

# **SYNCHRONISING POSITIVE LAW AND ISLAMIC LAW WITHIN A JUSTICE CONCEPT IN CONCURRENT ELECTIONS 2024: FROM THE PHILOSOPHICAL PERSPECTIVE OF ISLAMIC LAW**

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*Abstract:* Concurrent elections should not be injured by dissenting interpretations of Islamic Law in terms of its contextual connection to Positive Law. This research aims to delve into the connection between the norms of Islam and politics in Indonesia and the measures taken to bring about the harmony of religious norms within the political system of law in Indonesia. With a normative-descriptive approach, this legal research discovered that the legal objective is not restricted to justice, but it also takes into account legal certainty and merit. The discourse on justice often refers to two thoughts. John Rawls and Jürgen Habermas, within the scope of critical philosophy developed by Kant, attempted to seek the primary principles underlying social life. Concurrent elections 2024 in Indonesia refer to direct, universal, free, secret, genuine, and just principles. These principles serve as the basis for justice enforcement, especially in the fulfilment of the political rights of the citizens. The justice principle builds the harmonization of the norms that underlie elections with Islamic Law as the core soul of the elections. Participation in elections is understood as the exercise of the norms of Islamic law with the frameworks aiming to bring about the merit of the people as a whole. How do the principles of justice in the principles of elections intertwine with the principle of justice in Islamic law?

*Keywords:* Harmonization, justice, concurrent elections, the philosophy of Islamic Law

## **Introduction**

Elections in Indonesia adhere to the democratic process of voting candidates for leaders and vice-leaders across governmental levels. These elections take place in direct, universal, free, secret, genuine, and just principles. All Indonesian citizens reaching 17 or older and holding suffrage are allowed to vote in elections.<sup>1</sup>

Elections facilitate political participation involving the citizens to influence governmental policies and direct the course of the development of the state. Within a democratic purview, elections are regarded as an essential indicator measuring to what extent the state and its citizens have built democratic, transparent, and accountable political systems. Elections play a core role in reinforcing the unity of the state simply because people have equal rights to vote in elections.<sup>2</sup> This tendency is expected to alleviate political conflict that is likely to threaten the stability and security of the state. Thus, it is essential that all parties such as the governments, political parties, and the members of the public back up and ensure that the elections run justly and transparently according to the principles of justice and democracy.<sup>3</sup>

By 2024, elections will take place concurrently on 14 February. Concurrent elections are contextually related to the development of the democratic system in Indonesia that

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<sup>1</sup> Denny JA, *Pemilu-Pemilu Indonesia: Suara, Media, Partisipasi* (Jakarta: Kompas Gramedia, 2014), 46.

<sup>2</sup> Syamsuddin Haris, *Pemilu Dan Perubahan Sosial Politik Di Indonesia* (Yogyakarta: LKIS Pelangi Aksara, 2005), 78.

<sup>3</sup> Yusril Ihza Mahendra, *Era Baru Pemilu Indonesia* (Jakarta: Pustaka Sinar Harapan, 2005), 56.

upholds justice principles and equality for all parties. As a state with a major Muslim population, Indonesia has strong traditions and cultures of Islamic law, inspiring policy- and regulation-making in all sectors, including politics.

From the philosophical perspective of Islamic law, the concept of justice is necessary to avert any disharmony in the fulfilment of the political rights of the people, as related to the right holders and the execution of responsibilities. However, comprehending the true meaning of justice is not as easy as reading the text on justice as expressed by experts. When it comes to meaning, it takes into account philosophical structure that requires in-depth contemplation that reaches a principal base.

The harmony between positive law and Islamic law within the concept of concurrent elections is paramount, recalling that the synchronisation between principles and values that the positive law and Islamic law adhere to is important. The disharmony between state law and Islamic law in the context of concurrent elections in Indonesia can present a complex and sensitive problem in which most Muslims in Indonesia believe that participation in concurrent elections will affect the entire results of the elections. Muslims also have the perspective of how Islamic principles should be implemented in concurrent elections. Some views believe that participation in concurrent elections is compulsory for Muslims, while others believe that concurrent elections contravene Islamic principles. These dissenting views will certainly spark debates and tension among parties with different thoughts.

Some Muslim extremists regarded the 2019 election in Indonesia as haram. Front Pembela Islam (FPI) and Hizbut Tahrir Indonesia (HTI) regarded as Muslim radicals refused to participate in elections, and they issued a fatwa declaring that elections were haram. They claimed that elections represented the democracy adopted from Western countries,

and this type of democracy was believed to contravene Islamic principles arguing that authorities were only for Allah and His Prophet. They also argued that elections would not be able to give solutions to the problems faced by Muslims such as injustice, poverty, and corruption.<sup>4</sup> Therefore, harmonization of law is required to control the view of Muslim extremists.

The essence of such synchronisation in the concept of concurrent elections can take place for some reasons. Within the context of elections, the harmonisation between positive law and Islamic law is considered important to ensure that the process of elections can take place justly and equally for all the parties involved and according to the principle of justice that Islamic law strongly adheres to. This is also essential in alleviating conflict and tension among people with different views and boosting active participation of the people in the election process. The harmonization between the positive law and Islamic law within the context of concurrent elections, thus, should be the primary need to be implemented for the sake of stable political and democratic systems in Indonesia.<sup>5</sup>

The objective of such harmonisation between the positive and Islamic laws is to synchronise these laws to avert conflict between the laws in Indonesia, where the latter has been the core that most people in Indonesia have adhered to. This harmonisation is expected to preclude injustice and uncertainty in law amidst the society, and this measure is also intended to support just legal systems congruent with the religious values that most people in Indonesia have clung to.

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<sup>4</sup> Lembaga Ilmu Pengetahuan Indonesia. *Islam, Radikalisme dan Demokrasi*, 2005.

<sup>5</sup> Aris Ananta dan Leo Suryadinata, *Money Politics Dan Pemilu Di Indonesia* (Jakarta: Yayasan Pustaka Obor Indonesia, 2018), 31.

In such a digital world, elections may take into account the advancement of communication and information technology such as e-voting in the election process to help count the votes gained. In the election of 2019, General Election Commission (henceforth referred to as KPU) applied this technology to help count the votes gained in the election process. Some technological features used in the election included the Information System of Vote Calculation (Situng), Vote Calculation Application (APPS), and Quick Count.

Previous studies compared and harmonised the regulations of elections and other regulations in Indonesia, while this research focuses on Islam which serves as the philosophical perspective of Islamic law, connected to the constitutional rights of the citizens, recalling that Indonesia is a heterogeneous country in terms of Islamic principles and values.

This research employed a normative method, where the data were analysed based on descriptive analysis with deductive reasoning. This research also refers to the theory of justice seen from the philosophical perspective of Islamic law and the theory of legal harmonisation and conceptual and comparative approaches.

Departing from the above research background, this research is intended to study *“Synchronising Positive Law and Islamic Law within a Justice Concept in Concurrent Elections 2024: from the Perspective of Islamic Law”*.

### **The Concept of Concurrent Elections**

Elections represent a democratic process where people vote for their leaders and vice-leaders in a government across all levels. Every state has its own rules of elections concerning eligible age to vote, campaign period, voting methods, and vote calculation. Elections are intended to improve and maintain democracy, and it gives a chance to

the members of the public to vote for the representatives freely and justly.<sup>6</sup>

In general, the election process in Indonesia involves political parties that register their appointed candidates, followed by election campaigns, voting, ballot calculation, and announcement of elected candidates.<sup>7</sup> Elections are governed in the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the Constitution) Article 1 Paragraph (2), stating: "Sovereignty is vested in the people and implemented according to the Constitution" and Article 22 Paragraph (1) stating "every citizen has the right and obligation to participate in a general election".<sup>8</sup> In Indonesia, general elections are governed by KPU authorised to govern, implement, and supervise general elections. The KPU is also responsible for the registration of candidates and political parties, deciding voting venues, drafting lists of electors, and ballot calculation mechanisms.<sup>9</sup> General elections in Indonesia involve political parties and candidates from all walks of life and diverse political ideologies.<sup>10</sup>

General elections take place concurrently in Indonesia to elect the president, the representatives of DPR, DPD, and the Regional Governments. Concurrent general elections are often based on the following legal bases:

1. Law Number 7 of 2017 concerning General Elections

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<sup>6</sup> Indriyanto Seno Adji dan Edi Suharto, *Pemilu Dan Partai Politik Di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2010), 45.

<sup>7</sup> Lili Yulyadi Arnakim dan Andi Faisal Bakti, *Pemilu, Demokrasi, Dan Politik Identitas Di Indonesia* (Jakarta: Prenada Media Group, 2019), 25.

<sup>8</sup> Jeremia Alexander Wewo, "Mewujudkan Pemilihan Umum Kepala Daerah Serentak 2020 Yang Berintegritas," *Jurnal Jatiswara* 34, no. 3 (2020): 79.

<sup>9</sup> Fitria Barokah et al., "Disrupsi Politik: Peluang Dan Tantangan Partai Politik Baru Jelang Pemilu 2024," *Nakhoda: Jurnal Ilmu Pemerintahan* 21, no. 1 (2022): 54.

<sup>10</sup> Nurul Arifin dan Samsul Maarif, *Membangun Budaya Demokrasi Melalui Pemilu* (Yogyakarta: Graha Ilmu, 2015), 81.

2. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections of Governors, Regents, and Mayors into Law
3. The Regulation of General Election Commission Number 5 of 2020 concerning the Second Amendment to the Regulation of General Election Commission Number 15 of 2019 concerning Voting and Ballot Calculation in General Elections
4. The Regulation of General Election Commission Number 10 of 2021 concerning Campaigns for Concurrent Elections 2024
5. Law Number 2 of 2008 concerning Political Parties
6. The Regulation of the Minister of Home Affairs Number 16 of 2019 concerning the Administration of the Factual Verification of Organizations and Memberships of Political Parties
7. Law Number 9 of 2015 concerning the Amendment to Law Number 8 of 2012 concerning the Members of the House of Representatives (DPR), Regional Representative Council (DPD), Regional House of Representatives (DPRD).<sup>11</sup>

Concurrent elections in Indonesia take place once in five years, with the recent elections taking place in 2019. Concurrent elections give a chance to the people of Indonesia to vote for their representatives across all

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<sup>11</sup> Muhammad Sholeh, et. al, "Election Practices Based on Money Politics in the Dimensions of State Political Thought," *Mizan: Journal of Islamic Law* 2, no. 2 (2018): 40.

governmental levels within one vote, allowing voters to voice their choices more easily and efficiently.<sup>12</sup>

Concurrent elections 2024 in Indonesia will be held on 14 February 2024 to vote for a president and vice-president, the members of DPR, DPD, and DPRD in all the provinces and regencies/municipalities in Indonesia.<sup>13</sup> Concurrent elections 2024 will be the fourth taking place in all parts of Indonesia, departing from the first election event in 2004. To assure the success and the continuity of these concurrent elections 2024, active participation of all parties, including the KPU, political parties, candidates, voters, and the members of the public is highly required.<sup>14</sup>

Elections play a vital role in Indonesia because they aim to:

1) Maintain the democratic principle

Elections are regarded as vital in maintaining the democratic system in Indonesia. With these elections, Indonesian people have access to voting for their leaders and representatives to run the government and represent their position at both regional and national levels. With fair, transparent, and open events of elections, the democratic principle can be surely maintained.<sup>15</sup>

2) Give people the right to vote

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<sup>12</sup> Edward Aspinall, *Kontestasi Demokrasi Di Indonesia* (Jakarta: Yayasan Pustaka Obor Indonesia, 2010), 78.

<sup>13</sup> Ria Casmi Arrsa, "Pemilu Serentak Dan Masa Depan Konsolidasi Demokrasi," *Jurnal Konstitusi* 11, no. 3 (2014): .

<sup>14</sup> Achmad Edi Subiyanto, "Pemilihan Umum Serentak yang Berintegritas sebagai Pembaruan Demokrasi Indonesia" (*Jurnal Konstitusi*, Volume 17 No. 2, Juni 2020), 56.

<sup>15</sup> Tim Peneliti Pemilu dan Demokrasi LIPI, *Menuju Pemilu 2024: Refleksi Dan Prospek Pemilu Di Indonesia* (Jakarta: LIPI Press, 2020), 25.



Certainly, elections give people who meet the requirements the right to vote for their ideal representatives who should be able to represent their interests. In a democracy, each vote has an equal value, and with elections, every person in Indonesia has equal rights to elect their leaders and representatives.<sup>16</sup>

- 3) Improve the accountability of the government  
Elections are expected to improve the accountability of the government because the candidates competing in an election are required to promote themselves and bring promises of policies to the people later when they win the election. When elected, those new leaders and representatives must execute what they promise in the campaigns and meet the demands raised by the people that voted for them.
- 4) Increase people's participation  
Elections also increase public participation in political processes and reinforce democratic awareness. Their active participation in elections hugely affects the results of the elections and encourages leaders and winning representatives to do what they promised and prioritise public interests.<sup>17</sup>
- 5) Stimulate sustainable development  
Candidates in the candidacy must set agenda of sustainable development for the future of Indonesia to positively support better development and accelerate

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<sup>16</sup> Abdul Basid Fuadi, "Politik Hukum Pengaturan Keserentakan Pemilu" (Jurnal Konstitusi, Volume 18, No. 3, September 2021) , 60.

<sup>17</sup> Ibid, 26.

economic development for the benefit of the people as a whole.<sup>18</sup>

Concurrent elections in Indonesia are supposed to strengthen democracy and improve the efficiency and efficacy of general elections per se. Such elections are cost- and time-efficient and allow for easier consideration and supervision conducted by the general election administration body. Moreover, concurrent elections also increase the participation of the voters since they only have to vote on the same day for all voting.<sup>19</sup> Concurrent elections, however, also present some issues, considering that there will be a great number of voters from different geographical, social, and cultural backgrounds in Indonesia. In other words, with transparent and fair elections, democracy can be maintained, the right to vote is appreciated, public participation increases, and the winning representatives can prioritise public interests with proper accountability.<sup>20</sup>

### **The Concept of Philosophical Perspective of Islamic Law**

Understanding the meaning of justice is not that hard because some simple formulations define what justice is. Nevertheless, giving meaning to justice is not an easy matter because doing so will shift to a philosophical structure requiring in-depth contemplation that could touch the deepest base of this act.

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<sup>18</sup> Ibid, 27.

<sup>19</sup> Ramlan Subakti, *"Pemilu Di Indonesia: Catatan Kritis Terhadap Demokratisasi"* (Jakarta: Gramedia Pustaka Utama, 2009), 56.

<sup>20</sup> Is Susanto, "Analisis Hukum Islam Dan Hukum Positif Terhadap *Money Politics* Pada Pemilu," *Istinbath: Jurnal Hukum* 15, no. 2 (2018): 53.

Justice, firstly, represents the harmony between the use of right and the execution of obligation and the proposition of the legal balance between the proportion of right and obligation. Secondly, the views from legal experts concluded that justice represented legal certainty and legal justice. Plato defined justice as something that was heavily affected by a collective perspective seeing justice as a harmonious relationship of social organisms. Every citizen performs their tasks according to their position and natural trait.<sup>21</sup> Hegel, in his *Philosophy of Right*, views that justice represents interdependent connectedness, meaning that justice and solidarity are inseparable, where an existence predicts another existence that has not come yet. Justice represents individual freedom, while solidarity indicates the realization of freedom at a social level.

Aristotle viewed that justice was affected by ownership of a certain object. An ideal justice, in his view, refers to a definition where all people receive equal portions of what exists. Humans are seen as equal with their equal rights to ownership of an object. Still, in Aristotle's perspective, the law is a just statute, and justice represents a constitutive aspect of any definition of law. Just regulations are called laws, and the state must not shape an unjust law.<sup>22</sup> Moral principles outlined in a statute are paramount over human-made policies such as court decisions. The attitude of each individual towards the law reflects the meaning of the law, indicating that the law is a living norm (ideal norm).

Islam offers rules applying to all with faith. All humans have equal rights and opportunities to grow their potential.<sup>23</sup>

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<sup>21</sup> Mukhtasar Zainuddin, *Konsep Demokrasi Dalam Islam* (Yogyakarta: Pustaka Pelajar, 2008), 55.

<sup>22</sup> Subhan Amin, "Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *EL-AFKAR: Jurnal Pemikiran Keislaman dan Tafsir Hadis* 8, no. 1 (2019): 68.

<sup>23</sup> Abdul Azis Qahhar Mudzakkar, *Islam Dan Demokrasi: Analisis Konsep pemilu Dalam Perspektif Islam* (Jakarta: Rajawali Pers, 2013), 20.

Al-Qur'an improves the quality of justice in human life either collectively or independently. From this concept, the idealism of the Quran as the most reliable source of thought about justice came up. Such a perspective is in line with the doctrine of faith in Islam to Allah as God almighty.<sup>24</sup>

Al-Qur'an presents diverse definitions of words or terms related to justice. The words intended to describe the knowledge of justice were not always derived from the word '*adl*'. The synonyms like *qisth* and *hukm*, for example, are referred to by the Quran to relate to justice, while the word '*adl*' with its multiple conjugations could lose its direct connectedness to justice per se (ta'dilu is defined as associating something with God and '*adl*' is understood as compensation).<sup>25</sup> Another term for *al-'adl* is *al-qist*, *al-misl* (equal portion). Terminologically, justice means equalizing one thing to something else, in terms of either value or proportion. With this equal proportion, things will be accepted as equal. Justice can also mean adherence to truth.

In terms of the category, "*adl*" as in the Quran refers to something right, a fair attitude.<sup>26</sup> The above definition is directly linked to justice, giving details of justice in life.

In terms of the connectedness of the term '*adl*' to the knowledge of justice indicates that the portion of justice has its space in the Quran.

The concept of elections within the scope of the philosophical perspective of Islamic law shows that a process is highly required in democratic life. Elections exist to appoint public representatives in legislative and executive bodies. From the philosophical perspective of Islamic law,

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<sup>24</sup> Adian Husaini, *Teori Dan Praktik Demokrasi Dalam Perspektif Islam* (Yogyakarta: LKIS Pelangi Aksara, 2006), 28.

<sup>25</sup> M. Masykur Abdullah, *pemilu Dan Demokrasi Dalam Perspektif Islam* (Yogyakarta: Adicita Karya Nusa, 2010), 65.

<sup>26</sup> Ibid, 68.

elections must comply with fundamental principles. Also from this perspective, elections can be viewed from different angles:

1. Common interests

Elections can fulfil the public interests of all the citizens—the interests to vote for the representatives representing public interests in general and make a decision best for the people.

2. Democracy

Elections represent a democratic practice where people have equal rights to vote and to be voted for as public representatives.

3. Justice.<sup>27</sup>

Elections can give rise to justice for state administration, where all the people have equal rights to gain political rights to be voted for as public representatives.

4. Public participation

Elections can trigger active participation of the people in political activities and democratic life in the country, strengthening democracy.

From the philosophical perspective of Islamic law, the concept of justice in the context of concurrent elections indicates that every citizen has equal rights to vote and to be voted for. This notion is congruent with Islamic teaching, emphasising the importance of justice and equality in all aspects of life. Justice in concurrent elections indicates that the voting process is open and transparent. All political parties and candidates have equal rights to win elections without any intervention from other parties that can change the voting results in unfair ways. Justice in concurrent elections ensures that all parties involved in the voting must abide by current laws and regulations. In this context, all

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<sup>27</sup> N Harun, "Keadilan Dalam Perspektif Hukum Islam," *I'tisham: Journal of Islamic Law and Economics* (2022): 77,.

parties must accept the voting results. In case of dispute or unfair conduct, just law should be implemented transparently to resolve it.<sup>28</sup>

Elections must take place according to the principles of Islam to run just and expected governance for the benefit of the public. From the philosophical perspective of Islamic law, elections are part of the mechanism guaranteeing just and appropriate governance to protect public rights and public interest.<sup>29</sup> The concept of justice in concurrent elections, still in this perspective, is to uphold the principle of justice and equality in election processes and to ensure that all parties involved abide by current laws and regulations. Thus, elections should heed the principles of Islam relevant to the principles of justice and merit for all citizens.<sup>30</sup>

### **The Harmony between Positive and Islamic Laws in the Concept of Justice in Concurrent Elections 2024 from the Philosophical Perspective of Islamic Law**

The justice concept in the philosophical concept of Islamic law can be understood within the concept of *maqashid al-shari'ah* (the objective of the sharia of Islam). *Maqashid al-shari'ah* comprises five primary objectives in Islamic law to ensure that this objective is fulfilled. Overall, the justice concept, from the philosophical perspective of Islamic law, involves the principles of respecting human

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<sup>28</sup> Mahir Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam" (Al-Daulah: Jurnal Hukum dan Perundangan Islam, Volume 4 No. 2, Oktober 2014), 75.

<sup>29</sup> Muhammad Helmi, "Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam," *Mazahib: Jurnal Pemikiran Hukum Islam* 14, no. 02 (2015): 59.

<sup>30</sup> Muhammad Abduh Tuasikal, *Pemikiran Politik Islam: Dari Teologi Menuju Gerakan Sosial* (Jakarta: Gema Insani Press, 2011), 76.

dignity, fulfilling the rights of individuals and communities, and assuring justice in social and economic interactions.<sup>31</sup>

Generally, the concept of justice from the Islamic law perspective involves the following principles:

- 1) Equality before the law; this principle implies that people deserve equal treatment before the law. People across social, economic, and religious backgrounds are equally treated without any exemptions.
- 2) Just law; this principle emphasises the respect of human rights, including the rights to freedom, justice, and security.
- 3) Minority right protection; this principle highlights the essence of recognition and protection of minority rights, such as women's rights, child rights, and non-Muslim rights. All people, with no exemption, have equal rights to protection and recognition.
- 4) Fair distribution of resources; this principle highlights the importance of justice in the context of fair and even resource and richness distribution.
- 5) Social and economic justice; this principle highlights justice in social and economic relationships. The law must be able to ensure that individuals and communities should bear equal rights to grow their potential and succeed.<sup>32</sup>

In the philosophy of Islamic law, the concept of justice is not restricted to the connection between individuals, but it also takes into account the connection between people and

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<sup>31</sup> Agung Dugaswara, "Harmonisasi Peraturan KPU Dan Peraturan Perundangan Lainnya Demi Terciptanya Azas Kepastian Hukum," *Electoral Research Komisi Pemilihan Umum Republik Indonesia*, Call for Paper Evaluasi Pemilu Serentak 2019 Bidang Evaluasi Aspek Hukum Pemilu (2020):68, <https://journal.kpu.go.id/index.php/ERE/article/view/127>.

<sup>32</sup> Muhammad Tajuddin Ulya dan Muhammad Chairul Huda, "Pengawasan Partisipatif Pemilihan Umum: Kajian Perspektif Tujuan Hukum Dan Masalah Mursalah", *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam*, Volume 14 No. 1, 2022), 59.ko

their God. Justice from God is regarded as a fundamental principle in Islamic teaching, manifesting in justice among humans worldwide. Therefore, such a concept of justice in the philosophy of Islamic law represents inseparable spiritual and social dimensions.<sup>33</sup>

The harmony of law aims to bring together, align, and integrate all the rules of law. This harmony refers to an effort of bringing together, aligning, and integrating all diverse regulations into one system of law that is consistent and appropriately coordinated. The harmony of law can be understood as an effort to unite the rules of law deriving from different legal systems. The existence of the harmony of law is paramount in the development and modernisation of law in Indonesia. such harmony can improve legal certainty, alleviate legal conflict, and increase the efficiency and efficacy of the justice system.

Harmonization is essential simply because Indonesia is home to diverse laws. All the legal systems often overlap or contravene one another, raising legal certainty and conflict. The harmony of law can increase the efficiency and efficacy of legal systems, followed by improved quality and credibility of the government.<sup>34</sup>

Philosophical views of Islamic law concerning the concept of justice applied in concurrent elections indicate that these elections should embrace all aspects of voting, ranging from the administration, and implementation, to the election results. Justice in elections should implement Islamic morality and ethics, maintain integrity, avert any unfair conduct, and maintain the values of truth and honesty in every electoral aspect. Justice in concurrent elections should

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<sup>33</sup> Kornelius Benuf, "Jurnal Gema Keadilan Jurnal Gema Keadilan," *Jurnal Gema Keadilan* 6, no. II (2019).

<sup>34</sup> Said Mahyiddin, "FILSAFAT HUKUM KETATANEGARAAN DALAM PERSPEKTIF ISLAM" (*Jurnal Mentari*, Volume 12 No. 1, 2009), 56.



reflect democratic principles stemming from Islamic values. Democracy in Islam is not only about voting but also about the participation and involvement of the people in all aspects of life. Justice in this matter should be backed up by leadership principles adhering to Islamic values. The philosophical understanding of Islamic law in terms of the concept of justice in elections 2024 is then about upholding the principles of justice, morality, democracy, and leadership stemming from Islamic values. This is expected to assure the execution of concurrent elections that are just, transparent, democratic, and capable of bringing about welfare and happiness for all the citizens of Indonesia.<sup>35</sup>

The philosophical understanding of Islamic law regarding democracy can help strengthen the participation of the people in concurrent elections, including active participation in the process of elections and the rising awareness of the people of the essence of democratic decision-making. This understanding of leadership that adheres to Islamic values can help ensure that elected leaders can truly demonstrate leadership qualities relevant to Islamic values. It is expected that the philosophical understanding of Islam regarding justice, morality, democracy, and leadership stemming from Islamic values can give a positive contribution to the implementation of concurrent elections 2024 in Indonesia and that it can bring the nation to a better state for better social justice for all the citizens of Indonesia.

The philosophical understanding of Islamic law about the concept of justice in concurrent elections can also have significant influences on the implementation of the 2024 concurrent elections in Indonesia and ensure that the right of every citizen to vote and to be voted for is respected and

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<sup>35</sup> Muhammad Ashsubli, "Perspektif Hukum Islam Terhadap Pencalonan Diri Dan Kampanye Untuk Jabatan Politik," *JURIS (Jurnal Ilmiah Syariah)* 15, no. 1 (2017): 73.

guaranteed. The philosophical understanding of Islamic law about morality can help alleviate unfair conduct in concurrent elections. Practices contravening Islamic principles such as money politics and corruption must not take place. To achieve this goal, synchronisation between the law and the 2024 concurrent elections is required.

The synchronisation of law is intended to reinforce and maintain justice and protect all citizens, including Moslems.<sup>36</sup> The synchronisation between positive and Islamic laws can be performed by inserting some Islamic legal principles into the systems of national law, similar to how Indonesia recognise Islamic law as a source of formal law.<sup>37</sup> However, the harmonisation between positive and Islamic laws is hard to achieve since these two systems demonstrate different values, beliefs, and legal principles that underlie each system.<sup>38</sup> Thus, this harmony needs a careful and comprehensive approach to reach appropriate synchronisation and relevance.<sup>39</sup> Efforts need to be made to come to an agreement and acquire relevance between positive law and Islamic law for the sake of justice and world peace, and concurrent elections are intended to adjust to this objective.<sup>40</sup>

The disharmony between state law and Islamic law in the implementation of concurrent elections can be a complex and sensitive matter, considering that Muslim people in Indonesia will probably think that participation in the elections contravenes Islamic principles. The election of caliphates in the time of Prophet Muhammad did not take

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<sup>36</sup> Muhammad Fajri Matahati Muhammadin, *Islam, Demokrasi, Dan Pemilu: Perspektif Teologi Dan Fiqh* (Jakarta: Rajawali Pers, 2014), 55.

<sup>37</sup> Hasanuddin Abdul Wahid, *pemilu Dalam Perspektif Al-Qur'an Dan Hadits* (Yogyakarta: LKIS Pelangi Aksara, 2011), 55.

<sup>38</sup> Ahmad Suaedy, *Pemilu, Demokrasi, Dan Islam* (Yogyakarta: Bentang, 2018), 35.

<sup>39</sup> Ahmad Syafi'i Maarif, *Demokrasi Dalam Islam* (Jakarta: Paramadina, 2006), 4.

<sup>40</sup> *Ibid.*, 44.

place in the same way as today's general elections, but it rather took place with deliberation and *syura*. This practice would reduce public participation, which could affect the election results as a whole. There are some Muslims who view participation in elections as compulsory for Muslims, while others believe that concurrent elections contravene Islamic principles. These different views ignite debates and tension among different communities, especially among Muslim extremists. Islamic extremists regard concurrent elections as haram. This view departed from a very conservative and fundamentalist perspective about Islam, where they believe that democracy is a secular system that only takes into account worldly matters, political interests, and political power.

One of the Muslim extremist groups saw the 2019 election as haram. Some Muslim radicals such as Front Pembela Islam (FPI) and Hizbut Tahrir Indonesia (HTI) refused to participate in elections. They argued that such elections stood against the Islamic principles that set an understanding that power only belongs to Allah and His Prophet. They also believed that such elections were not capable of providing solutions to the problems Muslim people were facing, leading further to injustice, poverty, and corruption. The attitude of the extremists was lambasted by ulama and moderate Islamic activists. As generally accepted, elections represent a democratic system giving a chance to all Muslims to participate in the election of leaders to represent their people. However, some extremists would remain in their perspective, discouraging Muslims to take part in the elections. This indicates that the perspectives on the principles of Islam and democracy have always been debatable among Muslims, especially among extremists.

In this case, the philosophical perspective of Islamic law calls for harmonious positive and Islamic laws in concurrent elections to avert any likelihood of discrimination against the

candidates and voters with particular religious backgrounds. With the harmony between positive and Islamic laws,<sup>41</sup> the candidates and Moslem voters can participate in concurrent elections by heeding moral values and ethics as expected by Moslems. Similarly, social needs and the reality faced by the people of Indonesia in concurrent elections should also be considered. Islamic law calls for the recognition of human rights and the right to express. The harmony between positive and Islamic laws within the general election context is to ensure that all the participants of the elections have equal rights to express their thoughts, vision, and mission.

From the philosophical perspective of Islamic law, the harmony between both laws within the concept of concurrent elections is required because both positive and Islamic laws bear values that are supplementary to each other. As a legal philosophy with its primary fundamentals in the Quran and Hadhist, Islamic law demands justice and general merit in the exercise of law.<sup>42</sup> Meanwhile, positive law as the rule of law in Indonesia must pay attention to the social reality and the need of the state in the implementation of concurrent elections.

The harmonisation between these two laws in the elections will result in appropriate policies since they take into account the moral and ethical values expected by Islamic law and the social need and reality of the people of Indonesia regarding the implementation of concurrent elections. This tendency is relevant to the philosophical principles of Islamic law, calling for just regulations for all

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<sup>41</sup> Nurcholish Madjid, *Islam Dan Politik: Sebuah Analisis Kontemporer* (Jakarta: Paramadina, 2010), 27.

<sup>42</sup> M. Dawam Rahardjo, *Islam Dan Negara: Sebuah Penelitian Teori Dan Praktik Politik Islam* (Surabaya: Erlangga, 2017), 34.

people of the state and prioritising common interests.<sup>43</sup> The elections in Indonesia are the application of the principles of general election and Islam. The harmony between positive and Islamic laws within the context of concurrent elections 2024 is essential to ensure that all electoral aspects meet the standards of justice principles set by Islamic law. From the perspective of Islam, justice is one of the vital principles in the legal systems and it should be mainly considered in all aspects of life such as in general elections. From the philosophical perspective of Islamic law, justice is the main principle upheld in the systems of the law in the context of elections.<sup>44</sup> In its function as a regulator in concurrent elections 2024, the positive law should set an attempt to strengthen justice and maintain the principles of justice that Islamic law has adhered to.<sup>45</sup>

From the perspective of Islamic law, the justice concept in the elections comprises several aspects to fulfil:

1. Equality; this aspect, in the scope of Islamic law, represents an understanding that every person should abide by the law and current regulations during the process of an election, and all parties must be responsible for their actions.
2. Transparency; this aspect is done openly to allow other parties to witness and understand the election process. This process must be under the control of voters and authorities responsible for elections.
3. Freedom; voters have the freedom to decide who they will vote for without any intimidation or intervention from other parties.

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<sup>43</sup> Ahmad Suaedy, *Politik Syariah: Menelusuri Sejarah Dan Kontemporer Islam Indonesia* (Jakarta: Pustaka Pelajar, 2008), 12.

<sup>44</sup> A. Mukti Ali, *Demokrasi Dalam Perspektif Islam* (Yogyakarta: Pustaka Pelajar, 2007), 32.

<sup>45</sup> Dawam Rahardjo, *Demokrasi Dan Pemilu Dalam Perspektif Islam* (Yogyakarta: UII Press, 2004), 76.

4. Accountability; all the election processes must be under supervision and conducted fairly. The parties violating the rules must be held liable for their action, and sanctions may be imposed following the violations.
5. Fair representation; the election results must reflect the expectation of the majority of the voters fairly. The leaders elected must also be able to represent the interest of the people as a whole regardless of religion, race, and sex.

In Islam, justice is the main value held for all aspects of life, including an election. Surah Al-Ma'idah verse 8 states: *"Be upright to God, witnessing with justice, and let not the hatred of a certain people prevent you from acting justly. Adhere to justice, for that is nearer to piety, and fear God."* Thus, the concept of justice linked to elections must be fulfilled according to the Islamic perspective<sup>46</sup>

Several aspects that need attention in the harmony of the positive law and Islamic law within the context of concurrent elections 2024 involve the following:

1. Equality

Positive law must ensure that all the participants of elections are treated equally without any discrimination regardless of sex, religion, tribe, and socio-economic background. This principle is also prioritised in Islamic teaching, where all people are treated equally before the law and have equal rights to vote and to be voted for.<sup>47</sup>

2. Transparency

The processes of elections must be open and transparent, allowing people to control and evaluate how an election goes. The positive law must also ensure that the

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<sup>46</sup> Jalaluddin Rakhmat, *Pemikiran Politik Islam Kontemporer* (PT. Remaja Rosdakarya, 2015), 47.

<sup>47</sup> Yusuf Al-Qardhawi, *Pemilu Dan Demokrasi Dalam Islam* (Jakarta: Gema Insani Press, 2005), 30.

processes of elections are open to the public with no intention to manipulate voting results. Transparency is relevant to Islamic values teaching the essence of integrity and honesty in the connection between humans.

3. Accountability

All the parties involved in elections must be responsible for their own decisions and actions during the process of an election. The positive law must reinforce the accountability principle, so any parties violating the rules can be imposed with sanctions. The concept of accountability is also strongly correlated with Islamic principles that teach the importance of responsibility and justice in human interactions.

4. Piety

From the perspective of Islamic law, apart from the benchmark of justice set by the law, all the activities of the elections must also consider moral and ethical values in Islam. Concurrent elections 2024 must be truly aimed at the reinforcement of democracy and justice, not because of the sake of political benefits. Positive law should keep encouraging political leaders and all the election participants to act honestly, fairly, and accountably in performing their tasks.<sup>48</sup>

In the harmonisation between positive law and Islamic law in this electoral context 2024, it is essential to ensure that all the justice principles in Islam are recognised and integrated into the positive law.<sup>49</sup> The harmony between positive and Islamic law in the electoral context 2024 is vital to ensure that all the election processes work as expected,

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<sup>48</sup> Ibid, 31.

<sup>49</sup> Sayafi'i Anwar, *Islam Dan Pemilu: Antara Syari'ah Dan Demokrasi* (Yogyakarta: Galang Press, 2009), 35.

fairly, and evenly for all parties and according to the principles of justice that Islam has always adhered to.<sup>50</sup>

Within the electoral context 2024, harmony can take place by considering the principles of Islamic law as the fundament and integrating it with the positive law currently applied in Indonesia. This can take the involvement of ulama and Islamic legal experts in regulatory drafting concerning elections and improve the understanding of the people about the principles of Islamic law relevant to elections. The harmony between positive law and Islamic law can lead to the reinforcement of integrity and boost voters' participation in more accountable and smart ways. In addition, the harmonisation can also help prevent violations of law and unfair actions in elections. Thus, the harmony between the positive and Islamic laws in this electoral context 2024 in Indonesia is essential to assure fair, transparent, and democratic elections and to reinforce the trust of the public in the political systems and the state.

The direct, universal, secret, genuine, and just principles are important in the democratic and modern systems, requiring every election to take place transparently and justly and it must also be corruption-free. Within the philosophical concept of Islamic law, these principles are essential and relevant to Islamic values. For example, the concept of justice in Islam is considered strong, where people deserve equal and just treatment regardless of their religion and socio-economic backgrounds. This concept also stimulates more efforts to avert any corrupt practices and abuse of power harming the people in general. The principles of elections mentioned above are also understood as a trust that people have to be responsible before Allah. In Islam, every individual holds the moral responsibility to act

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<sup>50</sup> Ulil Abshar Abdalla, *Partisipasi Politik Muslim: Antara Demokrasi Dan Syari'ah* (Yogyakarta: LKIS Pelangi Aksara, 2006), 50.



genuinely and to be responsible for every conduct done. This also applies to the concept of elections; voters and candidates should also act with integrity and honesty in the process of elections. In this case, the philosophical aspect of Islamic law can also provide moral and ethical guidance to ensure that elections take place fairly and appropriately. Thus, the principles of the elections can be taken as the fundamental principles in Islamic law, stimulating the achievement of social justice and welfare for the people.

Similar principles to those of elections in this state took place in the election of caliphates during the time of Prophet Muhammad, but with a slight difference that the election was done through deliberation and *syura*, meaning that today's principles of elections within the context of positive law and Islamic law share similar principles such as transparency, justice, clean attitudes, and freedom. Within the context of positive law, the implementation of the principles of elections above is performed based on legal instruments such as statutes, government regulations, and other policies but in the context of Islamic law, the implementation of direct, universal, free, genuine, and just principles is parallel to the religious teaching in Islam and the moral values contained therein. Both of these fundamentals are heading in the same direction. Although the implementations of the principles of elections between the positive law and Islamic law are different, they share a similar objective of reaching the legality and integrity of the elections and guaranteeing the rights of the people to participate in genuine, free, and fair general elections.

The following are several reasons for harmonisation between positive law and Islamic law essential within the context of concurrent elections:

1. Increasing the trust of the people in the election processes

By accommodating the principles of justice in Islam in positive law concerning elections, the people will have a deeper trust in the processes of fair and transparent elections.

2. Alleviating conflict and tension in election processes.  
The harmony between positive law and Islamic law within the context of elections can help reduce the conflict and tension among people with different views.<sup>51</sup>
3. Stimulating active participation of the people in election processes.  
By ensuring that Islamic values are recognised and integrated into the regulation of positive law concerning elections, people will feel more motivated and vigorous to actively participate in election processes.
4. Guaranteeing the integrity of elected leaders according to Islamic principles.  
By assuring the principles of justice in Islam in the processes of elections, representatives with integrity and the capability to apply Islamic principles in their leadership are expected.
5. Increasing security and stability of the state  
The elected leaders according to the principles of Islam are expected to assure the security and stability of the state better for better and more sustainable development.<sup>52</sup>

The harmonisation of positive law and Islamic law in concurrent elections is vital in tackling problems arising in elections in Indonesia. The harmonisation ensures that the law produced takes into account both moral and ethical values in line with Islamic law and the social needs and

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<sup>51</sup> Hasyim Asy'ari, *Demokrasi Dan Tantangan Pemilu Di Indonesia: Perspektif Islam* (Yogyakarta: LKIS Pelangi Aksara, 2006), 67.

<sup>52</sup> Ibid, 68.

reality faced by the citizens of Indonesia in the context of concurrent elections. This harmony also needs cooperation with all experts in positive law and Islamic law to set proper rules of law relevant to the principles of Islamic law.

To bring about harmony between positive and Islamic laws in this electoral context 2024, measured and systematic efforts should be made as follows:

1. Raising awareness and improving legal academy regarding positive law and Islamic law in the context of concurrent elections across all social elements, especially election committees, election supervisory bodies, and political parties. This step also involves social campaigns, seminars, and coaching programs.
2. Stimulating active participation in elections through the introduction of the importance of the rights and obligations in elections and improving the understanding of positive law and Islamic law concerning elections.
3. Forming expert teams consisting of experts in positive and Islamic laws in the discussion of controversial issues arising in concurrent elections. These experts are expected to contribute thoughts and recommendations to those responsible for the running of the elections and other related organisations.
4. Improving the harmony between positive and Islamic laws in concurrent elections. It can take into account a dialogue involving legal experts and regulatory drafting sourced from Islamic principles.
5. Ensuring the implementation of the principles of elections including free, secret, genuine, fair, and democratic principles for concurrent elections in Indonesia. This can be manifested through a transparent election mechanism with integrity and under effective supervision.

By implementing the above measures, the harmony between positive and Islamic laws should be achieved in the electoral context 2024 with the fundamentals of elections serving as the basis. Therefore, to welcome the concurrent elections 2024, both voters and candidates must carefully understand Islamic principles within national and state contexts while respecting freedom and rights protected by the Constitution. With it, the harmony between positive and Islamic laws in the electoral context 2024, it is important to assure the presence of fair, transparent, and sustainable elections and the election of responsible candidates with integrity according to Islamic principles.

## **Conclusion**

Elections running in Indonesia represent the application of election principles in Islam. The synchronisation between positive and Islamic laws in the context of concurrent elections 2024 is something inevitable to give rise to just and even legal systems for all parties. In this context, this harmonisation is performed by adopting the principles of Islamic law as the basis to come together with positive law in Indonesia. The principles of elections comprising direct, universal, free, secret, genuine, and just principles are similar to those applied during the period of caliphate elections in the time of the Prophet Muhammad. That is, these principles of general elections within the context of positive law and Islamic law share similarities in terms of transparency, justice, clean attitudes, freedom, and justice. Within the context of positive law, the implementation of the principles of elections is based on legal instruments such as statutes, government regulations, and other policies. However, within the context of Islamic law, the application of the principles of elections also refers to Islamic teaching and moral values

contained therein. Notwithstanding the different applications of the principles of elections between positive and Islamic laws, both are heading toward the same goals and integrity for elections to guarantee the rights of the people to participate in genuine, free, and just elections. All of these represent the reflection of the harmony between positive and Islamic laws. The harmonisation of both positive and Islamic laws can also help reinforce the integrity of the institutions responsible to administer elections and increase the participation of accountable and smart voters. Moreover, the harmonisation can also help prevent any likelihood of violations of law and unfair conduct in concurrent elections 2024 in the time to come.

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