

Integrative Negotiation Approach by the Indonesian Constitutional Court in Concurrent General Elections Policy

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ABSTRACT

The Indonesian Constitutional Court has rejected the judicial review of concurrent general elections' constitutionality in Decision No. 55/PUU-XVII/2019 on 26 February 2020. The Constitutional Court rejected the entire judicial review of Law No.7/2017 considering General Elections and Law No. 1/2015 considering Regional Head Elections. Association for Elections and Democracy (Perkumpulan Untuk Pemilu dan Demokrasi (Perludem)) submitted this issue as the 2019 concurrent general elections with the five-box design were inconsistent with the Election Principles in the Indonesian Constitution 1945 (UUD 1945). Surprisingly, the Constitutional Court decided on six possible models in the concurrent general election besides the rejection. Even though this decision was issued before pandemic Covid-19, the options significantly impact the next concurrent general elections in the new-normal era. This paper reviews the dynamics of the decision-making process on the concurrent general elections policy in an integrative negotiation approach to understanding the Constitutional Court by juridical method and desk study. Through analyzing Decision No. 55/PUU-XVII/2019, it appeared that the Constitutional Court has succeeded in accommodating the petitioner's necessities and referring to the implementation of elections policy effective and efficient according to the mandate of UUD 1945. In conclusion, the integrative negotiation approach applied in the decision-making process produced the six best possible options to conduct simultaneous elections in a new-normal society.

Keywords: *Integrative negotiation approach; concurrent elections policy; Indonesian Constitutional Court; Decision No. 55/PUU-XVII/2019.*

1. INTRODUCTION

Indonesia held the first concurrent general elections on 17 April 2019 with a five-box design. Based on Law No. 7/2017 considering the General Elections, the five-box design means each voter have to cast five separate ballots: one for President, one for the House of Representatives (DPR), one for the Regional Representative Council (DPD), one for the provincial legislative council (DPRD Provinsi) and one for the municipal legislative council (DPRD Kabupaten/Kota) simultaneously. This new election policy has created positive and negative aspects.

The rising voter participation rate was the first achievement of concurrent general elections. The voter participation rate reached 80.90%, exceeding the KPU target of 77.5%. Voter participation in 2019 concurrent general elections was higher than the series of elections

from the 2004 to 2015 presidential elections in the range of 70.7%-78.2%. In general, the second positive aspects were that the public considered that concurrent general elections were held in a free, honest, and just manner. Third, the elected presidential and vice-presidential pairs are supported by the majority of seats in the DPR. The party supporters of Joko Widodo-Ma'ruf Amin won 62.29% in the legislative election and 60.7% in the parliament. The last was that the increase in the percentage of electability of women legislative candidates in the House of Representatives became 20.56% highest in the Reform Era elections [1, p. 3]

However, the adverse problems were more popular since the elections caused 894 local poll administrators (KPPS) to die across the country, and 5,175 were sick due to exhaustion, according to General Elections Commission (KPU) [2]. Other issues in the spotlight were the final voter list (DPT) and logistics distribution.

The election supervisory agency (Bawaslu) found that the DPT list changes impacted the preparation of election logistics for the first time [3, p. 99]. In addition, the five-box design was unmanageable for the politician's side since the politicians had to support their candidacy when they campaigned for their party and electoral candidate. This mechanism also created difficulties for the voter to recognize all the candidates [1, p. 7]. Thus, initiating Association for Elections and Democracy (Perkumpulan Untuk Pemilu dan Demokrasi (Perludem) submitted the judicial review to the Indonesia Constitutional Court for simultaneous elections policy on 31 August 2019.

Perludem filed a constitutional review of several articles in Law No. 7/2017 concerning General Elections; and Law No. 1/2015, which contains the election of governors, regents, and mayors. It argued that the design of the five-box simultaneous elections does not reinforce the presidential system. It is also inconsistent with the Election Principles in the 1945 Constitution [4]. The petitioners requested the Constitutional Court to declare that a concurrent election with constitutionality is a national election to elect the President, DPR, and DPD. After that, the government-held concurrent local elections to elect Governor, Regent, and Mayor, along with the Provincial and Regency/City DPRDs.

On 26 February 2020, the Constitutional Court rejected the judicial review petitions as a whole. Responding to the decision, Perludem stated that they are satisfied though it was rejected the Judicial Review No. 55/PUU-XVII/2019. Since the Constitutional Court provided firm foundations and limitations in its legal considerations on the future concurrent general election administration system [5].

A range of contemporary scholars has produced many pieces of literature on concurrent general elections. However, most of this literature had focused on the concurrent general elections 2019 before the Judicial Review No. 55/PUU-XVII/2019 was published. Relatively, few academic publications have used the decision as a reference. Jurdi focused on strengthening the checks and balances mechanism in concurrent general elections under the political and sociology perspective [6, p. 144]. R. Rosanti analyzed that there is no longer distinguish between the Regional Head Election and Indonesian General Election. The concurrent general election system puts three simultaneously: presidential, legislative, and regional head elections [7, p. 101]. M. Amir described the ideal simultaneous elections model referring to textual analysis of the Indonesian Constitutional Court's Decision [8, p. 121].

Furthermore, none of the scholars has discussed the dynamic of the concurrent general election judiciary judicial review process No. 55/PUU-XVII/2019. In addition, no literature discusses it from a negotiation perspective between the petitioner and the Constitutional Court. Therefore, this paper intended to review the

decision-making process's dynamics by the Indonesian Constitutional Court on the concurrent general elections policy in an integrative negotiation approach.

2. METHODOLOGY

This study is descriptive and analytic. It uses the juridical method and desk study. The juridical or formal-legal method is "the key characteristic of constitutional studies" because it deals with the law [9, p. 15]. It highlights the textual content of Decision No. 55/PUU-XVII/2019 to describe the dynamics of the decision-making process during the judiciary. This study also applied in desk study to identify vital integrative negotiation steps and factors affecting the Court's decision to concurrent general elections policy. Eventually, it would help determine the best possible options for concurrent general elections in a new-era society with an integrative negotiation approach.

Data for this study was taken from Decision No. 55/PUU-XVII/2019 and other related concurrent general elections regulations as primary data. Secondary materials are gathered from various sources such as books, journals, major newspapers, magazines, official publications, and websites are published in Indonesian and English.

3. FINDINGS AND DISCUSSION

In the negotiation process, there are three ways to resolve the disputes: reconciling the interest of parties, determining who is right, and determining who is more robust [10, pp. 2-4]. In concurrent general elections judicial review, those three ways were founded in the Constitutional Court authorities in Law No. 24/2003 on considering the Constitutional Court.

The Constitutional Court authority as a guardian of the constitution accommodates the reconciling of interest between parties. It reserves the right to interpret a provision of articles in law to align with constitutional values. It also creates an opportunity to achieve an integrative decision (win-win) rather than distributive bargaining (win-lose).

In Article 10 (1), Law No. 24/2003 embodies authorities of the Constitutional Court to determine who is right and who is more powerful by looking at the final character of its decision comprises the legal binding force (final and binding). Therefore, no legal effort can be made [11]. Those legal authorities enable the Constitutional Court to use any type of negotiation approach in the court process.

Even though Perludem must accept the Constitutional Court's final decision, Perludem can win the case by making careful preparations, putting forward common goals, and determining the best alternative encourages the Court's decision to win the Perludem.

Furthermore, instead of using the power to simplify the process, the Constitutional Court develops collaborative problem solving with the petitioner by discussing all related issues and concerns from different stakeholders in simultaneous elections. Effective information exchange promotes the development of reasonable integrative solutions.

3.1. Integrative Negotiation Approach by the Indonesian Constitutional Court

The integrative negotiation approach refers to win-win solutions between parties and involved participants through creative and collaborative problem-solving. If the negotiator aims to reach integrative agreements, they must share their interests and priorities [12, p. 328]. Although the situation may initially appear to the parties to be win-lose in resolving disputes through the Court, discussion and mutual exploration will often suggest alternatives where both parties can gain.

3.1.1 Four Steps in Integrative Negotiation Process

According to R. J. Lewicki, B. Barry, and D. M. Saunders, the integrative negotiation process contains four significant steps. These are: (1) identify and define the problem, (2) surface interests and needs, (3) generate alternative solutions to the problem, and (4) evaluate those alternatives and select among them. The first three steps are essential for creating value. The fourth step involves claiming value [13, p. 163] (see figure 3.1.1).

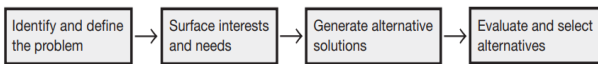


Figure 3. 1.1 Key Steps in Negotiation Process

Source: R. J. Lewicki, B. Barry, and D. M. Saunders, *Essentials of Negotiation*, 6th ed., New York: Mc Graw-Hill, 2016, p. 63.

3.1.1.1 Step 1: Identify and define the problem

The problem definition process is critical for integrative negotiation because it sets broad parameters regarding the negotiation and provides an initial framework for approaching the discussion [13, p. 64]. Identify and define the problem, emphasize mutually acceptable ways, accurately reflect both parties' needs and priorities, and clearly state the objectives and obstacles to attaining the goal.

Perludem initiated the first step since filing a case at the Constitutional Court. The Constitutional Court's position is passive. After the Constitutional Court checked their authority to proceed and decided Perludem's legal standing, the Constitutional Court adopted it as a mutual problem.

The petitioner's petition is a test constitutionality of statutory norms, in casu Article 167 paragraph (3), Article 347 paragraph (1) of Law No. 7/2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement State Gazette of the Republic of Indonesia No. 6109, hereinafter referred to as Law No. 7/2017), Article 3 paragraph (1) of Law No. 8/2015 concerning Amendments to Law No. 1/2015 concerning Stipulation Government Regulation in Lieu of Law No. 1/2014 concerning Elections for Governors, Regents and Mayors Become Law (Gazette The Republic of Indonesia of 2015 No. 57, Supplement to the State Gazette Republic of Indonesia No. 5678, hereinafter referred to as Law No. 8/2015), and Article 201 paragraph (7) and paragraph (9) of Law No. 10/2016 concerning Amendment Second, on Law No. 1/2015 concerning Stipulation of Regulations Government in Lieu of Law No. 1/2014 concerning Elections Governors, Regents and Mayors Become Laws (State Gazette Republic of Indonesia of 2016 No. 130, Supplement to the State Gazette Republic of Indonesia No. 5898, here in after referred to as Law 10/2016) against UUD 1945, the Court has the authority to adjudicate the a quo petition [4].

Perludem also submitted a request for a provision containing speed up the examination process and decided upon a quo petition. Hence, it is related directly to the election implementation system, especially with the scheduled elections, which will have a broad impact on holding elections in Indonesia.

Even though Perludem had received a legal position many times for legal standing assessment, the Constitutional Court still examined their qualification. Previously, Perludem got legal standing from the Decision No. 20/PUU-XVII/ 2019 on 28 March 2019, Decision No. 135/PUU-XIII/ 2015 on 13 October 2016, Decision No. 8/PUU-X/ 2012 on 13 February 2013, and Decision No. 96 / PUU-X / 2012, dated 5 September 2013. The Constitutional Court must confirm the organization's objective in line with judicial review material.

Eventually, the Constitutional Court stated that Perludem has legal standing as a non-government organization petitioner that holds activities in the electoral sector, as reflected in Article 3 of the Deed of Establishment Perludem Foundation (Association for Elections and Democracy) Number 279 dated 15 November 2011. The deed stated, "Perludem runs activities that include studies on elections and democracy, provides education about elections and democracy, provides training to the public on elections and democracy, and conducts election monitoring and democracy." As an association, Perludem is represented by an Executive Director, Titi Anggraini; based on Article 16, point 5 of the Deed of Establishment of Perludem stated, "The Executive Director of Perludem

has the right to represent the organization in inside and outside the court."

In summary, Perludem's main petitum requested the Constitutional Court declare that the concurrent election with constitutionality is a concurrent general national election to elect the President, DPR, and DPD. After that, concurrent local elections are held to elect Governors, Regents, and Mayors, and Provincial and Regency DPRD's /City. Perludem claimed the urgency to review those policies as the five-box design did not reinforce the presidential system of government and was not suitable with the principle of election in UUD 1945. Also, the implementation of regional head simultaneous elections is not in accordance with strengthening the local government.

Based on the Constitutional Court assessment, Perludem petitum and legal standing have fulfilled the court requirement. Therefore, the concurrent general elections policy has become a mutual problem between Perludem and the Constitutional Court. It had reflected both joint priorities. Perludem clearly stated the objective and obstacle for the problem that needs to be considered by the Constitutional Court in the next step of the judiciary process. This is a fourth level heading. You can replicate it where suitable.

3.1.1.2 Step 2: Surface interest and needs

The parties need to pursue the other's thinking and logic to determine the factors that motivated them in integrative negotiation to arrive at their goals. Thus, a joint problem produced in the first step would be exercised depend on each party's interest. Since interests are the underlying concerns, needs, desires, or fears that motivate a negotiator to take a particular position, it is essential to determine The Constitutional Court and Perludem interest. Three types of interest suggested by Lax and Sebenius: (1) Substantive interests are related to focal issues that may be intrinsic or instrumental or to achieve their goal under the negotiation; (2) Process interests refers to how the negotiation unfolds; (3) Relationship interest focus on the value of the ongoing and the future relationship between the parties [13, p. 68].

Referring to the Constitutional Court authorities and petitioner's petitum, both have a similar interest, namely the substantive interest. In particular, the Constitutional Court's interest is concerning what is fair, what is right, what is acceptable, what is ethical, or what has been done in the past and should be done in the future—may be sincerely held by the parties and serve as the dominant guides to their action. Thus, in response to the Constitutional Court's dominant roles, Perludem had to perform a collaborative will and effort to generate the best solution from the Constitutional Court.

3.1.1.3 Step 3: Generate alternative solutions

Once the parties have agreed on a common definition of the problem and understood each other's interests, they can generate alternative solutions. There are two basic approaches to generating alternative solutions: first, generating options by redefining the problem. It requires the negotiators to redefine, recast, or reframe the problem (or problem set) to create win-win alternatives out of what earlier appeared to be a win-lose problem. Second, generating options to the problems as given takes the problem as given and creates a long list of options from which the parties can choose [13, p. 70]. Concurrent general elections policy judicial review is more related to the first approach.

The Constitutional Court and Perludem clarify the scope of the problem, norms, contents of the request and examine alternative solutions starting from the first trial. In the second until the fifth Court, the Indonesian Constitutional Court presented a logrolling approach for refocusing questions to reveal win-win options and questioning the priority issues in Perludem view. After that, the Constitutional did logroll itself with the same question. This strategy is also a mechanism to explore differences in risk preference and expectations [13, p. 71].

Besides generating alternative options by redefining the problems, there are other ways to prolong the process by adopting BATNA and ZOPA terms when the negotiation tends to be deadlock. The best alternative to negotiating an agreement (BATNA) and zone of possible agreement (ZOPA) can be applied to analyze the alternative solution when the negotiation needs more deepen information sharing to produce the best alternative win-win solution. BATNA helps determine each party's reservation point, or walk away point, in the negotiation [14, p. 41]. It represented in the will and efforts between Perludem and the Constitutional Court and their influence by taking much information from the expert's statement from both parties. Meanwhile, ZOPA is a bargaining range in an area where negotiating parties may find common ground in dealing [15, p. 97]. The deal was at least as good for each party in a negotiation as their respective BATNA's. If negotiating parties cannot reach a ZOPA, they are in a negative bargaining zone.

In the preliminary hearing (I) on 2 October 2019, the panel of judges – I Dewa Palguna as a chairman of trial, Enny Nurbaningsih as a member, Wahiddudin Adams as a member – asked the petitioner to revise the petition after the judge had previously conducted an initial review of the petitum. The judges found a technical error in petitum and some main substantive issues that the petitioner must elaborate on more. Regarding the substantive issues, first, the need to explain the norms of unconstitutionality because, in posita, the petitioner only focuses on implementation issues, such as casualties in simultaneous

elections. Unconstitutionality also concerned the legal standing of Perludem to what extent to which the petitioner's constitutional impairment is in the form of potential or actual norms. Second, they emphasized the importance of revising the proposed legislation. Perludem submitted three judicial reviews, namely Law No. 7/2017 concerning General Elections, Law No. 1/2015 concerning Regional Head Election, and Law No. 16/2016, the second amendment to amendment of Law No. 1/2015. According to the Constitutional Court, the review was only for two laws, namely Law No. 7/2017 and Law No. 1/2015, due to Law No. 10/2016 is part of the local elections law. Third, the explanation of the urgency of the provisional petition by reviewing the previous Constitutional Court decisions related to concurrent general elections and regional head election. The judges argued that there were two regimes in this case, general election regime, and local elections. Hence, the petitioner must understand the scope of the Constitutional Court's authority as a negative legislator or as a positive legislator in the sense of making new norms or interpreting existing norms. A revised petition must be submitted no later than 14 days or sooner [16]. If the petitioner was late, then the trial will continue regarding the first petition.

Instead of rejecting the case, the Constitutional Court allowed Perludem to share more information about their concerns, needs, desires, or fears. Information is crucial to problem-solving, and there is a relative emphasis on fact-finding [17, p. 5]. The Constitutional Court shared information and disclosure of its needs and interests that Perludem must fulfil to find a mutually acceptable solution. Without revising the petition and posita as requested, the court process had the potential to terminate or settle into zero agreement. In this phase, Perludem presented accommodative action by revising their petition. Both sides have encouraged BATNA, then the subject matter of the case being the main negotiation agenda.

3.1.1.4 Step 4: Evaluate and select alternatives

Claiming value is the aim of evaluating and select alternatives steps. Negotiators need to ensure that working together to define issues and possible solutions to choose alternatives does not harm the relationship. Determining the claimed value of the Constitutional Court and Perludem would be beneficial to produce ZOPA to encourage a win-win agreement. A win-win solution will establish good relations in Perludem interaction with The Constitutional Court. As Perludem is concerned about elections and democracy issues, and it might have a high chance of filing more cases, the long-term relations with the Constitutional Court have to be considered in negotiation. Attention to the relationship is most important in continuing relationships, where integrative negotiations are most appropriate [13, p. 77].

The petitioners and the Constitutional Court showed similar and different claimed values during the first to fifth Court. Similar values lead to a win-win solution rather than a difference valued. According to Decision No. 55/PUU-XVII/2019, Perludem and the Constitutional Court emphasized the primary concern of concurrent general elections as strengthening the presidential system and the concurrent phrase meaning in the elections. However, Perludem and the Constitutional Court have different views about concurrent general election's impact on constitutionality.

Perludem's constitutionality claimed that the five-box concurrent general election design did not reinforce the presidential government system, contradicted the principle of elections in UUD 1945, and concurrent regional head elections were inconsistent with strengthening regional governance. Perludem argumentations were supported by letters/written evidence (P1-P7) and two experts' statements: Khairul Fahmi and Didik Supriyanto.

Khairul Fahmi reinforced Perludem's claiming value by addressing the Constitutional Court authority to decide the concurrent design of the presidential election with the legislative election. The Constitutional Court should reinterpret the original intent in article 22E paragraph (2) of UUD 1945 to confirm the need to separate the presidential and legislative elections at the national level.

In addition, Didik Supriyanto mentioned the necessity to expand the Constitutional Court Decision No. 14/PUU-XI/2013 scope, which asked for concurrent presidential elections with legislative elections to separate the national and regional elections aim of the Constitutional Court decisions. He also argued that the implementation of legislative elections violates the principle of honesty and fairness for voters and is unmanageable for the organizers. Hence, the schedule of national and regional elections needed to be rearranged.

On the other hand, the Constitutional Court considered the constitutionality of concurrent elections, referring to the original intent of UUD 1945. It stated that concerning the legal considerations in the decision of the Constitutional Court No. 14/PUU-XI/2013, which said that concurrent elections are constitutional, which are considerations that have a strong basis at the time of discussion of amendments to the UUD 1945. The five-box design was not the only idea that developed and debated in UUD 1945 amendment. In these debates, the simultaneously was not the matter for the Majelis Permusyawaratan Rakyat (MPR). It is more focused on the aim of elections to strengthening the presidential government system.

Regarding the petitioner's provision, both have a different opinion on the urgency of it. Perludem asked for accelerating the process of examination and decision-

making, especially with the schedule for the implementation of elections which will have a broad impact on the administration of elections in Indonesia. Contrary, the Constitutional Court argued that limited time due to concurrent general elections was not relevant because there is sufficient time to prepare before the 2024 simultaneous elections. First, however, the Constitutional Court needed to comprehensively analyze the constitutionality of the case and opinion from concurrent general elections' stakeholders during the judiciary process.

To bridge and prove Perudem's claiming values with the Constitutional Court alleging values, the Constitutional Court held experts' statements (Djayadi Hanan, Syamsudin Haris, Topo Santoso, Ramlan Surbakti) and election stakeholders (DPR, Presiden, KPU, DKPP, Bawaslu). They provided a statement based on their expertise, authorities, duties, and obligations in the election.

Djayadi Hanan addressed the concurrency phrase. He considered that the elections must work simultaneously in the presidential system, then concurrency is only included in legislative and executive elections at the national level. Therefore, determine the regional head elections as part of it is only an option.

Syamsudin Haris provide a different opinion about concurrency. Haris argued that simultaneous legislative and executive elections were necessary for the presidential government system. Besides, the five-box concurrent election design in Decision No. 14/ PUU-XI /2013 was not the only available model. He identified that the 2019 concurrent general elections burden derived from the unsuitable elections design and mistake in setting the duration of the voting time, not from the concurrent phrase. Then, he explained six possible schemes or models for concurrent general elections that got positive accommodation from the Constitutional Court. In general, Haris mentioned that the concurrent general elections had created positive impacts in strengthening the presidential government system in Indonesia.

Meanwhile, Topo Santoso was more concerning about casualties of the 2019 concurrent general elections. Thus, he suggested two choices to guarantee safety, health, and a reasonable/humane workload for all parties involved in elections. First, revert the elections back to the previous two stages, not simultaneously in one day. Second, concurrent general elections with prerequisites are carried out using and by optimizing technology in the electoral process.

Ramlan Surbakti is concerned about the time separation in holding national elections from the administration time of regional elections is more suitable to election principles than holding elections simultaneously. He stated that separation of national

elections from local elections at an interval of 30 months guarantees more democratic elections than concurrent general elections.

In addition, DPR stated that regional head elections are not a part of the general elections regime and concurrent regional elections design is an open legal policy under the Legislator authorizes: DPR and President, as a positive legislator. Therefore, Perudem should request a new norm to the Legislator, not the Constitutional Court, since it is an open legal policy. Furthermore, DPR argued that concurrent general elections to vote executive and legislative members encourage the consolidation of the party system in the parliament and presidential system.

The President stated that concurrent general elections policy is an open legal policy in line with DPR opinion. It concluded that the Constitutional Court authority is a negative legislator. Regarding the principle of elections in Article 22E (1) of UUD 1945, it does not stipulate that the number of general elections must be held simultaneously or not simultaneously. It only refers to the implementation of the election must comply with the principles. Therefore, the design of the election must be submitted to the legislative review, not judicial review. President also mentioned the positive impacts of concurrent general elections: national stability and strong legitimacy from Indonesian people; reduce time wastage, conflict, and horizontal friction in society; reduce state budget spending; encourage coattail effect; reduce money politics and corruption potential. Eventually, President suggested the Constitutional Court reject Perudem's petition as a whole.

KPU, Dewan Kehormatan Penyelenggara Pemilu (DKPP), and Bawaslu, in their separate opinion, described the positive achievements and the detriment of concurrent general elections in 2019. As a concurrent general elections' organizer, KPU concluded that, in principle, concurrent general elections in 2019 were organized safely, orderly, and smoothly according to the prepared schedule, stages, and programs. However, some technical improvement needs to be done for the next elections. Regarding the model of elections, KPU will follow the decision and laws in elections policy.

Meanwhile, DKPP suggested improving the regulation of the concurrent general election (KPU regulation and Bawaslu regulation) to overcome unmanageable implementations due to bad electoral governance. This conclusion referred to ethical disputes data in the 2019 elections. While handling the 2019 concurrent general elections administration disputes, Bawaslu informed that there were 816 disputes submitted and provided detailed information and data about the dispute caused and its settlement process.

The discussion, information sharing, and additional communication exchange from many experts and elections stakeholders had shaped claiming values. The different claiming values would produce negative ZOPA and vice versa. Eventually, after five sessions, the Constitutional Court rejected all petitions that would be interpreted as a win-lose solution or unfavourable settlement for Perludem. Despite the rejection, Perludem appreciated and was thankful for this decision. Perludem found that their request on concurrent general election model had been accommodated in the fourth option decision. It stated that concurrent national elections to elect members of the DPR, DPD, President/Vice President; and sometime after that was implemented concurrent local elections to elect members of the Provincial DPRD, members of the Regency/City DPRD, the election for the Governor and the Regent/Mayor." The fourth option decision means the Constitutional Court has considered Perludem's concern and interest.

Petitioner's positive response to the judicial rejection is unusual in the court process. However, the similarity in claiming value has accommodated Perludem's interest in fixing concurrent general elections' implementation's shortcomings. Then, it has changed the settlement agreement of both negotiators from a win-lose into a win-win solution.

By scrutinizing the judicial process into four stages of integrative negotiations, it is seen that each stage of the negotiations went smoothly. Failure at one stage will cause negotiations to stall or fail to produce a win-win solution. For example, if Perludem refused to provide additional information and evidence, thus causing the Constitutional Court to analyze the case only based on preliminary evidence, stopping at the first stage. The awareness of the importance of each stage also applies vice versa for the Constitutional Court. With the dominance of power, the Constitutional Court showed the same interest as Perludem in the second stage, encouraging the formation of ZOPA and BATNA from the same claiming value on the importance of simultaneous elections for strengthening the presidential system in Indonesia.

Another interesting thing is the emergence of influence from other election stakeholders and elections experts in the fourth stage. The difficulties and negative impacts of the 2019 Concurrent Elections were the main backgrounds for the panel of judges to consider aspects of the simultaneous election. Each of the election stakeholders presented their opinion and supported with reliable data related to the achievement of the 2019 Concurrent General Elections, both positives and negatives. Thus, the dynamics of this concurrency discourse contributed to the decision that provides six options for holding the 2024 Concurrent General Elections and five guidelines for selecting options for legislators.

3.2 Seven Factors for Successful Integrative Negotiation

Successful integrative negotiation relies not only on how the parties understand the major negotiation steps but also on psychological and information conditions; motivation, communication and language, trust, and supportive climate [17, p. 4]. R. J. Lewicki, B. Barry, and D. M. Saunders identified seven fundamental factors that facilitate integrative negotiation: some form of shared or common goal, faith in one's problem-solving ability, a belief in the validity of one's position and the other's perspective, the motivation and commitment to work together, trust, clear and accurate communication, and an understanding of the dynamics of integrative negotiation [13, pp. 80-86]. Without those preconditions, they will need to resolve the challenge to unfold integrative negotiation.

During the judiciary process from 31 August 2019 – 26 February 2020 and after the judicial review decision time, the Constitutional Court performed most of the seven factors that facilitated the successful integrative negotiation. However, the Constitutional Court could not adopt faith in one's problem-solving ability and a belief in the one's position ability and other's perspective since the limits of four authorities and one obligation of the Constitutional Court under the Constitutional Court Law. The four authorities are examining at the first and final level: (1) judicial review the law against UUD 1945; (2) decide a dispute over the state institution authority that granted by UUD 1945; decide the political parties distortion; (4) decide a dispute over the general election result [18, p. 5].

Meanwhile, Perludem performed all the factors to win the negotiation. First, it built collaborative cooperation with the Court because they have a common objective goal to put concurrent general election concern to strengthen the presidential system based on UUD 1945. Second, as Perludem has filed other cases before in the Constitutional Court and felt satisfied with the decisions, it believes and trusts in the Court's capability and validity in reviewing the case. Third, Perludem's experiences in elections issues make it easier to communicate precisely and accurately to the Court and elections stakeholders during the hearing.

Eventually, the similarity of the precondition factors that each party performed leads to a successful integrative negotiation result. Thus, the decision is a win-win solution for Perludem and the Constitutional Court and for elections stakeholders since the decision provides more options in holding concurrent general elections.

No	Factor	The Constitutional Court	Perludem	Description
1.	Common objective goal	Yes	Yes	Both have a common mutual objective as they concerned about the presidential strengthening, constitutionality of Law to UUD 1945 in simultaneous elections policy.
2.	Faith in one's problem-solving ability	-	Yes	The Constitutional Court authorities and roles built Perludem's faith in its problem-solving activity Perludem has filed several cases in the Constitutional Court before the Judicial Review Number 55/PUU-XVII/2019
3.	A belief in the validity of one's position and the other's perspective	-	Yes	The Constitutional Court belief in its perspective validity, but it had to assess Perludem perspective. On the other hand, Perludem belief in the Constitutional Court validity.
4.	The motivation and commitment to work together	Yes	Yes	They performed motivation and commitment to work together during the judiciary process. Both were work collaboratively in providing simultaneous logical reasoning under UUD 1945.
5.	Trust	Yes	Yes	The Constitutional Court had experienced proceeding several cases filed by Perludem.
6.	Clear and accurate communication	Yes	Yes	Perludem shared clear and accurate information supported by letter/written evidence and expert statements (Khairul Fahmi and Didik Supriyanto). The Constitutional Court has elaborated the simultaneous elections judicial review by: 1. Experts statement hearing: Djayadi Hannan, Syamsudin Haris, Topo Santoso, and Ramlan Surbakti. 2. Simultaneous elections stakeholders hearing: DPR, Presiden, KPU, Bawaslu, DKPP.
7.	Understanding the dynamics of integrative negotiation.	Yes	Yes	Both performed a dynamic of the integrative negotiation.

Figure 3.1.2 Seven Factors for Successful Integrative Negotiation in the Judicial Review of Concurrent General Elections Policy

Source: The Constitutional Court Decision No. 55/PUU-XVII/2019

3.3 Six Options in Simultaneous Election as an Integrative Settlement

In legal considerations, the Constitutional Court constructed the decision based on three things. First, the debate and original intentions of the amendments of UUD 1945 in 1999-2002 and UUD 1945 after the amendment. Second, the presidential strengthening approach in the Indonesian government system. Third, the immersion of the Constitutional Court's legal considerations in the decisions regarding the previous simultaneous elections, namely Decision Number 14 / PUU-XI / 2013.

The six concurrent general elections option models prove that collaborative working produced a satisfactory outcome for Perludem and the Constitutional Court as a direct result of judicial reviews. Focusing on the model of concurrent general elections in a new normal society is much more essential than discussing the rejection of the case. The Constitutional Court decided to expand and provided more options in concurrent general elections after retracing the original intent under UUD 1945. There are six choices of concurrent general election models to strengthening the presidential government system in the Constitutional Court Decision Number 14/PUU-XI/2013 that can still be considered constitutional based on UUD 1945:

1. Simultaneous general election to elect members of People's Representative Council, Regional Representative Council, President / Vice President, and Regional People's Representative Assembly members;
2. Simultaneous general elections to elect members of People's Representative Council, Regional Representative Council, President / Vice President, Governor and Regent / Mayor;
3. Simultaneous general election to elect members of People's Representative Council, Regional Representative Council, President / Vice President, Regional People's Representative Assembly members, Governors and Regents / Mayors;
4. National simultaneous general election to elect members of People's Representative Council, Regional Representative Council, President / Vice President; and sometime after that, local simultaneous general elections were held to elect members of the Provincial DPRD, Regency/City Regional People's Representative Assembly members, the election for the Governor and the Regent / Mayor;
5. Simultaneous national elections to elect members of People's Representative Council, Regional Representative Council, President /

Vice President; and sometime after that, simultaneous provincial elections were held to elect members of the Provincial Regional People's Representative Assembly and elect the governor; and then sometime after that, district/city general elections were held to elect members of the Regency/City Regional People's Representative Assembly and elect the Regent and Mayor;

6. Other options can be explored, as long as they maintain the simultaneous nature of general elections to elect members of the People's Representative Council, Regional Representative Council, and the President / Vice President. [19, p. 5].

A strengthening of the presidential government system is one of the mutual interests from the petitioners, experts, and elections stakeholders that positively accommodated by the Constitutional Court since it is a mandate of the UUD 1945. The 2019 concurrent general elections created a congruent government and simplified party system through pre-election coalitions and the coattail effect [20, p. 11]. In addition, coalitions based on ideological similarities from political party disciplines are expected to encourage the realization of policies. The concurrent election design aims to produce political stability in the government in a pluralistic, open society and a competitive world, particularly in the post covid era for a new-normal society.

A concurrent election as an open legal policy means that the Constitutional Court does not have the authority to determine the electoral model/design. In the view of the Constitutional Court, the open legal policy is a policy regarding the provisions in specific articles in the law, which is the authority of the legislators [21, p. 561]. Therefore, it is the legislator territory to determine the concurrent election's model. However, the Constitutional Court has provided a guide to be followed by the Legislator. The Legislator, President, and DPR, need to consider several things: (1) the selection of a model that has implications for law amendment is carried out with the participation of all groups who have concerns about general election administration; (2) the possibility of changing the law on the choice of models to be carried out earlier so that there is time for simulation before the changes are implemented effectively; (3) legislators carefully take into account all the technical implications of the available model options so that their implementation remains within the limits of rational reasoning, especially for realizing quality general elections; (4) the choice of the model always takes into account the convenience and simplicity of voters in exercising their right to vote as a form of exercising people's sovereignty; and (5) does not change the model of direct elections simultaneously so that the certainty and stability of the general election are built [4]. That

guidance will be implemented in deciding the simultaneous election model in the new-normal society.

4. CONCLUSION

An integrative negotiation refers to win-win solutions involved negotiations participants through creative and collaborative problem-solving. Understanding the four major steps in integrative negotiation will be beneficial in encouraging a positive settlement. These are: (1) identify and define the problem, (2) surface interests and needs, (3) generate alternative solutions to the problem, and (4) evaluate those alternatives and select among them [13, p. 63]. Perludem and the Constitutional Court have similarities, particularly in the common goal, the will to do collaborative work, and supporting each claiming value with valid evidence. During the negotiation, both successfully defined BATNA by information exchange under their authorities and expertise's referred to constitutionality issues in the simultaneous election. Therefore, information exchange will develop similar claiming values that contribute to a positive ZOPA.

Besides implementing steps in integrative negotiation, the effectiveness of the negotiation facilitated the success of negotiation by preconditioning psychological aspects and exchange of information through clear communication.

In judicial review Decision No. 55/PUU-XVII/2019 concerning Concurrent General Elections, the Constitutional Court adopted an integrative negotiation approach during the court process. This approach produced a win-win solution. Win-win solution reflected in the six-option model for next simultaneous elections in the Constitutional Court decision. Moreover, the Constitutional Court also provided five guidance to select the 2024 concurrent elections model in the new-normal society. But, the authority to determine the design is in the Legislator.

Referring to the concurrent general election policies above, it recommends that the Constitutional Court and petitioners consistently adopt an integrative negotiation approach in the judiciary process to settle a dispute with a win-win solution. This similar approach can also be used by the legislator and elections stakeholders to determine the suitable simultaneous elections model in a new normal society.

Eventually, further research is needed to choose the best options model in simultaneous elections with limitations and challenges in the new-normal society under the Constitutional Court guidance for the 2024 elections.

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REFERENCES

- [1] W. Ichwanuddin, A. P. Budiartri, D. Suryani and K. A. Nur, "Menuju Pemilu Serentak Yang Efektif Dan Demokratis (Towards Effective and Democratic Concurrent Elections)," Lembaga Ilmu Pengetahuan Indonesia, Jakarta, 2020.
- [2] Kompas.com, "Refleksi Pemilu 2019, Sebanyak 894 Petugas KPPS Meninggal Dunia (Reflections on the 2019 Election, A Total of 894 KPPS Officers Have Died)," 22 January 2020. [Online]. [Accessed 2 April 2021].
- [3] A. Aziz, B. C. Widodo, K. Ambardi, S. Nuryanti, S. Haris and Wiryaningsih, *Seri Evaluasi Penyelenggaraan Pemilu Serentak 2019, Refeksi Pemilu Serentak di Indonesia Implementation of Simultaneous Elections 2019, Refection of Simultaneous Elections in Indonesia*, E. A. Wibisono, Ed., Jakarta: Bawaslu, 2019.
- [4] *Decision No. 55/PUU-XVII/2019*, 2020.
- [5] Perkumpulan untuk Pemilu dan Demokrasi (Perludem), *Implikasi Putusan MK Terhadap Desain Sistem Pemilu Serentak yang Konstitusional (Implications of the Constitutional Court Decision on the Constitutional Design of the Simultaneous Election System)*, Jakarta, 2020.
- [6] S. Jurdi, "Format Pemilu Serentak Pasca Putusan MK No. 55/2019: Kajian dan Analisis dengan Perspektif Sosiologi Politik (Format of Simultaneous Elections Post MK Decision No. 55/2019: Study and Analysis with the Perspective of Political Sociology)," *Sosiologi Reflektif*, vol. 15, no. 1, pp. 117-148, October 2020.
- [7] R. Rosanti, "Masa Depan Pemilihan Kepala Daerah Pasca Putusan Mahkamah Konstitusi Nomor 55/PUU-XVII/2019 (The Future of Regional Head Elections after the Constitutional Court Decision Number 55 / PUU-XVII / 2019)," *Jurnal Ilmu Sosial dan Ilmu Politik (JISPO)*, vol. 10, no. 1, pp. 87-103, 30 March 2020.
- [8] M. Amir, "Keserentakan Pemilu 2024 yang Paling Ideal Berdasarkan Putusan Mahkamah Konstitusi Republik Indonesia (The Most Ideal Simultaneous Election in 2024 Based on the Decision of the Constitutional Court of the Republic of Indonesia)," *Al-Ishlah*, vol. 22, no. 2, pp. 115-131, November 2020.
- [9] M. Manan, *Democratic Constitutionalism, New Constitutionalism For The Emerging of New Normal Democracy: The Case of Indonesia*, Malang: Setara Press, 2013.
- [10] W. L.Ury, J. M. Brett and S. B. Goldberg, "Negotiation in Fundamentals," in *Negotiation Readings, Exercise and Cases*, 6th ed., New York, McGraw-Hill, 2010, pp. 1-13.
- [11] *Law of The Republic of Indonesia Number 24/2003*, 2003.
- [12] J. M. Brett, "Negotiation across Cultures," in *Negotiation: Reading, Exercises and Cases*, 6th ed., J. R. Lewicky, D. M. Saunders and B. Barry, Eds., New York, McGraw-Hill, 2010, pp. 321-362.
- [13] R. J. Lewicki, B. Barry and D. M. Saunders, *Essentials of Negotiation*, 6th ed., New York: Mc Graw-Hill, 2016.
- [14] T. Simons and T. M. Tripp, "The Negotiation Checklist," in *Negotiation: Readings, Exercises and Cases*, 6th ed., New York, McGraw-Hill, 2010, pp. 34-47.
- [15] D. A. Lax, "Solve Joint Problems to Create and Claim Value," in *Negotiation: Readings, Exercises and Cases*, 6th ed., New York, McGraw-Hill, 2010, pp. 97-114.
- [16] The Constitutional Court of The Republic of Indonesia, "Risalah Sidang Perkara Nomor 55/PUU-XVII/2019 (Risalah Sidang Perkara Nomor 55/PUU-XVII/2019)," The Constitutional Court of The Republic of Indonesia, Jakarta, 2019.
- [17] J. Park, H. A. Rahman, J. Suh and H. Hussin, "A Study of Integrative Bargaining Model with Argumentation-Based Negotiation," *Sustainability*, vol. 11, no. 6832, 2 December 2019.
- [18] L. W. Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi*, vol. 15, no. 1, pp. 1-26, March 2018.
- [19] *Summary of Decision on Cases Number 55/PUU-XVII/ 2019 concerning Concurrent Election Model*, 2020.
- [20] Efriza, "Penguatan Sistem Presidential dalam Pemilu Serentak 2019 (Strengthening Presidential System in the 2019 Concurrent Elections)," *Jurnal Penelitian Politik*, vol. 16, no. 1, pp. 1-15, 2019.

- [21] I. Satriawan and T. Lailam, “Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang (Open Legal Policy in the Constitutional Court Decision and National Legislation Making),” *Jurnal Konstitusi*, vol. 16, no. 3, pp. 559-584, September 2019.