

# Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective

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## Abstract

Post-general election reconciliation takes place to prevent polarisation and ongoing conflict after the general election in Indonesia. This research analyses and formulates post-2024 election reconciliation as a constitutional convention that must be implemented to maintain national unity and support progressive legal culture practices. The progressive legal culture refers to the character and culture of Indonesian society, emphasising the family dimension and noble values in society. This research is normative legal research, prioritising conceptual and statutory approaches. The research results confirm that constitutional conventions, as unwritten laws that must be obeyed, should fulfil several characteristics: repeated constitutional acts, substantially based on political ethics and constitutional morality, and having ethical binding force. When recognised as a constitutional convention, post-election reconciliation should serve as a moral and ethical framework that guides political actors and society in maintaining unity. The implication of post-election reconciliation as a constitutional convention is that it has ethical validity and must be implemented; however, if such reconciliation is not observed, it cannot be fair for the judicial institution. This research recommends the institutionalisation of post-election reconciliation as a constitutional convention, ensuring that Indonesia's legal culture prioritises morality and minimises societal divisions, safeguarding national unity and preventing social disintegration.

## 1. Introduction

General elections serve as a mechanism for a society to choose the most capable leaders to govern a country. General elections also play a vital role in ensuring a peaceful and sustainable leadership transition.<sup>1</sup> In Robert Dahl's view, elections are a vital instrument of democratisation, enabling the selection of leaders through public participation.<sup>2</sup> More broadly, elections are a defining feature of a democratic country—one that can hold fairness and integrity in its electoral process, demonstrating its commitment to democratic principles.<sup>3</sup>

While elections play a crucial role in a democracy, particularly in selecting national leaders, they can also lead to societal divisions. One of the challenges is the emergence of deep-seated political loyalties, where supporters of losing candidates—especially those backing the defeated presidential and vice-presidential contenders—continue to strongly oppose the elected leaders. When this opposition takes a constitutional path, serving as a critical voice that holds the government accountable, it strengthens democracy by ensuring checks and balances.<sup>4</sup> However, the real concern arises when opposition turns into societal discord, fuelled by hate speech, hoaxes, and other anarchist attitudes.<sup>5</sup>

The phenomenon of post-election community division became particularly evident in 2019. With only two candidates contesting the presidential and vice-presidential elections, political polarisation intensified, deepening societal divides. This divide was further exacerbated by the role of social media, which became a powerful tool for

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<sup>1</sup> Muhammad Syafei and Muhammad Rafi Darajati, "Design of General Election in Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 16, no. 1 (2020): 97–111, <https://doi.org/10.14710/lr.v16i1.30308>.

<sup>2</sup> Jamaluddin Jamaluddin, "The Settlement of Election Disputes By Bawaslu Reviewed From the Indonesian Justice System," *Interdisciplinary Social Studies* 2, no. 2 (2022): 521–31, <https://doi.org/10.55324/iss.v2i2.121>.

<sup>3</sup> Teguh Prasetyo, *Pemilu Dan Etika Penyelenggaraan Pemilu Bermartabat* (Bandung: Nusa Media, 2019).

<sup>4</sup> Christina Martha Lewerissa et al., "Contestious Dynamics of Politics That Occurred in the Singular Election," *Linguistics and Culture Review* 5, no. S1 (2021): 363–75, <https://doi.org/10.21744/lingcure.v5ns1.1402>.

<sup>5</sup> Bambang Hartono, I Ketut Seregig, and Budi Wibowo, "Strategies in Countering Hoax and Hate Speech in Indonesia," *Sociological Jurisprudence Journal* 4, no. 2 (2021): 134–44, <https://doi.org/10.22225/scj.4.2.2021.134-144>.

spreading misinformation and fueling tension.<sup>6</sup> This is evidenced by data from the Ministry of Communication and Information, revealing that in 2019, 3,356 cases of hoax information on social media were dominated by community polarisation triggered by the 2019 elections.<sup>7</sup>

The polarisation of society that occurred in the 2019 elections eventually led the President and Vice President-elect, Joko Widodo and Ma'ruf Amin, to finally give positions to the President and Vice President candidates who were not elected and became competitors in the 2019 elections, namely Prabowo Subianto as the Minister of Defence and Sandiaga Uno as the Minister of Tourism and Creative Economy. The effort to appoint 2019 election competitors to enter the cabinet is one of the progressive steps of the President and Vice President-elect, Joko Widodo and Ma'ruf Amin, to reconcile in the community as a result of the division of the community after the 2019 election.

Post-election reconciliation, as observed in Indonesia following the 2019 elections, presents a compelling area of study, especially regarding efforts to maintain national unity. Maintaining national unity is essential, especially during election years. The phenomenon of polarisation in society during and after elections must be the main orientation for maintaining national unity. Quoting Myron Weiner's view, one of the efforts to maintain national integration is to maintain integration in the political realm.<sup>8</sup> Integration in the political domain does not mean discrediting differences in political choices but rather an effort to continue to knit the nation's unity amid political differences. This implies that post-election reconciliation is important to anticipate polarisation that divides the nation.

Post-election reconciliation is important not only because of the polarisation phenomenon in the 2019 elections in Indonesia but also because it serves as an

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<sup>6</sup> Mohammad Nur Habibi and Sunjana, "Analysis of Indonesia Politics Polarization before 2019 President Election Using Sentiment Analysis and Social Network Analysis," *International Journal of Modern Education and Computer Science* 11, no. 11 (2019): 22–30, <https://doi.org/10.5815/ijmecs.2019.11.04>.

<sup>7</sup> Kominfo, "Kominfo Temukan 3.356 Hoaks, Terbanyak Saat Pemilu 2019," 2019.

<sup>8</sup> Ladlul Muksinin, "Sishankamrata in the Indonesian State Defense and Security System from the Beginning of Independence to the Reform Period," *Walisongo Law Review (Walrev)* 2, no. 2 (2020): 115, <https://doi.org/10.21580/walrev.2020.2.2.6587>.

example for society, reinforcing the idea that once the elections are over, the focus must shift towards national unity. Rather than remaining fixated on the presidential and vice-presidential candidates, efforts should be directed at rebuilding solidarity for the country's progress. This is particularly important as sentiment among grassroots supporters persist after the election period. Therefore, reconciliation is expected to serve as a means to regain the momentum of national unity post-election.

The practice of post-election reconciliation has indeed been carried out by countries worldwide, such as the United States, which is referred to as a representation of democratic and republican states globally. There is a custom in the United States where the unsuccessful presidential candidate then congratulates the elected president and delivers a speech to their supporters, stating that the election is over and that the progress and welfare of the American people are paramount, thus emphasising the need for unity. In practice, this was once done by Albert Arnold Gore Jr (Al Gore), who congratulated the elected president, George W. Bush, and delivered a speech to his supporters on December 13, 2001, to emphasise unity for the American people.<sup>9</sup> The example in the United States above shows that reconciliation is important as it can reunite a previously divided society after the election.

The importance of post-election reconciliation in constitutional law needs to be placed as part of the constitutional convention. Wade and Godfrey Phillips provide a view that constitutional conventions are part of constitutional practices that are not specifically regulated in the rule of law but have strong binding force and must be implemented.<sup>10</sup> The argument that the constitutional convention must be implemented is because it contains constitutional values and propriety, so its existence must be maintained even though it does not get special arrangements in positive law. Post-election reconciliation as a state convention is also relevant to the idea of progressive legal culture proposed by Satjipto Rahardjo. Progressive legal culture is a form of community legal behaviour emphasising the ideals of law, morals, and community civilisation, even though legal

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<sup>9</sup> Madan Prasad Baral, "Fear as a Political Propaganda: A Study on Politics of Fear by Al Gore," *Journal of Nelta Gandaki* 6, no. 1-2 (2023): 58-65.

<sup>10</sup> Tom Ginsburg and Isabel Álvarez, "It's the Procedures, Stupid: The Success and Failures of Chile's Constitutional Convention," *Global Constitutionalism* 1, no. 1 (2023): 1-10, <https://doi.org/10.1017/S2045381723000242>.

norms do not specifically regulate these matters.<sup>11</sup> Progressive legal culture highlights the attitude of *mesu budi*, where ethics and morals become the top priority in legal practices.

Research has been conducted on post-election polarisation and its various efforts: (i) Kiftiyah (2019) specifically discusses reconciliation efforts after identity politics in the 2019 elections.<sup>12</sup> The novelty of Kiftiyah's research (2019) is that reconciliation is important to prevent community division, especially identity politics in the 2019 elections. Further research was also conducted by (ii) Kusuma et al. (2022), focusing on the role of socio-culture in post-2019 election reconciliation efforts.<sup>13</sup> The novelty of Kusuma's research, et.al. (2022) lies in the important role of socio-cultural aspects in maintaining the spirit of nationalism and social integration of society, especially after the 2019 elections. Research by (iii) Hidayat and Hidayah (2023) focuses on Islam and identity politics ahead of the 2024 elections.<sup>14</sup> The novelty of Hidayat and Hidayah's (2023) research is the need for mitigation efforts before the division of society caused by the 2024 elections, especially those that emphasise Islam and identity politics.

Research on the importance of reconciliation efforts in the face of potential post-election polarisation has also been conducted by several academics in some countries: research by (iv) Robert B. Talisse (2023) specifically discusses depolarisation and reconciliation.<sup>15</sup> The novelty of Robert B. Talisse's research is that reconciliation is needed, especially at the political elite level, to prevent polarisation. Besides, social and cultural aspects also need to be encouraged as a major factor in preventing post-

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<sup>11</sup> Muhammad Harun, "Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law," *Walisongo Law Review (Walrev)* 1, no. 2 (2019): 195–220, <https://doi.org/10.21580/Walrev/2019.1.2.4815>.

<sup>12</sup> Anifatul Kiftiyah, "Upaya Rekonsiliasi Politik Identitas Pasca Pelaksanaan Pemilu 2019 Di Indonesia Reconciliation Efforts of Identity Politics Post of Election 2019 in Indonesia," *Jurnal Analis Kebijakan* 3, no. 1 (2019): 63–75.

<sup>13</sup> Jerry Indrawan, Anwar Ilmar, and Ardli Johan Kusuma, "Rekonsiliasi Politik Pasca Pilpres 2019: Menumbuhkan Semangat Kebangsaan Dalam Konstruksi Sosial Budaya," *Journal of Political Issues* 4, no. 1 (2022): 50–61.

<sup>14</sup> Taufik Hidayat and Miftahul Hidayah, "Islam Dan Politik Identitas Menjelang Pemilu 2024," *Jurnal Agama Dan Perubahan Sosial* 7, no. 2 (2024): 267–83.

<sup>15</sup> Robert B. Talisse, "Depolarization Without Reconciliation," *A Journal of Politics and Society* 35, no. 4 (2023): 426–49.

election polarisation. Further research was also conducted by (v) Daniel et al. (2023), discussing election practices in Nigeria, especially in Kwara state.<sup>16</sup> The novelty of the research is that efforts to prevent post-election polarisation in Kwara State, Nigeria, are carried out by promoting social harmony and public understanding of the importance of national unity.

In the context of previous research, five studies have been conducted, but specifically, research on post-2024 election reconciliation efforts in Indonesia as a constitutional convention has not been comprehensively discussed. This lacuna emphasises that my research is an original and important initiative to fill this gap. As such, this research is expected to significantly contribute to broadening our understanding of the dynamics of post-election reconciliation and its implications for political and constitutional stability in Indonesia.

## **2. Problem Statement**

This research specifically tries to accommodate the gap between post-election reconciliation efforts as a strategy to maintain national unity. Still, post-election reconciliation efforts have not received special arrangements in positive law. Therefore, this research specifically aims to analyse and formulate post-election reconciliation as a constitutional convention that must be implemented to maintain national unity and implement progressive legal culture. This research aims to answer three problem formulations: (i) what are the characteristics of constitutional conventions that can be enacted in Indonesia? (ii) what are the orientations and implications of the 2024 post-election reconciliation as a constitutional convention? and (iii) what are the efforts of the 2024 post-election reconciliation as a constitutional convention in implementing progressive legal culture?

## **3. Methods**

This research employs a normative legal research method involving the analysis of authoritative legal documents, especially in the form of laws and regulations and court

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<sup>16</sup> A. J. Ogundare, Y., Seriki, A. I., & Edun, "An Assessment of the 2023 Presidential Election in Nigeria: A Study of Kwara State," *Hasanuddin Journal of Strategic and International Studies* 1, no. 2 (2023): 32–38.

decisions, with an in-depth analysis of legal principles, theories, and concepts.<sup>17</sup> The concepts are related to constitutional conventions and post-election reconciliation, while the progressive legal theory is used. Progressive legal culture is oriented on values and character that underlie legal behaviour based on values and legal ideals recognised by society. In this study, progressive legal culture is used as an analytical tool to examine the existence of post-election reconciliation in Indonesia, which reflects the values and character of Indonesian society. The primary legal material in this research is the 1945 Constitution of the Republic of Indonesia. Secondary legal materials include journal articles, books, and various research results discussing constitutional conventions, political reconciliation, and progressive law. Non-legal materials include law and language dictionaries while the approaches consist of conceptual and statutory.

#### **4. Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective**

##### **4.1. Characteristics of Constitutional Conventions**

The term constitutional convention is not a foreign term in the field of constitutional law studies. State conventions are often explained as complementing a country's enforceability of positive legal norms. From a constitutional perspective, if the basic law of a country is a legal norm, state practices that bind and complement the validity of a country's basic law can be considered a state convention.<sup>18</sup> From an etymological perspective, constitutional convention comes from the word convention, which, according to Black's Law Dictionary, means a legal obligation that is not directly affirmed in legal norms but is recognised as something that exists in legal practice.<sup>19</sup> This confirms that by referring to the definition of convention in Black's Law Dictionary, constitutional conventions can be considered unwritten constitutional legal obligations but are recognised as something that exists in constitutional practice.

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<sup>17</sup> Tunggul Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

<sup>18</sup> Kahn Peter and Weissglas Dov, "Proposed Legal Reforms in Israel: Are Israel's 'Constitutional Conventions' in Jeopardy?," *Judicature International* 1, no. 1 (2023): 1-6.

<sup>19</sup> Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (Minnesota: West Publishing Co, St. Paul, 2019).

The understanding of constitutional conventions is strengthened by Jimly Asshiddiqie's perspective, which defines them as unwritten laws.<sup>20</sup> They are considered unwritten laws because they are not explicitly codified in positive legal norms, yet their validity is recognised and implemented based on constitutional practice. The term unwritten law is more appropriate to identify a state convention because constitutional law scholars debate whether constitutional conventions should be classified as law. From a legal positivist standpoint, the law must be formally written and enacted by authorised officials, challenging the classification of constitutional conventions as law within this framework.

The view that constitutional conventions are not considered law is deemed inappropriate because this view fails to understand the difference between constitutional conventions and constitutional customs. State conventions, although unwritten, have binding characteristics even though their binding power is restricted to ethical binding power and has no legal consequences.<sup>21</sup> This emphasises that non-observance of a constitutional convention can lead to an inappropriate constitutional practice. The view of the constitutional convention is certainly different from the constitutional custom. State customs, or in other terms known as constitutional customs, is a state practice carried out repeatedly because it is considered a form of prevalence or generality.<sup>22</sup> In contrast to constitutional conventions, which are characterised by ethical binding force, constitutional customs do not have any binding force, and they are considered to be something common or customary in constitutional practice.

The importance of constitutional conventions to be carried out in tandem with the implementation of positive legal norms in the field of state administration—the constitution—is also reinforced by Bagir Manan's view emphasising that constitutional conventions are important to run because they have the nature to complement, revive,

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<sup>20</sup> Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: Bhuana Ilmu Populer, 2007).

<sup>21</sup> Mary Sarah Bilder, "The Soul of a Free Government: The Influence of John Adams's A Defence on the Constitutional Convention," *Journal of American Constitutional History* 1, no. 1 (2023): 1–40, <https://doi.org/10.59015/jach.axbf8835>.

<sup>22</sup> David E Pozen, "The Common Law of Constitutional Conventions," *California Law Review* 112, no. 1 (2024): 3–7.



and even perfect practices that are expressly stated in positive legal norms.<sup>23</sup> Such a view also clarifies the existence of constitutional conventions, which, in practice, must be carried out as a complement to positive legal norms.<sup>24</sup> Bagir Manan's view above is also in line with A.V. Dicey's perspective, emphasising that state conventions are broadly interpreted to include all rules (in this case, legal norms) and practices that directly or indirectly influence a state's administration. More explicitly, A.V. Dicey also emphasised that constitutional conventions cannot be understood as ordinary practices in state administration as they contain political ethics and constitutional morality.<sup>25</sup> Although A.V. Dicey did not specifically and comprehensively emphasise political ethics and constitutional morality in his work, Ronald Dworkin argues that understanding the law, particularly the constitution, requires a moral reading or reasoning to fully grasp its intent. Following this view, political ethics and constitutional morality can be seen as integral to a comprehensive understanding of the Constitution, including the moral values it embodies.<sup>26</sup>

A.V. Dicey's perspective, which highlights political ethics and constitutional morality as the foundation of constitutional conventions, can be a primary reference in determining their characteristics. While some constitutional law experts acknowledge the significance of constitutional conventions, there are still different views on their defining features. Dahlan Thaib et al., for example, provide several characteristics of state conventions:<sup>27</sup> (i) in the realm or field of state administration, (ii) applying, growing, and followed in the practice of organising the state administration, (iii) an unwritten norm of the constitution, (iv) state conventions do not have legal implications so that violations of state conventions cannot be adjudicated by judicial institutions.

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<sup>23</sup> Franqois Steward Rawung, Dani Robert Pinasang, and Coby E M Mamahit, "Konvensi Ketatanegaraan Sebagai Salah Satu Sumber Hukum Tata Negara Indonesia," *Lex Administratum* 8, no. 3 (2020): 190.

<sup>24</sup> Mei Susanto, *Perkembangan Konseptual Dan Eksistensi Konvensi Ketatanegaraan Pasca-Perubahan Konstitusi, Undang: Jurnal Hukum*, vol. 4, 2021, <https://doi.org/10.22437/ujh.4.2.403-439>.

<sup>25</sup> Toar Neman Palilingan Rivana Tesalonika Troreh, Rumokoy, Donald A, "Praktik Konvensi Ketatanegaraan Terhadap Masa Jabatan Jaksa Agung Di Indonesia," *Lex Privatum* 9, no. 4 (2023): 6–9.

<sup>26</sup> Kenneth Einar Himma and Brian Bix, *Law and Morality*, ed. Kenneth Einar Himma and Brian Bix, *Law and Morality* (Routledge, 2017), <https://doi.org/10.4324/9781315092003>.

<sup>27</sup> Dahlan Thaib and Ni'matul Huda Hamidi, Jazim, *Teori Dan Hukum Konstitusi* (Jakarta: Yayasan Mutiara Tauhid, 2005).

Referring to the views of Dahlan Thaib et al. above, the four characteristics put forward by Dahlan Thaib et al. do not specifically and directly indicate the difference between constitutional conventions and constitutional customs. To distinguish specifically between constitutional conventions and constitutional customs, the characteristics of constitutional conventions as proposed by Dahlan Thaib et al. must be added with aspects of political ethics and constitutional morality as proposed by A.V. Dicey as the main requirements and characteristics of a constitutional convention that distinguishes it from constitutional customs. Referring to the above views, the author proposes that the characteristics of a state convention must include: (i) a state action that arises and is carried out repeatedly, (ii) in the realm or field of state administration, (iii) applying, growing, and followed in the practice of state administration, (iv) an unwritten norm of the constitution, (v) substantially based on political ethics and constitutional morality, and (vi) having ethical binding power, which does not have legal implications so that violations of state conventions cannot be tried by judicial institutions.

#### **4.2. Post-Election Reconciliation in 2024 as a Constitutional Convention: Orientation and Implications**

The term reconciliation refers to Kamus Besar Bahasa Indonesia (KBBI), which is generally understood as an action to resolve differences or restore the original condition before the relationship between friends and foes.<sup>28</sup> Based on the definition of reconciliation according to KBBI above, it can be simply understood that reconciliation means to restore friendly or fraternal relations after a division. In the political context, reconciliation is often carried out after mass conflicts or actions that socially trigger riots or have implications for the nation's disintegration.<sup>29</sup> This is often identified with reconciliation as a post-conflict effort to restore social harmonisation.

The concept of reconciliation remains relevant to Indonesia's 2024 elections. Although polarisation may not be as extreme as in 2019, reconciliation should still be a priority,

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<sup>28</sup> Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

<sup>29</sup> Esti Zaduqisti et al., "On Being Moderate and Peaceful: Why Islamic Political Moderateness Promotes Outgroup Tolerance and Reconciliation," *Archive for the Psychology of Religion* 42, no. 3 (2020): 359–78, <http://doi.org/10.1177/0084672420931204>.

particularly in the post-election period. Unlike the 2019 elections, which featured only two competing candidates and deepened societal divides, the 2024 presidential race includes three candidate pairs: (i) Anies Baswedan-Muhaimin Iskandar, (ii) Prabowo Subianto-Gibran Rakabuming Raka, and (iii) Ganjar Pranowo-Moh. Mahfud MD. While having three candidates may reduce the risk of severe polarisation compared to a two-candidate race, divisions can still emerge.<sup>30</sup>

In 2019, polarisation was largely driven by identity politics. However, in 2024, the primary source of division stemmed from political alignments, particularly in relation to Joko Widodo, who was president. A primary factor is the widespread perception that the President supported his son, Gibran Rakabuming Raka, as a vice-presidential candidate. This led to a political split between those who supported Joko Widodo and those who opposed him. Voters critical of the President were likely to rally behind either Anies Baswedan-Muhaimin Iskandar, who campaigned on a platform of change, or Ganjar Pranowo-Moh. Mahfud MD, who emphasised improvements. This confirms that the potential for polarisation in the 2024 elections was more oriented towards political attitudes between those aligned with the current administration and those advocating for an alternative direction.

Second, polarisation in the 2024 elections could occur over the planned relocation of Indonesia's capital from Jakarta to Nusantara Capital City (Ibu Kota Nusantara/IKN). This can be understood because the Prabowo Subianto-Gibran Rakabuming Raka and Ganjar Pranowo-Moh Mahfud MD pairs are pro-capital relocation to IKN. In contrast, while Anies Baswedan-Muhaimin Iskandar has never explicitly rejected the relocation, their stance suggests a preference for keeping the capital in Jakarta—effectively signalling opposition to or at least a delay in the transition.

Third, another potential source of polarisation revolves around the integrity of the 2024 elections. One faction believes the election process was marred by fraud, while the other views it as being conducted according to the constitutional mandate. This divide gained traction when the right of inquiry was initially proposed by presidential

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<sup>30</sup> Moch. Nurhasim, "Potensi Pelanggaran Etik Pada Pemilu Paralel 2024," *Etika Dan Pemilu* 7, no. Juni (2021): 25–45.

candidate Ganjar Pranowo and his supporting party, later gaining interest from Anies Baswedan-Muhaimin Iskandar and their allies. The right of inquiry was intended to investigate alleged election fraud in-depth. As a result, the debate is likely to intensify between those advocating for the inquiry and those opposing it.

The potential of the above three polarisations seen as a phenomenon after the 2024 elections should be comprehensively addressed, as they could potentially lead to societal divisions and even trigger anarchic actions in the real world and online.<sup>31</sup> In the digital space, cyber-aggression and criminal behaviour could escalate rapidly, particularly in an era shaped by the Industrial Revolution 4.0 and Society 5.0, as the digital realm has become a "new world" for expressing frustrations, including those stemming from political contestation.<sup>32</sup> Richard Susskind highlighted this global phenomenon, noting that digitalisation fundamentally transforms political and legal practices.<sup>33</sup>

The potential for post-2024 election polarisation, both online and in society, needs certain efforts to minimise the potential for post-2024 election polarisation. One of the approaches is a political reconciliation, which has been implemented in Indonesia—most notably after the 2019 elections when Joko Widodo appointed his former rivals, Prabowo Subianto, as Minister of Defence and Sandiaga Uno as Minister of Tourism and Creative Economy. However, reconciliation should not be narrowly defined as simply appointing political opponents to government positions.

Instead, post-election reconciliation should take the form of structured political and legal dialogue, where winning and losing parties come together in a public forum. Ideally, this reconciliation process should be broadcast live, demonstrating to the public that the electoral contest has concluded and that all sides are committed to national unity. The best time for such a reconciliation event would be after the General

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<sup>31</sup> Dicky Eko Prasetyo Tinambunan, Hezron Sabar Rotua, "Meme: Upaya Rekonsiliasi 4.0 Dalam Pemilihan Umum 2019," *Masalah-Masalah Hukum* 49, no. 1 (2020): 61, <https://doi.org/10.14710/mmh.49.1.2020.61-70>.

<sup>32</sup> Ahmad Yani Anshori and Landy Trisna Abdurrahman, "Constitutional Contestation of the Islamic State Concept in the Indonesian Parliament 1956-1959," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 278-316, <https://doi.org/10.18860/j-fsh.v16i2.29572>.

<sup>33</sup> Richard Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford: Oxford University Press, 2015).

Election Commission (KPU) determines the elected president and vice president and after any election disputes are resolved by the Constitutional Court (MK).

By visibly bringing opposing parties together in a spirit of unity, this form of reconciliation can help ease tensions, reduce societal divisions, and set a powerful example that the nation must move forward together—prioritising unity and integrity over lingering political rivalries.<sup>34</sup>

The polarisation in the 2024 general election is evidenced by campaigns tending towards hate speech, especially on social media, as emphasised in the following table.

**Table 1.** The Percentage of Social Media with Hate Speech in the 2024 General Election

No	Media Used in Hate Speech in the 2024 General Election	Percentage (%)
1.	Twitter	51.2%
2.	Facebook	41.15%
3.	Instagram	3.34%

(Source: Monash University Research Team)<sup>35</sup>

The table highlights the spread of hate speech across various social media platforms in the 2024 general election, which can significantly contribute to societal polarisation. The practice of post-election reconciliation in Indonesia, as happened in the 2019 elections, can serve as a reference for a state convention. Bagir Manan's view suggests that a state convention emerges as a response to certain political phenomena, evolving through continuous practice when deemed beneficial and complementary to positive legal norms.<sup>36</sup> As stated by A.V. Dicey, one of the important aspects of constitutional conventions is the emphasis on political ethics and constitutional morality. From the various views above, the author concludes that a state practice can be called a state convention when it fulfils several aspects: (i) a state action that arises and is carried out repeatedly, (ii) in the realm or field of state administration, (iii) applying, growing,

<sup>34</sup> Habibi and Sunjana, "Analysis of Indonesia Politics Polarization before 2019 President Election Using Sentiment Analysis and Social Network Analysis."

<sup>35</sup> Aliansi Jurnalis Independen, "Kampanye Pemilu 2024, Ujaran Kebencian Terhadap Kelompok Minoritas Meningkat," 2024.

<sup>36</sup> Mei Susanto et al., "Should the Muslim President Become a Constitutional Convention in Indonesia? Based on Constitutional Debates about Islam and State, and the Constitutional Practice," *Cogent Social Sciences* 9, no. 1 (2023): 3–4, <https://doi.org/10.1080/23311886.2023.2196815>.

and followed in the practice of state administration, (iv) an unwritten norm of the constitution, (v) substantially based on political ethics and constitutional morality, and (vi) having ethical binding power, which does not have legal implications so that violations of state conventions cannot be tried by judicial institutions.

Referring to the importance of post-election reconciliation as a constitutional convention, it is necessary to analyse that it has fulfilled the six characteristics of a constitutional convention. Post-election reconciliation is a state action that arises and is carried out repeatedly, is in the realm or field of state administration, applies, grows, is followed in state administration, and is an unwritten norm of the constitution. This can be proven by the fact that post-election reconciliation is not regulated in the provisions of laws and regulations. Even so, the non-regulation of post-election reconciliation in the provisions of laws and regulations emphasises the existence of post-election reconciliation as a constitutional convention because constitutional conventions are unwritten and complement the validity of constitutional norms (basic laws).<sup>37</sup>

Moreover, post-election reconciliation is also based on political ethics and constitutional morality, emphasising the responsibility of both winning and losing parties to sit together while showing a spirit of unity. Post-election reconciliation as a constitutional convention has an ethical binding force, so it does not have legal implications, and violations of constitutional conventions cannot be tried by judicial institutions.

Based on the above description, post-election reconciliation can be categorised as a constitutional convention oriented towards prioritising aspects of political ethics and constitutional morality as well as being an example for the community that after the election, all citizens are one single nation—Indonesia. Electoral competition exists only during the voting period, but once the process concludes, unity should take precedence. The practice of post-election reconciliation as a constitutional convention carries ethical validity. However, because it remains an unwritten constitutional

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<sup>37</sup> David M. Farrell et al., “The Effects of Mixed Membership in a Deliberative Forum: The Irish Constitutional Convention of 2012–2014,” *Political Studies* 68, no. 1 (2020): 54–73, <https://doi.org/10.1177/0032321719830936>.

practice, its implementation cannot be judged by a judicial institution.

### 4.3. Post-election Reconciliation 2024: Orientation of Progressive Legal Culture in Maintaining National Unity

The importance of reconciliation as an effort to maintain national unity after the election is principally relevant to the idea of progressive law as proposed by Satjipto Rahardjo. For Satjipto Rahardjo, progressive law means law prioritising all components and aspects, ensuring the law can maximally bring happiness to society.<sup>38</sup> This is based on Satjipto Rahardjo's view that law is not only related to norms and regulations but also concerns broader matters, including values and behaviour.<sup>39</sup> Based on the view of progressive law above, the legal culture applied by Indonesian society should be a progressive legal culture that accommodates moral, spiritual, and behavioural aspects, as well as existing norms.

The term progressive legal culture itself cannot be separated from the concept of legal culture. Lawrence M. Friedman views legal culture as the orientation of people's actions and attitudes according to existing legal values.<sup>40</sup> In his view, legal culture consists of the internal aspect, including law enforcers and political elites in society and the external aspect, such as the legal culture, that covers the general public's behaviour.<sup>41</sup> This emphasises that progressive legal culture accommodates the external and internal aspects of legal culture while guiding legal culture to align with the nation's moral values, as enshrined in Pancasila.<sup>42</sup> Progressive legal culture in

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<sup>38</sup> Muhammad Zulfa Aulia et al., "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication," *Jurnal Konstitusi* 20, no. 3 (2023): 423–50, <https://doi.org/10.31078/jk3034>.

<sup>39</sup> Rikson Sitorus Markus Marselinus Soge, "Kajian Hukum Progresif Terhadap Fungsi Pemasarakatan Dalam Rancangan Undang-Undang Pemasarakatan," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 2, no. 2 (2022): 5–24.

<sup>40</sup> Ariel Zuckerbrot, "Impact: How Law Affects Behavior, by Lawrence M. Friedman," *Osgoode Hall Law Journal* 3, no. 55 (2019): 846–52.

<sup>41</sup> Mateja Čehulić, "Perspectives of Legal Culture," *Revija Za Sociologiju* 51, no. 2 (August 2021): 257–82, <https://doi.org/10.5613/rzs.51.2.4>.

<sup>42</sup> Dicky Eko Prasetyo, "Pancasila Sebagai Pengembangan Moral Virtual Dalam Perspektif Living Ideology," *Pancasila: Jurnal Keindonesiaan* 3, no. 2 (October 26, 2023): 125–33, <https://doi.org/10.52738/pjk.v3i2.151>; Novendri M Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 480–500; Novendri Nggilu et al., "Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia," *Lex Scientia Law Review* 8, no. 1 (September 22, 2024), <https://doi.org/10.15294/lslr.v8i1.1901>.

Satjipto Rahardjo's view is also based on the nature of mesu budi—a term that emphasises that a legal culture entails the use of heart, soul, taste, and karsa so that the law laden with values can be fully utilised.<sup>43</sup> Laws with values lose their essence of justice if interpreted solely through a rigid, black-letter approach, focusing only on what is explicitly written in legal texts.<sup>44</sup> Reading and understanding the law is an activity of human morality and intellect. Comprehensively, reading and understanding a law requires intellectual reasoning and moral insight, allowing legal justice to be explored fully. This is relevant to Paul Scholten's view, which asserts that interpreting and applying the law is fundamentally about uncovering and embracing the moral values embedded within it.<sup>45</sup>

Progressive legal culture based on the value of mesu budi is oriented towards exploring moral values in law that prioritise behaviour in addition to written legal norms, which is relevant to the practice of reconciliation as an effort to maintain national unity and integrity after the election.

Post-election reconciliation practices oriented as constitutional conventions in Indonesia have relevance to a progressive legal culture based on the value of mesu budi because constitutional conventions emphasise behaviour and unwritten legal values that are in line with a progressive legal culture based on the value of mesu budi with its emphasis on behaviour as a complement to positive legal norms. Post-election reconciliation practices oriented as constitutional conventions in Indonesia are also relevant to progressive legal culture based on the value of mesu budi, which emphasises the dimension of morality in legal practice as in line with A.V. Dicey's view suggesting that an important element of constitutional conventions is political ethics and legal morality.

The practice of post-election reconciliation, which is oriented as a constitutional convention in Indonesia, is not only in line with progressive legal culture based on the value of mesu budi but also relevant to maintaining national unity. In general, two

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<sup>43</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

<sup>44</sup> Satjipto Rahardjo, *Membedah Hukum Progresif*, 3rd ed. (Jakarta: Kompas, 2008).

<sup>45</sup> Achmad Rifai, *Menggapai Keadilan Dengan Hukum Progresif: Sebuah Upaya Menyempurnakan Putusan Hakim Pada Keadilan*, 1st ed. (Makassar: CV Nas Media Pustaka, 2020).



aspects cause the rupture of national unity and the emergence of disintegration: internal and external factors. The internal aspect that causes the rupture of national unity and the emergence of disintegration involves the existence of massive divisions in society, causing riots and ethnic, religious, racial, and intergroup discrimination. The external aspects that cause the rupture of national unity and the emergence of disintegration are threats and activities from other countries threatening Indonesian sovereignty and dividing the nation. Of the two aspects, the internal aspect is the most important, considering that such social divisions can lead to national disintegration, threatening Indonesian sovereignty. This highlights the importance of post-election reconciliation oriented as a constitutional convention in Indonesia as part of a progressive legal culture to maintain social harmonisation in society and an effort to maintain national unity.

## 5. Conclusion

The constitutional convention as an unwritten law should meet several characteristics: (i) a state action that arises and is carried out repeatedly, (ii) in the realm or field of state administration, (iii) applying, growing, and followed in the practice of state administration, (iv) an unwritten norm of the constitution, (v) substantially based on political ethics and constitutional morality, and (vi) having ethical binding power, which does not have legal implications so that violations of constitutional conventions cannot be tried by judicial institutions. The orientation of post-election reconciliation as a constitutional convention that prioritises aspects of political ethics and constitutional morality should serve as a reminder that, once the election is over, all citizens belong to a single nation—Indonesia. The implication of practising post-election reconciliation as a constitutional convention is that post-election reconciliation has ethical validity to be applied. While failing to carry out reconciliation may challenge democratic values, it cannot be judged by a judicial institution.

Post-election reconciliation as a constitutional convention has relevance to a progressive legal culture based on the value of *mesu budi*, which emphasises morality in legal practice. As a legal practice, post-election reconciliation offers a pathway for Indonesia's legal culture to place greater emphasis on morality and unity, helping to minimise divisions that could lead to societal disintegration. This research

recommends that post-general election reconciliation, based on constitutional conventions, should take place after the completion of the Constitutional Court Decision regarding the General Election Results Dispute (PHPU), where all presidential and vice-presidential candidates sit together, congratulating the elected leader and delivering speeches or narratives that emphasise that the election has concluded. More importantly, their statement should focus on the need to move forward together, reinforcing efforts to strengthen national unity and integrity.

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