

The Protection of Political Rights in Surabaya Regional Head Elections 2020 during the COVID 19 Pandemic

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ABSTRACT

The state must be responsible for fulfilling the political rights of every citizen. Political rights are one of the human rights that cannot be reduced by the state. Even though Indonesia is currently experiencing the Covid 19 Pandemic, the Government decided to hold simultaneous local elections due to various considerations. As for some of these considerations is the need for legal certainty of the election of new public officials because the previous period is up, the Covid 19 pandemic is not known when it will end, the strategic policies of the government must still be taken and implemented, and the main thing is to fulfill the political rights of Indonesian citizens who are a democracy based on the law. Therefore, it is considered necessary to explore how the country fulfills the political rights of the citizens of Surabaya during the Pandemic at the Simultaneously Regional Head Elections 2020. This study is conducted with empirical normative where researchers will examine every rule relevant to this theme and empirically review the implementation of government rules and policies in the fulfillment of people's political rights at the 2020 Regional Elections and the obstacles faced in the fulfillment process.

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1. INTRODUCTION

The end of 2019 marks a change in the world order in various fields. The covid-19 virus, which was first discovered in Wuhan, China, spread so fast and began to infect people in other countries. This pandemic has resulted in a governance crisis and pandemic management policies in various countries in the world (Mas'udi & Winanti, 2020). Almost every country, be it developed countries, developing countries, even poor

countries, must compete quickly with the spread of Covid-19 to reduce the negative impact caused by it. Indonesia, which was previously suspected of being a country immune to Covid-19 because no citizen in Indonesia's territory was infected with the Covid-19 virus as of a few months since the virus was first discovered, has not escaped being the target of the virus.

Indonesia confirmed the Covid-19 case for the first time on March 2, 2020. President Jokowi announced that two Indonesian citizens who were mother and child contracted the virus after the child met a Japanese national at a dance club. However, it is suspected that this case is not the first case. The expert team from the Faculty of Public Health, University of Indonesia assessed that predicting the Coronavirus had entered Indonesia since the 3rd week of January 2020. This is based on cases of people under surveillance (ODP) and patients under surveillance (PDP) reported since week 3 of 2020. On December 3, 2020, there were 557,887 people exposed to Covid-19, 462,553 of whom recovered and as many as 17,355 people died.

The Indonesian government with all its power and efforts has taken several policies to solve this problem. Slightly different from other countries that immediately implemented a lockdown after indicating that Covid-19 had infected their country, the Indonesian government with all considerations from an economic, social, to health perspective took steps to issue a policy, namely Large-Scale Social Restrictions (PSBB). The steps taken by the government are expected to break the chain of spreading Covid-19 by limiting community activities that allow forming crowds.

In the political field, in particular the COVID-19 pandemic has caused polemics related to the implementation of the 2020 regional elections. The Indonesian state is a legal state that adheres to the basic laws, namely the 1945 Constitution and the Indonesian nation's philosophical grondslag, namely Pancasila. Both of them strictly regulate the rights of their citizens, including political rights. Pancasila in the fourth principle explicitly regulates the existence of democratic rights that involve citizens playing an active role in determining their leaders. The implementation of simultaneous regional elections as a form of fulfillment of citizens' politics has been regulated in article 201 paragraph (6) of Law 10 of 2016 which states, simultaneous voting for Governors and Deputy Governors, Regents and Deputy Regents, as well as mayors and deputy mayors, will be held in September 2020. However, the problems caused by the Covid-19 pandemic demand the government not to ignore the health of its citizens. For this reason, the Government, the Indonesian People's Representative Council (DPR), and the General Election Commission (KPU) agreed to postpone the 2020 Pilkada until December 2020 until the state conditions caused by the pandemic improved with the issuance of Government Regulation in place of Law (Perppu) Number 2. 2020 year.

As with the previous general election, the instruments involved in the 2020 elections include Bawaslu, KPU, and DKPP. The formation of the General Election Commission (KPU) is regulated in Article 10 of Law Number 3 of 1999 concerning General Elections and Article 2 of Presidential Decree Number 16 of 1999 concerning the Establishment of the General Election Commission and the Establishment of the Organization and Work Procedures of the General Election Commission General Secretariat. The KPU's task is to prepare general election executors, starting from forming general election organizers, leading the course of general elections to dripping the overall election results. Meanwhile, the Election Supervisory Body is primarily tasked with supervising the implementation of the Election in the framework of preventing and prosecuting violations for the realization of a democratic Election as

stipulated in Law Number 15 the year 2011 concerning the Implementation of General Elections. The next device is DKPP. The General Election Organizer Honorary Council (DKPP) is an institution devoted to balancing and monitoring (check and balance) the performance of the KPU and Bawaslu and their staff. DKPP must examine and decide on complaints and/or reports of suspected violations of the code of ethics committed by election administrators.

No different from other regions in Indonesia, Surabaya also held Pilkada in 2020 to elect a mayor and deputy mayor for the next period to replace Tri Rismaharini and Whisnu Sakti Buana. This general election was attended by two pairs of candidates for mayor and deputy mayor. Candidate pair number one is Eri Cahyadi and Armudj. While the candidate pair number two is Machfud Arifin and Mujiawan Sukirno. Now the question is how the state fulfills the political rights of Surabaya citizens at the 2020 regional elections with various considerations related to the health of Surabaya's citizens during this pandemic.

2. METHOD

This type of research conducted in this study is a normative legal research or normative. Normative juridical research refers to the legal norms contained in legislation and judicial decisions and legal norms that exist in society. Research normative or normative legal research will be doing by researching library materials which are also known as secondary data and legal research library (library research). This research is a descriptive analysis, which revealed the legislation relating to the legal theories that the object of research. Descriptive analysis, a method that is used to describe a condition or circumstance that is happening or underway that aim to provide the data as accurately as possible about the object of study so as to dig into things that are ideal, then analyzed based on the theory of law or legislation that apply.

3. RESULTS AND DISCUSSION

3.1. Political Rights as The Embodiment of Human Rights

Human rights are things that are owned by humans as basic rights that are obtained by all humans and regardless of the location of the nation, language, religion, ethnic origin another status. Human rights can be said to apply universally because basically all countries in the world consider human rights as something that must be upheld and respected to create a peaceful and serene world. In Indonesia, human rights or what is commonly called HAM have a legal basis, namely in Law no. 39 of 1999 which discusses human rights where a total of 8 basic rights are owned by a person, namely the right to life, the right to have a family and continue offspring, the right to self-development, the right to justice, the right to personal freedom, the right to feel safe, the right to welfare and the right to participate in government. In the fifth part, namely the right to personal freedom, article 23 (1), that everyone is free to choose and have political beliefs.

So it can be said that everyone has political rights that cannot be disturbed by anything else. Political rights are human rights that a person has and are related to political life, such as the right to participate in government and the right to vote and be elected in general elections. Provisions regarding political rights are regulated in the Civil and Political Rights Law No. 12 of 2005 concerning the convention of the ratification of the international covenant on civil and political rights which confirms the

principles of human rights in the civil and political fields listed in the UDHR so that it becomes binding provisions. legally and the translation includes other related subjects. The Covenant consists of a preamble and Articles covering 6 chapters and 53 Articles. Article 25 contains the right of every citizen to participate in the administration of public affairs, to vote and be elected, and to have access based on the same general requirements to public office in his country.

3.2. The Effect from Covid-19 on The Realization Political Rights in The Implementation Regional Head Elections in Surabaya

Indonesia as a country with a democratic government system in its concept highly upholds the people as the holder of the highest sovereignty in the country. Normatively, democracy is something that would ideally be carried out by a country and expressed in its constitutional practice. One form of the implementation of democracy in Indonesia is through the simultaneous Pilkada (regional head elections) which will be held in 2020. Although Indonesia is currently being hit by the Covid-19 pandemic, the regional head elections were decided to be held offline. Covid-19 itself is a global pandemic that has resulted in many changes in all areas of a country including Indonesia, which attacks the economy, politics, education, and even tourism and culture. Precisely on April 13, 2020, President Jokowi officially determined the spread of the coronavirus (Covid-19) as a national disaster as stipulated in Presidential Decree (Keppres) No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019. Covid-19 as a National Disaster has an impact on the existence of large-scale social restrictions (PSBB) listed in Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019.

In all the limitations of movement during the conditions of the Covid-19 pandemic in Indonesia which targeted the economic, educational, social, and even political sectors, the simultaneous regional head elections which were supposed to be held on 23 September 2020 were postponed until December 2020 officially with the issuance of a Government Regulation. In place of Law (Perppu) No. 2 of 2020 which is based on various considerations and risks on the environmental and health conditions of citizens. For all estimates and the search for solutions by the government and implementing agencies such as the KPU and Bawaslu, it was finally decided that the 2020 regional elections would still be held. This is because it is based on various reasons including reasons of legitimacy. Because as it is well known that in February 2021 there will be a change in the tenure of the regional head leadership and if there are no regional elections, the consequence is that the regions will be led by the executor of duty by the provisions in PERPU No. 1 of 2014 which is certainly different from the role of regional heads. Second, namely the reasons for legal and political certainty, which means that if the regional election is postponed until conditions become conducive and a vaccine is found, legal certainty will be difficult to achieve considering that experts are unable to predict when the Covid-19 conditions will subside. Postponing the election is considered to be counterproductive to political conflict, especially in the conditions of handling Covid-19.

3.3. The Protection of Political Rights in Surabaya Regional Head Elections 2020 during the COVID 19 Pandemic

Another reason that becomes the basis for the implementation of the PILKADA is the existence of the political rights of citizens who should be given the means and

fulfilled by the state. The political right here is the right to vote and be elected in the practice of democracy in Indonesia. By holding the 2020 regional elections simultaneously, it is considered capable of maintaining the continuity of democracy in Indonesia as a rule of law because if the elections are not implemented, it is feared that this could injure democracy which has been going on so far. In carrying out simultaneous regional elections during a pandemic, of course, the implementing agency has adjusted all processes, tools, and techniques to minimize the spread of Covid-19 with careful preparation and close supervision. Government policies governing simultaneous regional elections during the pandemic in 2020 are sourced from Government Regulation in place of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in place of Law Number 1 of 2014 concerning Elections Governors, Regents and Mayors Became the Law "PERPU Pilkada" which was enacted on May 4, 2020. Government policy to continue to hold Pilkada simultaneously during a pandemic can be through the application of strict health protocols and close supervision of both candidate pairs and citizens so that minimize the spread of the virus and also the occurrence of fraud which can damage the course of democracy.

The election tool for Regional Heads during the Covid-19 pandemic is the same as the implementation of elections before the Covid-19 pandemic. These include the General Election Commission (KPU), the Voting Committee (PPS), and the Election Supervisory Board (BAWASLU). The electoral apparatus for Regional Heads is by the General Election Commission Regulation Number 11 of 2018 Chapter 1 Article 1 paragraph 8 that the Election Organizer is an institution that organizes the Election which consists of the General Election Commission, the Election Supervisory Board, and the Election Organizer Honorary Council as an integral part of the Organizing function. Election to elect members of the People's Representative Council, members of the Regional Representative Council, President and Vice President, and to elect members of the Regional People's Representative Council directly by the people. The General Election Commission will be tasked with planning and implementing elections as well as receiving, researching, and determining political parties that have the right to run as contestants in the elections. The task of the Voting Committee is to determine the DPT (Permanent Voters Data) as a review in case of fraud in the implementation of the election. Meanwhile, the duties of the Election Supervisory Body are to plan and determine the date for the implementation of elections, socialization of election implementation with the aim of the public being able to provide active participation in the implementation of elections and the implementation of other preparations by the provisions of election violations by the Election Supervisory Body which have been determined by law.

In early December, namely on December 9, 2020, Indonesia held Regional Head Elections in several regions, one of which was the City of Surabaya. According to the results obtained from the KPU of the City of Surabaya, the Permanent Voters List (DPT) in the implementation of the Regional Head Election in the city of Surabaya is 2,089,027 consisting of 1,016,395 men and 1,072,632 women. According to the KPU of the City of Surabaya, the number of voters in 2020 has increased by 50 thousand voters compared to the simultaneous Regional Head Elections in Surabaya in 2015. In the implementation of the Regional Head Election in early December 2020, there were two coalitions of parties, namely the PDI-P party and the Party. Solidaritas Indonesia (PSI) carries the candidate pair number one Eri Cahyadi-Armuji. Meanwhile, in the

nomination of candidate pair number two, Machfud Arifin-Mujiaman was nominated by 8 coalitions of parties, namely PKB, PPP, PAN, Golkar, Gerindra, PKS, Demokrat, and Nasdem Party. So that in the implementation of the Regional Head Election in the city of Surabaya, 10 political parties played an active role in providing cadres as contestants in the implementation of the Regional Head Election contestation in the city of Surabaya.

There are several problems before the official date for the simultaneous regional elections in Indonesia is determined, this is based on the increasingly widespread of the coronavirus in Indonesia. This problem concerns the safety and health of citizens if the simultaneous regional head elections in Indonesia are carried out, which are feared, will cause new clusters of the coronavirus. Also, other problems will arise if the Election of Regional Heads is Concurrent, namely irregularities of the Basic Law which states that each Regional Head will occupy his office as Regional Head within 5 years. As a midpoint for the two problems that will trigger a public debate, the KPU has decided to continue to carry out the Regional Head Election as stipulated in PKPU Number 6 of 2020 in Article 5 where simultaneous elections will be held by complying with health protocols to minimize the spread of the new covid cluster. 19, especially paying attention to the safety and health of organizers, election participants, and voters using conducting rapid tests or Real-Time Chain Reaction (RT-PCR) on members and the Secretary-General of the KPU, Regency / City KPU, PPK, PPS, and PPDP. Also, there is personal protective equipment that must be used by organizers, election participants, and voters, namely at least masks, hand sanitizers, antiseptics. And must adhere to health protocols, namely social distancing, namely maintaining a distance of at least 1 meter, checking body temperature, and giving regular disinfectants.

3.4. Strategy for Implementing Regional Head Elections in Surabaya During The Covid-19 Pandemic as Protection of Political Rights

Holding Simultaneous Regional Elections in 2020 during the Covid-19 pandemic is a challenge for Bawaslu. The PILKADA stages are mostly carried out using networked methods and the risk of the spread of covid-19 due to the simultaneous Pilkada that makes the Surabaya City Bawaslu have to rack their brains to find the best surveillance strategy. Quoted from the official website of Bawaslu, Bawaslu stated that it would explain the simultaneous regional elections in 2020 in the Covid-19 pandemic by implementing several surveillance strategies including restructuring the budget to provide personal protective equipment such as hand sanitizers, gloves, masks, and face shields by a statement from Commission II of the DPR. This is very important because to carry out the health protocols that have been determined by the Covid-19 task force and the Ministry of Health. The purpose of all of this is to protect election supervisors from being exposed to Covid-19 while carrying out their supervisory duties and functions.

Then the second strategy is to map the potential for violations so that prevention measures can be measured. This method was pursued by rearranging the Election Vulnerability Index (IKP) as a comprehensive mapping effort related to potential violations and vulnerabilities in organizing Pilkada in the Covid-19 pandemic. The preparation of this IKP involved various parties, namely the Police, provincial or district/city KPU, and the mass media. Several Banwaslu regulations regarding technical supervision, handling of violations, and dispute resolution must adjust and pay attention to health protocols in handling the Covid-19 pandemic.

The next strategy is to use an information technology-based surveillance strategy. Covid-19 has limited the activities of Indonesian citizens to carry out activities offline, one of which is regarding the campaign, therefore, the campaigns carried out by candidate pairs and their supporters will mostly be carried out in the network. So that election supervisors must improve their ability to use information technology to carry out maximum supervision. Still related to activities carried out in the network, Bawaslu also collaborates with existing broadcasting institutions. This is to anticipate the emergence of content containing hoaxes, slander, or hate speech that can harm one of the candidate pairs. And the last strategy that will be implemented by Bawaslu is to increase the appeal and prevention of Pilkada violations through social media owned by Bawaslu such as Facebook, Instagram, and Twitter. This step can be done by making meme pictures and short films that educate the public about regulations related to the implementation of Pilkada.

These strategies are very important to implement to create a quality, dignified, and dignified democratic party event to fulfill the political rights of citizens, especially residents of the city of Surabaya, without having to cause a spike in the number of Covid-19 transmissions. In carrying out this strategy, Bawaslu of Surabaya city facilitated a Rapid test for ad hoc supervisors. But the test was carried out simultaneously for 93 sub-district supervisory committees and 154 village supervisory committees. Also, by looking at the weakening economic conditions of almost all residents of Surabaya, Bawaslu has steps that are different from the previous regional elections to prevent the practice of money politics. The step taken by Bawaslu to address this is by launching several anti-money politics villages. With this, it is hoped that the simultaneous regional elections in 2020 can run well and that the voting rights of Surabaya citizens can be truly channeled. Although in practice these practices cannot be eliminated.

3.5. The Results of The Regional Head Election in Surabaya During The Covid-19 Pandemic

The Candidate Pair for Mayor and Deputy Mayor of Surabaya Machfud Arifin and Mujiawan through their legal counsel officially registered the 2020 Pilkada lawsuit in Surabaya to the Constitutional Court (MK), on December 21, 2020, represented by a legal team consisting of Veri Junaidi, SH, MH, Febri Diansyah, SH, Donal Fariz, SH, MH, Jamil Burhan, SH, Slamet Santoso, SH, Muhammad Sholeh, SH.

The lawsuit contains a request for the Cancellation of the General Election Commission (KPU) Decree of the City of Surabaya Number: 1419 / PL.02.6-Kpt / 3578 / KPU-Kot / XII / 2020 concerning the Determination of the Recapitulation of Vote Count Results in the 2020 Mayor and Deputy Mayor of Surabaya Election. In his petition, Machfud Arifin asked the Constitutional Court to disqualify Serial Number 1 Candidate Pair Eri Cahyadi and Armuji as winners of the Surabaya Mayor and Deputy Mayor Election because candidate pair number 1 had violated APK in the form of billboards, ASN, social assistance, Risma's letter, and City Government programs. Surabaya, like PKH and others. The applicant candidate pairs also stated that they had evidence of violations that showed structured, systematic, and massive fraud (TSM). In response to the lawsuit, the Eri-Armuji Legal team has prepared a lot of evidence of the alleged violations committed by Machfud-Mujiawan to face the lawsuit at the Constitutional Court and admit that they already have evidence and witnesses for the violation.

However, in the election dispute trial, the Constitutional Court judges rejected the request of the Surabaya mayor and vice mayor candidate pair number 2 Machfud Arifin-Mujiaman regarding alleged fraud committed by the elected candidate pair Eri-Armuji in the Constitutional Court decision Number 88 / PHP. .KOT-XIX / 2021. This decision was taken based on the consideration of the panel of judges that the difference in vote acquisition between the applicant and the respondent exceeds the percentage required by Article 158 Paragraph 2 letter d of Law Number 10 of 2016 concerning Regional Head Elections, namely 0.5 percent. Meanwhile, the difference between the two candidates' votes was 13.89 percent. Which is Eri Cahyadi-Armuji's vote from the recapitulation of the Surabaya KPU as many as 597,540 votes, which is 145,746 votes adrift of the Machfud candidate pair Arifin-Mujiaman who only pocketed 451,794 votes. Another consideration of the decision of the Panel of Judges of the Constitutional Court is that there is no evidence that convinces the court that the structured, systematic and massive violations argued by the applicant affect the votes acquired by the candidate pairs.

4. CONCLUSION

Political rights as inherent rights and owned by Indonesian citizens who have met the requirements, can in fact be said to have been achieved in the implementation of the Surabaya Regional Elections in 2020 even though the implementation was carried out with various obstacles and obstacles to the Covid-19 pandemic. The Surabaya local government with all considerations and possibilities, is trying its best to continue to hold the 2020 simultaneous elections in Surabaya as an effort to fulfill the political rights of the citizens of Surabaya as well as an effort to prevent the vacuum of power in politics by thinking ahead that the end of this pandemic period is still unpredictable even to date. in various ways to minimize the occurrence of clusters of virus spread, the KPU as the organizing agency implements various policies and rules that are clearly different from the previous PILKADA implementation. starting from the general public to Covid-19 patients, the election process is systematically considered and designed for the comfort and health of all Indonesian citizens.

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