



MAQASHID'S LENS ON CHECKS AND BALANCES OF SIMULTANEOUS ELECTIONS IN INDONESIA

*Muhaimin**

Faculty of Sharia IAIN Kudus, Indonesia
Email: muhaimin@iainkudus.ac.id

Sirajul Munir

Faculty of Sharia, IAIN Kudus, Indonesia
Email: sirajulmunir@iainkudus.ac.id

Zahratur Rofiqah

Youth Network Majelis Ugama Islam Singapore
Email: i.zahqa@hotmail.com

**Corresponding Author*

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Abstract: This study aimed to explore the principle of checks and balances using the results of simultaneous elections from the perspective of Maqashid al-Syariah. This study is legal research with a normative, comparative, and conceptual approach. According to the findings of this study, the scope of *maqashid al-sharia* has been considered in the control of state life (*maqashid al-siyasah*) as part of the development of current maqashid studies. In implementing checks and balances, the nation's interests (*hifdz al-ummah*) are the main objective of consolidating executive and legislative institutions after simultaneous elections. A government will function effectively if the elected president receives support from a broad coalition in parliament; if he receives just minority support in parliament, the government will face political challenges and become unstable. As a result, institutional ties must be strengthened to offer checks and balances based on *maqashid siyasi*. This study adds to the implementation of checks and balances based on performance and the interests of the people, rather than political sentiment, to develop friendly governance following the simultaneous elections.

Keywords: check and balances; simultaneous election; *maqashid al-siyasah*

Abstrak: Penelitian ini bertujuan untuk mengeksplorasi prinsip checks and balances yang didasarkan pada hasil pemilu serentak dalam perspektif *maqashid al-syariah*. Penelitian ini merupakan penelitian hukum dengan pendekatan normatif, pendekatan perbandingan dan pendekatan konseptual. Hasil penelitian ini menunjukkan bahwa ruang lingkup *maqashid al-syariah* telah diperhitungkan ke dalam pengaturan kehidupan bernegara (*maqashid al-siyasah*) sebagai bagian perkembangan dari kajian maqashid kontemporer. Dalam proses

penerapan check and balance, kepentingan bangsa (*hifdz al-ummah*) menjadi tujuan utama konsolidasi lembaga eksekutif dan legislatif pasca pemilu serentak. Sebuah pemerintahan akan berjalan efektif, jika presiden terpilih mendapat dukungan dari koalisi besar di parlemen, dan sebaliknya, jika hanya mendapat dukungan minoritas di parlemen, maka pemerintahan akan mengalami hambatan politik dan cenderung tidak stabil. Oleh karena itu, perlu penguatan hubungan kelembagaan untuk menghadirkan check and balances berbasis maqashid siyasi. Penelitian ini berkontribusi dalam menerapkan check and balances berbasis kinerja dan kepentingan ummat bukan pada sentimen politik sehingga dapat membangun kondusifitas pemerintahan pasca pemilu serentak.

Kata Kunci: kontrol dan imbang; pemilu serentak; *maqashid siyasah*



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INTRODUCTION

Changes to the constitution following the 1998 reform emphasized the authority of state institutions and their distinct responsibilities and duties, establishing a new order in constitutional law. Separation of powers can limit state institutions' breadth of power in carrying out their functions and authority. Still, state institutions can continue to supervise each other to maintain balance (checks and balances). It is envisaged that the establishment of a checks and balances mechanism will prevent misuse of power and abuse of authority between one state entity and another.¹ Checks and balances become instruments that allow one branch of government to check and balance the powers of another.²

In constitutional practice, the concept of checks and balances is frequently associated with the separation of powers, even though checks and balances are merely one of various manifestations of the division of powers. Various variables that precede both drive the relationship between checks and balances and power control. The notion of checks and balances becomes effective due to "necessary" conditions such as political power balance and the elite's adherence to ethical norms of behavior. This indicates that as long as the government ignores the ideal function

¹ Hezky Fernando Pitoy, "Mekanisme Checks and Balances Antara Presiden dan DPR Dalam Sistem Pemerintahan Presidensial Di Indonesia," *Lex et Societatis* 2, no. 5 (2014): 5-16.

² Randall G. Holcombe, "Checks and Balances: Enforcing Constitutional Constraints," *Economies* 6, no. 57 (2018), <https://doi.org/10.3390/economies6040057>: 8

of legislative institutions, institutional checks and balances will be challenging to establish.³

Regarding separation of powers, the executive and legislative branches have equal sovereignty under the 1945 Constitution after the Amendment. The president's position as executor of executive power has excellent jurisdiction in the post-amendment Indonesian government structure. The president serves as both the head of state and the head of government. The presidential system of government refers to the central position of the President in the government system in the constitutional notion.⁴ The legislature, on the other hand, is granted the authority to control the exercise of power.⁵

Elections are required in a country that follows a presidential government. The implementation of elections underwent a shift following the Constitutional Court (MK) Number 14/PUU-XI/2013 ruling, namely the simultaneous holding of parliamentary and executive elections. In comparative studies, simultaneous elections are frequently used in countries with a presidential administration system. Legislative and executive members run this system elected democratically. Meanwhile, in a parliamentary system, executive officials are elected based on the outcomes of legislative elections. This occurs because the party that wins the legislative election can create the government.⁶ The reality of the Indonesian presidential system with its multiparty system inevitably leads to debates over the presidential threshold in its electoral system. The presence of a political party that implements a presidential threshold is the path chosen to strengthen support for the president.⁷

The design of simultaneous elections following the constitutionality test based on Constitutional Court decision Number 14/PUU-XI/2013 and the legislators' retention of the presidential threshold to strengthen the presidential system raises pros and cons regarding its regulation. Because of the volatile political climate in the

³ Luciano Da Ros and Matthew M Taylor, "Checks and Balances: The Concept and Its Implications for Corruption," *Revista Direito GV* 17, no. 2 (2021): 21.

⁴ Fajlurrahman Jurdi, "Format Kekuasaan Presiden Dalam UUD NRI 1945 (Relasi Horizontal dan Vertikal Kekuasaan Presiden Dalam Sistem Presidensial)," *Jurnal Ilmu Hukum Amanna Gappa* 21, no. 1 (2017): 38-59.

⁵ Sodikin Sodikin, "Pemilu Serentak (Pemilu Legislatif Dengan Pemilu Presiden Dan Wakil Presiden) Dan Penguatan Sistem Presidensial," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 1 (2014): 19, <https://doi.org/10.33331/rechtsvinding.v3i1.54>.

⁶ Ria Casmi Arrsa, "Pemilu Serentak Dan Masa Depan Konsolidasi Demokrasi," *Jurnal Konstitusi* 11, no. 3 (2014): 169.

⁷ Rizky Andrian et al., "Mekanisme Pelaksanaan Prinsip Checks And Balances Antara Lembaga Legislatif dan Eksekutif Dalam Pembentukan Undang-Undang Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).

run-up to the 2024 election, the concept of a presidential threshold, which corresponds to the results of past parliamentary elections, impacts the government coalition. The results of the legislative vote may differ from the results of the current presidential election. The elected president may come from a coalition of supporting parties that was a majority coalition during the previous implementation but became a minority group in parliament at the election of legislative members. Since the elected president will face a majority group that was not previously part of the winning group in the presidential election, the implementation of checks and balances and government stability would undoubtedly suffer.

Every legal establishment has a goal to attain in the context of Islamic law (*maqashid sharia*). *Maqashid sharia* is defined linguistically as the goal of the laws imposed on humanity derived from religious teachings to accomplish individual and community life happiness in this world and the afterlife.⁸ *Maqashid sharia* requires benefit and prevents harm to live a happy existence.⁹

Belief systems can also be influential in determining individual views toward government.¹⁰ *Maqashid sharia* also applies in legal politics, namely fulfilling the values of religious teachings in public policy implementation.¹¹ One of the outcomes of research on the growth of *maqashid al-sharia* is expanding its scope in regulating public life, particularly in state practice.

Much research has been conducted on the notion of checks and balances. At least some past research findings can be utilized as comparative studies to examine differences in the evolution of the checks and balances discourse. First, an article by Nadirsyah Hosen¹² explains that sharia and constitutionalism must not cause political chaos or losses (*mafsadah*). On the contrary, it protects *maslahah al-`ammah* (public interest) – the main goal of sharia. The study's distinctive aspect will center on analyzing Checks and Balances that may arise following simultaneous general elections in 2024, considering the provisions of laws and regulations and the current political climate. This study refers to prior and existing political situations so

⁸ Ridwan Jamal, "Maqashid Al-Syari'ah Dan Relevansinya Dalam Konteks Kekinian" 8, no. 1 (2010): 1-12.

⁹ Khairul Hamim, "Hifz Al-Lisān As Maqasid Al-Shari'ah Al-Darūriyyah (Its Importance and Relevance in the Contemporary Era)," *Samarah* 5, no. 1 (2021): 332, <https://doi.org/10.22373/sjhk.v5i1.9139>.

¹⁰ MuamarHasanSalameh, "The Principle of Separation of Powers between Sharia and the Positive Law: A Case Study on the Constitutional System of Saudi Arabia," *Advances in Social Science, Education, and Humanities Research* 162, no. 2 (2017): 387-410.

¹¹ Miskari Miskari, "Politik Hukum Islam Dan Maqasid Al-Syariah," *Al Ijarah : Jurnal Pemerintahan Dan Politik Islam* 4, no. 1 (2019): 57, <https://doi.org/10.29300/imr.v4i1.2168>.

¹² Nadirsyah Hosen, "Checks and Balances Mechanism in Islamic Constitutionalism: A Critical Reflection," *Journal of Islamic Studies and Culture* 7, no. 2 (2019): 26-38, <https://doi.org/10.15640/jisc.v7n2a4>.

scholars can learn about the possibilities that could arise following the general election. This case is then evaluated utilizing Islamic law concepts, specifically Maqâshid al-syariah.

Second, research by Laurence Tribe and Joshua Matz discusses impeachment as part of the control mechanism regulated in a constitution. Impeachment is regarded as an essential component of the Constitution's system of separation of powers—a vital check on the legislative branch for alleged executive and judicial misconduct. The right to remove officials for activities deemed to be significant violations of the Constitution is supported by the Constitution.¹³ The study's distinguishing aspect will be debates about establishing government rule following the 2024 elections. Mainly since the current political environment differs from the past two periods in that two candidates are running. Control of power must be seen not just from the calculation of the amount of support but also from maqâshid al-syarî'ah as *maslahah al-'ammah* (public interest) that is consistent with the purposes of the state.

Third, Deddy Supriady Bratakusumah conducted research.¹⁴ This study argues that in a presidential system, a president will undoubtedly consider the strength of the DPR when establishing a government to gain DPR support. With this backing, it is envisaged that the president's work plan will be readily accomplished. The study's distinguishing aspect will look at the history of previous coalitions and the composition of coalitions in the 2024 elections. Following the elections, different coalition configurations will undoubtedly influence the Checks and Balances in government. Checks and balances are inextricably linked to the coalition's composition following the election. The coalition in the election does not rule out the possibility of changing as the government progresses from the 2024 election results. This means that the strength of Checks and Balances will depend on the coalition's composition after the election. The composition of this coalition will undoubtedly put pressure on the government, which will then be studied from the perspective of maqâshid al-syarî'ah as *maslahah al-'ammah* (public interest).

The president's and Parliament's powers have a relationship that influences each other as checks and balances processes in the running of the government

¹³ Laurence Tribe and Joshua Matz, *To End a Presidency: The Power of Impeachment*, First Edition (New York, NY: Basic Books, 2018).

¹⁴ Deddy Supriady Bratakusumah, "Actualization of Checks and Balances between Executive, Legislative, and Judicial in Indonesia," *Jurnal Perencanaan Pembangunan: The Indonesian Journal of Development Planning* 2, no. 3 (2018): 219–26, <https://doi.org/10.36574/jpp.v2i3.47>.

system. As a result, the purpose of this research is to investigate the implementation of the principle of checks and balances in a presidential government system that correlates with the results of simultaneous elections using the maqashid al-shari'ah approach to broaden the development of state life arrangements in realizing a constitutional hifz ummah.

This study employed a legal research method that includes a juridical, philosophical, comparative, and conceptual approach. The juridical, philosophical approach investigates the legal idea governing simultaneous elections and the design of checks and balances between the executive and legislative institutions under Indonesia's presidential system. Meanwhile, the comparative and conceptual approach is used to investigate modern constitutional ideas in Islamic law, specifically Maqâshid al-syariah.

IMPLICATIONS OF SIMULTANEOUS ELECTIONS ON COALITION CONFIGURATION AND IMPLEMENTATION OF CHECK AND BALANCES

The 1945 constitution is the primary reference for how Indonesia's government and election administration systems are designed and implemented. In arranging elections, political parties have a very critical constitutional role. Political parties are election participants¹⁵ with the unique distinction of being the only institution with the authority to propose presidential/vice presidential candidates.¹⁶ In reality, a Presidential Threshold, necessary for the nomination of President and Vice President, highlights political parties' strategic role in holding elections.

Elections are part of the efforts to alter power that take place regularly.¹⁷ General elections are an essential component of implementing a constitutional democratic government. According to the constitution, democratic elections must be held to fill members of the parliamentary body and the position of president using the principle of popular sovereignty.¹⁸ The structure of presidential elections is tied to the governance system established by the 1945 Constitution. The power relations in government administration between the executive and the legislature are called the government system in issue.¹⁹

¹⁵ Article 22E of the 1945 Constitution

¹⁶ Article 6A of the 1945 Constitution

¹⁷ Achmad Edi Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17, no. 2 (2020): 356, <https://doi.org/10.31078/jk1726>.

¹⁸ Casmi Arrsa, "Pemilu Serentak dan Masa Depan Konsolidasi Demokrasi." 518.

¹⁹ Bagir Manan, *Membedah UUD 1945* (Malang: Universitas Brawijaya Press, 2012).

After the Constitutional Court's decision Number 14/PUU- held elections to fill executive and legislative positions on the same day. The consideration of the original intent used by the Constitutional Court must be balanced with efforts to establish an efficient and effective general election system that runs simultaneously with a presidential government system with the principle of checks and balances.

Since the election, full assistance for government administration has been planned. Political parties participating in the election are directed to construct the most robust possible axis of support for the presidential candidate to create a robust presidential system.²⁰ Simultaneous elections that retain the presidential threshold necessitate political parties to form coalition-building organizations to achieve the conditions for presidential candidate support. This is consistent with the legislators' overarching goal of strengthening the presidential system if the president is chosen.²¹

A political coalition before the election is critical for future support for the government that will be in place. This coalition must be built with a coalition orientation based on a shared ideology and maintaining political party discipline to last an extended period.²² Because of the different interests each political party promotes, a presidential system with many political parties can lead to an impasse in relations between the president and parliament.²³ As a result, a presidential political structure focusing on government stability must be approved by a majority of parliamentary votes. Presidential programs directly tied to legislative approval can benefit from parliamentary backing.²⁴ The president requires not only public legitimacy but also DPR legitimacy. This legitimacy is acquired by assembling a solid coalition of coalition partners. Coalition relations between the government and the DPR can result in concrete cooperation.²⁵

Because the people directly choose both, the interaction structure between the legislative and the administration in the 1945 Constitution amendment tries to

²⁰ Ratnia Solihah, "Peluang dan Tantangan Pemilu Serentak 2019 Dalam Perspektif Politik," *Jurnal Ilmiah Ilmu Pemerintahan* 3, no. 1 (2018): 73, <https://doi.org/10.14710/jiip.v3i1.3234>.

²¹ Retno Saraswati, "Desain Sistem Pemerintahan Presidensial Yang Efektif," *MMH* 41, no. 1 (2012): 137-43.

²² Triono, "Menakar Efektivitas Pemilu Serentak 2019," *Jurnal Wacana Politik* 2, no. 2 (2017): 156-64, <https://doi.org/10.24198/jwp.v2i2.14205>. 159.

²³ Vanni Anggara, "Dinamika Presidential Threshold Di Indonesia," *Jurnal Transformative* 5, no. 2 (2019): 17-36, <https://doi.org/10.21776/ub.transformative.2019.005.02.2>.

²⁴ Saraswati, "Desain Sistem Pemerintahan Presidensial Yang Efektif." 138.

²⁵ Hayat, "Korelasi Pemilu Serentak Dengan Multi Partai Sederhana Sebagai Penguatan Sistem Presidensial," *Jurnal Konstitusi* 11, no. 3 (2014): 468-91.

construct a checks and balances design.²⁶ The checks and balances principle can be applied to state institutions with equal status and a functional relationship to apply control in maintaining balance. Checks and balances determine the link between distinct governmental entities that can control each other, preventing abuse of authority.²⁷ One of the fundamental ideas in constitutional practice for reducing abuse of power is the concept of checks and balances.²⁸

Checks and balances, ideally, should place governmental institutions in a lower position than others. Only the functions and tasks differ, allowing for a balanced partnership to be developed. As the holder of executive power, the president is on an equal footing with parliament. Despite their structural separation, they can collaborate with Parliamentary entities to carry out their tasks and functions.²⁹ Checks and balances determine the link between distinct governmental entities that can control each other, preventing abuse of authority.³⁰ Balanced monitoring efforts across state institutions can thus be carried out effectively.³¹

Checks and balances, as well as the separation of powers, entail that one arm of government cannot act unilaterally without the permission of the other.³² Article 20 A paragraph (1), which specifies that "the People's Representative Council has a legislative function, a budgeting function, and a supervisory function," demonstrates this mutually beneficial connection. The executive and the legislature have several relationships: the legislative process,³³ international relations,³⁴ requesting consideration from the DPR in granting amnesty and abolition, the president,³⁵ creating a legal basis in emergency/critical situations,³⁶ and

²⁶ Saldi Isra, Fahmi Idris, and Hilaire Tegan, "Designing a Constitutional Presidential Democracy in Indonesia," *Journal of Politics and Law* 13, no. 2 (2020): 22, <https://doi.org/10.5539/jpl.v13n2p22>.

²⁷ Tanto Lailam, "Problem dan Solusi Penataan Checks and Balances System Dalam Pembentukan dan Pengujian Undang-Undang Di Indonesia (Problem and Solutions for Arranging of The Checks and Balances System in The Process of Making Law and Constitutional Review in Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 12, no. 1 (2021): 123–42.

²⁸ Hanif Fudin, "Aktualisasi Checks And Balances Lembaga Negara: Antara Majelis Permusyawaratan Rakyat Dan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 1 (2022): 202, <https://doi.org/10.31078/jk1919>.

²⁹ Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia."

³⁰ Tanto Lailam, "Problem dan Solusi Penataan Checks and Balances System Dalam Pembentukan dan Pengujian Undang-Undang Di Indonesia (Problem and Solutions for Arranging of The Checks and Balances System in The Process of Making Law and Constitutional Review in Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 12, no. 1 (2021): 129.

³¹ Hanif Fudin, "Aktualisasi Checks And Balances Lembaga Negara: Antara Majelis Permusyawaratan Rakyat Dan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 1 (2022): 213, <https://doi.org/10.31078/jk1919>.

³² Holcombe, "Checks and Balances: Enforcing Constitutional Constraints."

³³ Article 20 Paragraph 2 of the 1945 Constitution

³⁴ Article 11 Paragraphs 1 and 2, Article 13 Paragraphs 2 and 3 of the 1945 Constitution

³⁵ Article 14 Paragraph 2 of the 1945 Constitution

³⁶ Article 22 Paragraph 2 of the 1945 Constitution

budgeting.³⁷ The DPR has a supervisory function and can propose the president's dismissal.³⁸ This is one of the demands to prevent power from becoming concentrated in a few institutions. In this case, the DPR's support decides the government's effectiveness, which is the President's work agenda. This means that the President and Vice President rely on the political parties with representatives in the DPR to exercise government power.

As an illustration, this can be observed from the results of the votes obtained by each political party determined by the General Election Commission (KPU) on Saturday, 31 August 2019.

Table 1: Data on 9 (nine) factions in the DPR for the 2019-2024 period

No.	Fraction Name	Abbreviation	Total Members	Percentage
1	Fraction of Demokrasi Indonesia Perjuangan Party	FPDIP	128	22,26
2	Fraction of Golongan Karya Party	FPG	85	14,78
3	Fraction of Gerakan Indonesia Raya Party	FGERINDRA	78	13,57
4	Fraction of Nasdem Party	FNASDEM	59	10,26
5	Fraction of Kebangkitan Bangsa Party	FPKB	58	10,09
6	Fraction of Demokrat Party	FPD	54	9,39
7	Fraction of Keadilan Sejahtera Party	FPKS	50	8,70
8	Fraction of Amanat Nasional Party	FPAN	44	7,65
9	Fraction of Persatuan Pembangunan Party	FPPP	19	3,30
TOTAL:			575	100,0

Source: <https://www.dpr.go.id/tentang/fraksi>

According to the table above, nine political parties, namely PDIP, Golkar, Gerindra, PKB, Nasdem, Demokrat, PKS, PAN, and PPP, were reported to have passed the DPR. Based on the number of DPR members from the coalition backing

³⁷ Article 23 Paragraph 2 of the 1945 Constitution

³⁸ Article 7A, Article 7B paragraphs 1,2,3, 4 and 5 of the 1945 Constitution

elected President Joko Widodo and Vice President-elect Ma'ruf Amin, the PDIP has 128 members, Golkar has 85 members, PKB has 58 members, Nasdem has 59 members, and PPP has 19 members, for a total of 349 members. The remaining 228 persons are members of Prabowo Subianto-Sandiaga Uno's coalition party.

Based on this composition, President Joko Widodo's tenure from 2019 to 2024 enjoys solid support in parliament. The President will be okay with carrying out different plans, particularly those requiring parliamentary participation. Government stability can be easily achieved in this manner.

The dynamic political climate compelled Gerindra and PAN to join the government, bringing the coalition's backing to 471 out of 575 DPR members. The PKS now has 50 members, and the Democrats have 54 members. In this situation, it is clear that most parties in parliament favor the president and a victorious presidential system. Political parties are divided into two groups: those who join the cabinet and become part of the executive and those who remain outside the executive and provide different policies (opposition).

Based on the political environment following the 2019 election and the merging of the Gerindra Party and PAN, the role of other parties that are not linked with the party backing the executive has weakened. If these changes in the makeup of DPR seats are seen, then significant power has been developed, with the potential for the absence of criticism as a balanced control. Suppose the president's policy is put to a vote in plenary. In that case, it may not meet opposition from parliament because most parties are in the same camp or have similar interests.

On the other hand, the concentration of power can foster the growth of sectoral egos, culminating in misuse of authority and, eventually, arbitrary government. A notion of balanced oversight between state institutions as administrators of power is required to grow state administration.³⁹ Especially since the Constitution needs a balance of power with checks and balances to prevent the buildup of unrestrained power. As a result, separation of powers is at the forefront of fundamental constitutional concepts aimed at eradicating tyranny and dictatorship in power.⁴⁰ One of the fundamental ideas in constitutional practice for reducing abuse of power is the concept of checks and balances. Because the president's power cannot be monopolized, other state institutions must maximize their function as part of the

³⁹ Andy Wiyanto, "Pemakzulan Dan Pelaksanaan Mekanisme Checks And Balances Dalam Sistem Ketatanegaraan Indonesia," *Negara Hukum* 4, no. 1 (2013): 137.

⁴⁰ Salameh, "The Principle of Separation of Powers between Sharia and the Positive Law: A Case Study on the Constitutional System of Saudi Arabia."11

state administration system. The need to preserve balance with control systems in government management avoids the creation of numerous acts of irregularity.

Looking back at the 2014 presidential election, followed by the same presidential candidate with two pairs of presidential and vice presidential candidates, we can see the polarization of the two coalition groups formed in parliament. Since the general election, coalition polarisation has developed depending on support for presidential candidates (*Capres*) and vice presidential candidates (*Cawapres*). With 207 members in parliament, the coalition parties PDI Perjuangan, PKB, Nasdem Party, and Hanura Party carried the elected president. Meanwhile, the Gerindra party, Golkar party, PPP, PAN, PKS, and the Democratic Party have 353 members supported by members of parliament. The lack of support in parliament means that decisions made by voting in plenary are bound to be lost.

The Madisonian approach to power separation and politics demonstrates how ambition can lead to extreme aggressiveness or fear.⁴¹ The power structure of political parties whose members are successfully elected to parliament determines the President's ability to administer the government. Government stability in a presidential political structure is preferably dominated by the party supporting the president in parliament.⁴² As a result, at the outset of his candidacy, the president requires the backing of political parties so that the position of political parties with members in the DPR can impact the effectiveness of decision-making for the elected President to carry out the government's policies.

The polarization of political parties before the election will typically last until the post-election government is implemented. Usually, two factions will form the supportive group and the opposition group.⁴³ Political parties will take a position between these two categories. Coalition partners who construct a presidential threshold as supporters of the President and Vice President candidates will find it easier to implement the government if the candidate they support is elected. The supporting party becomes the majority group in parliament.

The presence of opposition from outside the government is a contributor to alternative ideas and attitudes. With this position, a balance will be established so that government policies are not monopolized for the sake of power and are not in

⁴¹ Ros and Taylor, "Checks and Balances : The Concept and Its Implications for Corruption."

⁴² Triono, "Menakar Efektivitas Pemilu Serentak 2019."

⁴³ Saiful Ansori, "Maqashid Syariah Dan Praktik Sistem Presidential Threshold Di Indonesia:," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Dan Ekonomi Islam* 12, no. 1 (2020): 64-78, <https://doi.org/10.32505/jurisprudensi.v12i1.1539>.

the public's best interests. The government formed by democratic elections does not necessarily ensure the loss of power ego after being elected. Furthermore, the president's followers dominate parliament and are proponents of executive power. As a result, parliament's critical attitude must be maintained to create checks and balances between the government and the legislature.

Towards the 2024 election, the final composition of the coalition will be evident when the registration of presidential and vice presidential candidates has been carried out. Presidential candidacy, according to regulations, requires the bearer to have votes that meet the threshold requirements for presidential and vice presidential candidacy or the presidential threshold, namely obtaining seats of at least 20% (twenty percent) of the number of seats in the DPR or obtaining 25% (twenty-five percent) of the valid votes nationally in the previous DPR member elections, as stated in Article 222 of Law No. 7 of 2017 concerning Elections.

This means that if there are now 575 seats in parliament, the candidate pair for president and vice president must be supported by a political party or a coalition of political parties with a minimum of 20% or 115 seats in the DPR RI.

The registration period for the Presidential Candidate-Vice Presidential Candidate duo is set for October 19-25, 2023. Anies Rasyid Baswedan-Muhaimin Iskandar, the Presidential Candidate-Vice Presidential Candidate, registered on Thursday, October 19, 2023, supported by the NasDem Party with 59 seats in parliament, PKB with 58 seats, and PKS with 50 seats, bringing the total support to 167 seats. On the same day, Ganjar Pranowo and Mohammad Mahfud MD were registered as Presidential-Vice Presidential Candidates, sponsored by PDIP with 128 seats and PPP with 19, for 147 seats supported by both. Meanwhile, on Wednesday, October 25, 2023, presidential and vice-presidential candidates Prabowo Subianto and Gibran Rakabuming Raka officially registered as presidential and vice-presidential candidates with the KPU. The Gerindra alliance with 78 seats, Golkar with 85 seats, and PAN with 44 seats back the couple. Democrats have 54 seats. There are a total of 261 seats. Three political party coalition axes have met the threshold requirements for presidential and vice presidential candidacy and have registered their candidates till the closing of registration for the 2024 presidential election.

The presidential election battle, which has three axes of power, is distinct from the previous two elections. In a regular campaign with only two coalitions, the loser tends to present himself as the opposition to the winner who governs the government. Unless the political circumstances suggest otherwise, with the

existence of three coalition axes and the provisions of Article 6A Paragraph (3) of the 1945 Constitution that the presidential-vice presidential candidate pair who wins the contest must win more than 50 percent of the vote by getting at least 20 percent of the vote in each province and more than half of the total number of existing provinces, then if not If a pair gets votes as stated in Article 6A Paragraph (3) of the 1945 Constitution, of course, there will be a second round of presidential elections. Two rounds of presidential elections were held in 2004. Five pairs of presidential and vice presidential candidates were contesting at that time. The situation in the second round will undoubtedly affect the coalition map because only two contestants will compete again in the second round of elections. There may also be a change in the coalition's composition.

If there is a second round and a change in the composition of the coalition, parties may merge into another coalition that enters the second round. This situation then narrowed the composition of the coalition into two groups. Later, the party that wins the election will be the power holder. In contrast, the party that loses will act as the opposition outside of power, tasked with controlling power and providing alternative policies to those in power. With a working opposition, the government will become more careful in making decisions because the possibility of being questioned by the opposition becomes more open. This means that the presence of an opposition party can further dynamize the role of the DPR as an institution tasked with controlling government power, especially if the opposition party has numerical dominance in parliament.

On the other hand, if political parties who fail to elect their nominees to the presidency also fail to control parliament, control over power will deteriorate. The first condition is almost identical to Jokowi's first time of government, while the second situation is almost identical to Jokowi's second period of government. On the other hand, the opportunistic inclinations of coalition political parties can weaken the president's standing in a presidential government system that runs concurrently with a multiparty system.⁴⁴ The government becomes unstable because of the sectoral interests of each party that is part of and outside the coalition with a bargaining strategy.

⁴⁴ Ratnia Solihah, "Peluang dan Tantangan Pemilu Serentak 2019 Dalam Perspektif Politik," *Jurnal Ilmiah Ilmu Pemerintahan* 3, no. 1 (2018): 73, <https://doi.org/10.14710/jiip.v3i1.3234>. 79.

BUILDING GOODNESS WITH CHECKS AND BALANCES: A MAQASHID PERSPECTIVE

Sharia (Islamic law) regulations aim to be realized for the benefit (*maqashidi*).⁴⁵ When Islamic law was established, mujtahids were required to follow *maqashid sharia*.⁴⁶ *Maqashid Sharia* needs profit or advantage and prevents evil.⁴⁷ To construct a law, one must first grasp the objective of providing basic rules based on the Qur'an and Sunnah.⁴⁸

The process of law formation positions *maqashid al-sharia* as the main thing. In this context, *maqashid sharia* can be the goal expected from enacting the law itself.⁴⁹ Using the concept of *maqashid sharia* in understanding Islamic law can make Islamic law always relevant without being limited to space and time.⁵⁰

The substance of *maqashid al-sharia* is beneficial and can be classified according to its influence on human life. Benefits have three levels, namely:⁵¹ a. *dlaruriyah* (primary benefits). Primary benefit is a form of essential benefit that must be fulfilled. *Dlaruriyah* (primary) benefits are divided into five, reflected in *al-kulliyat al-khamsah*: first, *Hifdz Din*, Which means maintaining religious norms, both in terms of relationship with God and from a social perspective. Second, *Hifdz Nafs* protects the right to life of every individual and collective. Third, *Hifdz 'Aql* prevents mental defects, protecting the results of thinking power through creativity. Fourth, *Hifdz Nashl*; preserving the continuity of generations by making the marriage process easier, avoiding any policies that could break the continuity of life; Fifth, *Hifdz Mal*; develop people's economic resources and protect personal and public rights; b. *hajjiyah* (secondary) *hajjiyat* is a benefit that society needs to increase the stability of

⁴⁵ Asrul Hamid and Dedisyah Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid al-Syari'ah Approach," *Samarah* 5, no. 2 (2021): 1021-43, <https://doi.org/10.22373/sjkh.v5i2.7575>.

⁴⁶ Akmaludin Sya'bani, "Maqasid Al-Syari'ah Sebagai Metode Ijtihad," *El-Hikam: Journal of Education and Religious Studies* VIII, no. 1 (2015): 127-42.

⁴⁷ Hamim, "Hifz Al-Lisān As Maqasid Al-Shari'ah Al-Darūriyyah (Its Importance and Relevance in the Contemporary Era)."

⁴⁸ Ardhina Shafa Sipayung, "Maqashid Syari'ah Sebagai Pendekatan Dalam Hukum Islam," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (2022): 2605-16.

⁴⁹ Dan Yasid and Makhshushi Zakiyah, "Perspektif Maqashidus Syari'ah Menyikapi Dinamika Hukum Ketatanegaraan Islam," *Jurnal Hukum Lus Quia Iustum* 29, no. 2 (2022): 415-38, <https://doi.org/10.20885/iustum.vol29.iss2.art9>.

⁵⁰ Nasrulloh, "Maqasid Shari'ah Sebagai Pendekatan Sistem Dalam Hukum Islam," *De Jure, Jurnal Syariah Dan Hukum* 2, no. 2 (2010).

⁵¹ Abdurrahman Kasdi, "Maqashid Syari'ah Dan Hak Asasi Manusia (Implementasi Ham Dalam Pemikiran Islam)," *Penelitian* 8, no. 2 (2014): 247-68.

the order of life or to create better conditions; c. *tahsiniyah* (complementary). The benefit of *tahsiniyat* gives birth to a condition of the people close to perfection.⁵²

Sharia regulates the law and serves as the foundation for the order of human life. This foundation was established to monitor developments and accept them by changing situations. This is also true in the context of constitutional politics as a technique of governing. According to the Islamic political viewpoint, power is a way to attain goals through a *siyasa* process, which entails rules and regulations issued by government administrators to overcome a problem or as a response to a specific scenario to gain a benefit.⁵³ *Maqâshid al-sharîa* is the foundation of Islamic law, including constitutional law politics.⁵⁴

The constitution (Political Legal Document) is a contract and agreement between the people and the government that contains the principles of the state. Aside from that, the Constitution is a legal document with historical and philosophical connotations and an essential and strategic foundation for a country.⁵⁵ Every country is born with ideals that must be fulfilled. The main goal of the Indonesian state is stated in the constitution, specifically in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which states: "... to protect the entire Indonesian nation and all of Indonesia's blood, as well as to promote general welfare, educate national life, and participate in implementing world order..." This ideal is a type of advantage to be obtained.

In Islamic history, the Madinah Charter was born from a consensus on the same objectives in building a civil society to achieve similar aims among the Muhajirin, Anshor, and indigenous people. This political legal text is inextricably linked to the concept of sovereignty embodied in the State of Medina, namely that authority genuinely belongs to God and is granted to the state's leader (*ulil amri*) for the welfare of the people (*ummah*). This type of sovereignty gave birth to a form of democracy and nomocracy in the State of Medina, with Islamic doctrines serving as its *staatsfundamental norm* and the Medina Charter serving as the applicable

⁵² Sholahuddin Al-Fatih and Fitria Esfandiari, "Presidential Threshold in Indonesian Election: An Islamic Law Perspective," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 1 (January 20, 2022): 55–69, <https://doi.org/10.33474/yur.v5i1.14145>.

⁵³ Miskari, "Politik Hukum Islam Dan Maqasid Al-Syariah"; Ansori, "Maqashid Syariah Dan Praktik Sistem Presidential Threshold Di Indonesia:"

⁵⁴ Maimunah Maimunah, "Politik Islam Perspektif Maqashid Syariah," *El-Mashlahah* 8, no. 1 (2019): 16–29, <https://doi.org/10.23971/el-mas.v8i1.1093>.

⁵⁵ Himas Hakim, "Prinsip Konstitusionalisme Dalam Piagam Madinah dan Relevansinya Bagi Konstitusi Indonesia," *Journal of Islamic Law Studies* 2, no. 2 (2019): 41–61.

Grundnorm. As a legislative instrument, deliberation also serves as a check and balance on Ulil Amri's policies as the holder of the highest power.⁵⁶

Citizens benefit from applying constitutional principles by having the right to object to and provide feedback on state policies that will be implemented. Deliberation as a tool for oversight also gives every citizen more opportunity to voice their ambitions for developing the best policies based on that person's competence and scientific background. The Medina Charter's constitutionalism is relevant to the Indonesian constitution. A democratic system that creates legislative and executive officials creates checks and balances in a state organization. Of course, the checks and balances established between institutions are expected to realize the benefits and goals of the country.

In essence, comprehending modern constitutionalism is concerned with limiting authority, sometimes known as the principle of limited government. This means that when it comes to understanding constitutionalism, the authority to prohibit and procedures are specified, so that government power assures a government that is not arbitrary and responsible.⁵⁷

The compatibility of Islam and the fundamental concepts of statehood is founded on early Islamic teaching, embodied in the Medina Charter (*sohifah al-Madinah*). The doctrines of fairness (*al-adl*), egalitarianism (*al-musawah*), and deliberation (*syura*) can be implemented in the state practice of the State of Medina under this constitution. The concepts of Islamic nomocracy and the Pancasila rule of law place values defined as standard values or measures of value. The values found in the Qur'an and Sunnah form the foundation of Islamic nomocracy. Meanwhile, the Pancasila legal state makes the values contained in Pancasila the standard or measure of value, resulting in a likeness between these two notions that combines with the acceptance of the presence of standard values defined in written materials. Aside from that, these two notions bind God, humankind, religion, and the state together.

In the context of Islamic law, the objective of the law is human benefit (*maqashid shariah*).⁵⁸ When Islamic law was established, mujtahids were required to follow

⁵⁶ Lukman Santoso, "Eksistensi Taqin Dalam Negara Hukum Modern dan Relevansinya Dalam Dinamika Legislasi Di Indonesia," *El-Dusturie* 2, no. 1 (July 26, 2023), <https://doi.org/10.21154/el-dusturie.v2i1.6746>.

⁵⁷ Bactiar, "Esensi Paham Konsep Konstitualisme Dalam Konteks Penyelenggaraan Sistem Ketatanegaraan," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 6, no. 1 (2016): 122, <https://doi.org/10.32493/jdmhkdmhk.v6i1.342>.

⁵⁸ Hamid and Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach."

maqashid sharia.⁵⁹ *Maqashid Sharia* needs profit or advantage and prevents evil. To construct a law, one must first grasp the objective of providing basic rules based on the Quran and Sunnah.⁶⁰

Maqashid Sharia is prioritized in the legal formulation process. In this context, *maqashidus shari'ah* refers to the predicted outcome of the law's enactment.⁶¹ Using the *maqashid sharia* concept in understanding Islamic law can make Islamic law always relevant without being limited to space and time.⁶²

The substance of *maqashid al-sharia* is a benefit that can be classified according to its influence on human life. Benefits have three levels, namely⁶³: a. *dlaruriyah* (primary benefits). Primary benefit is a form of essential benefit that must be fulfilled. *Dlaruriyah* (primary) benefits are divided into five, reflected in *al-kulliyat al-khamsah*: first, *Hifdz Din*, Which means maintaining religious norms, both in terms of relationship with God and from a social perspective. Second, *Hifdz Nafs* protects the right to life of every individual and collective. Third, *Hifdz 'Aql* prevents halal (defects) in the mind, protecting the results of the power of thought in creativity. Fourth, *Hifdz Nashl*; preserving the continuity of generations by making the marriage process easier, avoiding any policies that could break the continuity of life; Fifth, *Hifdz Mal*; develop people's economic resources and protect personal and public rights; b. *hajjiyah* (secondary) *hajjiyat* is a benefit that society needs to increase the stability of the order of life or to create better conditions; c. *tahsiniyah* (complementary). The benefit of *tahsiniyat* gives birth to a condition of the people close to perfection.

Sharia is a law that governs the order of human life. These standards were undoubtedly established to monitor every change in life so that it can be accepted by changing conditions. This is also true in constitutional politics when elections and checks and balances are used to operate the government. According to the Islamic political viewpoint, power is a way to achieve goals through a *siyasa* process, which refers to rules and regulations issued by government administrators to overcome obstacles or as a solution to a specific scenario to obtain a benefit.⁶⁴ *Maqashidus shari'ah* is implemented to implement the values of the political teachings of Islamic

⁵⁹ Sya'bani, "Maqasid Al-Syari'ah Sebagai Metode Ijtihad."

⁶⁰ Sipayung, "Maqashid Syari'ah Sebagai Pendekatan Dalam Hukum Islam."

⁶¹ Yasid and Zakiyah, "Perspektif Maqashidus Syari'ah Menyikapi Dinamika Hukum Ketatanegaraan Islam."

⁶² Nasrulloh, "Maqasid Shari'ah Sebagai Pendekatan Sistem Dalam Hukum Islam."

⁶³ Kasdi, "Maqashid Syari'ah Dan Hak Asasi Manusia (Implementasi Ham Dalam Pemikiran Islam)."

⁶⁴ Miskari, "Politik Hukum Islam Dan Maqasid Al-Syariah."

law into national life.⁶⁵ This means that *maqâshid al-syarî'ah* is the basis for Islamic law, including the politics of constitutional law in it.⁶⁶

One of the products of studies on the development of *maqashid al-shari'ah* is to develop it and expand its scope in regulating public life, especially in the state. Apart from the five standard things put forward by the ulama, namely *hifz al-din*, *hifz al-nafs*, *hifz al-'aql*, *hifz al-mal*, and *hifz al-nasl*, one thing emerged, namely *hifz ummah* (unity of the people). Government, state, and political instruments are the pillars that organize and regulate people's lives in all aspects. Everything related to state administration must be as safe as possible to avoid damage. Maintaining welfare can guarantee the realization of *hifz ummah* (citizen unity) to avoid disintegration and create an ideal state order, namely *balдах thayyibah*.

Concentrating power can foster the creation of sectoral egos, leading to misuse of authority and, eventually, arbitrary government. A notion of balanced oversight between state institutions as administrators of power is required to grow state administration.⁶⁷ One of the fundamental ideas in constitutional practice for reducing abuse of power is the concept of checks and balances. For the government to function correctly, institutions' positions in carrying out their tasks and authority must be horizontal, not vertical. Balanced monitoring efforts across state institutions can thus be carried out effectively.⁶⁸

Political parties' primary purpose is to have fewer representatives in parliament than feasible. Representing political parties in parliament is a way to help the country achieve its aims. Similarly, the existence of *sharia* is a means to help the country and state while avoiding harm (*maqashid al-daulah*).⁶⁹ This also applies to applying the checks and balances principle following simultaneous elections. Winning an election or exercising oversight over the government is not a battleground for power but rather a *siyasaḥ shar'iyah* or managing general government problems by the spirit of Islamic teachings to provide advantages and avoid harm.

There is a pattern in which the supporting party that wins the presidential election acts as the holder of power, while the party that loses acts as the opposition,

⁶⁵ Miskari.

⁶⁶ Maimunah, "Politik Islam Perspektif Maqashid Syariah."

⁶⁷ Wiyanto, "Pemakzulan dan Pelaksanaan Mekanisme Checks and Balances Dalam Sistem."

⁶⁸ Fudin, "Aktualisasi Checks and Balances Lembaga Negara: Antara Majelis Permusyawaratan Rakyat dan Mahkamah Konstitusi."

⁶⁹ Jayusman Jayusman et al., "The Development of Startup Coop in Indonesia: An Overview Maqashid al-Sharia," *Justicia Islamica* 20, no. 1 (2023): 135-54, <https://doi.org/10.21154/justicia.v20i1.4884>.

entrusted with regulating power and giving alternative policies to those in power so that the people have policy alternatives. Opposition can take the form of words, actions, and other forms of input that straighten out and push things along the right path. Criticizing and monitoring the direction of government policy so that it runs on rails by the law is the true essence of opposition.⁷⁰

Parliament has a supervisory function concerning the president, serving as a check and balance. The term "supervision" does not always refer to the legislature's suspicion of the president. The checks and balances function might be implemented as a monitoring model to strengthen governance by the constitution. Furthermore, it is accepted that checks and balances must be subjected to political systems and judicial scrutiny.⁷¹

Article 20A (2) of the 1945 Constitution stipulates that the DPR has the power of interpellation, the right of inquiry, and the right to voice opinions when carrying out legislative, budgetary, and supervisory tasks. This demonstrates that the DPR's rights can be used as a check and balance in a presidential democratic government. However, according to Saldi Isra, using these three rights (particularly the right to inquiry and interpellation) has strained the DPR-President relationship. Evidence indicates that the right of interpellation, in particular, appears to be overused. If used correctly, it may be okay to dispute the right in depth. In the experience so far, the right of interpellation is often used as if to intimidate the government.⁷²

According to Islamic teachings, the content of maqashid syar'iyah, or the goal of the law, is the betterment of humanity. This begins with the realization that responsibility was made to help people and that there is not a single law of God that does not have a purpose.⁷³ In the doctrine of separation of powers, checks and balances have a strategic position and even become determinants in relations between state institutions (especially central state institutions). This aims to ensure that each state institution controls and balances the power of other state institutions. It is envisaged that this mutually controlled balance will prevent dominance and misuse of power in each state institution.⁷⁴

⁷⁰ Munadi, "Oposisi dan Koalisi: Potret Kultur Demokrasi Indonesia," *Resolusi* 2, no. 1 (2019): 1–20.

⁷¹ Saldi Isra, "Hubungan Presiden Dengan DPR," *Jurnal Konstitusi* 10, no. 3 (2013): 399–416.

⁷² Saldi Isra, *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia* (Jakarta: Rajawali Pers, 2010).

⁷³ Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," *Samarah* 4, no. 2 (2020): 398–415, <https://doi.org/10.22373/sjhk.v4i2.7052>.

⁷⁴ Lailam, "Problem Dan Solusi Penataan Checks and Balances System Dalam Pembentukan dan Pengujian Undang-Undang Di Indonesia (Problem and Solutions for Arranging of The Checks and Balances System in The Process of Making Law and Constitutional Review in Indonesia)."

Much can be learned from ethically and culturally constructed religion regarding its application and implications for government.⁷⁵ The underlying principle of maqashid shari'ah is that checks and balances in government are an attempt to realize goodness and avert evil. If the checks and balances mechanism is used correctly, that is, by maqashid syar'iyah, the benefit of the nation will emerge; however, if it is used to intimidate only as a bargaining strategy that deviates from the state's goals, it indicates a deviation from the principles of checks and balances and maqashid syar'iyah because it does not aim at the benefit.

CONCLUSION

Based on the discussion in this article, efforts to create an efficient and effective general election system that operates concurrently with a presidential government system based on checks and balances still depend on the position of political party coalitions. The notion of concurrent post-election checks and balances, which is part of *maqashid siyasa* to benefit the ummah, will be challenged by the sectoral interests of each party in the coalition and outside the alliance. Bargaining techniques based on checks and balances can undermine government stability and lead to deviations from the state's benefit and objectives. Therefore, it is necessary to strengthen the design of institutional relationships based on *maqashid al-daulah al-siyasah*.

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⁷⁵ Salameh, "The Principle of Separation of Powers between Sharia and the Positive Law: A Case Study on the Constitutional System of Saudi Arabia."

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