

2020 REGIONAL HEAD ELECTIONS MUST BE POSTPONED

Fritz Edward Siregar

Member of Indonesia Election Supervisory Body (Bawaslu)

After a Limited Meeting chaired by the Coordinating Minister for Political, Legal, and Security Affairs of Indonesia (Menko Polhukam) on Wednesday 18 March 2020, the Government through the Menko Polhukam stated that the 2020 elections would remain on a fixed schedule. Shortly afterward, the Indonesian General Election Commission (KPU) on Saturday, 21 March 2020, issued Decree Number 179 / PL-02-Kpt / 01 / KPU / III / 2020 concerning the postponement of the election stages for the Governor and Deputy Governor, Regent and Deputy Regent and Mayor and Deputy Mayor of 2020 in Preventing the spread of COVID-19. The KPU Decree, in essence, postponed the four ongoing stages, namely (1) Inauguration and PPS work period; (2) Verification of individual candidate support conditions; (3) Establishment of PPDP and implementation of Matching and Research / Research; and (4) Updating and Arranging Voter Lists. The Regional Head Election divided into several stages that determined in PKPU Number 2 of 2020 on the Second Amendment to the Election Commission Regulation Number 15 of 2019 concerning Stages, Programs, and Schedule for the Election of the Governor and Deputy Governor, the Regent and Deputy Regent, and/or Mayor and Deputy Mayor in 2020.

In addition to the KPU, Bawaslu, on March 24, 2020, issued Circular Letter No. 0252/K.Bawaslu/PM.00.00/3/2020, concerning Supervision of Postponement of the Stages of the Election of the Governor and Deputy Governor, the Regent and Deputy Regent, and/or the Mayor and Deputy Mayor in 2020 in the Prevention of Transmission of COVID-19. In this Circular, Bawaslu instructed the Provincial Bawaslu, Regency/City Bawaslu, and their staff to supervise the implementation of the postponement of the 2020 regional head elections. Also, the Circular regulates the duties and authorities of the Provincial Bawaslu and Regency/City Bawaslu, as well as the working period of the ad hoc election supervisory committee in the national emergency period related to the transmission of COVID-19.

The question is, is it still possible that the 2020 regional head elections with the voting day on 23 September 2020, will still be carried out according to the schedule? The four stages are stages that are interrelated to one another.

The Voting Committee/*Panitia Pemungutan Suara* (PPS) is an organ that will carry out the process of verifying individual candidacies. The individual candidate is a path provided by law for candidate regional heads who wish to advance to become regional heads through individual channels. At this time, there are 148 Candidates Regional Head Individuals who have completed the Administration Verification stage and will then proceed to Factual Verification. This will all lead to the stages of Regional Head Candidate Determination, which will be held on 8 July 2020. If the factual verification stage postponed, then the stage of determining candidates be no clarity. Legal certainty for regional head candidates becomes unfulfilled.

The establishment of the Voter Data Update Officer/*Petugas Pemutakhiran Data Pemilih* (PPDP) and the implementation of research matching, as well as updating and compilation of the voter list, are the processes by which the KPU can determine correctly, precisely and accurately the number of voters who have the right and actual domicile. So, the distribution can be determined, the number of polling stations (TPS), and the logistics of ballots to printed. With matching and research, stealth voters, or voters who are not registered, there are no more so that no citizens' rights lost due to political rights not registered on the final voter list (DPT). Legal certainty for voters and election organizers related to election logistics becomes unfulfilled. Both stages involve many parties, which can potentially accelerate the spread of the COVID-19 virus.

On March 30, 2020, Commission II of the Indonesian Parliament, Ministry of Home Affairs, KPU, Bawaslu, and DKPP held a working meeting/hearing to discuss the postponement of the 2020 regional head elections due to the COVID-19 pandemic. The results of the meeting agreed that the postponement of the implementation of the Simultaneous Election in 2020 must have a legal basis, so based on that, Commission II of the Indonesian Parliament asked the Government to prepare a new legal basis in the form of PERPPU (Government in Lieu).

Furthermore, on April 14, 2020, Commission II of the Indonesian Parliament, the Ministry of Home Affairs, KPU, Bawaslu, and DKPP held a working meeting/hearing to

discuss the Government's proposal regarding the postponement of the 2020 regional head elections. In the meeting, it agreed that the implementation of the 2020 regional head elections, the 2020 regional head elections will be held on December 9, 2020. However, before starting the continued implementation of the stages of the 2020 regional head elections, Commission II of the Indonesian Parliament together with the Minister of the Home Affairs and the KPU will hold a meeting again after the emergency response period ends to discuss the latest conditions of the handling of the COVID-19 pandemic, and also pay attention to the readiness for the implementation of the next stages of the 2020 regional head elections.

A legal basis is needed to postpone the implementation of the 2020 regional head elections. In this case, the legal basis that could be the basis for the postponement of the implementation of the 2020 regional head elections is PERPPU because it is considering the global pandemic COVID-19. The legal basis for the issuance of PERPPU based on Article 22 paragraph (1) of the 1945 Constitution states that the President has the right to stipulate a PERPPU in conditions of compulsion. Also, based on the decision of the Constitutional Court (MK) Number 138/PUU/VIII/2009, there are three requirements for PERPPU to be issued. First, the urgent need to resolve the legal problems quickly under the Law. Second, the required Law does not yet exist so that there is a legal gap or there is a Law, but it is not adequate. Third, the legal gap cannot overcome by making the Law with the standard procedure because it takes a long time while the urgent situation needs certainty to resolve.¹

As of April 14, 2020, the number of COVID-19 patients under supervision (PDP) is 10,482 people. As for the COVID-19 Person Under Monitoring (ODP) category, there were 139,137 people.² The latest data in Indonesia are 4,839 COVID-19 positive patients, 426 patients recovered, and 459 people died.³

¹ See Legal Considerations of the Decision of the Constitutional Court Number 138/PUU-VII/ 2009 paragraph [3.10].

²<https://nasional.tempo.co/read/1331571/jubir-covid-19-ungkap-data-odp-dan-pdp-di-indonesia/full&view=ok> , accessed on 14 April 2020.

³ <https://www.covid19.go.id/> , accessed on 14 April 2020.

If the regional head elections still held in 2020, several things can be considered. The first choice is the process of the implementation of the fourth of these stages can be compressed. However, this is difficult to do without involving many people, which does not provide health security guarantees for election organizers and the public. The second option is to carry out a factual verification process and updating voter data online. This choice becomes challenging to do because not all citizens have the technological capabilities and legal certainty of verification and matching and research because there must be prior training and simulation to the election organizers who are involved in it. If the first or second choice is still possible, what about the next election stages such as the campaign stage, the voting stage, and the vote recapitulation stage, which involves many people with the COVID-19 pandemic that still threatens safety?

The wisest choice in the COVID-19 pandemic is to postpone the 2020 regional head elections until the COVID-19 pandemic is over. The problem is, the plan to postpone the 2020 regional head elections has a legal problem that needs to be resolved.

The reason is that the provisions regarding the stage of voting are regulated by the norms in Law 10/2016 (UU Pilkada). The legislators have determined that the voting for elected regional heads in the 2015 elections will be held in September 2020 (Article 201 paragraph (6) of Law 10/2016). If the stages of the 2020 regional heads elections are postponed to after September 2020, and the norms of the Law 10/2016 have not changed, then that becomes a problem in the future, and the implications might make the voting results formally flawed. The process of forming laws which will not be a stumbling block that will be faced. Therefore, the possible choice to avoid these problems is to issue a Government Regulation in Lieu of Law (PERPPU) related to the postponement of the 2020 regional head election. This should be considered, given the increasingly spare time to carry out the stages of the election towards the stage of voting for the 2020 regional head elections this September.

If Indonesia chooses to postpone the 2020 regional head elections, Indonesia is not alone in taking this policy. The COVID-19 Pandemic has also influenced elections in various countries. As of 22 March 2020, according to the IFES report, <http://www.electionguide.org/digest/post/17591/>, 23 countries have postponed their elections. Even in the United States, 12 states have postponed elections. Postponed elections

consist of Presidential Elections, Legislative Elections, Regional Head Elections, Referendums, Senator Elections, and even the primary elections ahead of the Presidential one which is now taking place in the United States. There are postponements that have a schedule for their duration, and some even have not determined how long it will be. During a COVID-19 pandemic that is still going on, it is a bit hard to imagine a government that permits the activities related to the elections remains to be implemented.

Carrying out the 2020 regional head elections and overcoming the COVID-19 pandemic at the same time is a risk that must be taken by decision-makers. However, postponing it is the most responsible choice from the health perspective, which protects the community and certainty in the implementation of the election. It is still unknown when the COVID-19 pandemic will end, and we must not forget that organizing the 2020 regional head elections must also be able to ensure the safety of the organizers, election participants, campaign teams, security forces and the voters themselves. If we have to choose between all the options available, postponing the 2020 regional head elections is not a step backward, but a step forward to safeguard the safety of Indonesian citizens.