
**CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA: SAFEGUARDING
CITIZENS' CONSTITUTIONAL RIGHTS IN THE MIDDLE OF A PANDEMIC**Hani Adhani^{i,ii*}ⁱ Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM).ⁱⁱ Substitute Registrar of Constitutional Court of Republic Indonesia,*(Corresponding Authors) e-mail: adhanihani@gmail.com**ABSTRACT**

Since the coronavirus's announcement that COVID-19 is a pandemic, there are concerns that this coronavirus pandemic will hurt all human life sectors. The health and economic sectors are the most vital, causing many countries worldwide to experience outbreaks, and it is difficult to avoid them. Many countries are not ready to face this pandemic, resulting in more casualties and an economic recession. However, amid the outbreak, it turns out that there is still a country that can survive, and one of the factors that cause this country to survive is law enforcement. The process is carried out optimally and is supported by law enforcement officials who are also professional, independent and with integrity. In this study, the author will discuss the extent to which the Indonesian Constitutional Court's role as the guardian of the constitution in safeguarding the constitutional rights of Indonesian citizens and providing legal certainty amid a pandemic.

Keywords: *Constitutional Court, Constitutional Right, Covid-19, Pandemic, Constitution.*

Introduction

The coronavirus pandemic that has hit parts of the world today is a new problem for all World citizens. Each country seeks to close "space" for the COVID-19 virus by closing the virus carriers' area. Several ways have been taken to limit the space for humans to avoid contracting the Covid-19 virus. Thousands of people worldwide have become victims, and we never know when this pandemic will end.

Every country is trying to survive against coronavirus by making every effort to protect its citizens. After knowing the number of fatalities due to the coronavirus, China, as the first infected country finally imposed a state of emergency by closing Wuhan's city (lockdown) (Yuan et al., 2020). People in Wuhan City could not leave the Wuhan City and vice versa people from outside Wuhan City also unable to enter Wuhan City. All transportation modes in Wuhan City were closed, and people were forced to stay at home. The lockdown was carried out in an attempt to close the area for spreading the virus. (See "Belajar dari Film Dokumenter' The Lockdown: One Month in Wuhan' - kumparan.com," n.d.)

The regulations carried out by the Chinese government were later copied by various countries in various parts of the world. However, by looking at the community's condition, each country has different regulations related to the implementation of this lockdown, so that some impose a full lockdown like in Wuhan City. However, some countries impose lockdown partially and only based on the area to still be leaving the house as in Indonesia. ("Pemerintah Kaji Kemungkinan Penerapan Lockdown Parsial," n.d.)

Each country's policies to impose a state of emergency are usually specified in the constitution of each country as the highest law. For example, the Chinese state has regulated an emergency mechanism in its constitution. The President becomes "the fulcrum" for authority to decide a state of emergency either in the whole country or province. (See article 80 lex, 2004) Likewise, countries with a majority of Muslims in Europe, namely Turkey, also rigidly regulate emergencies in a pandemic. In the Turkish constitution, the authority to determine a state of emergency is also in the President's hands. (See article 119 "Constitutional Court of the Republic of Turkey," 2016) The same thing also happened in Malaysia where the Malaysian constitution, a state of emergency, was the King and the prime minister's prerogative (See Article 150 *FEDERAL CONSTITUTION*, 2010).

Public Health Emergencies in Indonesia

As one of the countries that have a modern constitution, namely a constitution that protects human rights as a whole, Indonesia also clearly regulates the rules of this emergency. In Article 12 of the Indonesian Constitution (UUD 1945) it is stated that *"The President declared a state of emergency. The conditions governing and the consequences of the states of emergency shall be stipulated by-law"*. (See article 12 Majelis Permusyawaratan Rakyat, 2002) So far related to efforts to tackle the coronavirus, Indonesia already has Law Number 6/2018 concerning Health Quarantine promulgated on August 8, 2018. Concerning this law, steps that can be taken by the government are as regulated in Article 4. Namely *"responsible for protecting public health from diseases and Public Health Risk Factors that have potential to cause Public Health Emergency through the implementation of Health Quarantine"*. (See article 4 "UU No. 6 Tahun 2018 tentang Kekarantinaan Kesehatan [JDIH BPK RI]," n.d.) . Related to this, the President has issued several regulations, including stipulating the status of public health emergencies (Presidential Decree 11/2020) and also giving rules on Large-Scale Social Restrictions in the Context of Accelerating Handling of Covid-19 (Government Regulation 21/2020). ("Regulasi | Gugus Tugas Percepatan Penanganan COVID-19," n.d.)

Also, to close the space for the spread of the COVID-19, the Government of Indonesia, represented by the Minister of Health and Regional Governments, has made various regulations with the aim that the community can jointly fight or at least avoid contracting the coronavirus. These regulations are in the form of rules, decrees, circulars letter, protocols and also recommendations, such as the Governor's Regulation on Guidelines for Large-Scale Social Restrictions (PSBB), the Circular letter of the Minister of Health regarding the use of masks and the provision of means of washing hands with soap, the Decree of the Minister of Health regarding the Stipulation Large-Scale Social Restrictions in various regions in Indonesia, Circular letter of the Minister of Industry on Guidelines for Submitting Applications for

Licensing for the Implementation of Industrial Activities in Public Health Emergencies, Regulation of the Minister of Transportation on Transportation Control in the Context of Preventing the Spread of Corona and many other protocols and recommendations that have been made by the government, local governments, ministries and state institutions to break the chain of spreading the coronavirus. ("Regulasi | Gugus Tugas Percepatan Penanganan COVID-19," n.d.)

Legal Certainty During a Health Emergency

However, the Government of Indonesia tries to close the space for the virus to move; the facts that occur in society are different. These regulations are not sufficient to reduce people's desire not to leave the house. ("Indonesia to evaluate partial lockdown as companies, factories continue business as usual - National - The Jakarta Post," n.d.)

The community is ultimately divided into two views: those who follow the government's recommendations by implementing all existing regulations and suggestions. However, some people reject current regulations and do not follow Government recommendations. The survey results from the SRMC, for example, are related to the desire to go back to hometown (Pulang Kampung). 31% of Jakarta residents still wish to go "Pulang Kampung" amid this pandemic, even though we all understand that the effects of the dangers of going hometown for the whole community amid a health emergency. Also, some rules and regulations overlap and contradict one another, confusing the public. ("Survei SMRC: 31 Persen Warga Jakarta Ingin Mudik - Metro Tempo.co," n.d.)

Unfortunately, amid the divided public views and the asynchronous regulation, no concrete legal action has been made by the community groups or NGOs to take legal action so that the government takes measurable, exact and firm steps.

Whereas if we look at the existing legislation products that have bound citizens, it is very potential for these laws to violate citizens' constitutional rights. As stipulated in the Indonesia Constitution, namely Article 28D paragraph (1) which states *"Everyone has the right for recognition, guarantee, protection, and legal certainty that is just and equal treatment before the law"*. (See article 28D paragraph (1) Majelis Permusyawaratan Rakyat, 2002)

Legal certainty is the primary key in law enforcement when this health emergency is enacted because it will violate other citizens' constitutional rights. The right to life, the right to get a job, the right to a healthy environment, the right to obtain protection and feeling of security, and other citizens' fundamental rights as stipulated in the Indonesian Constitution (UUD 1945). (See article 28, article 28A - 28J Majelis Permusyawaratan Rakyat, 2002)

Safeguarding the Constitutional Rights of Citizens

With so many laws and regulations made to regulate society amid a pandemic, it should provide more legal certainty. However, unfortunately, not all rules are made in line with the constitution and provide legal certainty for the community. Many regulations that were made sporadically by the central and local governments during this pandemic were not in line with citizens' constitutional rights as stipulated in the constitution.

What can be done as an Indonesian citizen to take legal action when this health emergency is enforced so that space or potential constitutional losses can be avoided.

The first is to file a lawsuit or request for judicial review with the Constitutional Court. As one of the modern and reliable constitutional courts, the Constitutional Court, amid a health emergency such as today, still opens up opportunities for the public to file a lawsuit judicial review through an online application called "Simpel" available on the website of the Constitutional Court. (See website "SIMPEL.MKRI.ID," n.d.)

Quoting from website simpel.mkri.id, the "Simpel" media is a web-based application that provides direct access to parties, including to submit applications online. Through this application, parties or the

public can submit applications online, monitor the applications/cases' progress, and access various service features such as trial schedules, court summons, downloading minutes or decisions, and other features.

The Constitutional Court has also prepared the trial via video conference so that the parties do not have to come to the Constitutional Court's courtroom. Also, people who file a lawsuit or review don't charge with court fees.

Second, the public who will file a lawsuit or request a judicial review of the statutory regulations under the law can file a lawsuit for judicial review of the law's statutory rules under the law.

The Supreme Court also applies electronic or E-Court filing. Quoted from the E-Court application page of the Supreme Court, namely <https://ecourt.mahkamahagung.go.id>, that this E-Court service is a service for registered users registering cases online. Furthermore, get estimates down-payment of court fees online, pay online, calls made by electronic channels, and trials conducted electronically. (See website "e-Court Mahkamah Agung RI | Electronics Justice System," n.d.)

As quoted on the Supreme Court's E-Court website, that for the time being the submission of such applications can only be made by advocates so that ordinary people cannot directly submit applications or lawsuit. Also, cases to the Supreme Court incur court fees and can be paid online. Of course, the two existing lawsuit applications or requests for judicial review made by the Constitutional Court. Namely "Simpel" and the Supreme Court, namely "E-Court" can be a medium for the public to seek justice and seek legal certainty amid a corona outbreak that may have the potential interference with citizens' constitutional rights throughout Indonesia.

The Challenges of the Constitutional Court During the Pandemic

Since the founding fathers came up with establishing the Indonesian Constitutional Court, there is great hope that the Constitutional Court can provide a "new culture" for the process of law enforcement and constitutional enforcement in Indonesia. This hope is reflected in the procedural law processes and mechanisms and in terms of reaching the people's constitutional rights to take a role in upholding the law and upholding the constitution.

Before the Constitutional Court established, it was difficult for the public to file a lawsuit or review to the court to ask the court to cancel a law made by the House of Representatives and the President as the holder of executive power. But the fact is that after the founding fathers ratified Article 24C (See article 24C about Constitutional Court Majelis Permusyawaratan Rakyat, 2002) of the amendments to the Indonesia constitution which was followed up with the ratification of the Constitutional Court Law on August 13, 2003. Which was then followed by the inauguration of 9 first-generation judges on August 16, 2003, (See Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2003) so that finally, the Constitutional Court became part of the judicial power along with Supreme Court. In the end, this has resulted in the realization of the people's most fundamental hope in upholding the law and the constitution, namely that Indonesian citizens can freely apply for judicial review to the Constitutional Court only on the condition that they have an ID and are free of charge.

In the records of the Registrar's Office and the Secretary-General of the Constitutional Court since its establishment until August 2020, more than 1383 cases (See mkri.id, 2019) of judicial review have been registered at the Constitutional Court. Interestingly, the submission of requests for judicial review of the Law is mostly filled by ordinary people, so that it becomes a kind of proof that the formation of the Constitutional Court becomes a medium for the public to voice their constitutional aspirations through a petition for judicial review.

Another thing that is also quite surprising is that the public filed many cases without being accompanied by lawyers or advocates. However, the issues were granted by the Constitutional Court that this resulted in the annulment of the proposed laws. Several decisions whose cases were filed by ordinary people became landmarks of the Constitutional Court decisions. They inspired other people to be critical of all

CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA: SAFEGUARDING CITIZENS' CONSTITUTIONAL RIGHTS IN THE MIDDLE OF A PANDEMIC

state policies and understand their constitutional rights as citizens protected by the constitution. Some of the decisions were related to using GPS while driving filed by online public transportation drivers, (See Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2019). Marten Boiliu, a security guard who sued the Labor Law, (See "Marthen Boiliu, Satpam Merangkap Lawyer - hukumonline.com," n.d.). Fathul Hadi Utsman. They sued the National Education System Law. ("MK: Sertifikasi Guru untuk Cerdaskan Bangsa - Nasional - koran.tempo.co," n.d.)

Since President Joko Widodo announced that a case of Covid-19 had entered Indonesia, the government has tried to close the space for the spread of Covid-19 by referring to the Health Quarantine Law. Besides, the President also issued a government regulation in lieu of Law Number 1/2020 concerning state financial policies and financial system stability for handling Covid-19 and to face threats that endanger the national economy and financial system stability.

In the registrar's records of the Constitutional Court since the enactment of the pandemic that has kept Indonesia, namely on March 23, 2020, more than 70 applications for judicial review were received by the Constitutional Court. (See mkri.id, 2019) The judicial review application is made online through a simpel application, and the trial is conducted online via a video conference application. So that people do not need to come to the Constitutional Court to avoid the coronavirus spread.

Also, the Constitutional Court to provide legal certainty amid the corona pandemic continues to strive to speed up the case examination process so that it changes the average time for completing cases of judicial review to be faster. From January 2020 to August 2020, the Constitutional Court has decided more than 60 judicial review cases.

Besides, the Constitutional Court has also implemented online case administration and general administration management using digital technology facilities so that Constitutional Court employees can work at home during this pandemic.

With the existence of various digital technology facilities used by the Constitutional Court to support its performance to create a modern and reliable court, it must also synergize with other institutions, especially the government that manages government administration in general.

The Constitutional Court does this by way of synergizing the e-government in the constitutional court (I-judiciary). The existence of various digital technology facilities that have supported the Constitutional Court through the development of a constitutional court management information system must also be synchronized with multiple other applications. Its support the application of e-government which is also applied in the Constitutional Court. The application is manifested in various programs to improve the quality and quantity of Information and Communication Technology devices. Such as the development of Office Management Information Systems / e-offices and digitization of office archives work in synergy with the i-judiciary already owned by the Constitutional Court. (Mahkamah Konstitusi RI, 2017)

Conclusion

Amid the coronavirus pandemic that is sweeping the world, digital technology is the best solution to reduce the coronavirus spread. Nowadays, through digital technology, everyone can access anything only through the smartphone, and the world seems to be in our hands. As a society, we also try to adapt our lifestyle with existing technology and always try to make updates to get left behind. Today, the rapid digital world causes all parties to be willing to change, get involved, adapt, and innovate with technology.

As one of the public servants, the court must also be able to adjust to keep up with technological developments because the people served by the courts have also used the technology. The use of technology in the world of justice is a must so that people as justice seekers experience easy access to courts. Amid the current coronavirus pandemic, the Indonesian Constitutional Court as one of the courts founded in 2003 and has a mission to create a modern and reliable court has succeeded in creating a

digital court. It can be accessed by all Indonesians, amounting to 260 million, only using a smartphone that they have and no cost to litigate.

The existence of the Indonesian Constitutional Court's serious efforts amid the coronavirus pandemic by creating a digital court system is to provide easy access for the justice-seeking community. To carry out various constitutional challenges to the Indonesian Constitutional Court by utilizing this digital technology is extraordinary and enviable by all courts in the world. The era of digital technology should be carried out comprehensively, including being an integral part of court institutions to create a court that is friendly to the community and fair, transparent and accountable so that this will automatically increase public trust in the judiciary.

References

- Belajar dari Film Dokumenter "The Lockdown: One Month in Wuhan" - kumparan.com. (n.d.). Retrieved August 19, 2020, from <https://kumparan.com/hani-adhani/belajar-dari-film-dokumenter-the-lockdown-one-month-in-wuhan-1t56qC1kjUq>
- Constitutional Court of the Republic of Turkey. (2016). Retrieved September 28, 2018, from <http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleases/detail/31.html>
- E Court Mahkamah Agung RI | Electronics Justice System. (n.d.). Retrieved August 18, 2020, from <https://ecourt.mahkamahagung.go.id/>
- FEDERAL CONSTITUTION*. (2010).
- Indonesia to evaluate partial lockdown as companies, factories continue business as usual - National - The Jakarta Post. (n.d.). Retrieved August 18, 2020, from <https://www.thejakartapost.com/news/2020/04/20/indonesia-to-evaluate-partial-lockdown-as-companies-factories-continue-business-as-usual.html>
- lex, wipo. (2004). *The Constitution law of People's Republic of China*.
- Mahkamah Konstitusi RI. (2017). *Laporan Tahun 2017*. Jakarta.
- Majelis Permusyawaratan Rakyat. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945 § (2002). Indonesia.
- Marthen Boiliu, Satpam Merangkap Lawyer - hukumonline.com. (n.d.). Retrieved August 19, 2020, from <https://www.hukumonline.com/berita/baca/lt56fcdeb59c289/marthen-boiliu--satpam-merangkap-lawyer/>
- MK: Sertifikasi Guru untuk Cerdaskan Bangsa - Nasional - koran.tempo.co. (n.d.). Retrieved August 19, 2020, from <https://koran.tempo.co/read/nasional/95038/mk-sertifikasi-guru-untuk-cerdaskan-bangsa?>
- mkri.id. (2019). Search Engine - MKRI. Retrieved April 29, 2019, from https://search.mkri.id/?q=%22quick+count%22&type=%22v0.trialrulings.mk.hukumonline.com%22&case_type=%5B%22puu%22%5D&ruling=%5B%22dikabulkan%22%5D
- Pemerintah Kaji Kemungkinan Penerapan Lockdown Parsial. (n.d.). Retrieved August 19, 2020, from <https://news.detik.com/berita/d-4956303/pemerintah-kaji-kemungkinan-penerapan-lockdown-parsial>
- Regulasi | Gugus Tugas Percepatan Penanganan COVID-19. (n.d.). Retrieved August 18, 2020, from <https://covid19.go.id/p/regulasi>
- Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI. (2003). *Laporan Tahunan Mahkamah Konstitusi Tahun 2003*. Jakarta.
- Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI. (2019). *Laporan Tahunan Mahkamah Konstitusi Tahun 2019*. Jakarta.
- SIMPEL.MKRI.ID. (n.d.). Retrieved August 18, 2020, from <https://simpl.mkri.id/>
- Survei SMRC: 31 Persen Warga Jakarta Ingin Mudik - Metro Tempo.co. (n.d.). Retrieved August 18, 2020, from <https://metro.tempo.co/read/1332545/survei-smrc-31-persen-warga-jakarta-ingin-mudik>
- UU No. 6 Tahun 2018 tentang Keekarantinaan Kesehatan [JDIH BPK RI]. (n.d.). Retrieved August 18, 2020, from <https://peraturan.bpk.go.id/Home/Details/90037/uu-no-6-tahun-2018>
- Yuan, Z., Xiao, Y., Dai, Z., Huang, J., Zhang, Z., & Chen, Y. (2020). Modelling the effects of

CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA: SAFEGUARDING CITIZENS' CONSTITUTIONAL RIGHTS IN THE MIDDLE OF A PANDEMIC

wuhan's lockdown during covid-19, china. *Bulletin of the World Health Organization*, 98(7), 484–494. <https://doi.org/10.2471/BLT.20.254045>