



# CODIFICATION OF ELECTORAL AND LOCAL ELECTION LAWS AS AN INSTRUMENT FOR STRENGTHENING DEMOCRACY IN INDONESIA

Akhmad Mukhlis\*, M. Hadin Muhjad, Mirza Satria Buana

Law Study Program, Doctoral Program, Faculty of Law, Universitas Lambung Mangkurat, Banjarmasin City, South Kalimantan, Indonesia

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\*Corresponding author

## Abstract

This research is based on the analysis of three primary issues concerning the codification of the Law on General and Local Elections (*Pemilu* and *Pilkada*) as part of the efforts to build democracy in Indonesia. These issues include: First, how the concept and form of codification of the Election and Local Election Laws are viewed from the perspective of the Constitution of the Republic of Indonesia; Second, what the legal implications of such codification are for the national election legal system; and Third, how the direction of Indonesia's democratic legal policy supports codification as a strategy for national legal reform. The research method employs a normative legal approach with statutory, conceptual, and comparative approaches. The results indicate that codification is a constitutional necessity to unify election norms scattered across various regulations, aimed at creating legal certainty, efficiency, and regulatory consistency. An open codification model is considered the most suitable for Indonesia's pluralistic character, as it provides room for flexibility without compromising the harmonization of the legal system. Furthermore, codification serves as a concrete manifestation of democratic legal policy that upholds the principles of the rule of law and public participation in a fair and democratic electoral system. This study aims to formulate the theoretical and juridical foundations for the codification of the Election and Local Election Laws as an integral part of Indonesia's democratic development. The findings offer a concept of open codification grounded in the principles of constitutionality, legal system integration, and responsiveness to political dynamics and societal needs. Through a comprehensive electoral law codification model, this research contributes to the strengthening of a democratic national legal system, ensuring citizens' political rights, and improving the quality of election implementation in Indonesia in a just and sustainable manner.

**Keywords:** Codification, Democracy, General Elections, Legal Policy, Local Elections.

## INTRODUCTION

Indonesia is a state founded on democracy. Article 1, Paragraph (2) of UUD NRI 1945 explicitly affirms that Indonesia is a democratic state where sovereignty is vested in the people and exercised in accordance with the MPR (Asshiddiqie, 2006). In a democratic state, every aspect of national and state life involves active public participation. General elections, both legislative and presidential, serve as crucial instruments through which the role of the people as holders of sovereignty is manifested. One indicator of election quality is the level of citizen participation. A higher participation rate in every election signifies better election quality. Through elections, every citizen is protected by the state to channel their political aspirations through political parties or by voting for specific candidates. In a democracy, the political rights of every citizen are guaranteed by the state as a fundamental principle that must not be diminished an embodiment of the principle of the rule of law (*rechtsstaat*), as emphasized in Article 1, Paragraph (3) of UUD 1945.

However, the implementation of elections in Indonesia faces a fundamental challenge regarding regulation. An unfavorable tradition has emerged where election regulations are constantly changed every time an election is to be held (every five years). From a legislative drafting perspective, this is far from ideal. One characteristic of sound legislation is its durability it should be applicable over a long period rather than being segmented for specific periodic intervals (Marzuki, 2008). This phenomenon indicates an instability in the legal framework that can undermine the principle of legal certainty, one of the main pillars of the rule of law. Furthermore, the fragmented nature of election laws has led to non-standardized, ambiguous, conflicting, and multi-interpretable regulations, as well as duplication. This regulatory fragmentation complicates matters for all stakeholders, ranging from election organizers (KPU, Bawaslu) and participants (political parties, candidates) to voters and election monitors. The overlap and inconsistency of these norms constitute a primary issue that must be resolved to create efficient, fair, and democratic election governance.

The complexity of the electoral legal framework is further compounded by the Putusan Mahkamah Konstitusi (MK) Nomor 14/PUU-XI/2013. This decision mandated that the 2019 Elections be held simultaneously (*serentak*). The MK defined simultaneous elections as the legislative and presidential/vice-presidential elections occurring at the same time, commonly known as the "five-box election" (Mahkamah Konstitusi, 2013). Regardless of the debate surrounding its implementation, this decision has reinforced the urgent need for a codification of election laws. There is an immediate requirement for a single, unified election law that regulates all types of elections, including legislative, presidential and vice-presidential, as well as regional head elections (Pilkada). The policy of codifying the Undang-Undang Pemilihan Umum (Pemilu) is a legislative political choice aimed at unifying various regulations into a single code (*kitab undang-undang*).

The idea of codification is based on the fact that the current legal regimes governing elections are scattered across various unharmonized regulations. Currently, there are at least four separate electoral legal regimes: the legislative election regime (regulated by UU No. 8 Tahun 2012), the presidential election regime (UU No. 42 Tahun 2008), the regional head election regime (UU No. 1 Tahun 2015 juncto UU No. 8 Tahun 2015), and the election organizers regime (UU No. 15 Tahun 2011). Following the Putusan MK No. 14/PUU-XI/2013, which declared the separation of legislative and presidential elections unconstitutional, both must now be held concurrently (Mahkamah Konstitusi, 2013). Logically, since these two electoral regimes are carried out simultaneously, the laws governing them should constitute a unified whole. However, this idea of codification will face existing legislative politics, where the electoral legal

regimes are dispersed across various regulations, making their unification a major "homework" assignment that must be solved.

Another challenge lies in the implementation of regional head elections (Pilkada). From 2005 to 2014, Pilkada was based on the regime of UU No. 32 Tahun 2004 concerning Regional Government and its amendment, UU No. 12 Tahun 2008. The legislative politics of separating Pilkada regulations from the general election legal regime and placing them within the regional government regime has created its own complications (Manan, 2004). Yet, UUD 1945 Article 22E Paragraph (6) concerning Elections states that the election of the president, vice president, members of the legislature, and regional heads shall be regulated by law. According to an a contrario interpretation, this constitutional mandate points toward regulation under a single, integrated legal umbrella. Thus, the birth of multiple separate election laws can be viewed as a technical legislative error that deviates from the spirit of unification intended by the Constitution.

The reality observed thus far shows that the UU regulating Pilpres, Pileg, and Pilkada consistently undergo changes leading up to their implementation. This situation is caused by the nature of elections, which are directly linked to the interests of political party elites. Legislators, who notably originate from political parties, often feel entitled to amend the election implementation UU for their own electoral interests (Buana, 2023). This creates electoral law dynamics that are highly volatile and tend to be reactive toward short-term interests, thereby sacrificing legal stability and certainty. To transform the UU Pemilu into a complete codification, a strategy of strong political will from the legislators themselves is required, along with pressure from civil society and academia.

In the context of modern legal systems, codification has been practiced in various countries, such as the United States, Canada, and Australia, as a form of legal reform that is efficient and responsive to the needs of national legal harmonization (Buana, 2021). Therefore, in the Indonesian context, the codification of Pemilu and Pilkada laws can be positioned not merely as a simplification of regulations, but also as a legal renewal strategy grounded in the principles of efficiency, legal certainty, and substantial justice within electoral democracy. Codification is a means to perform compilation, systematization, and unification of scattered provisions into a structured, complete, and accessible written legal system. Its objectives, as formulated by experts, are to create legal certainty, simplification, and unity of law (Kansil, 2002).

The concept of codification itself has long historical roots. The term "codification" was first introduced by Jeremy Bentham (1748–1832), originating from the Dutch word *codificatie* or the Latin *codex* (Conway, 1988). Black's Law Dictionary defines codification as the process of systematically collecting and arranging the laws of a country or the regulations covering a particular area of law. In its development, the concept of legal codification shifted from mere compilation (*codex*) toward modern codification, which aims not only to collect but also to form a new legal system that is systematic and coherent (Canale, 2009). At this modern level, codification aims to: (1) design and simplify differing regulations into a single collection to assist legal practitioners; (2) create the systematization and unification of material law; and (3) establish a new legal system based on fundamental legal policy (Cabrillac, 2002).

In Indonesia, the development of legal codification is inseparable from the influence of Dutch colonial law. The enactment of the *concordantie beginsel* (principle of concordance) since the Dutch East Indies era resulted in the application of several Dutch legal products, such as the KUH Perdata, KUH Dagang, and KUH Pidana. Post-independence, this principle was still applied through Article II of the Transitional Provisions of the UUD 1945 (pre-amendment) to

prevent a legal vacuum. The experience of codification in Indonesia, such as in the formation of the new KUHP (UU No. 1 Tahun 2023), provides valuable lessons. This process demonstrates the challenge between choosing a total codification model (unifying all criminal provisions) and an open codification model (allowing for regulations outside the codification). For election law, an open codification model is deemed the most suitable as it provides the flexibility to accommodate evolving political and social dynamics without sacrificing systemic unity.

The legal policy of drafting election UU should not be trapped in elite interests alone. As stated by Buana (2023), normatively, every UU must be oriented toward the welfare of the people and the value of justice; however, in reality, legal policy is often conservative and elitist. This indicates that political configuration significantly determines the responsiveness of the resulting legal products. A democratic political configuration will produce progressive law, while an authoritarian configuration tends to yield orthodox law (Buana, 2023). Therefore, the effort to codify UU Pemilu and Pilkada must be driven by a democratic legal policy that places public interest and democratic consolidation as the primary goals.

Based on the background described, this research aims to analyze in depth the codification of the UU for the implementation of Pemilu and Pilkada as an effort to build democracy in Indonesia. Specifically, this research answers three primary research questions: First, how are the idea and form of codifying Pemilu and Pilkada legislation viewed from the perspective of the Konstitusi RI? Second, what are the legal implications of codifying Pemilu and Pilkada legislation for the national electoral legal system based on the Konstitusi RI? Third, how does democratic legal policy based on the Konstitusi RI support the codification of Pemilu and Pilkada legislation in Indonesia?

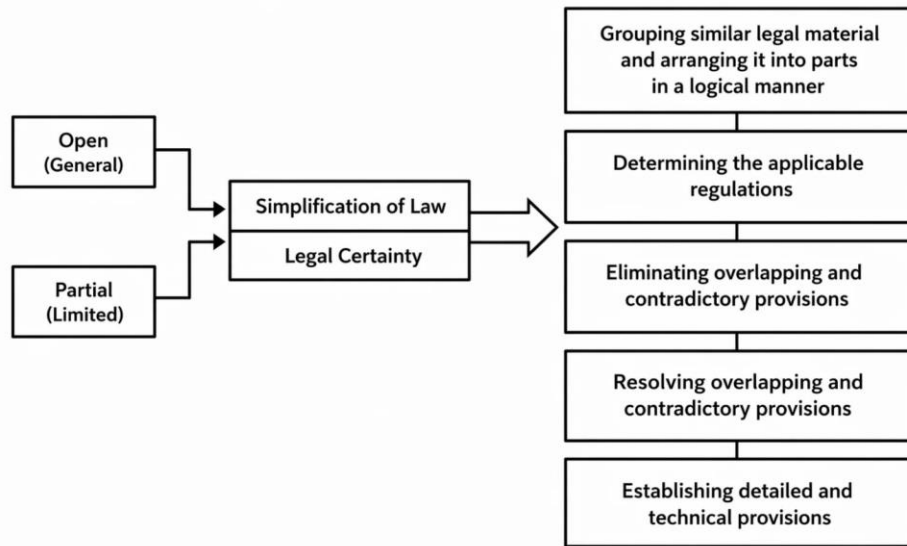
This research is expected to contribute both theoretically and practically. Theoretically, this study contributes to the development of legal science, particularly constitutional law (Hukum Tata Negara) and legislation, by enriching the discourse on ideal codification models within a pluralistic legal system. Practically, the results of this research are expected to serve as input for policymakers (DPR, Government, MK) and other stakeholders in formulating a more integrated, certain, and just legislative policy in the field of elections, ultimately strengthening the structure of Indonesian constitutional democracy.

## RESEARCH METHODS

This research is a normative legal research (*yuridis normatif*), which is conducted by examining library materials or legal materials (Marzuki, 2014). This type of normative legal research examines the laws and regulations concerning the authority of the MK to decide on the dissolution of political parties in relation to the development of Indonesian democracy. According to Soerjono Soekanto (2006), normative legal research focuses on positive legal norms in the form of laws, regulations, and court decisions. In this study, primary data consist of legal instruments such as Undang-Undang, while secondary data include books, previous research findings, and legal documents, including legislation related to the authority of the Mahkamah Konstitusi (Gozali, 2012).

This research is prescriptive in nature, meaning it is intended to provide suggestions on what should be done to overcome specific problems, which can result in arguments, theories, or new concepts as prescriptions for resolving the issues at hand (Marzuki, 2014). The prescriptive nature of legal science means its object is the coherence between legal norms and legal principles, the coherence between legal rules and legal norms, and the coherence between individual behavior and legal norms (Marzuki, 2014). Thus, this research does not merely

describe the problem but also seeks to provide concrete recommendations for resolving the fragmentation of election laws through codification.



**Figure 1.** Legal systematic flow

This type of normative legal research examines regulations concerning the authority of the MK to dissolve political parties in the context of Indonesian democratic development, against a background of legal vagueness in the prevailing regulations. This study employs three integrative approaches; the statute approach (*pendekatan perundang-undangan*), the conceptual approach (*pendekatan konseptual*), and the comparative approach (*pendekatan perbandingan*).

The statute approach is conducted by reviewing all Undang-Undang and regulations relevant to the legal issue being addressed (Marzuki, 2014). For research aimed at practical activities, this approach provides an opportunity for researchers to study the consistency and compatibility between one Undang-Undang and another, or between the Undang-Undang Dasar, or between regulations and the Undang-Undang (Marzuki, 2014). In this study, the statute approach is used to analyze UUD 1945, UU Pemilu, UU Pilkada, and relevant MK decisions to identify overlapping and inconsistent norms.

The conceptual approach is derived from the views and doctrines developing within legal science (Gozali, 2012). By studying these views and doctrines, the researcher will discover ideas that give rise to legal definitions, legal concepts, and legal principles relevant to the issue. An understanding of these views and doctrines serves as the basis for the researcher to build a legal argument in solving legal issues (Marzuki, 2014).

The comparative approach is carried out by conducting comparative legal studies. Comparative legal study is an activity to compare the law of one country with the law of another country, or the law of a certain period with the law of another period. This activity is useful for revealing the background behind certain legal provisions for the same problem in two or more countries (Marzuki, 2014). In this study, this approach is used to compare the practice of electoral law codification in other countries, such as the Philippines, which has codified its election laws into a single Undang-Undang, as well as the experience of codification in countries with civil law and common law traditions.

The sources of legal materials used come from various readings that support the research. By using data obtained from collecting and reviewing literature or documents related to the

research questions, the problem can be answered correctly and accurately (Soekanto, 2006). The data consist of the following sources:

1. Primary legal materials: Data obtained from literacy sources such as books, journals, and regulations related to the issues being studied.
2. Secondary legal materials: Materials that provide explanations of primary legal materials, such as textbooks, commentaries on court decisions, research results, scientific journal articles, and papers related to codification, election law, and democracy.
3. Tertiary legal materials: Materials that provide guidance or explanation for primary and secondary legal materials, such as legal dictionaries, encyclopedias, and periodic scientific indexes.

The technique for collecting legal materials in this research is through documentary study. This technique is performed by collecting, recording, and analyzing data sourced from the written documents mentioned above (Soekanto, 2006). The collection of materials is carried out systematically by identifying, classifying, and inventorying regulations, court decisions, and scientific literature relevant to the research focus. Secondary data collection is conducted through library research.

The collected legal materials are then processed and analyzed using the legal interpretation method and content analysis. The analytical technique used is qualitative analysis with deductive logic, which involves drawing specific conclusions from general propositions or premises (Soekanto, 2006). The analysis process is carried out through several stages:

1. Grammatical and systematic interpretation: Interpreting the wording of statutory articles based on the meaning of words and sentences, and observing their relationship with other articles within a single regulatory system (Marzuki, 2014). This is essential for understanding the intent of UUD 1945 Article 22E and Article 18 regarding Pemilu and Pilkada.
2. Teleological interpretation: Interpreting regulations based on the objectives to be achieved, namely the development of democracy and the enforcement of the rule of law (Asshiddiqie, 2006).
3. Comparative analysis: Comparing provisions in various prevailing UU Pemilu and Pilkada to identify overlaps, contradictions, and duplications of norms.
4. Conceptual analysis: Examining theoretical concepts such as codification (Bentham via Conway, 1988; Canale, 2009), the rule of law (Asshiddiqie, 2006), and legal certainty (Utrecht in Marzuki, 2008; Sudikno Mertokusumo, 2007) to build a framework of thought and argumentation.
5. Conclusion Drawing and Recommendation Formulation: After the analysis phase, a synthesis is performed to draw conclusions that answer the research questions and to formulate policy recommendations in the form of an open codification model suitable for the Indonesian constitutional context (Mukhlis, 2024).

## **RESULTS AND DISCUSSION**

### **The Urgency of Codifying Pemilu and Pilkada Legislation**

1. Dynamics of Regulatory Development and Fragmentation of Election Regulations  
Analysis of the history of Pemilu regulations in Indonesia reveals unstable dynamics that tend to be reactive toward short-term political interests (Aspinall & As'ad, 2016). Since the Reformation era, Indonesia has experienced a fragmentation of electoral legal regimes into at least four separate regulatory frameworks. First, the legislative election regime currently

regulated under Undang-Undang Nomor 8 Tahun 2012 concerning the General Election of Members of the DPR, DPD, and DPRD. Second, the presidential election regime regulated in Undang-Undang Nomor 42 Tahun 2008 concerning the General Election of the President and Vice President. Third, the regional head election (Pilkada) regime regulated in UU No. 1 Tahun 2015 concerning the Stipulation of Perpu Nomor 1 Tahun 2014 into Undang-Undang, as amended by UU No. 8 Tahun 2015. Fourth, the election organizers' regime, which is regulated under a separate Undang-Undang (Zain, 2020). This fragmentation has created complex legal problems.

First, there are overlaps and contradictions in regulations. For instance, the regulation regarding voter registration in the Pilpres UU (UU No. 42/2008) does not recognize the concept of a Special Voter List (Daftar Pemilih Khusus/DPK) or recapitulation at the village/sub-district level (PPS), even though these mechanisms are detailed in the Pileg UU (UU No. 8/2012) (KPU, 2014). Second, duplication occurs for substantively identical matters, such as the principles of Pemilu (direct, general, free, confidential, honest, and fair), which are repeated in every UU, indicating legislative inefficiency (Wijayanto, 2019). Third, different standards exist for the same issues. The most evident example is the regulation of money politics; the Pilpres UU regulates sanctions for the giver, while the Pilkada UU targets both the giver and the recipient. This inconsistency creates injustice and legal uncertainty (Anggraini, 2014; Surbakti, 2018).

Fourth, partial regulations lead to an incoherent electoral system as a whole. This contradicts the principle of the rule of law, which guarantees legal certainty as an essential element (Asshiddiqie, 2006). According to Hans Kelsen, law is a system of norms that must be coherent, where lower norms must not conflict with higher norms (Kelsen, in Marzuki, 2008). The current conditions reflect systemic flaws in the structure of Indonesia's election law, where various norms in different UU clash, reduce, or distort one another (Ferejohn, 2002).

The constant dynamics of changing election laws just before an election serve as a strong indicator of intervention by elite political interests (Mietzner, 2013). Normatively, every Undang-Undang should be oriented toward public welfare and justice; however, in reality, legal policy is often conservative and elitist (Buana, 2023). Legislators, who notably originate from political parties, feel entitled to change the election implementation UU for their own electoral interests (Slater, 2018). This shows that political configuration significantly determines the responsiveness of legal products. A democratic political configuration ideally produces progressive law, but in practice, oligarchic configurations tend to give birth to elitist law (Winters, 2011).

## 2. Mahkamah Konstitusi Decisions and the Imperative of Simultaneous Elections

The Putusan Mahkamah Konstitusi (MK) Nomor 14/PUU-XI/2013 serves as a constitutional turning point that reinforces the need for codification (Hendrianto, 2018). The MK decided that the separation of legislative and presidential elections was unconstitutional; therefore, both must be held simultaneously (Mahkamah Konstitusi, 2013). The legal logic built by the MK is that if the timing of the elections is unified, then the legal basis must also be unified (Butt, 2015). Civil society groups have also stated that it is illogical to synchronize election implementation while still utilizing different Undang-Undang (Koalisi untuk Pemilu Serentak, 2015). This decision shifted the paradigm from fragmented elections toward integrated elections, requiring an equally integrated legal umbrella (Siregar, 2020).

Furthermore, a series of subsequent MK decisions, specifically Putusan No. 55/PUU-XVII/2019 and No. 85/PUU-XX/2022, have ended the dichotomous debate between the Pemilu

regime and the Pilkada regime (Susanti, 2021). The MK explicitly affirmed that Pilkada is Pemilu (Mahkamah Konstitusi, 2019, 2022). This affirmation is based on the interpretation of Article 18, Paragraph (4) of the UUD 1945, which states that Governors, Regents, and Mayors are "elected democratically." In the context of constitutional developments post-amendment of the UUD 1945, where the President is directly elected, the phrase "elected democratically" must be interpreted as "directly elected by the people" through electoral mechanisms (Ellis, 2005). Thus, constitutionally, there are at least seven public offices elected through Pemilu. All are embodiments of popular sovereignty that should be regulated within a harmonious legal framework (Effendi, 2022).

Reality shows that the separate regulation of Pilkada within the UU Pemerintahan Daerah (previously UU No. 32/2004) created complications (Buehler, 2010). Separating regional head elections from the election legal regime and placing them within the regional government regime brought its own messiness (Manan, 2004). This separation created institutional dualism, oversight dualism, and most importantly, dualism in law enforcement and dispute resolution (Tomsa, 2014). Pilkada result disputes once occupied a gray area – whether they fell under the jurisdiction of the MK (as an election dispute) or the general courts (as a regional administrative dispute). Putusan MK No. 85/PUU-XX/2022 finally asserted that Pilkada disputes are resolved by the MK, as Pilkada is part of Pemilu (Mahkamah Konstitusi, 2022). This consolidation of authority further strengthens the argument for consolidating its regulations (Crouch, 2019).

### 3. The Need for Codification to Address Legal Certainty and Substantial Justice

The need for codification is not merely a technical legislative matter but a substantive requirement for building quality democracy (Ginsburg & Huq, 2018). Codification, in its modern sense, is the process of systematically collecting and arranging a country's laws or regulations covering a specific legal area (Merryman, 2007). Its objectives include achieving legal certainty, simplification of law, and creating unity of law (Raz, 1979).

In the context of election law, legal certainty is a prerequisite for fair and democratic elections (Elklit & Reynolds, 2005). According to Utrecht, legal certainty contains two meanings. First, the existence of general rules allows individuals to know what actions are permitted or prohibited. Second, it provides legal security for individuals against government arbitrariness (Utrecht, in Marzuki, 2008). Currently, legal uncertainty arises from multi-interpretations, contradictions, and inconsistencies between election UU. A clear example is the ambiguity in the enforcement of money politics laws across different regimes, creating opportunities for unfair practices (Mietzner, 2015). Legal certainty is closely related to justice; a certain law enables procedural justice, which is the foundation for substantial justice (Mertokusumo, 2007).

Codification also aims for law simplification. The currently scattered UU Pemilu and Pilkada are difficult for the public, and even for organizers and participants, to access and understand (Perludem, 2020). This complexity acts as a barrier to meaningful participation (Hicken & Kuhonta, 2014). As stated by the UK Law Commission, the goal of codification is to make the law more accessible, comprehensible, consistent, and certain (The Law Commission, 1989). These principles are highly relevant to election law, which governs the most fundamental process in a democracy (Dahl, 1989).

Furthermore, codification for unity of law is a necessity in a unitary state like Indonesia (Nasution, 2016). Differing regulations for the same democratic process (direct election of public officials) at the national and regional levels can create perceptions of discrimination and injustice (Aspinall & Berenschot, 2019). The unification of election law will create a democratic minimum national standard for all types of elections, while still allowing space for certain

technical regulations that respect regional specificities, provided they do not conflict with the basic principles within the codification. This aligns with the spirit of "Bhinneka Tunggal Ika," where regional diversity is accommodated within a unified national legal framework (Bertrand, 2004).

### **The Ideal Model and Form of Codification: Between Open Codification and Omnibus Law**

#### **1. Choosing Between the Codification Method and the Omnibus Law Method**

In the debate regarding the unification of the UU Pilkada into the UU Pemilu, two legislative methods have emerged: the omnibus law method and the codification method (Raymond, 2021). The omnibus law method, popularized through the UU Cipta Kerja (UU No. 11/2020), is a drafting method that includes new substantive material, amends various related regulations, and/or repeals other regulations by consolidating them into a single regulation to achieve specific objectives (Patria, 2021). Meanwhile, codification is the process of systematically collecting and arranging various scattered regulations into a complete and coherent code (*kitab undang-undang*) (Mattei, 1997).

Based on the analysis of various studies and practices, the codification method is deemed more appropriate for unifying the UU Pemilu and Pilkada than the omnibus law (Lindsey, 2022). The reasons are as follows:

##### **a. Homogeneous Nature of the Material**

The substantive content of the UU Pemilu, Pilpres, and Pilkada stems from the same legal field: election implementation law. They regulate the same bases, principles, institutions, stages, and law enforcement for similar processes (Ziegenhain, 2015). Therefore, what is required is coherent regulation within a single text, rather than merely partial amendments to various articles across different UU. The omnibus law is more suitable for cross-sectoral issues that are heterogeneous in nature (Huda, 2020). Avoiding complexity and new confusion. The experience with the UU Cipta Kerja shows that an omnibus law can produce legal products that are highly complex and difficult to track because they amend many articles across dozens of UU simultaneously, while the amended UU remain in force (Prasetyo, 2021). This can create new complications and potentially lead to "legal smuggling" (*penyelundupan hukum*) due to the inclusion of provisions whose relationships are not easily traced. Codification, by redrafting and organizing all norms into a complete new text, is more transparent and minimizes the risk of overlap (Santoso, 2022).

Successful precedents already exist. UU No. 7 Tahun 2017 concerning Pemilu is an example of successful codification (Haris, 2018). This UU unified (codified) three previous laws: the UU Pilpres (UU No. 42/2008), the UU Penyelenggara Pemilu (UU No. 15/2011), and the UU Pileg (UU No. 8/2012). The next step is to continue and perfect this codification by incorporating the Pilkada regime into it, thereby creating a truly comprehensive UU Pemilu. Responding to MK decisions. Codification is a direct implementation of the MK's mandate stating that Pilkada is part of Pemilu (Falaakh, 2022). Unification within a single codified text will ensure the harmonization of norms, such as candidacy requirements, oversight, and sanctions for violations, thereby preventing regulatory differences that have historically triggered numerous judicial reviews in the MK (Hendrianto & Hosen, 2023).

##### **b. The Open Codification Model as a Contextual Choice**

After determining codification as the preferred method, the next question is which codification model is most appropriate (Bell, 2006). Theoretically, there are two main models: total (closed) codification and open codification. Total codification attempts to incorporate all

provisions related to a legal field into a single code and precludes the possibility of regulations existing outside that code. Meanwhile, open codification allows for regulations outside the code, provided these new regulations remain closely related to and do not deviate from the fundamental principles within the codification.

For Indonesia's pluralistic and dynamic context, the open codification model is considered the most realistic and ideal (Pompe, 2005). This is supported by several considerations:

1) Flexibility in Facing Developments

Political and social dynamics change very rapidly (Aspinall & Mietzner, 2019). The open codification model provides space to regulate technical, procedural, or new developments (such as election technology) through regulations below the level of Undang-Undang (such as Peraturan KPU/Bawaslu) or specific sectoral laws, without constantly needing to amend the parent UU (the codification). This ensures the stability of the election UU while remaining responsive to change (Van Hoecke, 2002).

2) Lessons from the KUHP Codification

The long process of codifying the national Kitab Undang-Undang Hukum Pidana (KUHP) (resulting in UU No. 1 Tahun 2023) showed that total codification is extremely difficult to achieve due to the many criminal provisions scattered in sectoral UU (Nurhidayat, 2023). The final choice was the open codification model, reflected in an article stating that the general provisions of the KUHP also apply to acts punishable under other UU. This is a realistic acknowledgment that certain fields require specific regulation (Lindsay, 2008).

3) Alignment with the Presidential System and Regional Autonomy

Although Pilkada is Pemilu, it possesses specific characteristics as part of regional governance (Booth, 2011). Certain technical regulations related to regional autonomy might need to be regulated through regional regulations, as long as they do not conflict with the UU Pemilu. Open codification makes this possible (Fitriani et al., 2005).

However, the application of open codification must be accompanied by strict safeguards to prevent the weakening of the codification itself (Watson, 1993). The principle of *lex specialis derogat legi generali* (special law overrides general law) must be applied cautiously. Special rules outside the codification should only be made for matters that are strictly technical, administrative, or addressing local specificities, and they must not alter or diminish the bases, principles, rights standards, or oversight/enforcement mechanisms established in the codified UU Pemilu. Judicial review oversight by the MK regarding sectoral UU that regulate elections becomes crucial to maintaining systemic coherence (Asshiddiqie, 2009).

## **Legal and Political Implications of Codification on Democratic Development**

1. Implications for the Legal System and Electoral Institutions

The codification of UU Pemilu and Pilkada will bring significant and positive legal implications for the national legal system, particularly the electoral legal system (Tushnet, 2009). First, it creates legal certainty and coherence. By unifying all norms into a single, systematic UU, contradictions and overlaps between regimes are eliminated. Election organizers (KPU, Bawaslu, DKPP), election participants (political parties, candidates), voters, and monitors will have a single, clear, and easily referenced legal guideline. This will improve implementation efficiency, reduce the potential for disputes arising from multiple interpretations, and cut legal transaction costs (Hadiz, 2010).

Second, it harmonizes organizational institutions. Although the MK has stated that Pilkada is part of Pemilu, in practice, a dichotomy of perception still exists because the legal foundations remain separate (Mietzner, 2021). Codification will reinforce the positions of KPU, Bawaslu, and DKPP as the sole institutions for organizing, supervising, and enforcing ethics for all types of elections, both national and regional. This will strengthen the independence, professionalism, and accountability of these institutions as they operate within a clear and integrated legal framework (Schmidt, 2007). Furthermore, the recruitment of KPU and Bawaslu members at all levels can be streamlined (Djadijono, 2017).

Third, it simplifies and unifies the dispute resolution system (Crouch, 2010). All election result disputes – whether for Pileg, Pilpres, or Pilkada – will clearly fall under the jurisdiction of the MK. Meanwhile, administrative and criminal election violations will follow integrated law enforcement pathways. This will facilitate access to justice for election participants and create a stronger deterrent effect due to the consistency of sanctions (Mietzner & Muhtadi, 2018).

## 2. Implications for Democratic Quality and Public Participation

Codification is not merely an administrative improvement but a legal policy instrumentation for building substantial democracy (Przeworski et al., 2000). From a right-to-development perspective, elections have a substantive dimension as a means of development, where civil-political rights (such as the right to vote) are intertwined with economic, social, and cultural rights (Sen, 1999). First, codification strengthens democratic legitimacy. Elections conducted based on certain, fair, and easily understood laws will increase public trust in the electoral process and results (Norris, 2014). This trust is the most vital social capital for the legitimacy of the elected government. Conversely, complex election laws laden with elite interests will erode legitimacy and potentially trigger post-election conflicts (Schedler, 2006).

Second, codification empowers voters and election participants. An integrated and simple UU facilitates voter education and political education (Birch, 2009). A solid understanding of electoral rights and procedures will enhance the quality of participation (informed voting), rather than just quantitative participation. For political parties and candidates, certainty in the "rules of the game" will encourage healthier competition based on ideas and programs rather than rule manipulation or money politics (Power, 2018). Third, codification can suppress transactional political practices. By unifying regulations on campaign financing, fund audits, the prohibition of money politics, and firm, consistent sanctions for all types of elections, codification creates a less hospitable environment for corrupt practices (Warburton, 2016). The strengthening of PPATK's authority to monitor campaign fund flows can be more effectively integrated within a single codified UU (Sherlock, 2010).

## 3. Legal Politics of Codification: Between National Interest and Challenges of Elitism

Codification efforts will not proceed smoothly because they directly touch upon Indonesia's legal politics (politik hukum) – the policy regarding the direction of legal formation to be implemented (Mahfud MD, 2010). Currently, electoral legal politics tend to be dominated by the interests of political parties in the DPR who wish to maintain rules that benefit them electorally, such as the parliamentary threshold, presidential threshold, and election methods (Slater, 2018).

Codification must be driven by a democratic legal policy that prioritizes the national interest of building quality democracy as the primary orientation (Horowitz, 2013). This requires strengthening various elements from multiple parties:

- a. Strong political will from the government and DPR to prioritize the public interest over party interests (Mietzner, 2012).

- b. Meaningful participation from the public in the deliberation of the RUU Kodifikasi Pemilu. The DPR must be transparent with drafts, accept input, and be accountable for every decision made (Fung, 2006). Civil society experience shows that parliamentary participation is often ignored, making judicial review in the MK an alternative for advocacy (Dibley, 2014).
- c. Utilization of MK decisions as primary references. The MK, through various rulings (such as No. 55/2019, No. 85/2022, and No. 116/2023), has provided constitutional safeguards, recommendations, and even options for simultaneous election models (Hendrianto, 2021). The legal politics of codification must align with the constitutional mandates interpreted by the MK (Ginsburg, 2003).

The greatest challenge is shifting the elitist political configuration to a more democratic one (Robison & Hadiz, 2004). However, the momentum for reform following the 2024 Pemilu, the demands of civil society, and the commitment in the RPJPN 2025-2045 (UU No. 59/2024) – which emphasizes the importance of codifying the UU Pemilu and Pilkada – can serve as capital to fight for progressive codification legal politics. If successful, codification will become a landmark of legal reform that not only simplifies rules but truly strengthens the foundation of Indonesian democracy toward a substantial, just, and prosperous democracy (Diamond, 2015).

## CONCLUSION

The codification of the Undang-Undang for the implementation of Pemilu and Pilkada is a systematic and constitutional effort to unify electoral legal norms scattered across various regulations into a single, complete, and comprehensive parent regulation. This idea aligns with Article 22E, Paragraph (6) of the UUD 1945, which stipulates that Pemilu shall be regulated by law. Such codification aims not only to simplify the law but also to ensure that electoral regulations possess systemic coherence and consistency between norms, while avoiding legal conflicts between organizing institutions and election participants.

The form of codification relevant to the Indonesian context is open codification, which provides room for flexibility in sectoral legal arrangements as long as they do not contradict the basic principles of the codification. Codification will yield significant legal implications in creating legal certainty, legal unity, and harmony between the regulations for legislative, executive, and regional head elections. Furthermore, codification strengthens the legal legitimacy of elections through the formation of a single norm sourced from the constitution and the principles of good legislation-making.

This effort impacts the improvement of election law enforcement quality, minimizes the space for multiple interpretations and regulatory overlaps, and strengthens the role of election law enforcement agencies, including the Mahkamah Konstitusi, in resolving election result disputes fairly and efficiently. Indonesia's democratic legal policy positions Pemilu as the primary instrument for realizing substantial democracy. The codification of the Undang-Undang for the implementation of Pemilu and Pilkada is a concrete form of social engineering to build a democratic, transparent, and accountable legal system.

In the context of legal politics (*politik hukum*), codification signifies the direction of national legislation toward building an electoral system that is just, participatory, and guarantees the constitutional rights of citizens. Codification also demonstrates consistency with the direction of national legal development based on Pancasila, as well as respect for social diversity and the dynamic political nature of a pluralistic nation.

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