

ELECTION POLEMIC IN THE MIDDLE OF PANDEMIC COVID-19

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ABSTRACT

This direct regional head election has been going on since 2005, which is based on the provisions of Law no. 32 of 2004 based on the provisions of Article 18 paragraph (4) of the 1945 Constitution which stipulates that the Governor, Regent and Mayor respectively as heads of provincial, regency and municipal government are elected democratically. However, this direct election caused polemic in 2020. This is due to the emergence of a pandemic in 2019 which lasted until 2020. The pandemic is known as Covid-19. Because the Covid-19 case in Indonesia continues to increase, the holding of the 2020 regional elections (Pilkada) simultaneously in 270 regions has finally been postponed. The series of activities held in the midst of the Covid-19 pandemic were considered too forced and had minimal consideration of a number of things,

Seeing in the context of the precarious situation, coercion and the inability of the Pilkada Law to address the current situation, policies in the form of Government Regulations in Lieu of Laws are appropriate. The General Election Commission (KPU) has issued a policy stipulated in KPU Decree Number 179 / PL.02-Kpt / 01 / KPU / III / 2020 concerning Postponement of Election Stages for Governors and Deputy Governors, Regents and Deputy Regents, and / or Mayors and Deputy Mayor of 2020. In outline, there are 4 stages of holding the postponed regional head election, including the inauguration of the voting committee, verification of the support requirements for individual candidates, the formation of a voter data update committee, as well as updating and compiling voter lists. The General Election Commission's action by issuing steps to postpone the 4 stages of the 2020 Pilkada is the right and responsive step in addressing the current situation to suppress the spread of the Covid-19 pandemic that is increasingly widespread. Even so, the government still needs to make permanent regulations regarding regional elections in the midst of the Covid-19 pandemic outbreak.

Keywords: Polemic, Pilkada, Covid-19 Pandemic

A. preliminary

Regional head elections (pilkada) are currently being held directly. This direct regional head election has been going on since 2005, which is based on the provisions of Law no. 32 of 2004 based on the provisions of Article 18 paragraph (4) of the 1945 Constitution which stipulates that the Governor, Regent and

Mayor respectively as heads of provincial, regency and municipal government are elected democratically.¹ Direct Pilkada is a significant political breakthrough and has broad implications for the region and its people to realize democratization at the local level. Therefore, direct pilkada is a process of strengthening and deepening democracy (deepening democracy) and an effort to realize good and effective governance. Basically, the direct regional election is the sovereignty of the people as a realization of the principles of democracy which includes guarantees of the principles of individual freedom and equality, especially in political rights.²

In the context of the 2020 Regional Head Election (Pilkada or Pemilukada), all pilkada actors including organizers, prospective candidates, and political parties are fully waiting for the government's response and response regarding the conditions under the Covid-19 pandemic. By determining the status of health emergencies, limiting interactions complicates movement and hinders the performance of election organizers, the actions of prospective and prospective political party movements to reach the masses for the preparation of the agenda for organizing the elections for Governors, Regents and Mayors in 270 regions that will be Pilkada in 2020 are also hampered.

Technically, in anticipation of the spread of Covid-19, the General Election Commission (KPU) has issued a policy stipulated in KPU Decree Number 179 / PL.02-Kpt / 01 / KPU / III / 2020 concerning Postponement of Election Stages for Governors and Deputy Governors, Regents and Deputy Regentnd or Mayor and Deputy Mayor in 2020.³ In general, there are 4 stages of holding the postponed regional head election, including the inauguration of the voting committee, verification of the support requirements for individual candidates, the formation of a committee for updating voter data, as well as updating and compiling the voter list.

¹Nopyandri, "Democratic Regional Head Elections in the Perspective of the 1945 Constitution", Vol. 2 No. 2, Journal of Law, 2011, p. 2.

²Ridho Imawan Hanafi, "Direct Election of Regional Heads in Indonesia: Some Critical Notes for Political Parties", Journal of Political Research Vol. 11 No. 2, 2014. p. 2.

³KPU Decree Number 179 / PL.02-Kpt / 01 / Kpt / 01 / KPU / III / 2020 concerning Postponement of Election Stages for Governor and Deputy Governor, Bd (nd).

Looking at the content of the material, the decision was limited to postponing the technical implementation of the pilkada until the stage of determining the voter list, but the stages of holding simultaneous regional elections will still be carried out in September 2020. These provisions are based on the announcement contained in Article 201 paragraph (6) of Law No. 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning the Election of Governors, Regents and Mayors.

B. Postponement in the perspective of the Pilkada Law

When analyzing the provisions of the statutory regulations contained in Law Number 10 of 2016 concerning the second amendment to Law No.1 of 2015 concerning Elections for Governors, Regents and Mayors, there are actually mechanisms that can be implemented if there are conditions that compel or allow the stage of regional head elections must be postponed. The choice is in the form of a further election and a follow-up election.

Article 120 of the Pilkada Law states that a follow-up election is a mechanism to postpone the election which later continues the halted stages, while the conditions for a further election are stipulated in article 120 paragraph (1) which reads:

"In the event that part or all of the Electoral area occurs riots, security disturbances, natural disasters, or other disturbances which result in part of the Election implementation stages being unable to be implemented, a further Election shall be conducted."

Apart from this mechanism, there is another alternative, namely the selection of a follow-up in accordance with Article 121 paragraph (2), the mechanism is carried out for all stages in the sense that it starts from the beginning (Rohim, 2016). The conditions are contained in Article 121 Paragraph (1), which reads:

"In the event that a natural disaster occurs in an Electoral area, riots, security disturbances, and / or other disturbances that result in part of the stages of holding the election, a follow-up election will be conducted."

By referring to the current situation due to the Covid-19 pandemic outbreak, the advanced selection mechanism is more appropriate to be implemented and set as an option. However, the obstacle for this choice only refers to each area. It becomes a dilemma that the law does not describe a national danger situation, so it must be simultaneously postponed due to the widespread spread of this epidemic and for the sake of maintaining people's health. However, as an effort to mitigate greater risks, it needs to be appreciated when the General Election Commission takes steps to postpone the 4 stages of the 2020 Pilkada as the right and responsive step in addressing the current situation to reduce the spread of the increasingly widespread Covid-19 pandemic.

C. Anticipation Through Total Postponement of Regional Head Elections

Seeing current conditions, all stages of regional head elections should be postponed totally. In its scope, the stages of election day must also be postponed because the basic foundation for the stages has been postponed and it needs to be understood

that it is impossible to hold regional elections according to the agenda set out in the law if the Covid-19 pandemic has not been completely finished. In consideration, the state should first focus on basic and fundamental matters, namely efforts to deal with the Covid-19 pandemic outbreak that has attacked Indonesia and strive for the welfare of its people equally.

This postulate is in line with the results of a work meeting conducted by Commission II of the DPR with the Ministry of Home Affairs, the General Election Commission, the General Election Supervisory Board, and the Election Management Council on March 30, 2020 in the form of postponing the 2020 regional head elections. Comprehensively, there are 4 conclusions from the meeting. this includes the postponement of the 2020 regional elections simultaneously, the implementation of further regional elections will be carried out based on mutual agreement between the KPU. The government and the DPR then asked the regional heads to relocate the unused 2020 regional election funds for handling Covid-19, and the last one asked the government to immediately establish a legal umbrella in the form of a Government Regulation in Lieu of a Law. Then in its consideration,

Even though there is a memorandum of understanding and agreement between institutions, this is not an official legal product but a political agreement between institutions. Bearing in mind that Indonesia is a law-based state order in accordance with Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, the provisions for scheduled postponement are in the form of official law at the level of law.

D. Perppu (Government Regulation Substituting Laws) Pilkada as Legality of Postponement

In a rule of law study, the state must be able to respond to conditions manifested in the form of statutory regulations as a guarantee of the constitutionality of the 2020 Pilkada postponement. Originally intense, these regulations must be able to act to protect the people and ensure welfare (Opening of the 1945 Constitution of the Republic of Indonesia.⁴). In accordance with the adage echoed by Marcus Tullius Cicero in his work, namely "Salus populi suprema lex esto". (Soekanto, 2002)⁵

If you see in the context of the precarious situation, coercion and the inability of the Pilkada Law to respond to the current situation, policies in the form of Government Regulations in Lieu of Laws are appropriate. This is based on Article 22 of the Constitution of the Republic of Indonesia that "In compelling circumstances, the President has the right to stipulate government regulations in lieu of laws."

The Pilkada Perppu can actually be used as legality for the postponement of the 2020 pilkada. In the material content it should at least include several things including the status of the post-postponement stage, the scheme for filling regional head positions for regions that experience regional head vacancies before the implementation of the regional elections, the mechanism for reallocating the 2020 pilkada budget and stipulation the source of the post-postponement pilkada budget

⁴ The Preamble of the 1945 Constitution of the Republic of Indonesia. (Nd).

⁵Soekanto, S. (2002). Factors affecting law enforcement ., Jakarta: Rajawali Press.

and at least pay attention to the implementation of the election with the design of the electoral arrangement which is specifically contained in the Constitutional Court Decision Number 55 / PUU-XVII / 2019 concerning the constitutionality of the simultaneous election model so that there is no patchwork in determining the schedule of the elections in the future.⁶

So if the state is responsive and appropriate, responding to postponement of regional elections through Government Regulations in Lieu of Laws with all legal considerations and various other fields of study. So the law can run as a function according to Mochtar Kusuma Adtmaja that "the law must be able to be used as a means to solve problems in the administration of the State" (Kusumaatmadja, 2002).⁷

E. The Impact of the COVID-19 Pandemic on the 2020 Pilkada

The government through Perppu No. 2/2020 remains unmoved that the regional head elections will be held on 9 December 2020. As we all know, initially the 2020 Pilkada will be held on 23 September to elect 9 governors, 224 regents and 37 mayors simultaneously. Before Indonesia was hit by the Covid-19 pandemic, the General Election Commission (KPU) had conducted a series of stages for the 2020 simultaneous regional elections.

However, due to the Covid-19 pandemic, the KPU finally issued a KPU decree Number: 179 / PL.02-kpt / 01 / KPU / III / 2020 which, among other things, regulated the postponement of several stages of the 2020 Pilkada, including the inauguration and tenure of the Voting Committee. (PPS), verification of the support requirements of individual candidates, the formation of Voter Data Update Officers (PPDP) and the implementation of checking and research, as well as updating and compiling voter lists. The postponement of several stages of the aforementioned pilkada can have various impacts in its implementation, both positive and negative. The positive impact, for example, this delay provides space for independent candidates to prepare support requirements as individual candidates. Political parties can also experience relatively relaxation in the recruitment process for regional head candidates.

However, this positive impact is not too significant considering that the deadline for changing the implementation schedule has only shifted by three months, from 23 September to 9 December 2020. This change in schedule is considered forced considering that the increase in the number of positive cases of Covid-19 has not sloped and has ended. Moreover, until today there is no certainty when this pandemic will end. The impression of coercion over the issuance of Perppu Number 2 of 2020 is indeed visible.

Even though the Perppu has an article stipulating that the 2020 Pilkada can be postponed if the situation does not allow, this article is actually considered to be something that is uncertain. Moreover, the Perppu also does not regulate budget issues and whether this Perppu can also be a legal basis for the KPU to exercise discretion in assessing the Covid-19 pandemic situation in a region can be considered to be disruptive to the

implementation of regional elections. The question is, does the KPU have this authority or does that authority lie with other agencies, such as the Ministry of Health, as applicable to the Law on Health.

The looseness of the regulation in the Perppu can be considered a normal thing, but it can actually create new problems. This problem is not only a matter of uncertainty for the organizers because the level of possibility for the 2020 Pilkada is overshadowed by the Covid-19 pandemic situation which has an uncertain time, but also the high probability that the KPU will have difficulty making rules that can determine the situation of an area or the health status of an area.

F. Possible Malpractice

Election malpractice is an act of violation, whether intentional or not, legal or illegal (Ramlan, et al, 2014: 31). The violation actually depends on whether the rules of the game are tight in the electoral process and the anticipation of prevention so that the above malpractices can be avoided. One of the things that often happens and becomes the object of lawsuits in the Honorary Election Council (DKPP) is negligence or carelessness due to carelessness in implementing the election stages. In normal situations, this problem often occurs, especially in abnormal and emergency situations such as the Pilkada in the middle of the current Covid-19 pandemic.

One example, in the midst of the outbreak of the Covid-19 pandemic until May 13, 2020, approximately 156 individual candidates have been accepted by the KPU and 45 candidates have been rejected for registration because the initial requirements did not meet. According to the initial stages before the Covid-19 pandemic, verification of candidate support requirements individual. With the issuance of Perppu Number 2 of 2020, the KPU must make more rational steps to verify the terms of support. The problem faced by the KPU is a matter of time considering that the 9 provinces and 270 regencies / cities that will hold the 2020 Pilkada could be carrying out Large-Scale Social Restrictions (PSBB). In fact, verification of support requirements must be done randomly and to check whether the support conditions provided by the candidate are valid or not,

The potential for malpractice in the 2020 Pilkada is open considering that the verification stage for the support requirements of individual candidates is a sensitive stage, because it determines the fate of an individual candidate, whether they pass or fail to advance to the elections. The level of possibility of malpractice at this stage can occur because based on experience in normal situations, from a number of cases in the previous simultaneous regional elections, verification of the terms of support for individual pairs has resulted in many disputes. Therefore, the level of possibility of malpractice in verifying the support requirements of individual candidates can become an obstacle for organizers if not carried out carefully.

Another problem that can lead to malpractice in the 2020 Pilkada is registration and updating of voter data. This issue has become one of the crucial issues in the history of elections in Indonesia because voter databases are always different and not the same, which often leads to disputes between election organizers and election participants (including pilkada). One of the difficulty levels in the upcoming regional elections is that if Covid-19 does not end, what about voters who have migrated or live outside the provinces and / or districts that are holding the

⁶Constitutional Court Decision Number 55 / PUU-XVII / 2019. (nd).

⁷Kusumaatmadja, M. (2002). Legal Concepts in Development. Bandung: Alumni.

elections? Even though the KPU in compiling its stages can provide leeway that the voter update stage can be carried out until December 9, 2020, this step actually shows the KPU is not sure of the data it has. This pattern is possible given the previous 2020 Pilkada stages,

Apart from the issue of data uncertainty, the inaccuracy of voter data can also have an impact on the level of participation in the regional elections. As an illustration, Moch. Nurhasim (et al) in 2015 and 2016 regarding the level of voter turnout in the elections (voter turnout) showed that the low level of community participation in the Pilkada in Medan and Batam was due to the wandering voters and the high level of voter mobility. As a result, apart from not being able to do updating so that the data was not updated and did not match the actual voters, organizers often found it difficult to find the addresses of their voters. Situations like that, again occur in normal situations. Then, with the current covid-19 situation, can updating of voter data be carried out optimally?

With Mrelying on the Special Voters List (DPK) and the Supplementary Voters List (DPTb) which continue to occur and there is no improvement by the organizers, can actually be called part of the malpractice of election administration. The DPTb problem that occurred in the 2019 Election generally was that voters who wanted to use their voting rights in a place different from their residence, actually experienced various difficulties due to the "complicated" management process. During the PSBB period with physical distancing or social distancing restrictions, this must be anticipated by the election organizers.

The next potential malpractice is at the time of the vote count. Participants in the 2020 Pilkada, both candidates from parties and individuals, must meet the target of providing witnesses at each polling station (TPS). The psychology of voters to maintain social distancing during the PSBB period can become an obstacle to the emergence of participatory supervision. In addition, in a difficult situation in the middle of the PSBB, it could be difficult for candidates to find witnesses, and election supervisors can experience the same situation.

G. A Campaign That Is Not Easy for Candidates

In an abnormal situation like today, campaign elements for candidates or pilkada participants are not easy. The time was difficult and the situation made it impossible for the candidate to gather the masses. In fact, campaigns in the electoral process in Indonesia are synonymous with mass gathering. With a symbolic type campaign arrangement, where candidates tend to mobilize the masses, while there is a PSBB policy, one of which regulates physical distancing or social distancing, of course this is not easy for candidates. Can the KPU break the PSBB regulations if a region that is holding regional elections turns out that the pandemic situation is not over? There are no rules that explain this, and Perppu Number 2 of 2020 also does not mention it. Meanwhile, in the practice of elections and / or regional elections,

Although the Covid-19 pandemic situation could trigger a difficult situation for the 2020 Pilkada arrangement, the Pilkada in the midst of this pandemic could also encourage regional head candidates to reduce symbolic campaigns and mass mobilization. The use of technology applications in cyberspace will replace outdated methods of face-to-face campaigns with large crowds.

Candidates for regional heads must begin to get used to this method. This Covid-19 pandemic can be used as a momentum for the revival of a narrative campaign filled with ideas and ideas that are dialogued in a relaxed and comfortable manner.

Candidates need to prepare themselves to innovate digital campaigns. The orientation of candidates who still believe too much about campaigning in the traditional way through mass gathering, needs to be abandoned. Likewise, a short-cut way of thinking, because our electoral process in the reform era, both the elections and the regional head elections, is still lacking in exploring the narrative of candidates as a force to attract the masses.

Consequently, candidates have to sell ideas or ideas. There is a battle of big ideas to offer voters. It is no longer a social assistance model campaign (bansos) with the distribution of money and basic needs, which until now has led to a polemic whether it is a violation or not if social assistance is attached with a photo of the candidate's defense. Or a model of activity such as that carried out by the candidate for North Minahasa Regent, Shintia Gelly Rumumpe, who distributed masks, hand sanitizer, stickers and IDR 50,000 in cash to residents in Tatelu Village, Dimembe, North Minahasa, North Sulawesi. Masks and hand sanitizer were the items most sought after by residents during the Covid-19 outbreak (Kompas, 16-4-2020).

In the context of campaign arrangements, the KPU may experience a dilemma amid the PSBB situation. This is because there is a "political tradition" that has become a habit, so that candidates in the electoral process are not really important in selling ideas. Voters' behavior that tends to be transactional causes the campaign process in elections and regional head elections to be dominated by old-style campaigns, mass mobilization that is pragmatic in nature.

H. Anticipation by the Organizer

First, the KPU needs to make a KPU Regulation (PKPU) that translates Perppu Number 2 of 2020, especially with regard to the measures that a regional election can be postponed or not implemented. Second, Bawaslu from the start can anticipate various possibilities of malpractice in the 2020 Pilkada according to the 2020 Pilkada Vulnerability Index which has been drafted, by coordinating with the KPU, especially to create various innovative schemes in order to anticipate the bottlenecks that will occur in the 2020 Pilkada. Third, if the KPU wants to design an electronic e-recapitulation as the discourse develops to anticipate malpractice that may occur after voting, the KPU must ensure the level of security and validity of the electronic e-recapitulation data which becomes the official data on the results of the election.

Finally, ensuring that voter data is accurate because disputes over voter data have eroded the level of public trust in election administrators. The validity of voter data can end the polemic of sin inherited from the electoral problem that originates from the chaos of voter data that has occurred so far.⁸

I. Closing

⁸<http://www.politik.lipi.go.id/kolom/kolom-2/politik-nasional/1398-dampak-pandemi-covid-19-terhadap-pilkada-2020>, accessed on July 16, 2020.

To resolve polemic problems regarding the holding of regional elections in the midst of the Covid-19 pandemic situation, the government needs to make a Government Regulation in Lieu of a Law to delay the implementation of regional elections or make rules with all legal considerations and various other fields of study. Therefore, the General Election Commission (KPU) has issued a policy stipulated in KPU Decree Number 179 / PL.02-Kpt / 01 / KPU / III / 2020 concerning Postponement of Election Stages for Governors and Deputy Governors, Regents and Deputy Regents, and / or Mayor and Deputy Mayor of 2020. This is done because considering the increasing number of Covid-19 cases from day to day.

Some of the things regulated in this policy include regulating the postponement of several stages of the 2020 Pilkada, including the inauguration and tenure of the Voting Committee (PPS), verification of the support requirements of individual candidates, the formation of Voter Data Updating Officers (PPDP) and the implementation of matching and research (coklit). , as well as updating and compiling the list of voters. That way, while this postponement period, the government can focus more on the Covid-19 problem and on restoring other conditions so that it can carry out regional elections until the time is possible later.

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