

Juridical Analysis of Simultaneous Election Postpones during the COVID-19 Pandemic: Legal Certainty Perspective

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Abstract

The COVID-19 pandemic has implications for the postponement of the Simultaneous Pilkades in Indonesia. It's interesting to examine more deeply how the Simultaneous Pilkades policy arrangements during the COVID-19 Pandemic are viewed from the aspect of legal certainty and the legal consequences of postponing the Pilkades during the COVID-19 Pandemic. The research method uses a normative juridical approach with the statute approach and case approach. Legal materials (primary, secondary, tertiary) were collected through literature study and analyzed in depth using content analysis. Research shows that prior to the pandemic in the laws and regulations the rules regarding the postponement of Simultaneous Pilkades due to force majeure had not been regulated. The authority of the Ministry of Home Affairs to determine the postponement of the Simultaneous Pilkades also has multiple interpretations. The government's policy of issuing the Mendagri Circular is also inaccurate and does not provide legal certainty, the circular is not classified as a statutory regulation. The presence of Permendagri No.72 of 2020 provides legal certainty, the substance clearly regulates the authority of the Regent/Mayor to postpone the Simultaneous Pilkades. The legal consequence of postponing the Pilkades during the Pandemic Period is that many villages will be led by an Acting Village Head. In the future, the provisions regarding the postponement of Simultaneous Village Head Elections due to force majeure are clearly regulated in the legislation and in carrying out tasks by the Acting Village Head must be carried out with full responsibility, because the Acting has the same duties, authorities, obligations and rights as the definitive Village Head.

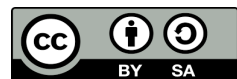
Keywords: Policy Arrangements; Postponement Simultaneous Elections of Village Head; Legal Certainty.

Abstrak

Pandemi COVID-19 berimplikasi pada penundaan Pilkades Serentak di Indonesia. Namun pengaturan ihwal penundaan Pilkades Serentak dalam peraturan perundang-undangan ternyata kurang jelas. Menarik untuk mengkaji lebih dalam bagaimana pengaturan kebijakan Pilkades Serentak di masa Pandemi COVID-19 ditinjau dari aspek kepastian hukum dan akibat hukum dari adanya penundaan Pilkades di masa Pandemi COVID-19. Metode penelitian menggunakan yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Bahan-bahan hukum (primer, sekunder, tersier) dikumpulkan melalui studi kepustakaan dan dianalisa secara mendalam menggunakan metode analisis konten. Penelitian menunjukkan bahwa sebelum pandemi dalam peraturan perundang-undangan (UU, PP, Permendagri) aturan mengenai penundaan Pilkades Serentak karena *force majeure* (bencana non alam) belum diatur. Kewenangan Kemendagri menetapkan penundaan Pilkades Serentak juga multitafsir. Kebijakan pemerintah mengeluarkan Surat Edaran Menteri Dalam Negeri juga kurang tepat dan tidak memberikan kepastian hukum, surat edaran bukan dikelompokkan sebagai sebuah

peraturan perundang-undangan. Akhirnya kehadiran Permendagri No. 72 Tahun 2020 memberikan kepastian hukum, substansinya mengatur secara jelas kewenangan Bupati/Walikota menunda Pilkades Serentak karena situasi darurat COVID-19 serta mekanisme dan teknis pelaksanaan Pilkades Serentak dalam situasi darurat COVID-19. Akibat hukum dari penundaan Pilkades di Masa Pandemi adalah banyak desa yang akan dipimpin oleh seorang Pejabat Kepala Desa. Kedepan ketentuan mengenai penundaan Pilkades Serentak karena *force majeure* diatur secara jelas dalam peraturan perundang-undangan dan dalam pelaksanaan tugas oleh Pejabat Kepala Desa harus dilakukan dengan penuh tanggung jawab, karena Pejabat memiliki tugas, wewenang, kewajiban dan hak yang sama seperti Kepala Desa definitif.

Kata Kunci: Pengaturan Kebijakan; Penundaan Pilkades Serentak; Kepastian Hukum.



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A. INTRODUCTION

Since the founding of this nation, democracy has become an option for the Unitary State of the Republic of Indonesia in navigating the life of the nation and state.¹ This refers to the basis of our country as well as the ideology of the Indonesian nation, namely Pancasila, as stated in the fourth precept of Pancasila. This precept is also the basis for the recognition of the Indonesian nation where people's sovereignty is based on the basic principles of democracy. In its development, Indonesian democracy adheres to the characteristics of constitutional democracy, where democracy is carried out and controlled by the constitution. This can be reviewed in Article 1 paragraph (3) of the 1945 NRI Constitution which explicitly explains that "*Sovereignty is in the hands of the people and is exercised according to the Constitution*". Constitutional democracy is the culmination of the development of the idea of democracy idealized in modern times today. Constitutional democracy is a set of ideas, principles, values and behaviors of a democracy based on the constitution.²

The manifestation of Indonesia as a democracy is reflected in the holding of general elections. Indonesia became one of the busiest countries in the world during the general elections. Within five (5) years, the public must follow various election agendas. The election of village heads is one of the most interesting general election agendas in Indonesia. Village Head Election (hereinafter referred to as Pilkades) is a democratic party at the Village level, where the villagers actively participate in voting to choose the best village head candidate.³ Elections are not included in the electoral regime, which is regulated in the Constitution and organized by the KPU. The author sees that the election of village heads is more suitable to be seen as a local election, because the Pilkades mechanism is carried out based on regional/city regulations.

The implementation of the village head election has an important meaning not only as a means of choosing leaders in the village area, but also as an obligation to carry out the mandate

¹ Z Firma Aditya and Sholahuddin Al-Fatih, "Democracy and Human Rights As A Solution To Resolve The Humanitarian Crisis In Muslim Countries," in *Conference On Islamic Studies (ICIS)* (Yogyakarta, 2017).

² Ronny Winarno, "Penerapan Sistem Demokrasi Dalam Menjaga Persatuan Dan Konstitusi Serta Penegakan Hukumnya," *Sapientia Et Virtus* 1, no. 1 (2014): 24–35, <https://doi.org/10.37477/sev.v1i1.155>. P. 243.

³ Alfrid Sentosa, Aston Pakpahan, and Della Eka Pratama, "Analisis Penyelenggaraan Pemilihan Kepala Desa Serentak," *Jurnal Sociopolitico* 3, no. 1 (2021): 42–64.

of the law. In addition, the village head has a very strategic role in determining the direction of development in the village. As mandated by the Village Law, the village head has an important role in organizing government in the village, carrying out community development, village development and village community empowerment.

The existence of Law No. 6 of 2014 concerning Villages has consequences for changes related to the implementation of village head elections. If the previous village head elections were held by each region according to their respective schedule agendas, the new Village Law provides for the holding of village head elections to be held simultaneously and in waves.⁴ The implementation of simultaneous elections will later be further regulated by each region that wants to carry out the election of the village head. In the explanation of Law No. 6 of 2014 concerning Villages, it is explained that simultaneous elections are held to avoid negative things in the election of village heads.⁵

However, in its development, in recent years the implementation of simultaneous Pilkadaes has had to experience unusual challenges and disturbances, namely the COVID-19 Pandemic. Implementing a democratic agenda during the Pandemic is a new experience in Indonesia's democratic journey. Moreover, holding elections in the midst of COVID-19 is not an easy effort to do. Learning from previous experiences the party of democracy always gives rise to an escalation of the times. The risk of casualties due to the explosion of the virus transmission rate threatens in front of the eyes. The implication is that in the last two years many regions have had to experience the postponement of simultaneous elections. In 2020 alone, the simultaneous elections experienced a policy of postponement under the pretext that there was no regulatory readiness to be carried out during the pandemic and the implementation of simultaneous regional head elections in 270 regions of Indonesia. What is interesting to note is the legal basis for the postponement of the elections simultaneously. Law No. 6 of 2014 concerning Villages does not clearly regulate the postponement of simultaneous elections due to *force majeure*. If dug deeper, the rules related to the postponement of the election of village heads can be found in derivative laws and regulations, namely in Article 57 paragraph (2) of PP RI No. 47 of 2015 concerning Amendments to Government Regulation No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages. Which reads:

"The policy of postponing the implementation of the village head election as referred to in paragraph (1) is determined by the minister who organizes government affairs in the field of domestic government."

The author sees that the above rules have not fully accommodated and become the basis for the simultaneous postponement of the Pilkadaes due to *force majeure* or in this case specifically non-natural disasters (COVID-19 Pandemic).⁶ Other rules also do not go into detail

⁴ Prasetio et al., "Problems of Democratic and Dignified Election in Indonesian Simultaneously Electoral Era," *International Journal of Criminology and Sociology* 9 (2020), <https://doi.org/DOI: https://doi.org/10.6000/1929-4409.2020.09.193>.

⁵ Devianty Hartasari, Fifiana Wisnaeni, and Untung Dwi Hananto, "Implementation of Simultaneous Village Head Elections in Pekalongan Regency Based on Law No. 6 of 2014 concerning Villages (Case Study of Simultaneous Village Head Elections in Pekalongan)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–15, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/17230>.

⁶ Ahmad Siboy and Sholahuddin Al-fatih, "The Logic Position of State Emergency Law in the Implementation of Regional Head Elections during the Covid-19 Pandemic," *Unnes Law Journal* 8, no. 1 (2022): 65–86, <https://doi.org/10.15294/ulj.v8i1.55354>.

about the basis of the rules for postponing the Simultaneous Elections. The rule only describes government agencies that are authorized to establish a postpone policy. The author sees the diction of "Procrastination" in the rule is still multi-interpretive and too broad. The absence of a clear election postpone rule can have implications for the risk of *abuse of power*. For example, the Ministry of Home Affairs can postpone the implementation of simultaneous elections for no apparent reason.

The author hypothesizes that before the COVID-19 Pandemic, there were no clear rules governing the simultaneous postponement of elections due to *force majeure*. This shows that mitigation efforts in making policies related to villages still do not accommodate legal certainty. It should be seen that Indonesia is a disaster risk area, the rule of law needs to accommodate appropriately all possibilities that occur, including *force majeure*. In addition to the legal arrangements that form the basis for the postponement of simultaneous village head elections, it is interesting to examine more deeply the legal consequences of the postponement of simultaneous elections. Of course, the simultaneous postponement of the elections will have consequences.

The research that the author raised basically has similarities in terms of theme with previously existing research regarding Pilkadaes. However, this study has a new update, especially related to juridical studies on the regulation of policies for postponing simultaneous elections during the COVID-19 Pandemic, which is viewed from the aspect of legal certainty. Later, the author will try to study, study and analyze more deeply the government's policies related to the postponement of simultaneous elections during the COVID-19 Pandemic. In addition, the author will also examine the legal consequences of the simultaneous postponement of the Pilkadaes during the COVID-19 Pandemic.

B. METHOD

This research is a type of normative legal research (*Normative Legal Research*). What is meant by normative legal research here is essentially to conduct a study of the law which is conceptualized as the norms and rules that apply in society.⁷ The research approach uses a *statute approach* (*The statute Approach*) and a case approach (*Case Approach*). In this study, the author will use three types of legal materials, namely primary, secondary and tertiary legal materials. The legal material collection model used is a *library research* model or literature study. Material analysis techniques use *the content analysis* method. *Content analysis* shows an integrative analysis method and conceptually tends to be directed to find, identify, manage and analyze legal materials to understand their meaning, significance, and relevance. The results of the research that have been collected will be analyzed in depth and responsibly which will later be stated in a descriptive description, so that it can be presented as the result of systematic research.⁸

⁷ Philip Langbroek et al., "Methodology of Legal Research: Challenges and Opportunities," *Utrecht Law Review* 13, no. 3 (2017): 1–8, <https://doi.org/10.18352/ulr.411>.

⁸ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

C. RESULTS AND DISCUSSION

1. Policy Arrangements for Simultaneous Elections During the COVID-19 Pandemic In Terms of Legal Certainty Aspects

a. The Development of The General Election During the COVID-19 Pandemic

The end of 2019 became a gray start for humanity around the world. The outbreak of the disease known as COVID-19 is massively spreading to all corners of the world. Until finally WHO in early 2020 declared COVID-19 as a Pandemic.⁹ The Government of the Republic of Indonesia, based on KEPPRES No. 11 of 2020, has declared COVID-19 as a health emergency that must be carried out in response efforts. Various efforts and actions have been taken by the government to stop the chain of spread of the virus, ranging from preventive socialization, *social distancing*, to issuing various legal and policy regulations.¹⁰ Furthermore, it was also followed by the issuance of KEPPRES No. 12 of 2020 which determined COVID-19 as a national disaster.¹¹

In its implications in the realm of democracy, there are no countries in the world that have been forced to postpone their general election agenda. This also shows that the COVID-19 pandemic has significant implications for democracies, especially countries that have a general election agenda in pandemic years. Some examples are New Zealand, which postponed the implementation of the election which was supposed to be held on September 19, 2020, which was forced to be postponed for 4 weeks due to the discovery of new cases of COVID-19. On the South American continent, Bolivia also postponed elections twice due to the spread of COVID-19 cases. In addition to these countries, based on a report from the *Institute for Democracy and Electoral Assistance* (IDEA), it was revealed that from February 21 to September 20, 2020, there were as many as 71 countries and regions that set postpones of national and regional elections due to the pandemic.¹²

As one of the many democracies spread across the world, Indonesia is also a country that has many democratic agendas in 2020. On December 9, 2020, Indonesia had an agenda for simultaneous regional elections in several regions. In addition to the regional election agenda, some regions also have a Simultaneous Election agenda in thousands of villages. Of course, the COVID-19 pandemic is a fairly complex challenge for a large-population country like Indonesia. Moreover, holding general elections during the Pandemic is a new experience in the journey of Indonesian democracy. Holding elections in the midst of COVID-19 is not an easy effort to do, especially regarding the safety of the lives of all

⁹ David Pradhan et al., "Constitutional Rights of Labour During Covid 19 Pandemic: A Study of India and Indonesia," *Advances in Social Science, Education and Humanities Research* 590, no. 1 (2021): 250–55, <https://doi.org/10.2991/assehr.k.211102.208>.

¹⁰ Muh. Hamzah et al., "Dampak Pandemi Covid-19 Terhadap Perekonomian Indonesia: Analisis Terhadap Sektor Domestik Dan Stabilitas Inflasi," *Trilogi: Jurnal Ilmu Teknologi, Kesehatan Dan Humaniora* 2, no. 3 (2021): 2–19, <https://doi.org/10.33650/trilogi.v2i3.3082>.

¹¹ Mohamad Syahrul RA, Yusuf Hamdika, and Sholahuddin Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law: An Indonesian Case," *Lentera Hukum* 7, no. 3 (2020): 267–78, <https://doi.org/https://doi.org/10.19184/ejrh.v7i3.18983>.

¹² Rafael Ryandika, "48 Countries Still Postponing Elections due to COVID-19 Pandemic," *Kumparan.com*, 2020, Accessed from online news pages <https://kumparan.com/kumparannews/48-negara-masih-menunda-pemilu-karena-pandemi-COVID-19-1uFqk4qRUDW/full> on Saturday, March 12, 2022 at 05.36 WIB.

citizens. Given that the COVID-19 outbreak is transmitted and spread through human contact, so the existence of a mass escalation is at great risk of an explosion of spread.¹³¹⁴

Conducting elections is very important for a democratic country like Indonesia to carry out. Apart from being a form of implementing the constitutional mandate, elections are also something crucial for the future sustainability of a country. As stated by Harmaily Ibrahim that there are approximately 3 (three) goals to be achieved in the general elections in Indonesia, namely the transition of government through an orderly and peaceful mechanism, the implementation of state institutions in accordance with the objectives of the Constitution and the actualization of the human rights of each citizen. In addition, as concluded by Arbi Sanit, that in fact democracy through general ¹⁵*elections* has the following objectives:

- 1) Gaining legitimacy for rulers and governments;
- 2) Formation of political representatives of the people;
- 3) Circulation of the ruling elite;
- 4) Political education for the people.¹⁶

The existence of the COVID-19 Pandemic is certainly a challenge that is not easy, but that does not mean that it must be used as a burden. Designing policies that are strategic, measurable and legally effective is a necessity that the government must do in an uncertain situation like now.

Imposing elections and neglecting the safety of citizens' lives is a form of state misappropriation of the constitution and human rights. So one solution is to postpone any agendas that are at risk of community escalation and explosion of virus transmission. In addition, it can also carry out elections but with a note that it must be accompanied by appropriate policy arrangements and strict implementation procedures which can reduce negative risks that occur. Furthermore, what is interesting is of course the implementation of the Simultaneous Pilkadaes, currently there are 74,961 villages spread throughout Indonesia. And every year there is always an agenda for the implementation of Simultaneous Elections in thousands of villages. Of course, the Simultaneous Elections during the COVID-19 Pandemic must be a serious concern for the government.¹⁷

¹³ Fitria Esfandiari and Arsyi Manggali Arya Putra, "Implementation of Consistent Pilkada in Malang District From Precautionary Principles," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 11–18, <https://doi.org/10.22219/aclj.v2i1.15157>.

¹⁴ Riza Umami, Catur Wido Haruni, and Fitria Esfandiari, "Tingkat Partisipasi Politik Masyarakat Dalam Pilkadaes Serentak Tahun 2019," *Indonesia Law Reform Journal (ILREJ)* 1, no. 1 (2021): 143–52, <https://doi.org/10.22219/ilrej.v1i1.16123>.

¹⁵ Marulak Pardede, "Implikasi Sistem Pemilihan Umum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 1 (2014): 45–66, <https://doi.org/10.33331/rechtsvinding.v3i1.58>.

¹⁶ Eko Wahyono, "Pemilihan Kepala Daerah Berdasarkan Undang-Undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah Sebagaimana Diubah Dengan Undang-Undang Nomor 12 Tahun 2008," *IUS : Jurnal Ilmu Hukum* 3, no. 1 (2015): 1–16, <https://doi.org/https://doi.org/10.51747/ius.v3i1.388>.

¹⁷ Ahmad Siboy, Sholahuddin Al-Fatih, and Abdul Kadir Jaelani, "Design to Resolve Case of Disqualification of Winning Candidates in Local Government Head Elections in Indonesia," *CENTRAL ASIA AND THE CAUCASUS* 23, no. 1 (2022): 632–42, <https://doi.org/https://doi.org/10.37178/ca-c.23.1.056>.

b. Policy Arrangements for Simultaneous Elections in Laws and Regulations in Indonesia Before the COVID-19 Pandemic

The author begins by studying, reading and reviewing the laws and regulations in Indonesia that are relevant to the research topics as follows:

1) Law No. 6 of 2014 concerning Villages

After conducting a careful and thorough study of the laws and regulations before the COVID-19 Pandemic. The author finds that in Law No. 6 of 2014 concerning Villages, there is explicitly no article that regulates the postponement of simultaneous elections. If you look at the rules related to elections in the latest Village Law, the election of village heads is regulated in the third part of the law. There is no article that discusses or alludes to the postponement of the Elections. However, in Article 31 paragraph (3) it is explained that:

"Further provisions regarding the procedure for selecting simultaneous Village Heads as referred to in paragraphs (1) and (2) are regulated by or based on a Government Regulation."

This shows that matters relating to the simultaneous election of village heads will more clearly be regulated in the provisions of the laws and regulations derived from the Village Law.

2) Government Regulation of the Republic of Indonesia No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages

The derivative rules of the Village Law are regulated in government regulations, which in the government regulations that the author finds are regulated in the provisions of PP RI No. 43 of 2014. The PP is an implementing regulation of the Village Law, which in the consideration section explains that the regulation is established to implement the provisions of the Village Law, optimize the implementation of Village Government, the implementation of Village Development, Village Community Development, and village community empowerment.

After reviewing and observing the following rules, provisions related to the postponement of the Simultaneous Elections can be found in article 57 paragraphs (1) and (2) of PP RI No. 43 of 2014, which then paragraph (2) of the article also undergoes changes or revisions during the issuance of PP RI No. 47 of 2015.

In essence, the two articles explain the postponement of the Simultaneous Elections as follows:

- Article 57 paragraph (1): *"In the event of a policy of postponing the implementation of the village head election, the village head who has expired his term of office will still be dismissed and subsequently the regent/mayor appoints the acting village head."*
- Article 57 paragraph (2): *"The policy of postponing the implementation of the village head election as referred to in paragraph (1) is determined by the minister who organizes government affairs in the field of domestic government."*

From the two articles above, the author concludes that there are two points related to the postponement of the Simultaneous Elections. *First*, that the institution that has the right and authority to settle the policy of postponing the election of village heads is the Ministry

of Home Affairs. *Secondly*, article 57 paragraph (1) provides that there is no extension of the term of office of the village head, and it is still dismissed according to the time of the term of office even though there is a postponement of the Elections. The vacant position of village head is filled by the acting village head appointed by the Regent/Mayor.

Aiming to criticize the article above, the author views article 57 paragraph (2) as the legitimacy of the Ministry of Home Affairs to carry out the policy of postponing the Simultaneous Elections. However, if you look closely, article 57 paragraphs (1) and (2) are very limited in regulating what is the reason for the postpone. Of course, the Ministry of Home Affairs cannot issue a postponement policy for no apparent reason, which is not regulated in the invitation-invitation regulation. When viewed from the aspect of legal certainty, the two rules still do not meet these aspects.

Certainty in law has several meanings that can be understood, including the existence of a clarity, can be done, is not contradictory and there is no multi-interpretation. If you look at the two rules, of course the author views the existence of multiple interpretations. The Ministry of Home ¹⁸ Affairs seems to have the power and legitimacy to postpone the Simultaneous Elections for no apparent reason.

It is feared that this legitimacy will be used as a basis for misappropriation by the Ministry of Home Affairs, not intending to be prejudiced, but if you look at the history of the position of Minister of Home Affairs in Indonesia, it is always filled by the background of a figure close to the coalition of political parties in power. The most worrying thing is the potential *abuse of power* for the political interests of the class. Of course, if that happens, the law does not reflect the existence of legal certainty. As stated by Sudikno Mertokusumo that the existence of the principle of certainty in a law is basically a form of protection for justice seekers in arbitrary actions, which means that a person wants to get something expected under certain conditions.¹⁹

3) Regulation of the Minister of Home Affairs No. 112 of 2014 concerning the Election of Village Heads

Article 46 of PP RI Number 47 of 2015 explains that:

"Further provisions regarding the election of village heads are regulated by a ministerial regulation that organizes government affairs in the field of domestic government. "

It also confirms that the Ministry of Home Affairs is given delegated authority from a Government Regulation to regulate in more detail regarding the selection of village heads in the form of a Ministerial Regulation. Regarding the reasons for the postponement of the Simultaneous Elections, the author tries to find and review the regulation of the minister of home affairs. The author finds that in the rules it is very limited which explicitly regulates the reasons for the postponement of the Simultaneous Elections. In

¹⁸ M. Julyano and A.Y. Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 1, no. 1 (2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

¹⁹ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 01, no. 01 (2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

Permendagri No.112 of 2014 concerning the Election of Village Heads. Regarding the reasons for the postponement of the Pilkades, the author finds in Article 24 paragraphs (1) and (2) of Permendagri 112 of 2014 concerning the Election of Village Heads, which explains as follows:

- Article 24 paragraph (1) : *"In the event that a candidate who meets the requirements as referred to in article 21 is less than 2 (two) people, the election committee extends the registration time for 20 (twenty) days."*
- Article 24 paragraph (2): *"In the event that a candidate who meets the permanent requirements is less than 2 (two) after the extension of the registration time as referred to in paragraph (1), the Regent/Mayor postpones the implementation of the village head election until the specified time later."*

The two articles, if examined more deeply, can be concluded as the basis or reason for the postponement of the Pilkades due to the lack of requirements for the number of Village Head Candidates. As we know that to carry out the Village Head Election, one of the requirements is a minimum of 2 (two) village head candidates. So if the minimum requirement of 2 (two) candidates is not met, then the Election can be postponed, that is the essence of the two articles above.

In addition to this article, the author also found rules governing the postponement of inter-time elections. This is as stipulated in Article 47C paragraph (5) of Permendagri No. 65 of 2017 concerning Amendments to the Regulation of the Minister of Home Affairs No. 112 of 2014 concerning the Election of Village Heads, which explains that:

"In the event that the candidate who meets the requirements remains less than 2 (two) people after the extension of time as referred to in paragraph (4), BPD postpones the implementation of the Village deliberations for the election of the Village head until the time set by the BPD."

This article is almost the same as Article 24 paragraph 2 of Permendagri No. 112 of 2014 which regulates the postponement of village head elections due to the lack of minimum number of candidates. The difference is that Article 47 C paragraph (5) regulates the inter-time elections, where the election mechanism is not through direct elections but through village deliberations.

Furthermore, regarding the postponement of the Simultaneous Elections, the author did not find other reasons that were clearly explained regarding the postponement of the Pilkades. In Permendagri No.112 of 2014 and Permendagri No. 65 of 2017, it is very limited to regulate the reasons for the postponement of the Simultaneous Elections. It is true that in the case of the outbreak of the COVID-19 outbreak in early 2020, the Ministry of Home Affairs, in this case the Minister of Home Affairs issued a suggestion to postpone the Simultaneous Elections under the pretext of having a legitimacy basis from Article 57 paragraph (2) of PP RI No. 47 of 2015, but what is questionable is that in the laws and regulations available at that time, there was no regulation regarding the reasons for the postpone due to the Pandemic. The regency/city government, which basically has the authority to organize and schedule simultaneous elections, cannot issue a policy of postponing the Simultaneous Elections in their area due to the emergency situation of the

COVID-19 Pandemic, because higher laws and regulations do not regulate and give this authority.

From the process of reviewing and observing what the author did with the laws and regulations regarding the postponement of the Simultaneous Elections above, the author concludes that before the COVID-19 Pandemic there were no rules in the legislation that regulated the reasons for the postponement of the Simultaneous Elections due to *force majeure* circumstances. It should be underlined that the author does not use the term *force majeure* which is closely related to civil law. However, *force majeure* here can be interpreted as a coercive condition that occurs beyond human capabilities (such as natural disasters and non-natural disasters). Because basically the Pandemic is a non-natural disaster and a situation beyond human capabilities and cannot be foreseen in advance.

Even the government's policy of issuing Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters The spread of COVID-19 as a condition of national disasters can already be categorized as *force majeure* events. According to the author, using the term *force majeure* is suitable for emergency conditions set by the government related to the Pandemic. Because by not involving Article 12 of the Constitution in the consideration of Presidential Decree 11 of 2020 and in Presidential Decree 12 of 2020, it can be assumed that the condition of COVID-19 in Indonesia is not an emergency in the sense of a state of emergency because there is no activation of Article 12 of the 1945 NRI Constitution. So it can be interpreted that the normal legal regime remains in force and that there are no deviations from human rights and the Constitution.²⁰

Actually, this is also what according to the authors of the policy related to the postponement of the Simultaneous Elections must also remain in accordance with the positive rule of law and must not conflict with laws and regulations so that there is legal certainty, and there is no potential violation of human rights. With the vagueness of the rules related to the policy of postponing the Simultaneous Pilkadaes due to non-natural disasters in the laws and regulations, of course, what is needed is to immediately revise or make new regulations that are fresher and clearer so that legal certainty related to the postponement of the Simultaneous Elections can be achieved.

The evaluation that needs to be put forward by the author is that our policymakers have shortcomings, especially with regard to mitigation efforts. It is true that administrative law is moving very dynamically and changing rapidly. However, you should look at the background of Indonesia which has historical, geographical and geological conditions prone to natural disasters, wars and community conflicts, of course the preparation of regulations must look at these aspects. Laws and regulations must be able to accommodate conditions and risks that exist in a country and most importantly every rule must be able to provide legal certainty.

²⁰ Rizki Bagus Prasetio, "Pandemi COVID-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 327-46, <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2021.V15.327-346>.

c. The Validity of the Circular Letter of the Minister of Home Affairs Regarding Suggestions for Postponing Simultaneous Elections during the COVID-19 Pandemic

In its development, as a response to the outbreak of the outbreak at the beginning of the COVID-19 Pandemic in Indonesia. Regarding the implementation of the Simultaneous Elections in 2020, on March 24, 2020, the Ministry of Home Affairs of the Republic of Indonesia issued a circular numbered 141/2577/SJ regarding suggestions for postponing the implementation of the Simultaneous Elections and the Election of Village Head PAW. Furthermore, on August 10, 2020, the Ministry of Home Affairs again issued a Circular Letter of the Minister of Home Affairs No. 141/4528/SJ regarding suggestions for postponing the Simultaneous Elections and Inter-Time Village Head Elections. The issuance of a letter that basically advises the postponement of the Simultaneous Regional Elections due to the agenda for the implementation of simultaneous regional head elections in 270 regions of Indonesia.

As an example of a follow-up to the Circular Letter of the Minister of Home Affairs No. 141/4528/SJ, Banyuwangi Regency, which has a Simultaneous Pilkadaes agenda, on September 9, 2020 issued a decree which basically decided to postpone the implementation of the Pilkadaes to 2021. This is in accordance with the Decree of the Regent of Banyuwangi No. 188 /215/KEP/429.011/2020. It was explained in the consideration that the decision followed up on the Circular of the Minister of Home Affairs 141/4528/SJ. In addition, the Regent of Ciamis also issued a Regent's Decree numbered 141.1 / Kpts.428-Huk / 2020 which is basically regulated in the first dictum, regarding the postponement of the 2020 Simultaneous Elections in Ciamis Regency until the completion of the implementation of the 2020 Simultaneous Regional Elections.

The Minister of Home Affairs of the Republic of Indonesia, Tito Karnavian explained why the postponement of the Simultaneous Elections until the completion of the 2020 Simultaneous Regional Elections was due to the reason that the implementation of the Simultaneous Regional Elections in the Pandemic Period did not have available regulatory provisions that could bind and adjust the COVID-19 situation as in the implementation of the Regional Elections. The Minister of Home Affairs said that after the Simultaneous Regional Elections are over, the Ministry of Home Affairs will revise several related laws and regulations and the implementation of the Simultaneous Elections can be carried out after the 2020 Simultaneous Regional Elections are over.²¹

Then the question is what is the validity of the Circular itself? Considering that the Ministry of Home Affairs as an institution that has the authority to issue a policy of postponing elections does not issue provisions in the form of a Decree of the Minister of Home Affairs but instead in the form of a Circular Letter. Whereas in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations does not explicitly regulate the existence of a Circular Letter as part of the laws and regulations in Indonesia.

²¹ Sania Mashabi, "Ministry of Home Affairs Asked to Explain to the Public the Consideration of Postponing the 2020 Election," cchus.com, 2020, <https://nasional.kompas.com/read/2020/11/13/18010841/kemendagri-diminta-explain-to-the-public-consideration-postpone-pilkades-2020?page=all>. Retrieved Monday, March 14, 2022 at 21.04 WIB .

The circular letter, according to Bayu Dwi Anggono's view, is basically not a law or KTUN, but a policy regulation (*beleidsregel*). This is also in line with legal officials such as Jimly Asshiddiqie and Philipus M. Hadjon who in conclusion classify the Circular as including policy regulations (*beleidsregel*) or pseudo-legislation. While the PSHK also gives an essentially similar view, that the Circular includes administrative instruments of an internal nature. Which is its function to provide further guidance related to a norm in laws and regulations.²²

Then again, does the Minister of Home Affairs' Letter regarding the suggestion of postponing the Simultaneous Elections have validity? It has been mentioned before that the circular is included in the category of pseudo-legislation/policy regulations. Basically, policy regulation can be understood as a regulation, but its function is only a part of the operation of implementing government tasks, therefore it cannot deviate from or change laws and regulations. Policy regulation or ²³*beleidsregel* is basically an implementation of the discretionary principle of "*freis ermessen*" which is a tool that provides space for freedom of action for state officials and administrative bodies without being fully bound by legislation. So it can be interpreted that although ²⁴*freies ermessen* gives freedom of space to the government in taking legal action, but in its application it must comply with laws and regulations.

Regarding the validity of the Circular Letter of the Minister of Home Affairs, the author tries to provide legal certainty regarding the use of circulars in the policy of postponing simultaneous elections during the COVID-19 pandemic as follows:

- a) If viewed juridically, the Circular of the Minister of Home Affairs cannot be used as a basis for the legal legitimacy of the postponement of simultaneous elections. Because Law No. 12 of 2011 concerning the Establishment of Laws and Regulations does not regulate the existence of the Circular Letter of the Minister of Home Affairs as a statutory regulation.
- b) Article 5 of Permendagri No. 42 of 2016 concerning Official Manuscripts within the Ministry of Home Affairs categorizes the Circular Letter as a service manuscript. Furthermore, in the appendix, it is explained that the circular of the Minister of Home Affairs is a service text containing notices, explanations and /or instructions on how to carry out certain matters deemed important and urgent. From this explanation, it can be interpreted that the circular is basically aimed at providing notice, explanation or clues when something urgent happens. It is neither a binding nor regulating policy, and does not contain legal norms.
- c) According to the author, basically the policy of the Ministry of Home Affairs by issuing a Circular letter of the Minister of Home Affairs regarding the postponement of the Simultaneous Elections is valid because it is an implementation of *the principle of freis ermessen* and can be considered to have validity, as long as its content does

²² MYS, "Circular, 'Gravel' in Legislation," Hukumonline.com, 2015, <https://www.hukumonline.com/berita/a/surat-edaran-kerikil-dalam-perundang-undangan-lt54b1f62361f81>. Retrieved March 22, 2021, at 13:28 WIB.

²³ Ridwan HR, *State Administrative Law*, Revised Edition (Jakarta: Rajagrafindo Persada, 2018). P. 175.

²⁴ *Ibid.* P. 169.

not conflict with laws and regulations and general principles of good state administration.

- d) It is not wrong for the Ministry of Home Affairs to issue a circular to urge and advise its internal parties, in this case the regional governments of regencies/cities in Indonesia. However, according to the author, it is not appropriate to issue a circular as an instrument regarding the policy of postponing the Simultaneous Elections. Because the district/city government does not yet have a foundation that can be used as the basis for spending the postponement policy. Even putting a circular as a basis for weighing in the consideration, certainly creates an uncertainty. Because circulars are not classified as laws and regulations.
- e) What creates legal uncertainty is when the Regency/City government issues a policy of postpone based on and based on the minister's circular. We all know that the Circular is basically an advice or order that has no legal force, nor is there any legal sanction for those who do not comply with it. In addition, because it does not contain sanctions, there is no need for local governments to comply with and follow up on the circular.
- f) The author again gives an affirmation that in order to create legal certainty regarding the postponement of the Simultaneous Elections during the COVID-19 Pandemic. There is an urgency for the existence of provisions in the laws and regulations that explicitly regulate and are binding regarding the basis / reason for the postponement of the Simultaneous Elections due to the emergency situation of the COVID-19 Pandemic. Because if local governments use the Circular of the Minister of Home Affairs to postpone the implementation of elections in their regions, then according to the author, it will create a legal uncertainty.

d. Policy Arrangements for Postponing Simultaneous Elections during the COVID-19 Pandemic After the Issuance of Permendagri No. 72 of 2020

In an effort to prepare for the implementation of the Simultaneous Elections during the COVID-19 Pandemic after the implementation of the 2020 Simultaneous Regional Elections, the Ministry of Home Affairs revised the laws and regulations related to the Simultaneous Elections. Dated December 1, 2020, the Ministry of Home Affairs made the second amendment to Permendagri No.112 of 2014 by issuing Permendagri No. 72 of 2020. In the consideration section, the consideration of issuing these provisions is explained to adjust the conditions of Indonesian sociology due to COVID-19.

This regulation is the government's answer regarding the implementation of the Pilkadaes during the COVID-19 Pandemic. The issue of Permendagri No. 72 of 2020 is an adjustment to the sociological conditions that occur in Indonesia related to the emergency situation of the COVID-19 Pandemic. If the author pays attention to this provision, there are many regulations related to the mechanism and technicalities of implementing the Simultaneous Elections during the COVID-19 Pandemic. It can also be concluded that the initial period of the pandemic in 2020 until December became a period of legal vacuum related to rules related to the Simultaneous Elections during the COVID-19 Pandemic.

Next, after the author observes, examines and reviews Permendagri No. 72 of 2020 related to simultaneous elections during the COVID-19 Pandemic. Dalam Permendagri No. 72 of 2020 is regulated in detail the provisions regarding the implementation of

simultaneous elections in conditions of non-natural disasters. In the rules, a new chapter was inserted, namely Chapter IIIA (Election of Village Heads in Conditions of Non-Natural Disaster Corona Virus Disease 2019). In this new chapter between Article 44 and Article 45 inserted 7 (seven) new Articles relating to mechanisms, guidelines. Prohibition and sanctions for the implementation of simultaneous elections during the COVID-19 pandemic. Some of the points in the chapters are as follows:

1) The Authority of the Regent/Mayor to Postpone Simultaneous Elections in Their Regions When the Spread of COVID-19 Cannot Be Controlled.

It has been mentioned before that before the COVID-19 Pandemic, various laws and regulations were very limited which explicitly regulated the reasons for the postponement of the Simultaneous Elections. After the issuance of Permendagri No. 72 of 2020 regarding the postponement of the Simultaneous Elections, it can be found in Article 44F which explains that:

"The regent/mayor as the head of the task force for handling Corona Virus Disease 2019 districts/cities based on recommendations from the election committee in the districts/cities can postpone the implementation of the village head election if the situation of handling health protocols for the prevention and control of Corona Virus Disease 2019 cannot be controlled."

The following rules can be interpreted to mean that the Regent/Mayor can postpone the implementation of the Simultaneous Elections in their area if the outbreak conditions are not controlled. The author considers that the above provisions further confirm and provide clarity regarding the basis or reasons for the simultaneous postponement of the Elections during the COVID-19 Pandemic. According to the author, this existence also provides legal certainty regarding the postponement of the Simultaneous Pilkadaes in the Pandemic Period, where in the previous laws and regulations the author has mentioned that the basis / reason for the postponement of the Simultaneous Elections is because *the force majeure* (Pandemic) is not clear.

2) Participation of the Regency/City COVID-19 Task Force and FORPIMDA Elements in the Simultaneous Election Election Committee in the Regency/City.

What distinguishes this provision the most from the previous provisions is that it is clearly explained the elements of the parties included in the district/city election committee. Article 5 paragraph (2) of Permendagri No. 72 of 2020 explains that:

The election committee as referred to in paragraph (1), shall consist of:

- a. *"Elements of the coordination forum for district/city regional leaders , namely the regent/mayor, DPRD leaders, police, prosecutorial leaders, leaders of territorial units Indonesian National Army in the regions;"*
- b. *"The task force for handling Corona Virus Disease 2019 regency/cities; and*
- c) *other related elements."*

The most distinguishing thing from the previous provisions, of course, is the presence of the Regency/City COVID-19 task force participating in the district/city election committee. In addition, the participation of regional leadership forums such as the TNI/POLRI and the prosecutor's office in an effort to make the Simultaneous Elections in the Regency / City a success. This shows that this latest regulation wants

synergy and collaboration of all parties to make the Simultaneous Elections in each Regency/City a success. Especially considering that the holding of Simultaneous Elections in the Pandemic Period is the first history in Indonesia.

3) Establishment of Sub-Committees in Each Sub-District

Article 5 paragraph (3) is the basis for the formation of sub-committees in sub-districts consisting of (*Forpimcam* and the sub-district COVID-19 Task Force). It should be noted that the previous rules did not regulate the existence of sub-committees of sub-districts in the Simultaneous Elections. Furthermore, Article 5 paragraph (3) basically explains that in the conditions of a non-natural disaster covid-19, the Regent/Mayor forms a sub-committee in the sub-district consisting of elements of the sub-district head, police leaders, regional leaders of the TNI, the Subdistrict COVID-19 Task Force and other elements.

The duties of this sub-committee are regulated in Article 5 paragraph (5) which basically explains that the duties of the sub-committee on elections in the sub-district have the task of socializing and educating health protocols to parties participating in the Simultaneous Elections in the village, supervising the health process in the Pilkades and reporting the results of supervision to the Chairman of the Election Committee in the Regency/City.

4) There are Sanctions for Violators of the Implementation of Health Protocols in Simultaneous Elections

Article 44E contains provisions for sanctions for violators of health protocols. Article 44E paragraph (1) explains that "*Candidates for Village Head, election committee, supporters and other elements who violate health protocols as referred to in Article 44A to Article 44D are subject to sanctions*". This shows that any parties who do not submit to and obey this rule will be subject to sanctions. Furthermore, Article 44E paragraph (2) regulates the types of sanctions

5) Provisions regarding "Election of Village Heads in Disaster Conditions of Non-natural Corona Virus Disease 2019" Apply Until the Pandemic Emergency Status is Lifted

Article 49A of Permendagri No. 72 of 2020 explains that:

"The provisions regarding the election of Village Heads in the conditions of disasters during corona virus disease 2019 are valid until the end of the period of disaster emergency status set by the President. "

This can be interpreted to mean that the Simultaneous Elections during the COVID-19 Pandemic must be carried out in accordance with the provisions regulated in Permendagri No. 72 of 2020, namely implementing strict health protocols. All stages stipulated in the provisions must be carried out obediently until the emergency condition of the COVID-19 Pandemic in Indonesia is declared over and revoked by the President of the Republic of Indonesia.

The existence of this regulation provides legal certainty, especially to the regional governments of regencies/cities that are authorized to hold simultaneous elections. Local governments have a reference for issuing pilkades legal products that are in accordance with the COVID-19 emergency situation and according to the rules above. As a justification and

an example of a follow-up to this regulation, the local government of Madiun Regency issued Madiun Regent Regulation No. 38 of 2021 concerning Village Heads. In the consideration, one of the reasons for the issuance of this regent regulation is also included is to implement the provisions of Permendagri No. 72 of 2020. After observing and reviewing the Perbup, the author found that article 83 of the Madiun Regent Regulation No. 38 of 2021 concerning Village Heads includes rules regarding the authority of the Regent as the Head of the COVID-19 Task Force to postpone the implementation of the Pilkades if the handling and control of the COVID-19 emergency situation in his area is not controlled. In addition, Madiun Regent Regulation No. 38 of 2021 concerning Village Heads includes a lot of substance regarding the implementation of Pilkades in accordance with the protocol regulated in Permendagri No.72 of 2020.

In addition to the Madiun Regency Government, another example is also contained in the Tulungagung Regency Government policy which issued Tulungagung Regent Regulation No. 26 of 2021. Which in this Perbup inserted a new chapter, namely Chapter IIA which specifically regulates elections in the conditions of non-natural disasters COVID-19. Article 3G of this rule also includes rules regarding the authority of the Regent as the Head of the COVID-19 Task Force to postpone the implementation of the Pilkades if the COVID-19 emergency situation in his area is not under control.

For the author, the existence of Permendagri No. 72 of 2020 is like an oasis in the midst of the arid rules regarding Elections in the Pandemic Period. As explained by the previous author, that since before and the beginning of the Pandemic, the rules regarding the implementation of the Pilkades during the COVID-19 Pandemic are unclear. The postponement policy since the beginning of 2020 is still multi-interpretation because there are no rules that clearly regulate the basis or reason for the postponement of the Simultaneous Elections due to a Pandemic or *force majeure* (non-natural disaster). The Ministry of Home Affairs also only issued a Circular Letter of the Minister of Home Affairs which was basically in the form of a suggestion of postponement and the position of the circular letter did not have legal legitimacy in the laws and regulations.

As stated by Maria S.W Sumardjono that the concept of normative legal certainty requires the existence of tools, laws and regulations that operationally support its implementation and empirically the existence of laws and regulations can be implemented consistently and responsibly by the SDM. Of course, if connected with the theory above, it can be concluded again that there is legal uncertainty in policy arrangements regarding simultaneous elections during the COVID-19 pandemic. Because normatively there are no clear and enforceable provisions of statutory provisions.²⁵

According to the author, the presence of Permendagri No. 72 of 2020 is what provides certainty for the community regarding the implementation of the Simultaneous Elections during the COVID-19 Pandemic. *First*, the basic provisions or reasons for the postponement of the Simultaneous Elections during the Pandemic Period became clear after the presence

²⁵ R. Tony Prayogo, "Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Pedoman Beracara Dalam Pengujian Undang-Undang (The Implementation Of Legal Certainty Principle In Supreme Court Regulation Number 1 Of 20," *Jurnal Legislasi Indonesia* 13, no. 2 (2016): 191–201, <https://doi.org/10.54629/jli.v13i2.151>.

of Article 44F of Permendagri No. 72 of 2020 which basically gives authority to the Regent/Mayor as the Head of the COVID-19 Task Force in the region to postpone the Simultaneous Elections if the COVID-19 emergency is not under control. Of course, the existence of this article gives legitimacy for the Regent/Mayor to postpone the implementation of the Simultaneous Elections. *Second*, Permendagri No. 72 of 2020 regulates in detail the guidelines for the implementation of simultaneous elections during the COVID-19 pandemic starting from the implementation of strict health protocols at various stages of implementation, prohibitions to sanctions.

The two things above, according to the author, have provided legal certainty for the implementation of the Simultaneous Elections in the midst of a Pandemic condition. If it is connected with the theory according to Jan Michiel Otto, where he gives several conditions for achieving a certainty in law as follows:

- 1) The availability of legal regulation issued by state power must be clear, clear, consistent and *accessible*;
- 2) The government implements legal regulations consistently which they also implement;
- 3) All citizens agree in principle to the substance of the content of a regulation;²⁶

According to the author, the existence of Permendagri No. 72 of 2020 has met the 3 conditions above. Namely, the regulations issued are clear, consistent and *accessible*, the government applies legal regulations consistently and is subject to it, all citizens agree to the content of the regulations.

Furthermore, the existence of this rule can be implemented when there is a policy of postponing the Simultaneous Elections due to the covid-19 emergency condition is not controlled. As a justification, in July 2021 the Ministry of Home Affairs again issued a Circular Letter of the Minister of Home Affairs Number 141/3351/BPD regarding the suggestion of postponing the Simultaneous Elections due to an increase in the number of cases of covid-19 spread. Of course, with the existence of Article 44F of permendagri No. 72 of 2020, the regency/city government has legal legitimacy to follow up on suggestions or instructions from the government regarding the postponement of the Simultaneous Elections in the event of an increase in the emergency situation of the spread of COVID-19 in their area. This is what distinguishes the presence of a circular letter from the Minister of Home Affairs before and after the issuance of Permendagri No. 72 of 2020. Because the district/city government has a clear legitimacy and legal basis to follow up on the advice and guidelines of the ministry of home affairs.

This is why according to the author, the existence of Permendagri No. 72 of 2020 has provided legal certainty in matters related to the implementation of simultaneous elections during the COVID-19 pandemic. Because it has met the requirements of legal certainty as stated by Jan Michiel Otto and Maria S.W Sumardjono.

2. Legal Consequences of Simultaneous Election Postpones during the COVID-19 Pandemic

²⁶ Gede Nyoman Adolescent *Op. Cit.*

It has been mentioned in previous discussions that in the last few years the world has experienced uncertainty due to the impact of the outbreak. The outbreak, called COVID-19, by the World Health Organization WHO in early 2020 has also been declared a Pandemic. The pandemic also has implications for many sectors that have to be paralyzed and devastated by the impact of the outbreak. The Government of the Republic of Indonesia has also issued Presidential Decree No. 11 of 2020 and declared COVID-19 as a public health emergency in Indonesia.

In its development in response to conditions in a country, the government in a country has the authority to determine actions according to administrative law which can affect the condition of others in carrying out legal actions. Van Poelje himself defined this as an act in public law which can be interpreted as a legal act carried out by the ruler in carrying out the functions of government. In Indonesia, the action taken by the government in facing the big dilemma above is to issue a policy of suggesting the postponement of the Simultaneous Elections during the COVID-19 Pandemic.²⁷

Periodically, on March 24, 2020, the Ministry of Home Affairs of the Republic of Indonesia issued a circular letter from the Minister of Home Affairs numbered 141/2577/SJ regarding suggestions for postponing the implementation of the Simultaneous Elections and An tar Time Pilkades. Furthermore, on August 10, 2020, the Ministry of Home Affairs again issued a Circular Letter of the Minister of Home Affairs No. 141/4528/SJ which basically also postponed the implementation of the Simultaneous Elections and Inter-Time Village Head Elections due to the agenda for the implementation of Simultaneous Regional Elections in 270 regions of Indonesia. After the Simultaneous Regional Elections are over, and the presence of new regulation permendagri No.72 of 2020 in 2021, the Ministry of Home Affairs issued a policy of suggesting the postponement of the Simultaneous Elections in 2021, this is reflected in the presence of the Circular Letter of the Minister of Home Affairs Number 141/3351/BPD regarding suggestions for postponement due to the increase in the spread of COVID-19 in several regions on July 21, 2021 and Circular Letter of the Minister of Home Affairs Number 141/4251/SJ regarding suggestions for postponing simultaneous elections due to the outbreak of delta variant on August 9, 2021.

From the government's policy through the Ministry of Home Affairs regarding the postponement of the Simultaneous Elections and followed up by legal action by local governments. The author will try to examine the legal consequences of the existence of this policy. We all know that legal action by the government and local governments regarding the postponement of the Simultaneous Elections will certainly have legal consequences. Legal consequences are basically implications brought about by a legal event, and in legal events there is always legal action. Further legal consequences according to Pipin Syarifin are:

"All consequences arising from all legal acts / legal actions by legal subjects against the object of law or other consequences caused by certain events by the law concerned have been determined or considered as legal consequences".

²⁷ Nur Aisyah, "Eksistensi Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara," *Jurnal Hukum Samudra Keadilan* 2, no. 1 (2016): 44-54, <https://doi.org/10.23887/jkh.v1i1.5012>.

In the policy of postponing the Simultaneous Elections during the COVID-19 Pandemic itself, we can know that there are legal actions from legal subjects, namely the Minister of Home Affairs and regents/mayors, which in this case are legal subjects who issue policies for postponing simultaneous elections and inter-time village head elections during the COVID-19 pandemic. This is what the author will examine regarding the implications or legal consequences arising from the policy. In the policy of postponing the Simultaneous Elections, of course, the Regency/City regions that have an Election agenda are forced to resign the predetermined schedule. The implementation of the Simultaneous Elections itself is the authority of the Regency/City Government, this is as stipulated in Law No. 6 of 2014 concerning Villages,

One thing that is certain about the implementation of the Simultaneous Elections is the end of the term of office of the Village Head in a village and the vacancy of office due to the previous Village Head being dismissed. The term of office of the Village Head itself is 6 (six) years from the time of inauguration and is entitled to be re-elected for a maximum of 3 (three) terms. In the event of the postponement of the Elections, there was no provision for extending the term of office for the Village Head. So when the Village Chief finished carrying out his position until the deadline, then he was still dismissed. This is as stipulated in detail in the provisions of Article 57 paragraph (1) of PP RI Number 43 of 2014 which explains that:

"In the event of a policy of postponeing the implementation of the village head election, the village head who has expired his term of office is still dismissed and then the regent/mayor appoints the acting village head. "

This also provides an answer that when there is a postponement of the Simultaneous Elections, the position of Village Head in a vacant village will be held by an Acting Village Head. Meanwhile, it is also clearly regulated the background of an Acting Village Head in Article 57 paragraph (3) which explains that:

"The Regent/mayor appoints the acting village head as referred to in paragraph (1) of civil servants from the district/city government."

So, it can be concluded that an Acting Village Head is a civil servant from the Regency/City local government elected by the Regent/City. It should also be noted that Article 46 paragraph (1) and Article 47 paragraph (1) of Law No. 6 of 2014 concerning Villages explains that apart from the end of the Village Head's term of office, the Acting Village Head can also be appointed because the previous Village Head was dismissed for being a convict.

As an example and justification, is the policy of the Banyuwangi Regency Government which extends the position of Acting Village Head due to the postponement of the Simultaneous Elections. Banyuwangi Regent Decree No. 188/193/KEP/429.011/2021 dated August 18, 2021, themain point of the decree is to extend the term of office of the Acting Head of Summersari Village, Srono District, Banyuwangi Regency. In the consideration, it was explained that the postponement policy was a follow-up to the SE of the Minister of Home Affairs Number 141/4251/SJ. Another example is within the Madiun Regency Government which postponed the implementation of the Simultaneous Pilkadaes until December 20, 2021 because the simultaneous election agenda that should have been

held in October had to be postponed due to the outbreak of the Delta variant. To fill the vacancies of the positions of 143 Village Heads in 15 sub-districts that expired their term of office, the Madiun Regency Government appointed acting village heads so that services and government in the villages continued to run as they should. The conclusion of these examples is, the Acting Village Head remains in office until the definitive Village Head is elected.

From the above, the author finds one certainty, that the legal consequence that occurs from the policy of postponing the Simultaneous Elections during the COVID-19 Pandemic is that there will be many villages in a Regency / City that have experienced postpones in holding simultaneous elections due to the COVID-19 Pandemic led by the Acting Village Head who is a civil servant elected by the local Regent / Mayor. Although his status is basically only as a temporary acting and within a certain period of time, in the event of a policy of postponing the Simultaneous Elections, it is clearly regulated in Article 58 paragraph (2) of PP RI Number 43 of 2014 that:

"The acting village head as referred to in paragraph (1) carries out the duties, authorities, and obligations and obtains the same rights as the village head."

Textually, the article is understood that an Acting Village Head who is appointed because of a vacancy in the position of village head due to the policy of postponing the Pilkades is given the same duties, principals, obligations and rights as a definitive Village Head by law.

To further emphasize this, the author also tries to compare with the duties to the rights owned by the Acting Village Head who was appointed because there was a vacancy due to the definitive Village Head being dismissed. This is as stipulated in Article 47 paragraphs (1) and (2) of the Village Law which explains that:

- Article 47 paragraph (1): *"In the event that the remaining term of office of the dismissed Village Head as referred to in Article 43 is more than 1 (one) year, the Regent/Mayor appoints a civil servant from the Regency/City Regional Government as the acting Village Head."*
- Article 47 paragraph (2): *"The Acting Village Head as referred to in paragraph (1) carries out the duties, authorities, obligations, and rights of the Village Head as referred to in Article 26 until the determination of the Village Head."*

It can be concluded that the Acting Village Head who was appointed because of a vacancy in the position of definitive village head due to the postponement of the Elections or dismissed was indeed given the mandate to carry out the same duties, authorities, obligations and rights as the definitf village head. It can be interpreted that the Acting Village Head can carry out the duties and authorities attached to a Definitive Village Head. The duties, authorities, obligations and rights attached to the village head are clearly outlined in Article 26 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of Law No. 6 of 2014 concerning Villages.²⁸

The description of the articles on the duties, authorities, obligations and rights of the village head in Article 26 of the Village Law can basically be understood as things that are entitled to be implemented and also owned by the Acting Village Head. Although in its

²⁸ Abdul Rohman, "Kewenangan Penjabat Kepala Desa Dalam Mengangkat Perangkat Desa," *Syiar Hukum : Jurnal Ilmu Hukum* 18, no. 1 (2020): 62–82, <https://doi.org/10.29313/shjih.v18i1.6026>.

development there is still a discourse among jurists related to whether it is the same duties and authorities that an Acting Village Head and Village Head have, especially regarding strategic policies and the nature of this authority attribution or delegation, according to the author this does not need to be discussed in this study because the scope is too broad and more suitable to be raised in research at a further level.

Furthermore, yang is a concern for the author, of course, if the postponement of the Simultaneous Elections due to the COVID-19 Pandemic is indefinite. Especially related to the availability of civil servants who can serve as Acting Village Heads. Given that an Acting Village Head is an ASN within the Regency/City regional government and in Article 58 paragraph (1) of PP RI Number 43 of 2014 explains that:

"Civil servants who are appointed as acting village heads as referred to in Article 55, Article 56, and Article 57 paragraph (3) must at least understand the leadership and technical areas of government."

Of course, this rule also limits civil servants who can serve as Acting Village Heads. Not all civil servants can be appointed as Acting Village Heads. For the author, if many villages experienced a postponement of the Pilkades and the vacant position was filled by the Acting Village Head, it could have implications for the suboptimal performance of regional apparatus organizations and other agencies. This is because an acting village head is certainly appointed from a civil servant who already has a position and duties, so if left vacant for too long or held in office, of course, the implication is that performance in other regional agencies can be less than optimal. For example, when the Regent appoints a Village Secretary with a civil servant background to become the Acting Village Head, of course, performance in a village government will not be optimal because the position of Village Secretary also has a crucial main task in village government.

In addition, if the Acting Village Head carries out the task for too long, it is certainly feared that there will be disharmony between the village government and the community. We all know that the position of village head itself is elected through a direct election process, so it can be concluded that the village head who serves is the person desired by the majority of local residents. That legitimacy is what the Acting Village Head does not have, who is basically a temporary official and is appointed by the Regent/Mayor. Because the existence of legitimacy in a power is very crucial in government. As discussed by Surbakti, that legitimacy is related to the validity or acceptance of society to the authority holder. If a power is not legitimized, it risks the emergence of political defiance which has implications for the state of leadership that is not optimally working. So we must realize together that although he has the same authority, rights and duties as the Village Head, the policy-making process by the Acting Village Head will not be as good and flexible as the Village Head.²⁹

²⁹ Aldri Samsa, "Understanding Legitimacy in Political Studies," Discourse Corner, 2019, <http://www.pojokwacana.com/pengertian-legitimasi-dalam-kajian-politik/>. Retrieved March 21, 2022 at 11:18 AM.

D. CONCLUSION

In the laws and regulations prior to the COVID-19 Pandemic, it did not clearly regulate the provisions for the postponement of the Simultaneous Elections due to *force majeure*. The Ministry of Home Affairs' policy of issuing a Circular regarding suggestions for postpones also creates legal uncertainty. Finally, the issuance of Permendagri No. 72 of 2020 provides legal certainty regarding the postponement of the Simultaneous Elections during the COVID-19 Pandemic. Because it regulates the authority of the Regent/Mayor to postpone the Elections due to the COVID-19 emergency situation. Departing from this fact, the author suggests and encourages that in the future in the existing laws and regulations must clearly regulate the provisions governing the postponement of the Pilkades agenda due to *force majeure*. This departs from several factors. *First*, Indonesia has many simultaneous elections every year. *Second*, Pilkades is a very important process for the sustainability of a village, so the rules must provide legal certainty. *Third*, Indonesia has a geographical, geological, sociological and historical background that is prone to *force majeure* conditions. This shows that the risk of postpones in the Pilkades stage in each region is very large.

The legal debate of the policy of postponing the Simultaneous Elections during the COVID-19 Pandemic is that the existence of villages in regencies/cities that have experienced the postponement of the Simultaneous Elections will be led by an Acting Village Head. The acting village head has the same duties, authorities, rights and obligations as the definitive head. Author encouraged and suggested that civil servants appointed as Acting Officers should not just make their duties a formality until the election of a definitive Village Head. Although the legitimacy of the Acting Village Head is not as large as the definitive Village Head, an acting head is obliged to establish good relations and communication with the local village community and carry out the responsibilities as well as possible. Having the same authority, duties, obligations and rights as the definitive Village Head must be used properly and wisely as a result of later being able to make a positive contribution to the local community.

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