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Indonesian Judiciary during the Pandemic: Staying Afloat on Troubled Water

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Indonesia Judiciary during the Pandemic: Staying Afloat in Troubled Water

Linda Yanti Sulistiawati*

Abstract

Indonesia is an archipelago of 17,000 islands and the fourth most populated country in the world with 270 million people. The country is by default a logistical nightmare, even prior to the pandemic. After some delay, Indonesia finally enacted the Contiguous Disease Law and the Health Law in 2020 to implement public health measures to manage the virus spread. The courts in Indonesia have also been faced with challenges due to the pandemic. Due to the many quarantine regulations, only hybrid or fully online court proceedings may be organized. For some courts in rural areas, this presents a major challenge as their internet infrastructure is either lacking or non-existent, and keeping to regular court proceedings would contravene regulations and put health at risk. Against this backdrop, how has Indonesian jurisprudence developed during the pandemic? What are the major issues that are discussed in court in relation to Covid-19? This paper aims to answer these questions in a descriptive and analytical method based on data available. Finally, the paper concludes with suggestions that may assist the Indonesian judiciary during this pandemic.

1. Introduction

As the largest archipelago in the world, Indonesia is made up of 17,000 islands – five major islands and other smaller groups of islands. The population of Indonesia stands at 270.20 million,¹ making it the fourth-most populous country in the world. Due to its vast geographical expanse and large population, one of the main challenges in Indonesia is its lack of infrastructure, which has in turn led to uneven economic development and social justice across the country, including access to healthcare. Thus, in response to the President of Indonesia's statement on March 2, 2020 that Covid-19 cases had been found in the country, and the World Health Organization's subsequent declaration of a Covid-19 pandemic, the Government of Indonesia ("GoI") had to immediately respond with the most suitable way to curb the spread of the virus and minimize the challenges.

¹ United Nations Statistics Division (n.d.). *Indonesian Population Census 2020*, accessed 28 September 2021. <https://unstats.un.org/unsd/demographic-social/meetings/2021/egm-covid19-census-20210209/docs/s03-04-IDN.pdf>

The Gol responded by enacting Law No. 4 of 1984 on Contagious Diseases (“Law on Contagious Diseases”) and Law No. 6 of 2018 on Health Quarantine (“Law on Health Quarantine”) as the basis to implement related regulations and bylaws to tackle the Covid-19 pandemic. With these laws, the Gol set several rules and policies, for example, placing limits on human traffic, shutting down schools, places of worship, introducing social distancing in public facilities and working from home. The Gol also promulgated rules that appeared to prioritize economic considerations over public health factors. These were not always welcomed by the people, as evinced by the complaints that have been made to the Gol in relation to these matters.

The pandemic also brought challenges to the judicial system, particularly in the implementation of procedural laws. The public movement limitations, working from home policies, and concerns over catching the virus have become obstacles to the normal flow of judicial processes. On March 23, 2020, most trials across the nation were suspended due to the Covid-19 pandemic. However, lower courts were still allowed to conduct selected trials offline, albeit with restricted attendance at hearings and temperature scans for all attendees before entry.²

Prior to the pandemic, the Supreme Court had issued Regulation No. 3 of 2018 on the Administration of Court Cases by Electronic Means, which was later revoked by Regulation No. 1 of 2019 on the Administration of Cases and Legal Proceedings in Courts via Electronic Means (SC Reg. No. 1/2019).³ However, implementation of the regulation met with many challenges, for instance, the lack of infrastructure, limited knowledge of court employees, and the reluctance of parties to deviate away from usual routines to adopt new ways of doing things.⁴ In this regard, the unexpected silver lining amidst the pandemic is that judicial institutions have been left with no choice but to encourage the effective and efficient use of digital tools as an alternative to physical court sessions.

The aims of this paper are four-fold. First, to discuss the efforts that have been made by the Gol to combat the effects of the Covid-19 pandemic, in particular, the effects on the Indonesian judicial system. Second, to provide possible suggestions to assist the Indonesian judiciary during this pandemic. Third, to explain the obstacles and challenges the judicial institutions have to overcome

² Post, T.J. (2021). *Indonesian courts to go virtual during COVID-19*, The Jakarta Post, accessed 30 September 2021. <https://www.thejakartapost.com/news/2020/04/20/indonesian-courts-to-go-virtual-during-covid-19.html>

³ Indonesia Supreme Court (2019). *Regulation No. 1 of 2019*, accessed 30 September 2021. https://ecourt.mahkamahagung.go.id/PERMA_01_2019.pdf

⁴ Putra, D. (2020). ‘A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding’, *Jurnal Hukum dan Peradilan*, 9(2): 275-297, doi: <http://dx.doi.org/10.25216/jhp.9.2.2020.275-297>

so that constitutional rights are upheld. Fourth, to highlight some major cases relating to Covid-19 that have come before the court, and the need for information technology to solve the problems.

2. Indonesian Governmental System and Legislation

Per the 1945 Constitution (“Constitution”), Indonesia is a unitary state in the form of a republic and has a presidential government system with separation of the Executive, Legislature, and Judiciary. Under the Constitution, there are eight ‘State High-Institutions’: the President and Vice President, General Assembly (*Majelis Permusyawaratan Rakyat* or MPR), the House of People’s Representatives (*Dewan Perwakilan Rakyat* or DPR), the House of Regional Representatives (*Dewan Perwakilan Daerah* or DPD), Constitutional Court (*Mahkamah Konstitusi* or MK), Supreme Court (*Mahkamah Agung* or MA), Judicial Commission (*Komisi Yudisial* or KY), and State Audit Board (*Badan Pemeriksa Keuangan* or BPK).

Among these eight institutions, the more important are the MPR who has the power to amend the Constitution, the DPR who can make legislation and hold the President and his ministers accountable, and the President, who holds the power of government as head of the Executive.

For the judiciary, the Supreme Court is the highest institution that has the responsibility to exercise judicial power together with the judicial bodies underneath it. The judicial bodies under the Supreme Court are public courts, religious affairs courts, military tribunals, and state administrative courts. Apart from the Supreme Court, Indonesia also has a Constitutional Court that has authority to review laws that run contrary to any provisions in the Constitution, determine disputes over the authorities of state institutions whose powers are given by the Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections.

The most authoritative law in Indonesia is the Constitution, followed by the MPR Decree (*Tap MPR*) made by the MPR, Laws (*Undang-Undang*) enacted by the DPR or Interim Emergency Regulation (*Peraturan Pemerintah Pengganti Undang-undang*) made by the Presidency, Governmental Regulation (*Peraturan Pemerintah*), Presidential Regulation (*Peraturan Presiden*), Provincial Regulation (*Peraturan Daerah*) made by provincial parliaments, and finally, Municipality/City Regulation.⁵ Regulations made by other government institutions such as

⁵ Law No. 12 of 2011 on Development of Laws and Regulations, art 7(1), accessed 23 November 2021. <http://bphn.go.id/data/documents/11uu012.pdf>

ministries or task forces will derive their legal power from one of these norms or authorities.⁶ Regulations are subject to certain constitutional limitations: they cannot conflict with higher norms, such as primary legislation and the Constitution.⁷

3. Indonesia's Response to the Covid-19 Pandemic

In light of Indonesia's unique geography and demography, the Gol has implemented different measures to contain the spread of Covid-19 in a dynamic manner, so that adjustments can be made in response to new Covid-19 developments. This chapter will discuss the key measures that have been implemented.

3.1. Earlier Stage of Covid-19 Pandemic in 2020

3.1.1. Health-related Measures

When Covid-19 cases were first detected in Indonesia, there was existing legislation relevant to the pandemic, including Law No. 74 of 1957 jo. Law No. 23 of 1959 on Emergency Situation (Law on Emergency Situation), Law on Contagious Diseases, Law No. 24/2007 on Disaster Management, and Law on Health Quarantine. The Gol chose to enact and implement the Law on Contagious Diseases, Law on Health Quarantine, Law on Regional Government as underlying laws, before enacting relevant regulations and bylaws that do not require prior approval from the legislature.

The rules issued to control the spread of infection is legally binding and non-compliance may be met with administrative or criminal sanctions, whereas guidance for the public is merely advisory. Directives, which are legally binding instructions to public authorities, are most commonly in the form of a presidential address which is followed up by regulations that are implemented by government agencies or regional leaders. Guidance is frequently employed to support legal rules and to affect behavior through recommendations instead of hard law.

On March 31, 2020, the Gol issued Government Regulation No. 21 of 2020 on the Large-Scale Social Restrictions to Accelerate the Mitigation of Corona Virus Disease 2019 (Covid-19) (GR No.

⁶ *Ibid.*, art 8(1) and 8(2)

⁷ *Ibid.*, art 7 (2)

21/2020),⁸ under which established Large-Scale Social Restrictions (PSBB) were established. This provides guidance to regional leaders to restrict social activities and the movement of people and/or goods within their respective regions, upon approval from the central government, specifically, via the Minister of Health.

Following GR No. 21/2020, government institutions and regional leaders introduced regulations to implement PSBB policies in their respective institutions or regions. For example, through a Circular, the Minister of Administrative and Bureaucracy Reform restricted travel and the taking of leave for civil servants on national holidays during the Covid-19 pandemic.⁹ The Circular provides disciplinary sanctions for the violators in the form of a verbal warning, written warning up to release from office, and termination. The enforcement of the Circular has not been published.

Furthermore, the government of Greater Jakarta has required every person located within the area to adhere to Covid-19 health protocols which include, inter alia, mask-wearing, restriction on outdoor activities, i.e., study from home, limitation on workplaces. Those who contravene the rules will be subject to administrative sanctions in the form of corrective work, such as cleaning public facilities for periods of one to four hours while wearing a special vest, or a fine of IDR 250,000 that may be increased to a maximum of IDR 1 million for repeat offenders. These measures also apply to business entities in Greater Jakarta. Every business entity must implement health protocols, for example, by requiring every employee to wear a mask at all times, and limiting the number of employees in the workplace at any time to 25% of the workplace capacity. Any business entity that violates these rules is liable to administrative fines of up to IDR 50million, and for repeat violations, up to IDR 150million.¹⁰

However, not all provinces have set their own sanctions for non-compliance with Covid-19 protocols. For provinces that have not, the enforcement of Covid-19 policies relies primarily on the Law on Health Quarantine and police powers based on the Criminal Code.¹¹

⁸ *Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions to Accelerate the Mitigation of Corona Virus Disease 2019 (Covid-19)*, accessed 27 September 2021. https://jdih.setkab.go.id/PUUdoc/176085/PP_Nomor_21_Tahun_2020.pdf

⁹ *Circular Letter of the Minister of Administrative and Bureaucracy Reform No. 46 of 2020 on the Restriction of Travelling and/or Taking Leave of Civil Servants on 2020 National Holiday during the Covid-19 pandemic*, accessed 29 September 2021. <https://covid19.go.id/p/regulasi/se-menpan-rb-nomor-46-tahun-2020>

¹⁰ *Government of Greater Jakarta Regulation No. 101 of 2020 on the First Amendment of Regulation No. 79 of 2020 on Disciplinary and Law Enforcement on Health Protocols as an Effort to Prevent and Control Covid-19*, accessed 29 September 2021. <https://ppid.jakarta.go.id/detail/306/5161>

¹¹ *Indonesia Criminal Code*, accessed 23 November 2021.

<https://m.hukumonline.com/pusatdata/detail/lt4c7b7fd88a8c3/wetboek-van-strafrecht-wvs>

The Law on Health Quarantine sets out imprisonment terms and fines for various violations of quarantine or isolation rules that apply to transportation providers, individuals, and corporations, per Articles 90 to 94. These sanctions can go up to 10 years' imprisonment or a fine of IDR 15 billion. Crimes under this Law are investigated by the police and specialized Civil Service Investigators with jurisdiction in health-related crimes as per Article 84.

Meanwhile, the Indonesian police rely on an interpretation of existing Criminal Code regulations. The primary regulation linking police authority, Covid-19, and the Criminal Code is the National Police Chief Decree of 2020,¹² which broadly provided, inter alia, that:

- a) Public events, including social, cultural, religious, music, sports, entertainment events, protests, and other activities are prohibited if they involve mass congregations. In cases of necessity, such events should follow relevant guidelines;
- b) The public follow information and formal recommendations from the government;
- c) Stockpiling necessities in excess should be avoided;
- d) The public should not be influenced by or create fake news.

According to the data published by the Indonesian Covid-19 Task Force,¹³ the bulk of non-compliance of Covid-19 rules and policies arises from the flouting of health protocols, in particular, the rules on wearing masks and limitations on public gatherings. In some cases, the implementation of sanctions sparked criticisms due to different interpretations taken by the law enforcement officers. For example, in DKI Jakarta, those caught not wearing masks were ordered to lie down in a coffin, whereas offenders in East Java were ordered to dig graves, pray for Covid-19 victims at cemeteries, and do push-ups. Epidemiologists criticized such sanctions as being ineffective, not educational, and unstandardized across the country.¹⁴ Criticism has also been directed at the officials in Pekanbaru, Riau province, where no specific punishment for violations is provided for in their local Covid-19 regulations. The officials there have been criticized by a coalition of civil society groups for bringing criminal charges against those found in violation of the

¹² *National Police Chief Decree No. Mak/2/III/2020 on Compliance with Government Regulation to Manage Covid-19 Spread*, accessed 19 March 2020. <https://humas.polri.go.id/download/maklumat-kepala-kepolisian-negara-republik-indonesia-nomor-mak-2-iii-2020-maklumat-kepala-kepolisian-negara-republik-indonesia-nomor-mak-2-iii-2020/>

¹³ *Indonesia Covid-19 Task Force, Tracking Health Protocols Compliance*, accessed 26 September 2021. <https://covid19.go.id/monitoring-kepatuhan-protokol-kesehatan>

¹⁴ Burrows, I., Souisa, H. and Renaldi, E. (2020). *How Indonesian officials are making coronavirus rule-breakers dig graves*, ABC News, accessed 29 September 2021. <https://www.abc.net.au/news/2020-09-19/indonesia-punishments-for-breaking-coronavirus-rules-masks/12676966>

city's PSBB. According to critics, PSBB violations should only be considered as administrative violations, therefore police officers do not have the authority to pursue criminal charges.¹⁵

3.1.2. Measures in Financial Matters

Aside from the health-related measures, on March 31, 2020, the GoI issued the Emergency Regulation in Replacement of Law No. 1 Year 2020 on Financial State Policy and Financial System Stability to Manage Covid-19 (Perppu No. 1/2020) to mitigate the economic impact of the Covid-19 pandemic. By providing the GoI with powers to widen the budget deficit to 3% of Gross Domestic Product, reallocate mandatory spending, shift budgeted funds between institutions, authorize procurement, and use available finances within the State budget, the GoI would be in a better position to alleviate the heavy financial burdens brought about by the Covid-19 pandemic. However, Perppu No. 1/2020 has sparked controversy due to Article 27(2) and (3) which provide that the Ministry of Finance, Bank of Indonesia, the Financial Services Authority, and other officials involved in the implementation process, will not be prosecuted if they perform their duties in good faith and in accordance with statutory requirements. Further, all verdicts of the actions taken based on Perppu No. 1/2020 cannot be the object of a lawsuit at the administrative law court.¹⁶ Nevertheless, this Perppu was officially passed by the House of Representatives as law and on May 18, 2020, the Perppu was enacted as Law No. 2 of 2020.¹⁷ Subsequently, several complaints were submitted to the Constitutional Court, contending that Perppu No. 1/2020 is unconstitutional.

Following the enactment of Perppu No. 1/2020, the GoI created various social assistance programs to help people overcome financial problems caused by the Covid-19 pandemic, especially after the PSBB was implemented. The social assistance came in the form of cash payouts, basic grocery assistance, and pre-employment cards. However, on the ground, it appears that the downstream implementation of these programs has run into problems. There have been many complaints from the people, expressing frustration over the overwhelming number of sources of information (ranging from state agencies to village heads), the consequential uncertainty as to whose voice should be listened to, and the confusing process of distribution of

¹⁵ Post, T.J. (2020). *PSBB violators shouldn't face criminal charges: Civil society groups*, The Jakarta Post, accessed 1 October 2021. <https://www.thejakartapost.com/news/2020/05/14/psbb-violators-shouldnt-face-criminal-charges-civil-society-groups.html>

¹⁶ *Emergency Regulation in Replacement of Law (PERPU) No. 1 Year 2020 on Financial State Policy and Financial System Stability to Manage Covid-19*, accessed 22 September 2021.

¹⁷ Ministry of Finance, Republic of Indonesia (2020). *UU No. 2 Tahun 2020 Bukti Negara Hadir Berikan Perlindungan terhadap Dampak Covid-19*, accessed 2 October 2021. <https://www.kemenkeu.go.id/publikasi/berita/uu-no-2-tahun-2020-bukti-negara-hadir-berikan-perlindungan-terhadap-dampak-covid-19/>

such aid.¹⁸ The problems have also been exacerbated by the corruption cases involving the former social affairs minister, who was found guilty of receiving kickbacks in relation to the procurement of goods intended for Covid-19 social assistance packages.¹⁹

3.2. The Response in 2021

With the rapidly developing Covid-19 pandemic, on January 6, 2021, the Gol, through the Minister of Home Affairs Instruction No. 1 of 2021 on Implementation of Restriction on Public Activities to Control the Spread of Covid-19,²⁰ chose to apply a different approach to fighting the pandemic by establishing the Restriction on Community Activities (*Pemberlakuan Pembatasan Kegiatan Masyarakat* or PPKM). With this PPKM, the central government has the role of deciding which cities or provinces should limit their public movement, regardless of whether there was prior request from the regional governments. The Gol provided detailed measures that should be taken by the regional governments, covering a wide range of issues such as allocation and distribution of vaccines, strengthening testing, tracing, and treatment (which includes the launch of PeduliLindungi mobile health surveillance application), distribution of social assistance and social security, and budget allocation for the management of Covid-19. The Gol's responsibility in PSBB also applies in PPKM, which is to provide medical assistance, food, and other essential needs for those on quarantine.

In June 2021, the Delta variant was detected in Indonesia, thereby causing thousands of infected cases and casualties.²¹ The President requested the Covid-19 related institutions, including the Covid-19 Task Force and Ministry of Home Affairs, to implement stricter measures to suppress the spread of infection. On July 2, 2021, the Minister of Home Affairs enacted Ministerial Instruction

¹⁸ Indonesia for Global Justice (2021). *Stories from across the Country: Problems in the Distribution of Government Social Aid in Handling Covid19 & the People's Economic Recovery*, accessed 5 October 2021. <https://igj.or.id/stories-from-across-the-country/problems-in-the-distribution-of-government-social-aid-in-handling-covid19-the-peoples-economic-recovery/?lang=en>

¹⁹ Costa, A.B.D. (2021). *Ex-Indonesian minister jailed for 12 years in COVID-19 graft scandal*, Reuters, accessed 30 September 2021. <https://www.reuters.com/world/asia-pacific/ex-indonesian-minister-jailed-12-years-over-covid-19-graft-scandal-2021-08-23/>

²⁰ Minister of Home Affairs Instruction No. 1 of 2021 on Implementation of Restriction on Public Activities to Control the Spread of Corona, accessed 6 January 2021. <https://infocorona.baliprov.go.id/wp-content/uploads/2021/01/INMENDAGRI-NOMOR-1-TAHUN-2021-TENTANG-PEMBERLAKUAN-PEMBATASAN-KEGIATAN-UNTUK-PENGENDALIAN-PENYEBARAN-CORONA-VIRUS-DISEASE-2019-COVID-19.pdf>

²¹ Wahyuni, N.C., Andriyanto, H. (2021). *Delta Variant Blamed for Dramatic Covid Surge in Indonesia*, *Jakarta GlobeNews*, accessed 8 July 2021. <https://jakartaglobe.id/news/delta-variant-blamed-for-dramatic-covid-surge-in-indonesia>

No. 15 of 2021 on Emergency Restriction on Public Activities, which focused primarily on Java and Bali – every region in Java and Bali was to apply the PPKM from July 3 to July 20, 2021.²²

On July 20, 2021, the Minister of Home Affairs enacted Ministerial Instruction No. 22 of 2021 on the Implementation of Level 4 Covid-19 Restriction of Public Activities in Java and Bali (Instruction No. 22/2021).²³ Under this Instruction, people who live in areas classified under Level 4 must observe a strict stay-home policy which entails (a) enforcing online schooling, (b) implementing 100% work-from-home measures for non-essential businesses, (c) implementing activities with a maximum of 50% capacity for essential businesses (for example, financial and banking services that involve some degree of physical interaction with customers), and 25% capacity for other administrative staff, (d) allowing a full 100% capacity for critical businesses (for example, hospitals, disaster management and basic utility services), and (e) ceasing the operation of malls and shopping centres.

In light of the constantly evolving situation, the Covid-19 Task Force made several adjustments to the measures, namely (a) expanding the PPKM to regions outside Java and Bali,²⁴ and (b) providing that, in applying the PPKM, the level of contingency in every region is determined based on the severity of the outbreak, which is in turn based on an assessment by the Ministry of Health.²⁵ The PPKM has been extended several times with the most recent extension period from October 19 to November 8, 2021.

Instruction No. 22/2021 and its following regulations stipulate that regional government leaders must adhere to the Instruction, and that non-compliance would result in administrative sanctions ranging from a written notice to temporary termination. Every business owner, restaurant,

²² *Minister of Home Affairs Instruction No. 15 Year 2021 on Implementation of Restriction on Public Activities Corona Virus Disease 2019 in Java and Bali*, accessed 2 July 2021. <https://covid19.go.id/storage/app/media/Regulasi/2021/Julii/INMENDAGRI%20NO%2015%20TAHUN%202021%20TE NTANG%20PPKM%20DARURAT.pdf>

²³ *Minister of Home Affairs Instruction No. 22 of 2021 on the Implementation of Level 4 Corona Virus Disease 2019 Restriction of Public Activities in Java and Bali*, accessed 21 July 2021. <https://covid19.go.id/p/regulasi/instruksi-menteri-dalam-negeri-nomor-22-tahun-2021>

²⁴ *Minister of Home Affairs Instruction No. 28 Year 2021 on Implementation of Level 4 Restriction on Public Activities Corona Virus Disease 2019 in Sumatera, Kalimantan, Sulawesi, Nusa Tenggara, Maluku, and Papua*, accessed 2 August 2021. <https://covid19.go.id/storage/app/media/Regulasi/2021/Julii/INMENDAGRI%20NO%2015%20TAHUN%202021%20TE NTANG%20PPKM%20DARURAT.pdf>

²⁵ *Minister of Home Affairs Instruction No. 29 Year 2021 on Implementation of Level 3, Level 2, and Level 1 Restriction on Public Activities and the Optimizing the Corona Virus Disease 2019 Command Post at Village and Sub-district Levels for the Handling of Corona Virus 2019 Spread*, accessed 2 August 2021. <https://covid19.go.id/storage/app/media/Regulasi/2021/Julii/INMENDAGRI%20NO%2015%20TAHUN%202021%20TE NTANG%20PPKM%20DARURAT.pdf>

shopping centre, public transport operator who violates the rules in the Instruction will be the subject of administrative sanction, the most serious of which involves business closure. For individuals, the sanctions that may apply are stipulated in Articles 212 to 218 of the Criminal Code, Contagious Diseases Law, Health Quarantine Law, local regulations, bylaws, and any related rules and legislation.

Some notable issues that have arisen in 2021 relating to the handling of Covid-19 pandemic include the shortage of oxygen supply for Covid-19 patients²⁶ and breach of data protection laws on the Pedulilindungi mobile application.²⁷

4. The Indonesian Judiciary System and the Covid-19 Pandemic

4.1. Indonesian Judiciary System

The Indonesian legal system is based on the civil law system (European Continental System) which is influenced by local Adat Law (Customary Law) and Islamic Law. Due to fast-paced business development and complex cross-border transactions, the common law system is also influenced strongly by Indonesia's commercial and business law.

The judicial institutions in Indonesia consist of the Supreme Court, Constitutional Court, and Judicial Commission.

4.1.1. Supreme Court

The Supreme Court has the highest judicial power over the existing four court jurisdictions, namely:

- a) General Court: The Court of General Jurisdiction has authority over general criminal and civil matters, including family law for non-Muslims.²⁸ Specialized courts were established

²⁶ BBC (2021). *Indonesia faces oxygen crisis amid worsening Covid surge*, BBC News, accessed 5 October 2021. <https://www.bbc.com/news/world-asia-57717144>

²⁷ Widiyanto, S. (2021). *Indonesia probes suspected data breach on COVID-19 app*, Reuters, accessed 5 October 2021. <https://www.reuters.com/technology/indonesia-probes-suspected-data-breach-covid-19-app-2021-08-31/>

²⁸ Undang-Undang No. 49 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 2 Tahun 1986 Tentang Peradilan Umum [JDIH BPK RI], accessed 5 October 2021. <https://peraturan.bpk.go.id/Home/Details/38794/uu-no-49-tahun-2009>

under this Court, consisting of the Commercial Court, Anti-Corruption Court, Fisheries Court, Human Rights Court, Industrial Relation Court, and Tax Court.

- b) Religious Court: The Religious Court has authority to hear family disputes for Muslim citizens, including disputes over divorce, inheritance, custody, and economic Shari'ah cases.²⁹
- c) State Administrative Court: The State Administrative Court has the authority to hear disputes arising between an individual or entity and a Government Agency or State Administrative Officials, either centrally or regionally, involving a State Administrative Decision. These may include disputes over the employment of civil servants.³⁰
- d) Military Court: The Military Court has the authority to hear and decide cases involving military personnel.³¹ Each court jurisdiction consists of a first instance court (District Court) and an appellate court (High Court). District Courts sits in the capital of every city or regency, while High Courts sit in the capital of provinces, with the exception of the state administrative court that has broader jurisdiction.

4.1.2. Constitutional Court

Under the Constitution, the Constitutional Court has the authority to try cases at the first and final level, and has the final say in reviewing allegedly unconstitutional laws, determining disputes over the authority of state institutions whose powers are granted by the Constitution, deciding the dissolution of a political party, and deciding disputes over the results of general elections.

According to Asshidiqie, the Constitutional Court has authority to conduct judicial reviews and judicial previews. Judicial review refers to the testing of statutory regulations after the law is passed, while a judicial preview is a test of legislation before it is ratified. Further, Asshidiqie elaborates that the test for whether a law is constitutional may be broken down into two aspects, a formal and a material aspect. The formal constitutional judicial review examines the constitutionality of the formation of laws relating to the validity of the law-making process, while material constitutionality testing examines the constitutionality of material contained in legal

²⁹ Undang-Undang No. 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama [JDIH BPK RI], accessed 5 October 2021. <https://peraturan.bpk.go.id/Home/Details/40154/uu-no-3-tahun-2006>

³⁰ Undang-Undang Republik Indonesia No. 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, accessed 5 October 2021. <https://www.dpr.go.id/dokjdi/document/uu/689.pdf>

³¹ Undang-Undang No. 31 Tahun 1997 tentang Peradilan Militer [JDIH BPK RI], accessed 5 October 2021. <https://peraturan.bpk.go.id/Home/Details/46050/uu-no-31-tahun-1997>

norms.³² Article 51A of Law No. 8 of 2011 on the Amendment of Law No. 24 of 2003 on Constitutional Court stipulates that the constitutionality testing on these two aspects have to be clearly stated in the judicial review application.³³

The Constitutional Court is composed of nine members who are constitutional justices confirmed in office by the President. Of the nine, three must be nominated by the Supreme Court, three nominated by the DPR, and three nominated by the President.

4.1.3. Judicial Commission

The Judicial Commission has authority to propose candidates for appointment as justices of the Supreme Court, and to maintain and ensure the honor, dignity, and appropriate behavior of judges. The members of the Judicial Commission are appointed by the President, with the approval of the DPR.

4.2. Traditional Litigation Procedures, E-Court, and E-Litigation

The rate at which court cases are concluded has been slow, as indicated by the many delayed cases before Indonesian courts.³⁴ This is largely due to the many steps involved in proceedings. For example, civil proceedings are initiated by a plaintiff who registers a lawsuit with the clerk's office at a District Court. Upon registration, the court bailiff serves a written summons on the defendant to appear in court on the first hearing day. Unless there are urgent circumstances which require an immediate hearing of the dispute, the first hearing usually takes place in no less than three working days from the date of summons.

On the first hearing day, the judge orders the parties to select a mediator to resolve the dispute through mandatory mediation. If mediation cannot resolve the dispute, the mediator returns the matter to the judge to issue a ruling. The defendant is ordered to respond to the plaintiff's claim in a hearing. The plaintiff is then given the chance to make a rejoinder responding to the defendant's response, following which the defendant can respond to it in a counterplea.

³² Asshiddiqie, J. (2006). *Hukum acara pengujian undang-undang*, accessed 23 November 2021.

http://mitrahukum.org/wp-content/uploads/2012/09/Hukum_Acara_PUU-Full.pdf

³³ Undang- Undang No. 8 Tahun 2011 tentang Perubahan atas Undang-Undang No. 24 Tahun 2003 tentang Mahkamah Konstitusi, accessed 5 October 2021. <https://peraturan.bpk.go.id/Home/Details/39183/uu-no-8-tahun-2011>

³⁴ Wibowo, B.R. (2012). *Pembenahan Administrasi Peradilan*, accessed 23 November 2021.

<https://www.bphn.go.id/data/documents/pk-2012-3.pdf>

Next, the judge orders the plaintiff to submit evidence, including witnesses who support the arguments on which the claim is based. The defendant is then given an opportunity to rebut with written evidence or witness testimony. Finally, each party is given an opportunity to present their case, after which the court issues its final ruling that is read out at the final hearing.³⁵

On April 4, 2018, the Supreme Court enacted Regulation No. 3 of 2018 on the Administration of Court Cases by Electronic Means (SC Reg. No. 3/2018) after noting that the steps in the litigation process can become overly complex, time-consuming, and inefficient, particularly given the geography of Indonesia as an archipelago with many rural areas. Under SC Reg. No. 3/2018, physical distance and other obstacles would no longer stand as a barrier to quality court services that accord with the times. Through this regulation, the Supreme Court is also making an attempt to fulfill its commitment to judicial reform by synergizing electronic means with the judicial process. By implementing electronic court services, the Supreme Court expects that judicial principles of simplicity, speed, and cost-effectiveness, per Law No. 48 of 2009 on Judicial Power, can be achieved. Ultimately, it may create fairness to all who seek justice, be it individuals or groups. The SC Reg. No. 3/2018 provides for an electronic court administration process for the submission of lawsuits, responses, counterpleas, rejoinders, conclusions, and the storage of case dossiers. However, as not all of the procedures are clearly regulated, the Supreme Court issued SC Reg. No. 1/2019 to revise and revoke SC Reg. No. 3/2018. The SC Reg. No. 1/2019 contains provisions that are more comprehensive than SC Reg. No. 3/2018. SC Reg. No. 1/2019 sets procedures on handling civil, religious, administrative, and military proceedings, stipulating two key procedures.

First, the electronic administration of cases, including:

- a) The registration of claims, petitions, objections, rebuttals, oppositions or interventions through the e-Court system and selection of the relevant court;
- b) The issuance of an e-SKUM (an Electronic Power of Attorney to Pay);
- c) The payment of court fees to the court's bank account electronically;
- d) The submission of summonses, responses, rejoinders or conclusions;
- e) The acceptance of legal remedies; and
- f) The storage and record of case management dossiers.

Second, e-litigation, which includes:

³⁵ Makarim and Taira, S. (2012). *Litigation Proceedings in Indonesia*, accessed 6 October 2021. <https://www.mondaq.com/corporate-and-company-law/160722/litigation-proceedings-in-indonesia>

- a) Submission of claims, petitions, objections, rebuttals, oppositions, interventions, and their amendments;
- b) Submission of answers, replies, rejoinders, and conclusions;
- c) Inquisitorial process; and
- d) Issuance of the verdict.

The implementation of SC Reg. No. 1/2019 to allow for an effective and efficient e-Court and e-Litigation system has encountered many challenges due to the lack of infrastructure and facilities, reliability on IT knowledge, and the mindset of court apparatus as well as the justice seekers in adapting to modern ways.

4.3. How the Indonesian Judicial System Manages Impacts of Covid-19 Pandemic

4.3.1. Supreme Court and related institutions

The judicial institutions had to manage challenges and obstacles when the Covid-19 pandemic reached Indonesia.

On March 23, 2020, Supreme Court issued Circular Letter No. 1 of 2020 (SC Circular Letter No. 1/2020) that suspended court trials across the nation. However, the lower courts and criminal courts were allowed to continue conducting selected trials offline with restricted attendance at hearings and temperature scans for all attendees before they were permitted entry. The underlying principle behind this measure is that the safety of the people should be the supreme law (*salus populi suprema lex esto*).³⁶ SC Circular Letter No. 1/2020 has been amended several times to adjust with the developing situation of the Covid-19 pandemic.

On the other hand, criminal courts are facing problems due to the Covid-19 health protocols set by the Gol, which consist of social distancing.

On March 27, 2020, through the letter of Directorate General of General Courts No. 379/DJU/PS.00/3/2020 (Letter No. 379/2020), the Supreme Court allowed criminal court proceedings to be conducted electronically (via teleconferencing) and requested for the courts to work together with the Attorney-General's Office and Correctional Institutions.

³⁶ Indonesia Supreme Court (2020). *Annual Report of Supreme Court*, accessed 1 October 2021. <https://www.mahkamahagung.go.id/cms/media/8832>

Further, Supreme Court also issued Circular Letter No. 4 of 2020 on the Administration and Trial of Criminal Cases in Court (SC Circular Letter No. 4/2020) to fill the gap created by the absence of procedures on managing cases in “special circumstances”, which was not regulated by Indonesia’s Code of Criminal Procedures (*Kitab Undang-Undang Hukum Pidana* or KUHP). SC Circular Letter No. 4/2020 applies to, inter alia, criminal cases, criminal military cases, *jinayat* (Islamic criminal law) cases.

Under SC Circular Letter No. 4/2020, the administration and e-trials for criminal cases can be conducted electronically in the special circumstance where it is impossible to conduct the case using regular procedures, for example, due to physical distance, natural disaster, pandemic, or other emergencies as determined by the Gol or the judges. The Letter also defines electronic domicile as messaging services, in the form of the verified account of the investigator, prosecutor, the court, defendant, legal consultant, witnesses, expert, detention center, and penitentiary.

In e-trials for criminal cases, the parties involved consist of judges, the deputy registrar, prosecutor, legal consultant or defendant, witnesses, and experts. Each of them can participate in the trial from the courtroom, prosecutor’s office, detention center or penitentiary, or any other location as determined by the judges.

In 2020, e-trials has been used by 379 out of 389 District Courts.³⁷ By conducting proceedings through teleconferences, distance is no longer an obstacle.

Further, the Supreme Court enables e-Court applications to cover e-Litigation for both civil and criminal cases, by providing information electronically on the date and schedule of the trial, the case dossier, the proceedings, and even the delivery of the verdict or ruling. With this e-Court application, the Supreme Court hopes to facilitate easier access to the litigation process while minimizing the need for physical attendance, so that the Covid-19 health protocols can be adhered to.

According to the Supreme Court database, the number of cases registered through e-Court application in 2020 are as follows: (i) 82,409 General Court cases; (ii) 102,729 Religious Court cases, and (iii) 2,143 State Administrative Court cases.³⁸

³⁷ *Ibid.*, p. 149

³⁸ *Ibid.*, p. 160

In addition, Supreme Court also provides technical assistance on e-Court to judges and registrars in an effort to counter the lack of IT knowledge within the institution.³⁹

4.3.2. Constitutional Court

On March 5, 2009, through the issuance of Constitutional Court Regulation No. 18 of 2009 on Guidelines for Electronic Filing and Video Conferencing (CC Reg. No. 18/2009), the Constitutional Court implemented a judicial system based on digital technology to conduct its reviews.⁴⁰ These reviews can be carried out virtually due to cooperation between universities across Indonesia and the Constitutional Court, where the Constitutional Court provides video conferencing facilities in each university.

Therefore, when the Covid-19 pandemic hit Indonesia, the Constitutional Court was more than prepared and ready to implement virtual proceedings.⁴¹

On January 25, 2021, the Constitutional Court issued Regulation No. 1 of 2021 on the Implementation of Court Proceedings through Teleconference (CC Reg. No. 1/2021). CC Reg. No. 1/2021, in revoking CC Reg. No. 18/2009, aims to perfect the previous regulation by amending several provisions so as to adjust to recent developments.

The current Constitutional Court policy in convening reviews through video conferencing is that the justices must still be in attendance physically at the Constitutional Court, while the applicants can be located anywhere with an internet connection. Further, the applicants still have to adhere to the usual court rules and procedures, for instance, advocates and applicants must comply with the rules of courtroom attire. As of October 2021, 43 universities have been equipped with video conferencing facilities owned by the Constitutional Court and anyone who wishes to request a review from the Constitutional Court may use it.⁴²

³⁹ *Ibid.*, p. 206

⁴⁰ Peraturan Mahkamah Konstitusi No. 18 Tahun 2009 tentang Pedoman Pengajuan Permohonan Elektronik dan Pemeriksaan Persidangan Jarak Jauh, accessed 2 October 2021. https://www.mkri.id/public/content/pmk/PMK_PMK_18.pdf

⁴¹ Indonesia Constitutional Court (2021). *Constitutional Court Annual Report 2020*, accessed 30 October 2021. https://www.mkri.id/public/content/infoumum/laporantahunan/pdf/LaporanTahunan_65_Laporan%20Tahunan%20MK%202020.pdf

⁴² Mahkamah Konstitusi Republik Indonesia (2021). *Arief Hidayat: Persidangan Virtual Pilihan Paling Realistik di Masa Pandemi*, accessed 28 October 2021. <https://www.mkri.id/index.php?page=web.Berita&id=16623&menu=2>

5. Cases, Legal Actions and Judicial Reviews

The rationale behind administrative law is that criticism and legal claims are part of the checks and balances in the administration of a democratic state.⁴³ As the third-largest democracy in the world, this concept also applies in Indonesia. The steps taken by the Gol in combatting Covid-19 have become the object of judicial review requests and challenges. Many Indonesians have questioned the policies and regulations through criticism and even lawsuits against the Gol. Details of some cases related to the GOI's handling of the Covid-19 pandemic are provided below.

5.1. Constitutional Court

Constitutional Court Case No. 23/PUU-XVIII/2020⁴⁴ and No. 24/PUU-XVIII/2020⁴⁵ concern the review of Article 27 Perppu No. 1/2020 against the 1945 Constitution. The Petitioners asked the Constitutional Court to examine Article 27 of Perppu No. 1/2020 for its potential to facilitate to criminal acts of corruption and its inconsistency with the Constitution. On June 23, 2020, the Constitutional Court rejected both applications and ruled that the object of the review was no longer valid by virtue of the enactment of Perppu No. 1/2020 as Law No. 2 of 2020.

Constitutional Court Case No. 34/PUU-XVIII/2020 concerned the review of Article 55(1) of the Law on Health Quarantine against the Constitution. The Petitioners argued that the term “people” in Article 55(1) must include the poor and thus the Gol is obliged to take full responsibility for their needs during the Regional Quarantine in the respective regions. On July 13, 2020, the Constitutional Court rejected the application on the grounds that the Petitioners had no legal standing.⁴⁶

Constitutional Court Case No. 36/PUU-XVIII/2020 concerned the review of Article 9(1) of the Law on Contagious Diseases and Article 6 of Law on Health Quarantine against the Constitution. The Petitioners, consisting of medical doctors and the Indonesian Health Law Society, requested the Constitutional Court to provide a constitutional interpretation of both articles and to provide a

⁴³ Noor, H.J. (2021). *Kritik dan Gugatan kepada Pemerintah*, accessed 27 September 2021.

<https://www.kompas.id/baca/opini/2021/08/25/kritik-dan-gugatan-pada-pemerintah>

⁴⁴ Constitutional Court Decision No. U-XVIII/2020, accessed 6 October 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6889.pdf

⁴⁵ Constitutional Court Decision No. 24/PUU-XVIII/2020, accessed 6 October 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6890.pdf

⁴⁶ Constitutional Court Decision No. 34/PUU-XVIII/2020, accessed 6 October 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6969.pdf

provisional order requiring the Gol to provide for the basic needs of medical personnel and healthcare workers. On November 12, 2020, the Constitutional Court rejected the application. However, three constitutional justices submitted a dissenting opinion, contending that due to the risks borne by the medical personnel and healthcare workers in carrying out their duties, the request was justified by law, and should have been granted.⁴⁷

Constitutional Court Case No. 14/PUU-XIX/2021 concerned the review of the Health Quarantine Law against the Constitution. The Petitioner sought a constitutional interpretation of the law in question, and the revocation of implementing regulation issued by the Governor of DKI Jakarta on the implementation of PPKM in DKI Jakarta. On June 10th, 2021, the Constitutional Court rejected the request, ruling that it had no legal basis.⁴⁸

Constitutional Court Case No. 37/PUU-XIX/2021 concerned a judicial review of Law No. 2 of 2020 on Stipulation of Government Regulation No. 1 of 2020 on State Financial Policy and Financial System Stability for the Management of the Covid-19 Pandemic in Facing Threats to the National Economy and/or Financial System Stability (“Law No. 2/2020”) against the Constitution. The Petitioner requested the Constitutional Court to (i) to examine the formal aspects of the formation of the Law and (ii) to examine the material aspects of certain provisions by providing a constitutional interpretation of the relevant laws and declaring that provisions that are contrary to the Constitution and endanger the national economy and/or financial system stability have no binding legal effect. On October 28, 2021, the Constitutional Court rejected the request for a review of the formal aspect, but granted partially the petition for the material aspects. Three constitutional justices submitted a dissenting opinion, stating that the entire application for judicial review, that is, both formal and material aspects, should be rejected. According to the dissenting justices, Law No. 2/2020 has been legally promulgated in accordance with emergency procedures and the material aspects of certain provisions must be viewed against the backdrop of the Covid-19 pandemic, where extraordinary regulations are required to legalize and legitimize decision-makers in taking action to mitigate the impacts of the pandemic.⁴⁹

The above court proceedings were conducted via video conference by the Constitutional Court.

⁴⁷ Constitutional Court Decision No. 36/PUU-XVIII/2020, accessed 6 October 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_7247.pdf

⁴⁸ Constitutional Court Decision No. 14/PUU-XIX/, accessed 6 October 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_7941.pdf

⁴⁹ Constitutional Court Decision No. 37/PUU-XIX/2020, accessed 2 November 2021.

https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8202_1635396311.pdf

5.2. Supreme Court

The following are some of the cases filed at the Supreme Court and its judicial bodies.

5.2.1. Supreme Court

On October 29, 2021, an application for judicial review of President Regulation No. 14 of 2021 on the Amendments to Presidential Regulation No. 99 of 2020 on Procurement and Implementation of Vaccinations in the Context of Eradicating the Covid-19 Pandemic (PR No. 14/2021) was submitted with the President as the Respondent. The Petitioner argued that the provisions of PR No. 14/2021, in particular Article 13A(2), Article 13A(4), and Article 13B, which requires every Indonesian citizen to receive the Covid-19 vaccine and that those who do not are liable to administrative and/or criminal sanction, were legally defective. Furthermore, the Petitioner requested that PR No. 14/2021 be declared formally and materially defective because it contradicted promulgation procedures as provided in Law No. 12 of 2011 on the Establishment of Legislation, and the spirit of human rights in guaranteeing every citizen to obtain health protection as regulated in Law No. 36 of 2009 on Health and Law on Contagious Diseases.⁵⁰ As of November 1, 2021, the application is still under review.⁵¹

5.2.2. State Administrative Court

On November 6, 2020, a group of people filed a lawsuit at the DKI Jakarta Administrative Court with Register No. 203/G/TF/2020/PTUN.JKT. The petitioner stated that the decision of the DPR, the Minister of Home Affairs, and General Election Commission (*Komisi Pemilihan Umum* or KPU) to continue holding the 2020 Regional Election (*Pemilihan Kepala Daerah* or Pilkada) amid the Covid-19 pandemic was against the law. The Petitioner requested for the Administrative Court to postpone the Pilkada until the pandemic subsided. On April 15, 2021, the Administrative Court

⁵⁰ Saputra, A. (2021). *Tolak Sanksi Pidana bagi yang Tak Mau Divaksin, Warga Gugat Presiden ke MA*, Detiknews, accessed 2 November 2021. <https://news.detik.com/berita/d-5794555/tolak-sanksi-pidana-bagi-yang-tak-mau-divaksin-warga-gugat-presiden-ke-ma>

⁵¹ *Informasi Perkara Mahkamah Agung Republik Indonesia*, accessed 1 November 2021.

https://kepaniteraan.mahkamahagung.go.id/perkara/perkara_detail.php?id=3141ab34-3ac6-1ac6-8522-31303435

rejected the lawsuit.⁵² Subsequently, after the Pilkada, there have been many Covid-19 clusters reported in three regencies in the Banten provinces.⁵³

On August 9, 2021, a street vendor filed a lawsuit with the DKI Jakarta Administrative Court (Register No. 188/G/TF/2021/PTUN). The Petitioner argued that the implementation of the PPKM is not in line with the definition given in the Law on Health Quarantine. The trial is still ongoing.⁵⁴

5.2.3. Civil Court

On April 1, 2020, a group of Small and Medium Enterprises filed a lawsuit in the Central Jakarta District Court, DKI Jakarta (Register No. PN JKT.PST-042020DGB). The petitioners claimed that the Gol was negligent and slow in tackling the Covid-19 pandemic, thus causing them to lose their businesses.⁵⁵

On June 26, 2020, 11 residents of Pematang Siantar, North Sumatra province, filed a lawsuit in the Pematang Siantar District Court, North Sumatra province (Register No. 67/Pdt.G/2020/PN Pms). The applicants claimed that the Mayor of Pematang Siantar, North Sumatra had created a social stigma in the community of them as Covid-19 patients, which resulted in them losing their jobs and businesses. The lawsuit was resolved through mediation.⁵⁶

Additionally, from March 2020 to October 2021, the Supreme Court database recorded around 1,019 court decisions related to the Covid-19 pandemic, including requests for judicial review and civil cases.⁵⁷ These cases do not necessarily involve the Gol, with the majority of lawsuits, 65 cases, filed in the Surabaya District Court, East Java. These claims mainly involve disputes over Covid-19 health protocols, for example, the refusal to comply with the funeral protocol for Covid-

⁵² *Sistem Informasi Penelusuran Perkara*, accessed 2 October 2021. https://sipp.ptun-jakarta.go.id/index.php/detil_perkara

⁵³ Hidayatullah, T. (2020). *Klaster baru Covid-19 akibat Pilkada 2020 mulai bermunculan*, Lokadata, accessed 2 November 2021. <https://lokadata.id/artikel/klaster-baru-covid-19-akibat-pilkada-2020-mulai-bermunculan>

⁵⁴ *Sistem Informasi Penelusuran Perkara*, accessed 4 October 2021. https://sipp.ptun-jakarta.go.id/index.php/detil_perkara

⁵⁵ CNN Indonesia (2020). *Warga Gugat Jokowi karena Dinilai Lalai Tangani Corona*, accessed 4 October 2021. <https://www.cnnindonesia.com/nasional/20200401120758-12-489059/warga-gugat-jokowi-karena-dinilai-lalai-tangani-corona>

⁵⁶ Pribadi, T. (2020). *Pasien Corona yang Gugat Wali Kota karena Stigma Akhirnya Terima Bantuan Halaman all*, Kompas.com, accessed 4 October 2021. <https://regional.kompas.com/read/2020/09/09/11075571/pasien-corona-yang-gugat-wali-kota-karena-stigma-akhirnya-terima-bantuan?page=all>

⁵⁷ *Direktori Putusan*, accessed 4 October 2021.

https://putusan3.mahkamahagung.go.id/search.html?q=COVID&cat=4d88fcc4f35395470bd80f19f776d242&t_upl=2021&t_put=2021

19 patients, exceeding the maximum number of people allowed at a public gathering, defamation due to social stigma surrounding Covid-19 patients, and personal data protection of Covid-19 patients.

5.2.4. Criminal Court

On May 27, 2021, the North Jakarta District Court through Decision No. 221/Pid.Sus/2021/PN.Jkt.Tim, declared Muhammad Rizieq Shihab, a controversial Indonesian cleric, guilty of violating the Covid-19 health protocol by causing a large public gathering. Shihab was charged under Article 160 of the Criminal Code and Article 93 of the Law on Health Quarantine, and was sentenced to two years' imprisonment. The Prosecution appealed against this decision and on August 2, 2021, through the decision of the High Court No. 171/Pid.Sus/2021/PT DKI, the verdict was upheld.⁵⁸ Subsequently, the Prosecution filed a cassation appeal against the High Court decision, however, on October 11, 2021, the Supreme Court rejected the appeal.⁵⁹

On October 22, 2021, the Jember District Court through Decision No. 4057/Pid.C/2021/PN Jmr found Zainul Fuad guilty of violating the Covid-19 health protocol by causing a large public gathering. He was charged under Article 49 of the East Java Province Regulation No. 2 of 2020 on Amendments to the East Java Provincial Regulation No. 1 of 2019 on Maintenance of Peace, Public Order, and Community Protection and sentenced to a fine of IDR 10,000,000 and 15 days of corrective work.⁶⁰ Zainul Fuad was the head organizer for the wedding reception for the Mayor of Jember, who is a relative of Hendy Siswanto. The trial was conducted virtually.⁶¹

⁵⁸ *Direktori Putusan*, accessed 5 October 2021.

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaebf52c329294888ed2323035393334.html>

⁵⁹ Saputra, A. (2021). *Kasasi JPU Ditolak MA, Habib Rizieq Tetap Dibui 8 Bulan di Kasus Petamburan*, Detiknews, accessed 30 October 2021. <https://news.detik.com/berita/d-5762116/kasasi-jpu-ditolak-ma-habib-rizieq-tetap-dibui-8-bulan-di-kasus-petamburan>

⁶⁰ Jember District Court (n.d.). *Sistem Informasi Penelusuran Perkara*, accessed 30 October 2021. https://sipp.pn-jember.go.id/index.php/detil_perkara

⁶¹ Primadhyta, S. (2021). *Langgar Prokes, Panitia Resepsi Famili Bupati Jember Didenda*, CNN Indonesia, accessed 30 October 2021. <https://www.cnnindonesia.com/nasional/20211023021958-12-711236/langgar-prokes-panitia-resepsi-famili-bupati-jember-didenda>

There are around 342 criminal cases related to Covid-19 health protocol violations recorded in the Supreme Court database from March 2020 to October 2021, with 308 cases having been decided in the District Court and 34 cases having been appealed to the High Court.⁶²

6. Conclusion

As a populous country with a vast geographical expanse, Indonesia faced many challenges when the Covid-19 pandemic hit. The lack of infrastructure had led to uneven economic development and social justice across the country, including access to healthcare. To address the challenges, the Gol established numerous rules and policies that were appropriate to the situation, namely, restricting the movement of people, shutting down schools and places of worship, introducing social distancing in public facilities, and implementing work-from-home policies. The Gol also issued Perppu No. 1/2020 an important yet controversial regulation. These regulations and policies were not always welcomed by the people, as demonstrated by requests for judicial review submitted to the Constitutional Court and lawsuits filed at the District Courts.

Similarly, the judicial system in Indonesia was also affected by the Covid-19 pandemic, especially in court procedure. The settlement of cases in Indonesian courts has not gone as expected as stakeholders involved in the court do not have the capacity to provide significant legal services. Problems also occur because of the lack of infrastructure and facilities, reliable IT knowledge, and the reluctance of court officials and parties in adapting to modern ways. Criminal courts also face problems due to the added requirement of social distancing per the new health protocols for Covid-19 that must be strictly adhered to.

In the spirit of creating an effective and efficient litigation process, as well as to provide quality court services that are adapted to meet new challenges posed by the pandemic, the Supreme Court implemented e-Court and e-Litigation by synergizing electronic means with the existing judicial process, so as to overcome geographical issues. In addition, to address the lack of IT knowledge within the institution, the Supreme Court has also provided e-Court technical assistance to judges and registrars.

⁶² Anon, (n.d.) , accessed 4 November 2021.
https://putusan3.mahkamahagung.go.id/search.html?q=covid&jenis_doc=putusan&cat=d92c02366ae91966e4cdeb6279fc36eb

The Constitutional Court experienced similar issues when faced with the Covid-19 pandemic. Although it appeared to be more adaptable to the situation due to the earlier implementation of court proceedings via video conferencing, some problems still have to be addressed, particularly in relation to the availability of infrastructure in more remote areas.

It is still too early to say with certainty that all challenges have been managed. Nevertheless, the efforts made by the Supreme Court and the Constitutional Court to address these issues must be appreciated. The cooperation with government agencies and other universities should be encouraged, so that infrastructure in the IT sector can be strengthened. Furthermore, it would be helpful for both the Supreme Court and the Constitutional Court to provide appropriate technical assistance to advance the IT knowledge of the parties involved in the court process.

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