

Indonesia Constitutional Court: The Guardians of Democracy in the Pandemic Era

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Abstract

General elections, which are carried out honestly, fairly, consistently and continuously, are efforts to maintain a democratic climate in every country. As a country that upholds democracy, Indonesia always strives to carry out general elections in an honest, fair, consistent and continuous manner every five years, as mandated by the constitution. In spite of the Coronavirus Disease 2019 (COVID-19) pandemic, Indonesia had conducted regional head elections, namely the election of governors in 9 provinces and of regents/mayors in 261 districts/cities. As the state institution guards the constitution and democracy, the Constitutional Court is obliged to resolve and manage general election disputes even during the pandemic. This paper examines the strategy and management of the Constitutional Court in handling general election dispute cases to regions during the pandemic period while maintaining the independence and impartiality of the Constitutional Court institutions. This study uses primary and secondary data, including the Indonesian Constitution, the regional election law, and other regulations related to handling regional head elections during a pandemic. This study also compares government policies related to handling regional head elections during a pandemic in Indonesia and other countries, especially regarding the rights of the people to still be able to come to Court during a pandemic. Existing data and legal materials related to handling general election disputes during a pandemic are compared and analysed in full and in detail. It is concluded that the management of case admissions and trial management using ICT technology has proven to be effective in minimising the gathering of people so that the Constitutional Court does not become a cluster of coronavirus transmission.

Keywords: Constitutional Court, Dispute Election, Coronavirus, Constitution.

1. Introduction

Since the Indonesian government first announced that there were Indonesian people who were positive for the coronavirus, there had not been a face of concern from the public that the virus would spread quickly at the time. On March 2, 2020, President Jokowi announced that two Indonesian citizens had tested positive for the coronavirus.¹²⁶ This matter was then followed up and handled by the Minister of Health by the health protocol for handling the coronavirus, which is a continuation of the WHO protocol. The coronavirus pandemic that has hit parts of the world today has become a new problem for all citizens.¹²⁷ Each country is trying to close the area for the COVID-19 virus by closing the space for virus carriers. There are several ways to limit the movement of people, so they do not get infected with the COVID-19 virus. Nevertheless, thousands of people worldwide have become victims, and we never know when this pandemic will end.

Every country is trying to survive against the coronavirus by making an effort to protect its citizens. China, as the country that was first infected, after knowing the number of fatalities due to this coronavirus, finally imposed a state of emergency by closing Wuhan City (lockdown) so that people in Wuhan City could not leave Wuhan City and vice versa, people from outside Wuhan City also cannot enter Wuhan City. All modes of transportation in Wuhan City were closed, and people were forced to stay at home. The lockdown was carried out to close the area against the spread of the virus.¹²⁸

Various countries then imitated the regulations carried out by the Chinese government in various parts of the world. However, by looking at the conditions of the people, each country has different regulations regarding the implementation of this lockdown, so some enforce a total lockdown as in Wuhan City. On the other hand, some countries impose a partial lockdown.¹²⁹

As a country that upholds the constitution, Indonesia has regulated that in a state of emergency, the President has a role in determining the conditions and consequences as stipulated in Article

¹²⁶ n/a, 'Jokowi Umumkan Dua WNI Positif Corona di Indonesia' (*CNN Indonesia*, 2 March 2020) <<https://www.cnnindonesia.com/nasional/20200302111534-20-479660/jokowi-umumkan-dua-wni-positif-corona-di-indonesia>> accessed 13 October 2021.

¹²⁷ Hani Adhani, 'Constitutional Court of the Republic of Indonesia' [2020] 3(1) INSLA e-Proceeding, 609 <<https://insla.usim.edu.my/index.php/e proceeding/article/download/52/77/197>> accessed 11 January 2021.

¹²⁸ Hani Adhani, 'Belajar Dari Film Dokumenter "The Lockdown: One Month in Wuhan"' (*Kumparan*, 23 March 2020) <<https://kumparan.com/hani-adhani/belajar-dari-film-dokumenter-the-lockdown-one-month-in-wuhan-1t56qC1kjUq>> accessed 19 August 2020.

¹²⁹ Arief Ikhsanudin, 'Pemerintah Kaji Kemungkinan Penerapan Lockdown Parsial' (*DetikNews*, 28 March 2020) <<https://news.detik.com/berita/d-4956303/pemerintah-kaji-kemungkinan-penerapan-lockdown-parsial>> accessed 19 August 2020.

12 of the Constitution, which states, “The President declares a state of emergency. The conditions and consequences of the state of emergency are determined by law ... ”.¹³⁰ Furthermore, in relation to efforts to tackle the coronavirus pandemic, Indonesia enacted Law Number 6/2018 concerning Health Quarantine promulgated on August 8, 2018. Regarding the law, the government can take steps as follows regulated in Article 4, “ ... responsible for protecting public health from diseases and Public Health Risk Factors that can cause Public Health Emergency through the implementation of Health Quarantine ... ”.¹³¹ In this regard, the President has issued several regulations, including establishing the status of a public health emergency (Presidential Decree No. 11/2020) and issuing a regulation on Large-Scale Social Restrictions in the Context of Accelerating the Handling of COVID-19 (Government Regulation 21/2020).¹³²

However, problems arise in implementing regional head elections that will elect regents, mayors and governors in September 2020. By looking at the conventional pattern of regional head elections, the implementation of regional elections will have the potential to be a medium for the spread of the COVID-19 virus. This concern became the main reason for President Joko Widodo to issue a government regulation in lieu of the law (Perpu) regarding the implementation of regional head elections, namely to postpone the implementation of the election, which was initially held in September 2020 and was postponed to December 2020.

The main reasons for the enactment of the Perpu are as follows:¹³³

- (i) in 2020, the world experienced a catastrophic COVID-19 pandemic. The spread of COVID-19, which has been declared a pandemic by the World Health Organization (WHO) in most countries worldwide, including Indonesia, has caused many fatalities, shown an increase from time to time and has been declared a national disaster,
- (ii) in the context of overcoming the spread of COVID-19 as a national disaster, extraordinary policies and steps need to be taken both at the central and regional levels, including the need to postpone the stages of holding simultaneous regional head elections in 2020 so that the regional head elections can continue to take place in a democratic and quality manner and to maintain domestic political stability,
- (iii) in addition to the reasons mentioned above, there are considerations regarding the compelling urgency by the Constitutional Court Decision Number 138/PUU-VIII2009, which contains the requirements for the need for a Government Regulation in Lieu of Law if 1). The existence of circumstances, namely an urgent need to resolve legal issues quickly

¹³⁰ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 2002 1, see Article 12.

¹³¹ See article 4 ‘UU No. 6 Tahun 2018 Tentang Kekarantinaan Kesehatan [JDIH BPK RI]’ <<https://peraturan.bpk.go.id/Home/Details/90037/uu-no-6-tahun-2018>> accessed 18 August 2020.

¹³² n/a, ‘Regulasi | Gugus Tugas Percepatan Penanganan COVID-19’ (*Indonesian Government*) <<https://covid19.go.id/p/regulasi>> accessed 18 August 2020.

¹³³ Perpu COVID-19 2020 2.

based on the Act; 2). The mandatory law does not yet exist so that there is a legal vacuum or there is a law, but it is not sufficient; 3). The legal vacuum cannot be overcome by making laws in the usual procedure because it will take quite a long time while the urgent situation requires certainty to be resolved, and

- (iv) based on the previous matters, in a compelling urgency, by the provisions of Article 22 paragraph (1) of the constitution, the President has the authority to stipulate a Government Regulation in Lieu of Law concerning the Third Amendment to Law Number 1/2020 concerning Stipulation of a Government Regulation in Lieu of Law Number 1/2014 concerning the Election of Governors, Regents, and Mayors to become a law.

The problem of implementing regional head elections during the COVID-19 pandemic stops at the time of its implementation and post-implementation, namely if there is an election dispute. The law on regional elections has stipulated that election disputes can be submitted to the Constitutional Court three days after announcing the determination by the general election commission. There are concerns that the regional head election dispute trial held at the Constitutional Court building can also become a medium for the transmission of COVID-19. With the number of simultaneous regional elections in 270 regions in Indonesia, covering 9 provinces, 224 regencies, and 37 cities, the potential for regional election disputes that will become cases in the Constitutional Court is also enormous.¹³⁴ Furthermore, it has the potential to make the Constitutional Court building a medium for the transmission of the COVID-19 virus.

Therefore, as one of the courts with a mission to become a modern and reliable court, the Constitutional Court is trying its best to close the area to avoid COVID-19 transmission during election disputes, by using an e-court system combined with limited trial evidence regulations in the Constitutional Court.¹³⁵

2. Literature Review

The Constitutional Court as a reformed state institution has the authority regulated in the Indonesian Constitution (UUD 1945), namely in Article 24C of the Indonesian Constitution, which states as follows: ¹³⁶ (1) The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine laws against the constitution. Basis, to decide on

¹³⁴ n/a, 'Berikut Daftar 270 Daerah Yang Gelar Pilkada Serentak 9 Desember 2020 Halaman All' (*Kompas.com*, 5 December 2020) <<https://www.kompas.com/tren/read/2020/12/05/193100165/berikut-daftar-270-daerah-yang-gelar-pilkada-serentak-9-desember-2020?page=all>> accessed 13 October 2021.

¹³⁵ Glery Lazuardi, 'MK Lakukan Persiapan Penanganan Sengketa Hasil Pilkada 2020' (*Tribunnews.com*, 17 July 2020) <<https://www.tribunnews.com/nasional/2020/07/17/mk-lakukan-persiapan-penanganan-sengketa-hasil-pilkada-2020>> accessed 30 September 2021.

¹³⁶ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, see article 24C.

disputes over the authority of state institutions whose authority is granted by the constitution, to decide on the dissolution of political parties, and to decide on disputes regarding the results of the general election. (2) The Constitutional Court is obliged to decide on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the constitution.

As written in Article 24C of the Indonesian Constitution, one of the constitutional powers is to decide disputes over general election results.¹³⁷ However, in its development, general elections have developed meanings that are not only identical with legislative elections and presidential elections as regulated in the constitution, but also regional head elections, which at the time of discussing constitutional amendments have not yet confirmed the authority to handle regional head election disputes which the Supreme Court initially handled.¹³⁸

The transfer of authority from the Supreme Court to the Constitutional Court is based on Article 236C of Law Number 12/2008 concerning the Second Amendment to Law Number 32/2004 concerning Regional Government. In Article 236C of Law Number 12/2008, it is stated that, "The handling of disputes over the results of the election of regional heads and deputy regional heads by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months from the promulgation of this Law".¹³⁹ According to Daniel Yusmic, the handling of election disputes by the Constitutional Court is very helpful in accelerating the settlement of regional election disputes. There is no more conflict and uncertainty due to unclear processes. However, the legal process must be genuinely valid and supported by facts and not manipulation. These improvements need to be appreciated as a form of improvement in the legal structure in Indonesia.¹⁴⁰

The transfer of the handling of regional election disputes from the Supreme Court to the Constitutional Court was finally determined on November 1, 2008, which was marked by the signing of the minutes of the transfer of regional election disputes between the chairman of the Constitutional Court and the chairman of the Supreme Court. According to Mahfud MD, the election disputes submitted to the Constitutional Court only concern the vote count results. At

¹³⁷ Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, *Naskah Komprehensif Perubahan UUD 1945 - Buku V* (Sekretariat Jenderal Mahkamah Konstitusi RI 2010).

¹³⁸ Hani Adhani, *Sengketa Pilkada: Penyelesaian Dari Mahkamah Agung Ke Mahkamah Konstitusi* (Rajagrafindo Persada 2019).

¹³⁹ Bambang Sutiyoso, 'Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia' (2010) *Jurnal Konstitusi* 7.

¹⁴⁰ Adhani (n 138).

the same time, the voting process rests with the Election Supervisory Body (Bawaslu), which can take them to the Criminal Court.¹⁴¹

In its journey, the authority of the Constitutional Court to handle regional election disputes has been maintained until this day. However, in its decision, the Constitutional Court had decided that the regional elections were not part of the electoral regime but the regional government regime. Therefore, according to Patrialis, the Constitutional Court has decided that the regional elections (Pilkada) are not an election regime based on Article 22E of the Constitution. At the same time, the Pilkada is regulated in Article 18 paragraph (4) of the constitution. Therefore, it is entirely left to the legislators whether the election dispute will remain the authority of the Constitutional Court or other institutions.¹⁴²

The decision became a stimulus for lawmakers to form a particular institution to handle regional election disputes so that regional election disputes are no longer the authority of the Constitutional Court as stipulated in Article 157 paragraphs (1), (2) and (3) of Law Number 10/2016 which states as follows: ¹⁴³

- (i) disputes of election results are examined and tried by a particular judicial body,
- (ii) as referred to in paragraph (i), the particular judicial body is established before implementing the simultaneous national elections, and
- (iii) disputes over the determination of votes in the final stage of the election results are examined and tried by the Constitutional Court until a particular judicial body is established.

While the formation of a special election court is the homework of lawmakers, it is not clear when it will be formed. In the end, the Constitutional Court will continue to play a role in adjudicating regional election disputes until 2024. With that, according to the Constitutional and Democracy Researcher (KoDe) Initiative, Violla Reininda, establishing a special election court as stated in Law 10/2016 concerning regional elections is no longer relevant. This is because in its development, the Constitutional Court has issued a decision Number 55/2019 concerning the simultaneous examination of elections and local elections.¹⁴⁴

¹⁴¹ Ibid, 92-93.

¹⁴² n/a, 'MK Sebut Pilkada Bukan Rezim Pemilu' (*Mahkamah Konstitusi Republik Indonesia*, 29 January 2015) <<https://www.mkri.id/index.php?page=web.Berita&id=10565>> accessed 13 October 2021.

¹⁴³ Undang-Undang Republik Indonesia Nomor 10 Tahun 2016 Tentang Pemilihan Gubernur, Bupati, Dan Walikota 2016 (JDIH BPK RI) 70, Article 157.

¹⁴⁴ Febrianto Adi Saputro, 'Pembentukan Badan Peradilan Khusus Pemilu Tak Lagi Relevan' (*Republika Online*, 29 August 2021) <<https://www.republika.co.id/berita/qylj7v428/pembentukan-badan-peradilan-khusus-pemilu-tak-lagi-relevan>> accessed 13 October 2021.

3. Research Methodology

This study uses secondary data from literature studies such as the Indonesian Constitution, the regional election law, and other regulations related to handling regional head elections during a pandemic. Thus, the data collection technique in this paper is a literature study conducted by studying the laws on regional head elections, books, papers, and journals related to regional head elections.

This study also compares government policies related to handling regional head elections during a pandemic in Indonesia and other countries, especially regarding the rights of the people to still be able to come to Court during a pandemic. Existing data and legal materials related to handling general election disputes during a pandemic are compared and analysed in full and in detail based on the research objectives. In addition, data analysis is carried out in the qualitative analysis of data that describes the pattern of handling disputes in Court during a pandemic at the Constitutional Court.

4. Health Emergency Regulations

Each country's policy to impose a state of emergency is usually specifically regulated in each country's constitution as the highest law. For example, China has set up an emergency mechanism in their constitution. Thus, the President becomes the fulcrum of authority to decide on a state of emergency in the entire country or the province.¹⁴⁵ Likewise, the Muslim-majority country in Europe, namely Turkey, also rigidly regulates the state of emergency in the event of a pandemic. In the Turkish constitution, the authority to establish a state of emergency is also in the hands of the President.¹⁴⁶ The same thing happens in Malaysia, wherein a state of emergency is the King and Prime Minister's prerogative, as mentioned in the Malaysian constitution.¹⁴⁷

As one of the countries with a modern constitution, namely a constitution that protects human rights, Indonesia also clearly regulates the rules for the state of emergency. Article 12 Indonesian Constitution (UUD 1945) states, "The President declares a state of emergency. The conditions and consequences of the state of emergency are determined by law".¹⁴⁸ Furthermore, related to efforts to tackle the coronavirus, Indonesia has a Law Number 6/2018 concerning Health Quarantine promulgated on August 8, 2018. Regarding the law, the steps that the Indonesian

¹⁴⁵ Constitution of the People's Republic of China, Article 80 <http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372966.htm> accessed 13 October 2021.

¹⁴⁶ Constitution of the Republic of Turkey 2018, see article 119.

¹⁴⁷ Federal Constitution of Malaysia, see Article 150 about emergency proclamation.

¹⁴⁸ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, see article 12.

government can take are as follows, which is regulated in Article 4 of the Law on Health Quarantine, namely “ ... responsible for protecting public health from diseases and/or Public Health Risk Factors that have the potential to cause Public Health Emergency through the implementation of Health Quarantine”. In this regard, the President has issued several regulations, including establishing the status of a public health emergency (Kepres 11/2020) and issuing regulations on Large-Scale Social Restrictions in the Context of Accelerating the Handling of COVID-19 (PP 21/2020).¹⁴⁹

In addition, as an effort to close the area for the spread of the COVID-19 virus, the government represented by the relevant Ministries and Regional Governments also makes regulations and legal rules with the aim that the community can fight together or at least avoid the spread of the coronavirus. These regulations are in the form of government regulations, decrees, circulars, protocols, and also recommendations, such as the Governor’s Regulation on Guidelines for Large-Scale Social Restrictions (PSBB),¹⁵⁰ the Minister of Health Regulation on the use of masks and handwashing facilities with soap, the Decree of the Minister of Health on the Determination of Large-Scale Social Restrictions in various regions in Indonesia, Letter Order of the Minister of Industry concerning Guidelines for Submitting Applications for Permits for the Implementation of Industrial Activities During Public Health Emergencies, Regulation of the Minister of Transportation concerning Transportation Control, many protocols and recommendations that the government central government has made, regional governments, ministries and also state institutions to break the chain of the spread of the coronavirus.¹⁵¹

5. Legal Assurance during Health Emergency

However, even though the government is trying to close the area for the movement of the virus, the facts that occur in society are different because these various regulations are not effective enough to dampen people’s desire not to leave their homes. The public is ultimately divided into two views, namely those who follow the government’s recommendations by implementing all existing regulations and recommendations. However, some people reject the existing regulations and do not follow the government’s recommendations. The SRMC survey results related to the desire to go to their hometown (*pulang kampung*), that 31% of Jakarta residents still want to go

¹⁴⁹ Rakhmat Nur Hakim, ‘Pembatasan Sosial Berskala Besar Berhak Batasi Orang Keluar Masuk Suatu Daerah’ (*Kompas.com*, 1 April 2020) <<https://nasional.kompas.com/read/2020/04/01/11054771/pembatasan-sosial-berskala-besar-berhak-batasi-orang-keluar-masuk-suatu>> accessed 13 October 2021.

¹⁵⁰ Hani Adhani (n 127).

¹⁵¹ n/a (n 132).

to their hometown amid this pandemic.¹⁵² Even though we all understand that the effects of *'pulang kampung'* are dangerous for the entire community, some rules and regulations overlap and even contradict one another, confusing the public.

Unfortunately, amid the split between the two views of the community and the out-of-sync regulation, there is no concrete legal action taken by the people, community groups or NGOs to take legal action so that the government takes measurable, clear and firm steps. Let us look at the existing statutory products and have bound us as citizens. Potentially, these laws and regulations violate the constitutional rights of citizens as regulated in article 28D paragraph (1) Indonesia Constitution, which states, "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law".¹⁵³

This legal certainty is the primary key in terms of law enforcement when this health emergency is enforced because it will have an impact on the violation of the constitutional rights of other citizens, such as the right to life, the right to get a job, the right to a healthy environment, the right to protection and security, and other fundamental rights of citizens as regulated in the Indonesian Constitution.

6. Regional Dispute Election at the Constitutional Court

Since the issuance of a Government Regulation in Lieu of Law regarding the implementation of simultaneous regional elections, which was initially scheduled for September 2020, which was later changed to December 2020, there has been concern that the implementation of the elections in 2020 will not run optimally, be unsafe, thus impacting the overall health risk of the community. Moreover, by looking at the standard level of community discipline, which is still below the average, the *'Pilkada'* seems to impact more and more people infected with the coronavirus.¹⁵⁴

The ranks of the *'Pilkada'* organisers, namely the General Elections Commission and the General Elections Supervisory Body, are at the forefront to succeed in the democratic process in the regions to elect regional leaders during the pandemic. This is done by trying to erode the

¹⁵² Barly Haliem, Sandy Baskoro, 'Hasil Survei: Di Tengah Pandemi Corona, 31% Warga DKI Tetap Ingin Mudik Lebaran' (*Kontan.co.id*, 18 April 2020) <<https://nasional.kontan.co.id/news/hasil-survei-di-tengah-pandemi-corona-31-warga-dki-tetap-ingin-mudik-lebaran>> accessed 13 October 2021.

¹⁵³ Hani Adhani, 'Menegakan Kepastian Hukum Di Tengah Wabah COVID-19' (*Kumparan*, 10 May 2020) <<https://kumparan.com/hani-adhani/menegakan-kepastian-hukum-di-tengah-wabah-COVID-19-1tO2Qr5gAM7>> accessed 11 January 2021.

¹⁵⁴ Radiordk, 'Polemik Pilkada Dan Penyelesaian Sengketa Di Tengah Pandemi' (*RDK FM UIN Jakarta*, 15 October 2020) <<http://rdk.fidkom.uinjkt.ac.id/index.php/2020/10/15/polemik-pilkada-dan-penyelesaian-sengketa-di-tengah-pandemi/>> accessed 13 October 2021.

occurrence of transmission carried out in various ways and methods, as well as by making various rules so that the ranks the organisers, the candidate pairs and their success teams, as well as the community-made maximum efforts by implementing health protocols so that the Pilkada did not become a massive virus transmission medium that would have an impact on public health at large.

However, the fact is that the existing patterns and methods are not maximal enough to close the room for the spread of the COVID-19 virus. This is evidenced by the many organisers who have also contracted the coronavirus. Moreover, candidate pairs of candidates and the successful candidate pairs are affected by the COVID-19 virus.¹⁵⁵ A pandemic due to COVID-19 that spreads rapidly in the community has led to regulations in implementing the 2020 simultaneous regional elections different from the previous elections.

The Constitutional Court as a judicial institution is given the task and responsibility, by law, to resolve the 2020 Pilkada disputes before establishing a special election court. Therefore, the Constitutional Court, which has just resolved the 2019 Election dispute, both the Legislative Election dispute and the Presidential Election dispute, is again preparing to be at the forefront of efforts to resolve the final voting results of the 2020 Regional Head Election. However, the Constitutional Court is also limited by the threshold for the difference in votes that have been regulated in the Regional Election Law with the maximum limit of the difference in votes between pairs of candidates starting from 2 per cent to 0.5 per cent, which adjusts to the population of each region as regulated in Article 158 Electoral Law.¹⁵⁶

Although the Constitutional Court, as an institution that guards democracy and interpreters of the constitution, is a judicial institution that has a platform that is “modern and reliable” with its various E-Court technologies, there are still concerns from the public that this election dispute will also become a medium for the spread of the coronavirus. Moreover, with a relatively high positive rate of COVID-19 between September and December 2020, the shifting of the Pilkada process from the ranks of regional election organisers in various regions to the Constitutional Court seems to be a new scourge that will have the potential to become a new cluster of coronavirus transmission.¹⁵⁷

¹⁵⁵ n/a, ‘Bawaslu: Petugas KPPS Positif Corona Masih Tugas Di 1.172 TPS’ (*CNN Indonesia*, 9 December 2020) <<https://www.cnnindonesia.com/nasional/20201209152553-32-580026/bawaslu-petugas-kpps-positif-corona-masih-tugas-di-1172-tps>> accessed 13 October 2021.

¹⁵⁶ Glery Lazuardi, ‘MK Siap Menangani Sengketa Pilkada Di Tengah Pandemi COVID-19’ (*Tribunnews.com*, 20 June 2020) <<https://www.tribunnews.com/pilkada-2020/2020/06/20/mk-siap-menangani-sengketa-pilkada-di-tengah-pandemi-COVID-19>> accessed 13 October 2021.

¹⁵⁷ Maria Rosari Dwi Putri, ‘MK Siap Tangani Sengketa Hasil Pemilu’ (*ANTARA News*, 26 March 2019) <<https://www.antaranews.com/berita/815694/mk-siap-tangani-sengketa-hasil-pemilu>> accessed 13 October 2021.

7. Regulations of the Constitutional Court during Pandemic

The existence of COVID-19, which spreads rapidly in the community, has led to changes in regulations in terms of the implementation of the 2020 simultaneous regional elections, which are different from the previous elections. Related to this, the Constitutional Court, as a judicial institution that is given temporary duties and responsibilities by law to resolve 2020 Pilkada disputes before the establishment of a particular election judiciary, also seeks to prepare the management of regional election dispute handling, which is also different from the management of regional election dispute cases in a familiar atmosphere.¹⁵⁸

Although the Constitutional Court, as a democratic guardian and interpreter of the constitution, is a judicial institution that has a “modern and reliable” platform with various E-Court technologies at its disposal, there are still concerns from all employees and also the public that the election disputes in the Constitutional Court during the period pandemic will also become a medium for the spread of the coronavirus. With the COVID-19 positive rate, which is relatively high, especially during the handling of regional election disputes, namely between September 2020 to March 2021, the shifting of the regional election dispute process from the ranks of the regional election organisers in various regions to the Constitutional Court seems to be a new scourge that will potentially become a threat and new cluster of coronavirus transmission.¹⁵⁹

To close the area for the spread of the coronavirus, the Constitutional Court finally established a Constitutional Court Regulation (PMK) in the case of regional election disputes with the main focus on shifting the mechanism for receiving case files online and hearing cases online.¹⁶⁰ Although the PMK does not close the area for the public to continue coming to the Constitutional Court building, it is obligated to comply with stringent health protocols. Therefore, in practice, when the parties come to the Constitutional Court building, the Constitutional Court prepares a health protocol procedure that is not only strict but also closes the potential for the entry of the coronavirus by requiring the parties to swab-antigen, wear masks and face shields, gloves and

¹⁵⁸ ‘Tangani Sengketa Pilkada, MK Tunda Perkara Pengujian UU - Kompas.Id’ <<https://www.kompas.id/baca/polhuk/2020/12/26/mk-fokus-tangani-sengketa-pilkada-pengujian-uu-ditangguhkan/>> accessed 4 June 2021.

¹⁵⁹ Nicholas Ryan Aditya, ‘Pilkada Berpotensi Tingkatkan Kasus COVID-19, Satgas Minta Dijalankan Sesuai PKPU’ (*Kompas.com*, 8 December 2020) <<https://nasional.kompas.com/read/2020/12/08/11115941/pilkada-berpotensi-tingkatkan-kasus-COVID-19-satgas-minta-dijalankan-sesuai>> accessed 4 June 2021.

¹⁶⁰ Nano Tresna Arfana, ‘MK Siapkan PMK Terbaru Hadapi Sengketa Pilkada Serentak’ (*Mahkamah Konstitusi Republik Indonesia*, 4 November 2020) <<https://www.mkri.id/index.php?page=web.Berita&id=16713>> accessed 4 June 2021.

also ensure physical distancing.¹⁶¹ Of course, this regulation is also applied to all employees and constitutional judges.

In addition, the regulation on the receipt of physical files brought by the parties to the case must first go through an anti-virus scanning process to ensure that the physical files brought by the parties are free from the coronavirus. Likewise, when the trial begins, the Constitutional Court applies a reasonably strict rule whereby the parties who will attend directly to the courtroom are only a maximum of 2 (two) people, who before entering the courtroom are also required to have an antigen swab explicitly prepared by the Constitutional Court. Finally, of course, the obligation to wear masks and face shields, gloves and maintain physical distance to accurately ensure that the parties present in the courtroom are entirely free of COVID-19.¹⁶²

Another thing that the Constitutional Court is also quite strict about is the use of various anti-virus tools in the file receiving room and the courtroom, which is part of the Constitutional Court's effort to close the spread of the COVID-19 virus. Besides, spraying the courtroom is carried out repeatedly to ensure that the courtroom is completely sterile from the coronavirus. The trial mechanism that uses a hybrid system, namely limited physical attendance (2 people) and online attendance using an online media platform, makes the trial unique for the public to participate. This is proven by the number of people who watch the Constitutional Court trial live through the YouTube channel. The seriousness of the Constitutional Court to build a capable online trial system for all justice seekers in all corners of the country from Sabang to Merauke is a momentum to prove that the Constitutional Court can truly implement a 'new normal' atmosphere in carrying out its duties and responsibilities, as well as maintaining the consistency of being a modern and trusted court.¹⁶³

Of course, we can imagine with the number of regional election dispute cases that went to the Registrar's Office of the Constitutional Court with a total of more than 130 cases, so if this time were not during a pandemic or under normal conditions, hundreds of people would attend the Constitutional Court building every day, namely the parties and the public who will come to the Constitutional Court building. However, due to the pandemic conditions, we can see the opposite with these stringent regulations. Therefore, at the start of the 2020 regional election dispute, the

¹⁶¹ Administrator, 'Protokol Kesehatan Ketat Dalam Sidang Pilkada Perdana Di MK' (*Media Indonesia*, 26 January 2021) <https://mediaindonesia.com/galleries/detail_galleries/17303-protokol-kesehatan-ketat-dalam-sidang-pilkada-perdana-di-mk> accessed 4 June 2021.

¹⁶² Mimi Kartika, 'Hakim MK Ingatkan Para Pihak Disiplin Protokol COVID-19' (*Republika Online*, 26 January 2021) <<https://www.republika.co.id/berita/qnj7zb428/hakim-mk-ingatkan-para-pihak-disiplin-protokol-covid19>> accessed 4 June 2021.

¹⁶³ Kautsar Widya Prabowo, 'Sidang Sengketa Pilkada Dimulai Di MK Dengan Protokol Kesehatan Ketat' (*Medcom.id*, 26 January 2021) <<https://www.medcom.id/pilkada/news-pilkada/IKYw5zPb-sidang-sengketa-pilkada-dimulai-di-mk-dengan-protokol-kesehatan-ketat>> accessed 4 June 2021.

Constitutional Court could force the parties to refrain from attending the Constitutional Court building. In addition, the parties are also forced to familiarise themselves with using technology (ICT) by submitting applications online,¹⁶⁴ attending an online trial, thus forcing the Constitutional Court to adapt by providing the best alternative media for online trials to seek substantive justice and efforts to maintain democracy even though it is carried out in cyberspace.

By looking at the description of how the Constitutional Court handled regional election cases during the pandemic, it provides a complete picture that the Constitutional Court has provided an excellent example of what and how the performance of the court apparatus should be in the new normal era.¹⁶⁵ What has been done by the Constitutional Court to maintain democracy during the pandemic with examples and concrete evidence of performance that is not only transparent but also effective and efficient so that in the end, a more dynamic and professional bureaucracy can be created as an effort to increase effectiveness and efficiency to support the performance of court services to society.

8. The Constitutional Court Trial during Pandemic

Quoted from the Indonesian Constitutional Court website, the Registrar's Office has received 140 applications for regional election dispute cases with details of 64 being done offline and 76 online with details as follows: governor 7 applications, regent 119 and city 14 applications. With the time limit for resolving cases limited by law, which is 45 days, the Constitutional Court handling the 2020 regional election dispute is like 'running but wearing a mask'.¹⁶⁶

The Constitutional Court looks very carefully in hearing each regional election dispute case. The timing is also carefully calculated so that the judges are not too exhausted and the constitution judges are always physically fit. However, because there are only nine constitutional judges with an average age of over 60 years and many cases have a limited time for completion, there are concerns that the Constitutional Court will not complete its duties.

Since the regional election dispute case was registered on January 18, 2021, the Constitutional Court has divided the case into 3 (three) panels, with an average of each panel handling 44 cases with an even distribution of regions in the provinces, regencies and cities. With the average

¹⁶⁴ Danang Triatmojo, 'Sidang Sengketa Hasil Pilkada 2020, MK Gelar Secara Online Dan Offline Dengan Pembatasan' (*Tribunnews.com*, 26 January 2021) <<https://www.tribunnews.com/nasional/2021/01/26/sidang-sengketa-hasil-pilkada-2020-mk-gelar-secara-online-dan-offline-dengan-pembatasan>> accessed 4 June 2021.

¹⁶⁵ Utami Argawati, 'Arief Hidayat: Persidangan Virtual Pilihan Paling Realistis Di Masa Pandemi' (*Mahkamah Konstitusi Republik Indonesia*, 30 September 2020) <<https://www.mkri.id/index.php?page=web.Berita&id=16623&menu=2>> accessed 4 June 2021.

¹⁶⁶ Danang Triatmojo (n 39).

number of hearings being 3 times per case, at least more than 300 sessions have been convened during the implementation of the regional election dispute. If the trial is carried out with an average number of sessions between two and three hours, the average constitutional judge convenes for 900 hours or approximately 38 days.

Meanwhile, regarding decisions, the Constitutional Court has also made significant progress in terms of cases being granted, which amounted to 17 cases with the majority of cases being granted in part with orders for re-voting (PSU)¹⁶⁷ at several polling stations which, according to the Constitutional Court, are under consideration. Therefore, the law is proven that there has been a violation or fraud that violates the general principles of elections, namely direct, general, free, confidential, honest and fair (Luber Jurdil), as confirmed in Article 22E paragraph (1) of the constitution.

This further confirms that the Constitutional Court is not a “Calculator Court” and does not compromise on the existence of various frauds and/or violations that occurred during the Pilkada, which incidentally were proven to violate the constitution. In addition, this further emphasises that the Constitutional Court in making decisions is limited to the numbers of the vote count results, namely maintaining the dignity of democracy and the implementation of fair elections so that the purity of the people’s voice is maintained by good.¹⁶⁸

9. Conclusions and Recommendations

As a state institution born from the reform era, the Constitutional Court must continually update it with various conditions experienced by the community to maintain its constitutional rights unity.

The existence of a period of uncertainty, as currently experienced by all levels of the world community, must also increase the intuition and ammunition of the Constitutional Court to carry out various measurable innovations so that the constitutional rights of citizens as stated in the constitution can still be appropriately maintained.

The fact that the Constitutional Court has succeeded in building a ‘new normal’ culture when handling regional election disputes in 2020 should also continue seriously when handling cases

¹⁶⁷ Sania Mashabi, ‘KPU Jadwalkan PSU Untuk 15 Daerah Pilkada 2020, Ini Jadwalnya... Halaman All’ (*Kompas.com*, 31 March 2021) <<https://nasional.kompas.com/read/2021/03/31/09054731/kpu-jadwalkan-psu-untuk-15-daerah-pilkada-2020-ini-jadwalnya?page=all>> accessed 14 October 2021.

¹⁶⁸ Nano Tresna Arfana, ‘Aswanto: MK Bukan Mahkamah Kalkulator’ (*Mahkamah Konstitusi Republik Indonesia*, 6 November 2020) <<https://www.mkri.id/index.php?page=web.Berita&id=16719>> accessed 14 October 2021.

that are the primary authority, namely judicial review and another task. Admittedly, the Constitutional Court has carried out the pattern of work culture in the new normal era with various notes of shortcomings and inconsistencies, but this can be immediately overcome as long as all stakeholders of the Constitutional Court carry out a joint movement by prioritising the principle of freedom of expression and is also egalitarian.

In addition, more substantial efforts are needed by the Constitutional Court, which is directly exemplified by the leadership of the Constitutional Court to maintain the honour of the Constitutional Court, namely quality decisions. Judges who are representatives of the three state institutions must be more concerned with substantial matters and focus on resolving cases that require speed and accuracy that are above average in this era of uncertainty. Of course, the existence of the nine judges will continue to be supported by supporters, or back-benders who are not only professionals but are furthermore ready to face the era of uncertainty with various innovations and collaborations to achieve the vision and mission of the Constitutional Court and achieve justice for the people, nation and state. What has been done by the Constitutional Court in implementing the management of election disputes during the pandemic, which is quite successful, can be a reference for becoming a standard for other institutions in Indonesia and even throughout the world to realise the best performance for the community in 'the new normal era'.

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