August 2000, resulting in a total of 25 articles that were successfully amended; 3) The Third Amendment to the 1945 Constitution which was enacted on November 9, 1999 resulted in 23 articles being successfully amended; and 4) The Fourth Amendment to the 1945 Constitution which was enacted on 10 August 2002 resulted in 13 articles being successfully amended and the addition of 3 articles of Transitional Rules and 2 articles of Additional Rules.

One of the provisions amended in the 1945 Constitution is the term of office of the president and vice president. Amendments to the terms of office for the president and vice president were made in the first amendment, namely on October 19, 1999. Article 7 reads: "The president and vice president hold office for five years, and after that they can be re-elected for the same position, only for one term of office." Then, in Article 6 of the 1945 Constitution, there are changes and additions related to the legal requirements to become president and vice president. One of them is the amendment to Article 6 paragraph (2) of the 1945 Constitution which regulates the authority of the MPR to appoint a president and vice president. In the third amendment made on November 9, 1999, the provisions of Article 6 paragraph (2) of the 1945 Constitution were changed to Article 6A paragraph 1 which reads: "The President and Vice President are elected as a pair directly by the people."

So that arrangements related to the term of office of the president and vice president that have been in effect until now are regulated in the 1945 Constitution of the Republic of Indonesia which has undergone amendments, in the form of: adding articles, changes related to the substance of the authority of state institutions, and several state institutions and their authorities which have been removed and not reintroduced. According to article 7 of the 1945 Constitution of the Republic of Indonesia, the articles governing the term of office of the president are five years of office for the elected president and vice president and a maximum of two terms, namely ten years. After these two terms, the president and vice president cannot run for president and vice president again and cannot serve again as president and vice president.

2. The Legal Consequences of Extending the President's Term of Office Through the Postponement of General Elections in Indonesia in the Perspective of Constitutional Democracy

Regarding the extension of the presidential term by postponing the general election, the statement made by the Coordinating Minister for Maritime Affairs and Investment, namely Luhut Binsar Pandjaitan last March, caused public uproar. Because the Coordinating Minister's statement was only based on big data of 110 million (one hundred and ten million) originating from public opinion from various social media, and the basis for big data has no legal basis and there is no transparency to the public regarding the validity of the data. In addition, the Minister said the statement was unethical. Because, the position of Minister is a public official regulated in chapter 1 Number 25 Law Number 30/2014 about Government administration, which reads: "Minister is minister who carry out government affairs in the field of utilization of the state apparatus." Thus, the position of Minister has a logical consequence, namely obeying

and apply AAUPB (General Principles of Good Governance) in carrying out his duties as Minister.

Related to the AAUPB concept, according to Crinca le Roy, it consists of: the principle of legal certainty, the principle of balance, the principle of careful action, the principle of motivation for every government decision, the principle of prohibition of merging and mixing of authorities, the principle of unity in making decisions, the principle of fair play, the principle fairness and/or fairness, the principle of responding to reasonable expectations, the principle of negating the consequences of an annulment of a decision, and the principle of protecting personal views on life. Koentjoro added two more principles, namely: the principle of wisdom and the principle of implementing public interest (Solechan, 2019). Draft AAUPB is regulated in article 10 UU No. 30/2014 about Government administration which reads: "AUPB referred to in this Law covers the principles of: a. legal certainty; b. expediency; c. impartiality; d. meticulousness; e. not abuse authority; f. openness; g. public interest; and h. good service." The purpose of the AUPB concept is none other than to realize a democratic government administration system, to create a government that can carry out public services in accordance with applicable laws and regulations, as a guideline for state civil servants and government officials in the context of running government in the form of providing community services in accordance with regulations. legislation, as a form of accountability to society for the mandate in the form of positions regulated in the 1945 Constitution of the Republic of Indonesia. The AUPB principle is a form of implementation of constitutional democracy

The AUPB principle is a benchmark for the implementation of constitutional democracy in the government system. The correlation between the AUPB principle and the concept of constitutional democracy is closely related. The concept of constitutional democracy according to Henry B. Mayo (Mayo, 1960) that is:

1. Settlement of a dispute peacefully and institutionally;
2. Guarantee the implementation of a peaceful change in a dynamic society;
3. Organize regular leadership changes;
4. Minimizing violence;
5. Recognizing and respecting differences in society in the form of: diversity of opinions, interests, and behavior;
6. Ensuring the upholding of justice through indiscriminate law enforcement.

The concept of constitutional democracy described by Henry B. Mayo explicitly provides an explanation related to constitutional democracy which is in line with the AUPB concept. If you look at the legal phenomenon, the Coordinating Minister for Maritime Affairs and Investment expressed an opinion to postpone the presidential and vice-presidential elections under the pretext of stabilizing the national economy due to the COVID-19 pandemic, which is a violation of the code of ethics committed by a Minister based on the AUPB principle of article 10 paragraph (1) of Law No. 30 of 2014 concerning Government Administration. This statement represents the partiality of the Coordinating Minister for Maritime Affairs and Investment towards the ruling government and does not look objectively at the interests of the community,

The extension of the term of office of the president and vice president by postponing general elections has implications for Indonesian administrative law and violates the concept of

constitutional democracy. The extension of the term of office of the president and vice president has clearly violated the constitution, article 7 of the 1945 Constitution of the Republic of Indonesia which regulates five years of presidential term and a maximum of two terms in term of office. The conditions set out in chapter 433 paragraph (2) UU No. 7/2017 which reads: "Determination of the postponement of the election implementation is carried out by:"

- a. KPU Regency/City on PPK's proposal if postponed, the implementation of the Election covers one or several sub-districts/villages;
- b. KPU Regency/City on element PPK if delay Implementation Election covers One or several: district;
- c. KPU Province on the Commission's proposal Regency/City if delay implementation Election covers One or several district/city; or
- d. KPU on the Commission's recommendation Province if implementation election advanced or continuation covers One or a number of province.

Based on this article, the postponement of the general election in question is a postponement of the implementation based on urgent conditions. Such as: natural disasters, regional scale security disturbances that have an impact on the implementation of elections. When viewed from the statement that postponing the election which has an impact on extending the presidential term on the grounds of public opinion and budget savings due to the COVID-19 pandemic, it really does not fulfill the elements of article 433 paragraph (2) of Law No.7/2017 concerning General Elections. The postponement of general elections takes into account situations and conditions that must be considered objectively and based on law. The aim is none other than to implement the constitutional mandate of the 1945 Constitution of the Republic of Indonesia and carry out the concept of constitutional democracy. The purpose of postponing the election referred to in that article, not merely to extend a position in both the executive and legislative institutions. Instead, the article is a form of solution if a region is experiencing a pressing situation so that general elections cannot be held. The extension of the presidential term by postponing general elections has the logical consequence of violating constitutional democracy. The characteristics of a constitutional democracy viz(Huda, 2005):

1. The existence of a constitution in the form of a constitution which has the substance of regulating the relationship between the authorities and the people;
2. The division of state power, such as: the power of legislature (legislature), the power to run the government (executive), and the power of the judiciary (judiciary). As well as the judicial power (judiciary) does not only decide disputes between individual people, but decides disputes between rulers and people, and the implementation of government based on law;
3. There is protection and recognition of the rights of people's freedoms.

Furthermore, if the extension of the term of office of the president and vice president through general elections is carried out without any legal action to amend the 1945 Constitution of the

Republic of Indonesia, the national condition is not in an emergency situation such as: a war emergency, national scale riots, natural disasters that affect all parts of Indonesia, then the government has violated constitution article 7, article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Violations of the state constitution are serious legal violations that have an impact on national instability, especially in upholding the constitution and as a form of deviation from constitutional democratic values contained in the 1945 Constitution of the Republic of Indonesia.

The deviation from the constitutional democratic values contained in the 1945 Constitution of the Republic of Indonesia does not only have an impact on aspects of the non-implementation of the process of rotation of powers in an orderly and peaceful manner, but will also have an impact on the concept of power sharing. The impact of extending the presidential term through postponing general elections represents an abuse of power by an institution of state power, namely the executive branch, which is carried out by the president and vice president. The abuse of power by delaying general elections to extend the presidential term will have serious legal implications. These implications have an impact on the failure of the state in protecting, respecting and maintaining human rights, especially in the implementation of general elections. General election is an event for the people to assess and choose candidates for the leadership of a country, a form of opportunity for the people to participate in the form of self-nomination as a leader. This is mandated by the constitution, article 28D paragraph (3), article 28 E of the 1945 Constitution of the Republic of Indonesia. Thus, the extension of the term of office of the president and vice president by postponing general elections is unconstitutional if carried out without amendments to the 1945 Constitution of the Republic of Indonesia and an emergency situation.

CONCLUSION

¹⁰ Democracy in a narrow perspective is a system of government from the people for the people. Democracy is a system used by almost all countries in the world, including Indonesia. One popular concept of democracy applied by the majority of countries is constitutional democracy. Constitutional democracy is democracy applied to a rule of law *rechtstaat*. Thus, the application of democratic values is based on applicable laws and regulations, and there is respect and recognition of the rights of every citizen. One of the characteristics of a constitutional democratic system is the rotation of power which is carried out peacefully and regularly. That is, in a country that adheres to a constitutional democracy system, it is obligatory to implement a peaceful and orderly general election system to create a democratic government based on laws and regulations. In the general election system in Indonesia, general elections are held for the rotation of legislative and executive powers.

Executive power is the power to run the government, one of which is the president and vice president. The positions of president and vice president are regulated in article 7 of the 1945 Constitution of the Republic of Indonesia. The positions of president and vice president are a result of post-reform amendments to the 1945 Constitution. In the constitution before the 1945 Constitution of the Republic of Indonesia, The terms of office for the president and vice president were not clearly regulated, which led to the abuse of presidential power during the Old Order and New Order periods. Thus, the 1945 Constitution of the Republic of Indonesia is clearly regulated in relation to the term of office of the president and vice president. The legal basis for general

elections is regulated in Law No.7/2017. So that the election of president and vice president must obey and comply with the 1945 Constitution of the Republic of Indonesia and Law No.7/2017.

The statement by the coordinating minister for Maritime Affairs and Investment related to the discourse on extending the presidential term through general elections which should be held in 2024 to 2027 sparked public uproar. The commotion was caused by the basis of extending the presidential term only on the big data of public opinion on social media and on the grounds that the budget was too large for this implementation. Regarding the statement by the coordinating minister for Maritime Affairs and Investment, he has violated article 10 of Law No. 30/2014 which regulates the AUPB (General Principles of Good Governance) principles in the aspects of impartiality and transparency. Related to this statement, it has the potential to violate the 1945 Constitution of the Republic of Indonesia regarding the term of office of the president and vice president by postponing the general election. Postponement of general elections can only be done if the country's condition is in an emergency which has an impact on the possibility of holding elections. So, if the implementation of the extension of the term of office of the president and vice president by postponing general elections is a form of abuse of power that is unconstitutional. To realize the concept of a rule of law that implements constitutional democratic values, all elements of society and especially the government must set a good example, in the aspect of law enforcement and carrying out the constitutional mandate. In order to ideally achieve a constitutional democracy system and realize a country that is subject to and obedient to applicable law.

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**EXTENSION TIME PRESIDENTIAL
OFFICE THROUGH DELAY GENERAL
ELECTIONS IN A CONSTITUTIONAL
DEMOCRACY PERSPECTIVE**

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Abstract: A democratic system in the state, which uses the rule of law system (*rechtsstaat*), is a constitutional democracy. Constitutional democracy is a system which respects and implements the mandate of the Constitution and applicable laws. Constitutional law aims to create discipline, peace and welfare in a country based on applicable law. Constitutional democracy is a system applied in many countries worldwide, without exception in Indonesia. In Indonesia, an applied system is a presidential one. Thus, the leader of the government is the president and vice president. The regulation on the terms of office for the president and vice president was written in Article 7 of the 1945 Constitution of the Republic of Indonesia. Meanwhile, the general election mechanism is written in regulated law number 7/2017. Regarding the terms of office for the president and vice president, minister of Coordinator for Maritime Affairs and Investment Luhut Binsar Pandjaitan made a public opinion that postponing the 2024 elections would have consequences in prolonging the terms of office for the president and vice president. Thus, this statement makes a public outreach because the opinion is based on big data of public opinion from social media and is not strengthened by the legally applied basis in Indonesia. This statement has violated the code of ethics of a minister based on the general principles of good governance (AAUPB) in Article 10 of Law Number 30/2014 concerning Government Administration. In addition, this statement caused public uproar and had implications for upholding the 1945 Constitution of the Republic of Indonesia and violating the values of constitutional democracy in Indonesia.

Keywords: Constitutional democracy; President and Vice President; General Election

INTRODUCTION

Democracy is a state system that is currently the most widely used by countries in the world. The word democracy is a combination of two Greek words, namely *demos* and *kratos*. The etymological definition of *demos* is the people, while *kratos* is the government (Harper, n.d.). In a narrow sense, democracy is a system of government run by the people and returned to the people. The concept of democracy over time has experienced rapid development following the legal

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