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ANTICIPATING ELECTION POSTPONE- MENT: PREPARING THE LEGAL FRAMEWORK OF ELECTORAL MANAGEMENT DURING PANDEMIC BASED ON RISK MANAGEMENT

Kahfi Adlan Hafiz
Perkumpulan untuk Pemilu dan Demokrasi (PERLUDEM)
email: kahfi@perludem.org

Abstract

One of the various reasons for postponing elections nowadays is the unpreparedness of electoral management in dealing with the Covid-19 pandemic. Along with lifting Covid-19 restrictions (PPKM) in Indonesia, the world is still haunted by the Covid-19 pandemic or other disease outbreaks that could affect election management. Therefore, it is crucial to prepare electoral governance through a responsive legal framework to mitigate the adverse effects of a pandemic. The legal framework should be based on risk management and become a basis for the dynamics and complexity policies on electoral management. Furthermore, the design of electoral management should be aware of several aspects and election stages such as management plan, voters and candidate registration, campaign and rally, temporary officer recruitment, voting and counting process, and election observation. Furthermore, the electoral process, including the voting and counting process, can adopt the Special Voting Arrangement (SVA) through various models such as postal vote, early vote, and mobile vote. This study will explain the possibility of special electoral arrangement and SVA adoption in the legal framework and give some relevant recommendations. This model can strengthen the responsive legal framework for elections to mitigate the negative impacts of the pandemic and anticipate the unconstitutional discourse on postponing elections that violates the periodic principle in elections.

Keywords: post-pandemic, digitalization, and democracy



A. Introduction

At the last of 2019, the whole world was shocked by the pandemic of Corona Virus (Covid-19), which was first detected in Wuhan, China, which then spread to the whole world, including Indonesia. Covid-19 has affected the public health system and has attacked various economic, social, and political aspects. Therefore, the implications of Covid-19 were sorely impacting the governance and policy crisis on handling the pandemic in the world.¹

The election and its stages were bringing risks to voters and electoral officers.² Due to the transmission of Covid-19 through the massive contact of humans and indirect contact (*fomite*), this could be a tremendous risk for the electoral administration.

Based on these facts, the promoters of election postponement were using Covid-19 transmission as the reason. Some politicians and significant party leaders, such as Muhaimin Iskandar (Chief of PKB) and Zulkifli Hasan (Chief of PAN), were following the trend and amplifying the notion of electoral postponement.³ In contrast, this notion is unconstitutional and would be putting Indonesia's democracy in jeopardy. Furthermore, the idea of election postponement will undermine the periodic principle of election guarantee by Article 22E (1) UUD 1945⁴ dan Article 21 (3) Universal Declaration of Human Rights.⁵

Indonesia itself has experienced holding elections during a pandemic, to be precise, in the 2020 *Pilkada* (Head of Regional/Local Election). Although considered successful, there are several notes regarding the 2020 *Pilkada*, particularly in the high-risk election stages during a pandemic.

- 1 Wawan Mas'udi and PS Winanti, *From the Health Crisis to The Governance Crisis*, in *Covid-19 Handling Management in Indonesia: An Initial Study* (Yogyakarta: Gadjah Mada University Press, 2020), p. 3-15
- 2 International IDEA, "Election and Covid-19: Technical Paper of International IDEA", International IDEA, January, 2020, <https://www.idea.int/sites/default/files/publications/pemilu-dan-covid-19.pdf>
- 3 Republika, "Election Postponement with the Covid-19 Reason is Contradictory with Government Claims", *Republika*, March 9, 2022, <https://www.republika.co.id/berita/r8h5g3428/alasan-menunda-pemilu-karena-covid19-berseberangan-dengan-klaim-pemerintah>
- 4 Article 22E (1) UUD 1945 (Indonesian Constitution): General elections shall be executed in a direct, public, free, confidential, honest, and just manner once every five years
- 5 Article 21 (3) Universal Declaration of Human Rights: The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures



Several problems are seen, starting from the changing regulatory framework, coordination between institutions that could be more optimal, technology usage, and an inflexible budget posture.

The precedents from the 2020 *Pilkada* can be lessons for holding elections during a pandemic. This preparation requires special arrangements for adaptive election management. Risks must be seen in several stages that trigger massive crowds and human interactions. This overview is essential to ensure the 2024 Election and 2024 *Pilkada* elections are on time.

Regulations for organizing elections must also consider risk management because it is essential to establish a dynamic and complex implementation mechanism in taking preventive and mitigation actions. Risk management is a set of components that provide the organizational arrangements to design, implement, monitor, review, and improve risk management.⁶

When linked to the conduct of elections, the risk is seen as the probability or threat of damage, injury, liability, loss, or other harmful events caused by external or internal vulnerabilities and can be minimized through preventive actions.⁷

According to Alihodzic et al.,⁸ this understanding can be related to holding elections in four ways. *First*, damage, accountability, and losses are related to elections in voter lists, ballot papers, ballot boxes, election results, and logistics. *Second*, injuries can be associated with violence directed at electoral actors. *Third*, external factors are related to risks in the social environment, such as exclusion, ethnic tensions, and others. *Fourth*, internal factors related to legal, technical, financial, and other threats. In addition, risk management in elections is also based on risk identification, risk measurement, reporting, and decision-making.⁹

In the context of risk management, one of the steps that can be taken is to introduce the Special Voting Arrangement (SVA) model. SVA can be used at several election stages, especially during voting. Heinmaa and Kalandadze's

6 Amy Vincent, Sead Alihodzic, & Stephen Gale, *Risk Management in Elections: A Guide for Electoral Management Bodies*, (Stockholm: International IDEA & Australia Electoral Commission, 2021), p. 11

7 Gregory L. Schlegel & Robert J. Trent, *Supply Risk Management: An Emerging Discipline*, (Boca Raton: CRC Press, 2015), p.2

8 Sead Alihodzic, et. al., *Risk Management in Election*, (Jakarta: International IDEA & Per-ludem, 2020), p. 11

9 *Ibid*, p.12



study¹⁰ shows several SVA models that can be adapted to create an adaptive election amidst the pandemic. First, postal voting is a model for allowing voters to submit their ballot through post-mail to the election organizer. Second, early voting provides an open polling station for some voters before election day. Third, mobile voting provides a mobile ballot for the voters.

Only the third model is possible within the legal framework of elections in Indonesia. However, mobile voting is limited to specific situations, such as in hospitals or quarantine locations for Covid-19 patients. However, the mobile ballot practice is still prone to fraud due to minimal regulation. Meanwhile, the postal and early vote models need a legal framework, especially at the statutory level.

Based on the description above, it is crucial to see how to map and deal with risks in holding elections amid a pandemic. Therefore, this research will look at the experiences of the 2020 *Pilkada* and best practices for holding elections in several countries in a pandemic situation. This is necessary to see formulations of risk management that can be implemented in adaptive election management regulations, including opportunities for implementing special arrangements and SVA within the electoral legal framework in Indonesia.

This research uses a mixed legal study or socio-legal method by combining normative and juridical-sociological legal research methods.¹¹ This method is operationalized by studying the developing legal principles and theories and reviewing the existing laws and regulations in Indonesia.¹² This method is used to identify election risks during a pandemic and see opportunities for implementing adaptive election regulations based on risk management, including the application of SVA.

B. Electoral Management amidst the Pandemic: Lesson Learnt from *Pilkada* 2020 and Election in Other Countries

The 2020 Simultaneous Region of Head Election was the first Indonesian experience in holding an election during a pandemic. Indonesia successfully held the election amidst the pandemic, in which the average daily added 6000-

10 Anika Heinmaa & Nana Kalandadze, *Special Voting Arrangements in Europe: Postal, Early and Mobile Voting*, (Stockholm: International IDEA, 2021), p. 10-23

11 Sulistyowati Irianto Shidarta, *Legal Research Method: Constellation and Reflexion*, (Jakarta: Yayasan Obor Indonesia, 2009), p.29

12 Sunaryanti Hartono, *Legal Research in Indonesia at the End of the 20th Century*, (Bandung: Alumni, 1994), p. 22-23



7000 positive cases of Covid-19. Until late December 2020, at least 735.124 people had been infected by Covid-19.¹³ However, there is no spreading cluster Covid-19 founded related to the Simultaneous Region of Head Election.

There are several critical evaluations on the Simultaneous Region of Head Election 2020. First, there were the uncertainty regulation framework and nonadaptive legal framework. That caused nonadaptive regulation on the campaign and inflicted the crowd. Second, the coordination among institutions could have been more optimal, especially organizing institutions and the institution involved in handling Covid-19, which developed crowds during the campaign period. Third, the insufficient budget impacted problems in the region, such as procurement needed in the pandemic era. Fourth, the utilization of technology and information system. Even so, several information systems such as Candidacy Information System (SILON) and Recapitulation Information System (SIREKAP) have been provided yet have not been used well.

One of the cases that reflected is the law framework on *Pilkada* in 2020 which did not guarantee the certainty law principle. The president tried to respond to that situation and released Perppu (Government Regulation in Lieu of Law) 2/2020 to make it more adaptive. However, that regulation only allowed the postponed Head Election to prepare the legal framework at the KPU (Commission of Election) and *Bawaslu* (Election Supervisory Body) levels, which are adaptive to degrade the risk of Covid-19. Meanwhile, Perppu 2/2020 did not provide a clear legal framework for KPU to make adaptive regulation and risk management based.

That was depicted in the nonadaptive and capricious regulations on political rallies. PKPU (*Peraturan KPU – KPU’s Regulation*) 11/2020 on Region Head Election still allowed offline campaigns, as mentioned on Law 10/2016. In contrast, PKPU was legalized on 23 September 2020, when the first wave of Covid-19 happened in Indonesia. Afterward, on PKPU 6/2020, the offline campaign is still allowed with several restrictions. In contrast, the legalization of this PKPU was intended to form adaptive regulations during a pandemic.

13 R. Manuhutu, “Update Situation of Covid-19 (31 December 2020)”, *Infeksi Emerging Kemenkes*, 31 December 2020, <https://infeksiemerging.kemkes.go.id/situasi-infeksi-emerging/situasi-terkini-perkembangan-coronavirus-disease-covid-19-31-desember-2020>



Campaigns or face-to-face meetings are also permitted in PKPU 10/2020 and PKPU 13/2020. The difference is that PKPU 13/2020, as the latest regulation, encourages regional election participants to carry out online face-to-face campaigns. However, face-to-face campaigns at the two PKPUs have relatively the exact requirements. PKPU cannot ban face-to-face campaigns because it is against Law 10/2016. The provisions regarding face-to-face campaigns were also not changed by Perppu 2/2020, which was meant to mitigate Covid-19.

In addition, the nonadaptive legal framework also results in poor coordination between agencies. These problems can be shown, for example, in the case of crowds during the registration of the candidates for mayor and deputy mayor of Surakarta, Gibran Rakabuming and Teguh Prakosa. The National Police and *Bawaslu* then shifted responsibility for handling the crowd case. The Police stated that *Bawaslu* should be dealing with the Gibran crowd because it was at the regional election stage.¹⁴ At the same time, the *Bawaslu* refused to take responsibility, saying that the crowd case was a general crime and became the domain of the Police.

Problems with campaigns and other risky stages should be anticipated with arrangements that are adaptive to the Covid-19 situation. Campaign mechanisms, for example, can be regulated by limiting the number of participants or prohibiting traditional campaign methods that generate crowds and human interaction. Several practices in many countries can be used as lessons. According to Asplund's records,¹⁵ most countries in the world limited the number of campaign participants during the pandemic, while others strictly banned traditional campaigns. The list can be seen in the following table:

14 CNN Indonesia, "The Reason of Police did not Investigate Gibran's Crowd Case in Solo", *CNN Indonesia*, 18 November 2020, <https://www.cnnindonesia.com/nasional/20201118200902-12-571583/alasan-polri-tak-usut-kasus-kerumunan-gibran-di-solo>

15 Erik Asplund et.al., "Elections and Covid-19: How Election Campaigns took Place in 2020", *International IDEA*, 2 February 2021, <https://www.idea.int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020>



Table 1

Traditional Campaign Limitations ahead of Elections in 2020 Based on Countries

Campaign Limitations	Country
Limit on Participant's number	Burkina Faso (50), Croatia (10 indoors), Guinea (100 for 18 October 2020 election), Iceland (100), Jamaica (20), Jordan (20), Malawi (100), Mali (50), Moldova (50), Montenegro (50 indoors and 100 outdoors), Myanmar (50), North Macedonia (1,000), Poland (50–150), Romania (20 indoors, and 50 outdoors), Serbia (50–500), Sri Lanka (100), USA (depending on the state)
Ban on political rallies	Croatia (ban on holding public events and large gatherings), Dominican Republic (rallies banned), Iran (candidates barred from campaigning on the streets), Jamaica (motorcades banned), Jordan (banned election rallies), Kuwait (rallies banned), Montenegro (public gatherings and rallies banned), Poland (public gatherings were officially prohibited), Serbia (campaign suspended), Singapore (rallies banned), Seychelles (rallies banned), USA (depending on the state)

Source: Erik Asplund¹⁶

In International IDEA's notes, many countries' campaign restrictions must be appropriately implemented. In Myanmar, for example, according to the ANFREL Interim Report, health protocols and restrictions on political campaigns are also widely violated and are not strictly sanctioned.¹⁷ Meanwhile, during the Presidential Election in the US, President Trump's campaign, which involved a large crowd, is predicted to have resulted in an additional 30,000 positive cases of Covid-19 and 700 deaths.¹⁸

However, there are good examples from several countries of campaign setting and practice. Traditional methods were then replaced by e-rallies models, which significantly utilized social media platforms such as Instagram, Twitter, Facebook, and YouTube. Kuwait, for example, prohibits face-to-face

16 *Ibid*

17 ANFREL, "International Election Observation Mission of the 2020 Myanmar General Elections: Interim Report", *Asian Network for Free Elections*, 2020, https://anfrel.org/wp-content/uploads/2020/11/ANFREL-Interim-Report_IEOM-to-the-2020-Myanmar-General-Elections.pdf, p.19

18 B. Douglas Bernheim, Nina Buchmann, Zach Freitas-Groff, & Sebastian Otero, "The Effects of Large Group Meetings on the Spread of COVID-19: The Case of Trump Rallies", October 2020, *Working Paper*, Stanford Institute for Economic Policy Research (SIEPR), p.11



campaigns, especially in *diwanis* (reception areas – a male-dominated hub and gathering place) which are usually used as campaign venues.¹⁹ This ban has had a considerable impact because apart from suppressing the spread of Covid-19 and encouraging social media usage, the electoral political process has also been effectively felt by female candidates and voters previously marginalized from the *diwanis* system.

Apart from the campaign stages, the vote and count process is also included in the election stages, which are risky in a pandemic situation. Based on several election studies in many countries during the pandemic, the vote and count process has become the stage that gets the most attention. This is because voting and counting are the main stages in elections and determine voter turnout. This has prompted several countries to adopt special voting arrangements (SVA) to ensure safe voting methods and mitigate Covid-19 transmission.

At least three models are widely used worldwide: early voting, postal voting, and mobile ballot box. Moreover, other models, such as proxy voting, are intended to allow Covid-19 patients to cast their ballot, even though it is only used in a few countries.²⁰ The table below shows several countries implementing Special Voting Arrangements can be seen in the table below:

Table 2.

Special Voting Arrangements used in 2020

SVA Model	Country
Early Voting	Belarus, Bermuda, Ghana, Iceland, Lithuania, Israel, Myanmar, Jamaica, North Macedonia, New Zealand, Sri Lanka, Russia, South Korea, USA, Trinidad and Tobago
Postal Voting	Romania and New Zealand (only from abroad), Poland, Lithuania, Switzerland, South Korea, Iceland, USA
Mobile Ballot	Croatia, Belarus, Bermuda, Czech, Iceland, Georgia, Italy, Kyrgyzstan, Lithuania, Moldova, Mongolia, Montenegro, Romania, Myanmar, North Macedonia, Russia, Singapore, Suriname, South Korea, Seychelles, Switzerland

19 Yasmeena Al Mulla, “How Election Campaigning Works in Kuwait – and How it is Being Impacted by Covid-19”, *Gulf News*, 11 November 2020, <https://gulfnews.com/world/gulf/kuwait/how-election-campaigning-works-in-kuwait---and-how-it-is-being-impacted-by-covid-19-1.1605103024526>

20 *Ibid*



Proxy Voting	Belize, Croatia, Poland, Switzerland
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Source: Erik Asplund²¹

The SVA model above guarantees citizens' right to vote and suppresses the spread of Covid-19. According to Asplund,²² several of the models implemented by many countries above are modifications of the existing voting regulations, which are based on the high level of risk of these stages during the Covid-19 pandemic.

There are successful lessons from several countries, one of which is South Korea. In the April 2020 national election, South Korea implemented three SVA models: early voting, postal voting, and mobile ballot. As a result, the voter turnout of South Korea's 2020 election reached 66%, of which 41% of voters used the SVA facility.²³ This figure is even the highest since 1992.

In addition, voter turnout in several countries that use SVA has also increased compared to the average turnout in the last ten years of elections.²⁴ For example, in Local Elections in Bavaria, Germany. The election used the postal vote model and was considered successful in minimizing the threat of Covid-19 spreading in that area and increasing voter turnout.²⁵

Based on the description above, various adaptive arrangements practiced by countries worldwide can be used as lessons. This learning is fundamental to furnishing a legal framework that is relevant to the pandemic situation and based on risk management. Furthermore, the successful experience of the 2020 *Pilkada* must be continued while improving the various problems in holding the 2020 *Pilkada* during the past pandemic. That way, the implementation of the 2024 General Election and *Pilkada* can be adaptive to the possible risk of exploding the spread of Covid-19.

C. **Preparing an Adaptive Regulation: The Possibility of Special Adaptive Arrangement in the Forthcoming General and Local Election of 2024**

2020 local Elections should be an anecdotal lesson on holding elections

21 *Ibid*

22 *Ibid*

23 Anika Heinmaa & Nana Kalandadze, *Op.Cit.*, p. 7

24 *Ibid*, p.8

25 IFES, "Elections Held and Mitigating Measures Taken During Covid-19", *ElectionGuide.org*, 16 April 2020, <https://www.electionguide.org/digest/post/17598/>



amid the pandemic because Indonesia's experience of this election may become a reason behind the election postponement, which is harmful to the sovereignty of the people and, on edge, human rights. Consequently, the notion of election postponement will undermine the periodic election principle guaranteed by The Constitution of 1945, the International Covenant on Civil and Political Rights, and the Declaration of Human Rights. This principle is essential for ensuring the people's sovereignty to exercise legislative and executive power.²⁶

However, ensuring the safety of voters and electoral officers is also essential, particularly during the pandemic and other emergencies such as natural disasters and war.²⁷ Indonesia is also considered a vulnerable country since the pandemic is an emergency and a natural disaster that would occur anytime and affect the electoral stages.

Hence, the electoral administration needs a set of special regulations which should be based on risk management with the relevant potential disasters. Special regulation is necessary to arrange the policies and strategies for reducing and avoiding disaster risks, such as Covid-19 transmission. Moreover, risk management should be implemented to manage residual risk and strengthen society's resilience. According to UNDRR,²⁸ risk management could also consider the degree of hazards, vulnerabilities, and capacities and the community involvement in planning, implementation, monitoring, and evaluation.

In holding elections, risk management must be seen in two aspects: internal risk and external risk. Both have at least several factors related to the electoral process, which are presented in the table below.

26 Amnon Rubinstein & Yaniv Roznai, "The Right to a Genuine Electoral Democracy", *Minnesota Journal of International Law*, Vol. 21, No. 1, 2018, p. 154-155

27 Toby S. James, "New Development: Running Elections during a Pandemic", *Public Money & Management*, Vol. 41, 2021, p. 65

28 United Nations Office for Disaster Risk Reduction, "Terminology: Disaster Risk Management", *UNDRR.org*, 2020, <https://www.undrr.org/terminology/disaster-risk-management>



Table 3.

Factors of Internal and External Risk

Internal Risk Factors	Eksternal Risk Factors
1. The Debatable Electoral legal framework	1. Social, economic, and political situations
2. Poor electoral planning and management	2. Social and political exception
3. Less quality of electoral officers training	3. Power shifting
4. Inadequate electoral dispute	4. Discrimination and gender-based violence
5. Problematic voters and candidates registration	5. The emergence of weaponized civil groups
6. The high temperature of political campaign	6. Organized crimes
7. The problem with the poll process	7. Genocide, crimes against humanity, and war crimes problems
8. The disputed electoral result	8. Violence against human rights
	9. Unethical media
	10. Environmental hazards:

Source: Sead Alihodzic²⁹

In elections amid a pandemic, external risks can be seen in social, economic, and political conditions and environmental hazards. This is because Covid-19 has affected the situation in several aspects. Meanwhile, internal risks can be seen in several aspects, mainly in the legal framework, election planning and management, political campaigns, and voting and counting. The legal framework is necessary to legitimize the other three aspects. In the table below, several recommendations can be seen in each election stage to respond to internal risks.

Table 4.

Risk Management and Special Regulations on Each Electoral Stage³⁰

Electoral Stages	Risk Management and Special Arrangements
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29 Sead Alihodzic et.al., *Op. Cit.*, p.13

30 Fernanda Buriil, Staffan Darnolf, & Muluken Aseresa, *Briefing Series: Safeguarding Health and Elections*, (Arlington: IFES, 2020), p. 4-5



<p>Electoral Planning</p>	<ul style="list-style-type: none"> - Building a legal framework that is compatible and adaptive to the pandemic situation - Recalculate the election budget that has been set - Adjust the procedures for electoral technical regulations to reduce the risk of spreading the virus
<p>Voter Registration</p>	<ul style="list-style-type: none"> - Reducing the interaction of officers and voters in the voter registration process - Develop protocols for touchless verification of voter identity, if necessary, virtually - If meeting in person is needed, ensure the officer's health with regular swab tests.
<p>Candidates Registration</p>	<ul style="list-style-type: none"> - Developing a virtual participant registration information system - Minimizing the presence of prospective participants in the organizer's office. If attending the event, make sure there are no crowds. - Increase the nomination period, and provide a different schedule for each candidate to reduce potential crowds.
<p>Campaign and Rallies</p>	<ul style="list-style-type: none"> - Include rules related to Covid-19 in campaign regulations to avoid crowds, along with strict sanctions for candidates who violate them. - Develop virtual campaign methods and remote campaigns
<p>Temporary Officers Recruitment</p>	<ul style="list-style-type: none"> - Acceptance of officers can be attempted using online methods, such as receiving and filling out forms, as well as submitting forms - If reception is face-to-face, the facility must be adaptive to prevent the risk of virus transmissions, such as with large, open rooms, hand sanitizers, and tight masks. - Releasing officers who belong to vulnerable groups - Providing training on handling Covid-19 as one of the mandatory training materials



<p>Vote and Counting</p>	<ul style="list-style-type: none"> - TPS locations in the open, as well as complete logistics to comply with health protocols, must be guaranteed - Reducing the number of individuals in voting facilities by providing schedules or extending voting times - Set the layout of each item at the poll station following the movement of voters and give a distance so that the time needed at the poll station is shorter. - Using a special voting arrangement (Special Voting Arrangement) such as voting by postal vote, the mobile ballot box, and early voting. - Guarantee the voting rights of voters who are positive for Covid-19, whether in a hospital or isolated at home, by visiting voters and maintaining strict health protocol.
<p>Election Observation</p>	<ul style="list-style-type: none"> - Vulnerable groups are not allowed to become election observers/witnesses by representatives of participants and civil society - The monitoring group accreditation process must be tightened by reducing the possibility of vulnerable groups with Covid-19 joining it. - Monitoring objects can also be developed and are not only related to the collection mechanism but also adherence to health protocols

The legal framework must explain election arrangements from the perspective of normal conditions so that the ideality of the arrangements can be maintained. However, based on the table above, the legal framework must also be flexible by providing the possibility to enact special arrangements as the basis for policies and technical regulations for holding elections amid a pandemic.

Based on Krimmer, Duenas-Cid, & Krivonosova’s study³¹, several considerations need to be answered. *First*, the safety mechanism, including campaign regulation and special protective equipment. *Second*, various models of special voting arrangements are introduced, including postal vote, early vote, and mobile ballot box. Both two considerations should be adopted

31 Robert Krimmer, David Duenas-Cid, & Iuliia Krivonosova, “Debate: Safeguarding Democracy during Pandemics. Social Distancing, Postal, or Internet Voting – the good, the bad or the ugly?”, *Public Money & Management*, Vol 41, 2021, p. 8-10

in preparing the adaptive electoral legal framework.

Consideration of the voting mechanism must also be taken seriously. This is because it is a critical stage in elections and involves the most people, so it can potentially become an incubation of Covid-19 transmission. Lessons from several countries that held elections during the Pandemic period illustrate the success of these countries in maintaining voter turnout by using the Special Voting Arrangement.

Table 5.

Advantages and Disadvantages of Special Voting Arrangement Variants

SVA Models	Considerations	Advantages	Disadvantages
<i>Postal Voting</i>	<ul style="list-style-type: none"> - Postal voting is not the only type that is implemented in voting. Regular voting should still be available - There must be clear security regulations because the voting process is out of control - Post office infrastructure and integrity must be guaranteed - Postal delivery by voters must be free of charge - Confidentiality of ballots must be guaranteed by installing authentication tools - There must be a particular protocol to properly manage ballots so that they are not damaged or lost 	<ul style="list-style-type: none"> - Adaptive to all situations, especially pandemic situations - Can avoid crowds and reduce interactions between individuals - Increase voter turnout - Simplify the selector (in some contexts, it can be tricky) - Strengthen the guarantee of everyone's right to vote 	<ul style="list-style-type: none"> - Lack of supervision - There is potential for vote selling, family voting, and coercion in voting. - Vulnerable to fraud if the post office does not have integrity - Requires good post office infrastructure - Lack of guarantees for the confidentiality of ballots - ballots prone to damage or loss - if the procedural implementation is inadequate, it can affect the integrity and public trust in the election



<p><i>Early Voting</i></p>	<ul style="list-style-type: none"> - Election integrity must be improved - the opportunity to vote for early voting must be the same for every citizen, even if it is carried out under certain voting condition. - The difficulty level of voter registration using early voting will affect the number of voters using early voting. - The location and time of early voting must consider the convenience of voters, the candidate registration period, and the campaign. - Security of ballot boxes and other election logistics must be guaranteed 	<ul style="list-style-type: none"> - Reducing interaction between individuals, both voters, and officers - Reducing crowds because voting takes a longer time - Reducing queues of voters at polling stations - Increase voter turnout due to long voting time 	<ul style="list-style-type: none"> - Election administration will be more complicated, especially at the voter registration stage - Taking care of the ballots that have been cast and other election logistics will take longer - TPS location security must be tightened because it is prone to outside intervention in logistics - The chance of cheating is getting bigger
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<p><i>Mobile Voting</i></p>	<ul style="list-style-type: none"> - There must be a special regulation that determines who has the right to vote via a mobile voting - There should be sufficient time for voters to submit their mobile voting option, especially in a crisis or unforeseen situations - Freedom of choice must be maintained even though officials may assist in voting - Monitoring of mobile ballot boxes must be intense to ensure the integrity of elections and public trust 	<ul style="list-style-type: none"> - Can reduce interaction between individuals - Can prevent voters who are positively exposed to Covid from interacting with other individuals - Can guarantee the right to vote for every citizen, even if unable to attend the TPS 	<ul style="list-style-type: none"> - The election was conducted outside the TPS location, so it was prone to fraud - If there are no clear regulations, supervision may not be optimal - Election administration will be more complicated because the committee also has to coordinate with related institutions to facilitate Covid-positive voters. - If the number of officers is small, it will impact officer fatigue.
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Source: Annika Heinmaa & Nana Kalandadze³²

Of the several advantages and disadvantages of the three types of SVA above, it is important to consider external and internal factors in setting elections during a pandemic. Heinmaa & Kalandadze provide several considerations for implementing SVA. First, a country must consider infrastructure and budget capabilities to maintain the integrity of the electoral process. Second, SVA is only temporary, so the prior arrangements must remain in perspective on implementation in typical situations.

Third, the impartiality and independence of the institutions involved in implementing SVA must also be seriously guaranteed so that public trust in SVA does not fade. Fourth, voter and officer education must be intensified so that both can take full advantage of SVA facilities, including strengthening supervision of potential fraud.

32 Anika Heinmaa & Nana Kalandadze, *Op.Cit.*, p. 10-24



After looking at some of the considerations above, it is necessary to look at the possibility of an adjustment arrangement in several stages of the election amid the Covid-19 pandemic, including the implementation of the SVA. The adjustment must be based on the available legal framework. The most crucial is Law No. 7 of 2017 on Elections. Because Law No. 7 of 2017 provides an indispensable basis for technical arrangements in KPU Regulations and *Bawaslu* Regulations, especially in the context of adaptation during emergencies, pandemics, and natural disasters.

This is seen through the possibility of implementing risk management and special arrangements at each electoral stage by Fernanda Buri, Staffan Darnolf, & Muluken Aseresa (2020) above. This can be seen in the table below:

Table 6.

Possibility of Special Arrangements Implementation on Each Electoral Stage Based on Law No. 7 of 2017 on Election

Electoral Stages	Risk Management and Special Arrangements	Possibilities Based on Existing Provisions on Law 7/2017
Elections Planning	<ul style="list-style-type: none"> - Recalculate the election budget that has been set - Adjust the procedures for electoral technical regulations to reduce the risk of spreading the virus 	<ul style="list-style-type: none"> - On Article 12 (a.) The KPU has the authority to determine the budget and program planning, also related to electoral technical procedures so that they can be adjusted directly by the KPU - Article 451 allows the KPU, <i>Bawaslu</i>, and DKPP to formulate and propose a budget plan for implementing and supervising elections. Once agreed upon, the election budget is determined in the APBN (State Budget) Law



Voters Registration	<ul style="list-style-type: none">- Reducing the interaction of officers and voters in the voter registration process- Develop protocols for touchless verification of voter identity, if necessary, virtually	<ul style="list-style-type: none">- On Article 201 (1), voter data is available based on aggregate population data provided by the government. Therefore, the crucial stage is updating voter data, which in-person committees traditionally carry out.- Reducing interaction in updating voter data is possible because Article 204 provides an opportunity for technology and virtual identity verification protocol involvement in this process.- On Article 218 (1), KPU is also required to have an Information System of Voter List (Sidalih), which has the opportunity to reduce individual interaction
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<p>Candidates Registration</p>	<ul style="list-style-type: none">- Developing a virtual participant registration information system- Increase the nomination period, and provide a different schedule for each candidate to reduce potential crowds.	<ul style="list-style-type: none">- Article 176 allows the KPU to provide an information system for registering political parties as participants in the Legislative Election (DPR and DPRD). So far, there is already a Party's Information System (SIPOL) to provide an easy registration- Article 226 and Article 229 allow the KPU to provide an information system for President and Vice President nominations. In addition, KPU can limit registration through the available online platform if Covid-19 occurs.- Article 258 allows the KPU to provide an online platform for registering candidates for DPD members
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<p>Campaign and Political Rallies</p>	<ul style="list-style-type: none"> - Include rules related to Covid-19 in campaign regulations to avoid crowds, along with strict sanctions for candidates who violate them. - Develop virtual campaign methods and remote campaigns 	<ul style="list-style-type: none"> - On Article 279, the KPU has the authority to regulate guidelines for the implementation of election campaigns. That is, this provision allows the KPU to implement several special arrangements to limit crowds - On Law 7/2017, campaign regulation does not provide administrative provisions for health protocol violators. This makes the KPU not have a legal framework for applying administrative sanctions. - Campaign regulation on Law 7/2017 also does not provide for criminal provisions and enforcement related to health protocol violations. This makes law enforcement ineffective, and there is a shifting responsibility between law enforcement agencies. - Article 275 regulates the method of political rallies. The development of virtual campaign methods is possible but cannot be forced. This made it impossible
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<p>Recruitment of Temporary Officers</p>	<ul style="list-style-type: none">- Acceptance of officers can be attempted using online methods, such as receiving and filling out forms, as well as submitting forms- If reception is face-to-face, the facility must be adaptive to prevent the risk of virus transmissions, such as with large, open rooms, hand sanitizers, and tight masks.- Providing training on handling Covid-19 as one of the mandatory training materials	<ul style="list-style-type: none">- Article 51, Article 54, Article 59, Article 63, Article 67, Article 132, and Article 205 regulate the formation of ad hoc committees and supervisory committees in districts until the polling station level. Those articles provide the possibility for the KPU to regulate the selection and recruitment mechanism so that it is more adaptive to disaster situations, especially Covid-19- Those articles provide some possibilities for KPU and Bawaslu to arrange the curriculum of the committee's training, which can also include material on handling Covid-19
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<p>Voting Process</p>	<ul style="list-style-type: none"> - TPS locations in the open, as well as complete logistics to comply with health protocols, must be guaranteed - Reducing the number of individuals in voting facilities by providing schedules or extending voting times - Set the layout of each item at the polling station following the movement of voters and give a distance so that the time needed at the TPS is less. - Using a special voting arrangement (Special Voting Arrangement) such as voting by post (postal vote), mobile voting box (mobile vote), and early voting (early voting). - Guarantee the voting rights of voters who are positive for Covid-19, wheth- 	<ul style="list-style-type: none"> - In Article 167 Paragraph (3) juncto Paragraph (8), the technical implementation of voting is regulated through KPU Regulations. This allows the KPU to freely adjust the location and format of TPS, limit the number of people at one time, and provide materials for Covid-19 protection. - The only special voting arrangement models that can be carried out are postal voting and early voting (Article 167 Paragraph (5)). However, these two types of SVA are only intended for overseas voters, not in the context of mitigating disaster risks, especially pandemics. - According to Article 347 Paragraphs (1) and (2), voting is carried out simultaneously at the Poll station on the day determined by the KPU Decree. This provision precludes using the mobile ballot box and early voting method. - On Article 356, the proxy vote is possible for voters
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<p>Election Observation</p>	<ul style="list-style-type: none"> - The monitoring group accreditation process must be tightened by reducing the possibility of vulnerable groups with Covid-19 joining it. - Monitoring objects can also be developed and are not only related to the collection mechanism but also adherence to health protocols 	<ul style="list-style-type: none"> - On Article 436 Paragraph (1), election observers are accredited by Bawaslu based on provisions in the Bawaslu Regulations. Therefore, Bawaslu can add requirements related to monitoring members' age and medical history in a Covid-19 situation or other emergency. - On Article 437 Paragraph (2), monitors are required to explain the plans and areas to be monitored. In addition, Bawaslu can encourage monitors to make compliance issues with health protocols part of the monitoring object.
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Source: Processed by Author³³

As in the table above, several recommendations by Buriil, Darnolf, & Aseresa (2020) regarding special election regulations based on risk management have the opportunity to be implemented through Law 7/2017. This can be seen from several election stages, such as planning, registration of voters and participants, recruitment of officers, and monitoring of elections, which can be adjusted according to situations during a pandemic or other emergency. Therefore, Law No. 7 of 2017 can be translated into KPU regulations and *Bawaslu* regulations and contains several adaptations of specific provisions recommended by Buriil, Darnolf, & Aseresa (2020).

However, the arrangements for the campaign and voting stages in Law 7/2017 need to be adjusted, especially at the statutory level. For example, in the campaign aspect, Law No. 7 of 2017 can provide the possibility of discretion in regulation at the PKPU level during an emergency by adjusting

33 Processed by author, based on recommendation from Fernanda Buriil, Staffan Darnolf, & Muluken Aseresa *Op.Cit.*, p. 4-5



the form of a political campaign relevant to the emergency. In addition, the law must also explain the relationship between institutions, especially during the emergency response, so there is no responsibility debate between agencies.

Then, in voting, Law No. 7 of 2017 may adopt several SVA models such as postal vote, early vote, and mobile ballot box. For the record, laws can provide restrictions regarding the use of SVA only in certain conditions, such as natural disasters or pandemics. The Election Law must ensure that the institutions involved, such as the post office, the Police, and others, remain independent and maintain the integrity of the election administration.

Based on the description above, it is necessary to review Law No. 7 of 2017 on General Election, which provides a legal umbrella for holding elections. Election technical regulations could be adaptive to every situation if the legal umbrella provides regulatory flexibility and accommodates an emergency perspective. Therefore, several regulations, especially in the aspects of campaigning and voting, require several additional provisions to enable electoral institutions to take appropriate steps to create adaptive elections based on risk management.

D. Conclusion

The Covid-19 pandemic, which has spread throughout the world, has impacted the holding of elections with an elevated risk in its various stages. This also gave rise to the discourse of postponing the election for a long time until the Covid-19 disappeared from the earth, which is undoubtedly unconstitutional and contrary to the spirit of democracy in Indonesia. Therefore, this needs to be anticipated by adopting several special arrangements that are adaptive and based on risk management, especially in several crucial election stages which generate massive and intensive direct contact between individuals.

Preparing special regulations for elections can learn from Indonesia's experience in the 2020 *Pilkada*, which was held during a pandemic. Although successful, several notes require advancements, such as the uncertainty of the legal framework, poor inter-agency coordination, inflexible budget postures, and minimal utilization of technology systems. Besides that, many countries have also had success in holding elections amid a pandemic. Therefore, the focus is on adaptive campaign and voting regulation by adopting special



arrangements such as limiting the number of participants in a campaign or introducing some variant special voting arrangements. Indeed, some best practices in several countries can be used as lessons to prepare for holding the 2024 General Election and *Pilkada*, which may, although small, be amid a pandemic.

Special arrangements are needed in several stages to preparing for the elections during a pandemic, such as organizing, planning, registering voters and candidates, campaigning, recruiting officers, voting, and monitoring elections. In Law No. 7 of 2017 on Election, several stages can encounter adjustments to be more adaptive. However, this law has yet to become a legal framework for adaptive implementation procedures during the campaign and voting stages, so additional provisions are needed. First, in the campaigning aspect, laws may provide opportunities to prohibit certain types of campaigning relevant to an emergency. Then, in the voting aspect, the law can introduce various models of special voting arrangements such as postal vote, early vote, and mobile ballot on a limited basis while maintaining the integrity of the election. This is important to anticipate the worst situation in holding elections during a pandemic and break the controversial notion of election postponement.