

**Organizing Court Administration in order to fulfil access to justice under the Covid-19**

**State of crisis**

**Organizar a Administração do Tribunal a fim de cumprir o acesso à justiça sob o**

**Estado de crise Covid-19**

**Organizar la Administración de los Tribunales para cumplir los derechos de acceso a la  
justicia en el Estado de crisis del Covid-19**

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**Abstract**

The Covid-19 pandemic in different countries, particularly in terms of performing their duties and functions, has both direct and indirect implications on the judiciary. This paper calls for a contrast between the implementation of law emergencies in the United States and the judiciary's reflection in Indonesia. The study uses the comparative approach in constitutional law to provide advice, which needs to be avoided in the Indonesian constitutional law by researching legal material and procedures in other countries' constitutional law. This article concludes that the Law of Judicial Power and the Law of Procedure in Indonesia require strict legal material on how procedural law does not give delegates too much technical, regulatory authority to each court during the time of crisis and has the potential to create unequal policies in the future to deal with judicial emergencies so that regulation is necessary.

**Keywords:** State in time of crisis; Court management; Acces to justice.

**Resumo**

A pandemia Covid-19 em diferentes países, especialmente em termos de desempenho de seus deveres e funções, tem implicações diretas e indiretas no judiciário. Este artigo pede um

contraste entre a implementação de emergências legais nos Estados Unidos e a reflexão do judiciário na Indonésia. O estudo usa a abordagem comparativa no direito constitucional para fornecer aconselhamento e isso deve ser evitado no direito constitucional indonésio, pesquisando materiais jurídicos e procedimentos no direito constitucional de outros países. Este artigo conclui que a Lei do Poder Judiciário e a Lei de Processo na Indonésia exigem material jurídico estrito sobre como a lei processual não dá aos delegados autoridade regulatória e técnica demais para cada tribunal durante o tempo de crise e tem o potencial de criar políticas desiguais no futuro para lidar com emergências judiciais para que a regulamentação seja necessária.

**Palavras-chave:** Estado em tempo de crise; Gestão do tribunal; Acesso à justiça.

### **Resumen**

La pandemia de Covid-19 en diferentes países, particularmente en términos de desempeño de sus deberes y funciones, tiene implicaciones tanto directas como indirectas sobre el poder judicial. Este documento pide un contraste entre la implementación de emergencias legales en los Estados Unidos y la reflexión del poder judicial en Indonesia. El estudio utiliza el enfoque comparativo en el derecho constitucional para brindar asesoramiento y eso debe evitarse en el derecho constitucional indonesio mediante la investigación de material y procedimientos legales en el derecho constitucional de otros países. Este artículo concluye que la Ley del Poder Judicial y la Ley de Procedimiento en Indonesia requieren material legal estricto sobre cómo la ley procesal no otorga a los delegados demasiada autoridad técnica y reguladora a cada tribunal durante el tiempo de crisis y tiene el potencial de crear políticas desiguales. en el futuro para hacer frente a las emergencias judiciales para que la regulación sea necesaria.

**Palabras-clave:** Estado en tiempo de crisis; Gestión judicial; Acceso a la justicia.

### **1. Introduction**

The Covid-19 pandemic has a character that limits human movement; simultaneously, the public has the rights access to justice through the judiciary (Hunter, 2017, p. 481). So, in general, the judicial power will implement a judicial emergency known as a judicial emergency. A judicial crisis is a provision known in the United States for court officials to establish an actual emergency that is deemed to endanger or violate the normal functioning of the justice system, such as the ability of people to use the justice system or to meet schedules or deadlines set by procedural law (Pimentel, 2015, pp. 13–14). This confirms that although

the judiciary is a significant power to balance executive and legislative powers, not only in normal circumstances but also in emergencies (Chandranegara, 2019, pp 148). This is due to the potential for many policies issued, especially in the context of health emergencies, which could potentially lead to abuse of authority or violations of citizens' constitutional rights (Chandranegara, 2020b, pp. 4–9). How many have even found that in the context of Southeast Asia alone, the handling of Covid-19 in each country often ultimately creates an authoritarian pattern of government (Chandranegara, 2020a, pp. 5–7). Therefore, in such conditions, the presence of an independent judicial power that still provides justice services is a necessity that needs attention. This article is intended to compare the implementation of judicial administration in the application of judicial emergencies in the United States and Indonesia in response to the Covid-19 Pandemic.

## **2. Research Methods**

This research uses normative research methods. The normative study is research methods in legal studies using a qualitative methodology carried out through library research or merely secondary data. In addition to the presence of analytical research that investigates primary data, this form of research is said to be normative research (Sugiyono, 2014). This normative research includes (i) research on legal principles, (ii) research on legal systematic, (iii) research on the level of vertical and horizontal synchronization, (iv) legal comparisons, and (v) legal history. Secondary data obtained through literature study. Data analysis was carried out by systematizing the data, and subsequently, the data was used to seek benefits for the judiciary in responding to uniform conditions in Indonesia. Referring to Mark Rheinstein who argued that the comparison of law is the explanation of various matters regarding how to treat law scientifically using special classifications or analytic descriptions of the use of one or more positive legal systems (Rheinstein, 1968, p. 415). Therefore, the scope of the data used is secondary data which includes primary and secondary legal material in the form of regulations relating to judicial responses in the United States to the Covid-19 Pandemic.

The material of this research is judicial policies in the field of judicial administration in response to the COVID-19 pandemic. These include policies in the Supreme Court and 50 states of the United States as well as various policies in the Supreme Court and the Constitutional Court in Indonesia. Data processing is done by classifying and categorizing various policy options in response to Covid-19 in each country. After that, the results of the categorization can be analyzed for each of the advantages and disadvantages of each policy.

### 3. US Court administration in State of Crisis of Covid-19

The pandemic of Covid-19 influenced much of America's lives, including any level of government. The Supreme Court took the unprecedented step of postponing the oral argument until at least the next couple of weeks on March 16 2020 (Livni, 2020). In 2012, after Sandy's Hurricane cut down all offices in Washington, the Supreme Court has delayed the oral argument process in this respect. It also expanded when other government departments closed in the same year because of snowstorms. (Liptak, 2012, p., 16). The new ruling by the Court proclaimed judges to take steps recommended by the COVID-19 in compliance with public health safeguards. Because of the developments, the Court will review the possibilities for reprogramming cases in due course. (Gerstein, 2020). This kind of delay is not known to be the first thing that happened. Courts in the United States postponed the scheduled oral argument in October 1918 in response to the Spanish flu epidemic. The Court also even shortened the time of the trial period in the evidentiary hearings in August 1793 and August 1798 in response to the plague of yellow fever (Mark, 2020).

The courts in the entire United States are responding rapidly to the situation outside the Supreme Court. At the beginning of March 2020. The federal court system set up a task force to exchange details and recommendations with 94 district courts and 13 district courts. The task force consists of US Marshall Service members. (Libowitz, 2020), that assist in ensuring safety for judges and courts and federal employment authorities who supervise the safety of workers (Sarat, 2020). As no recommendations for all federal justice have been released yet by the task force, courts are figuring out ways of doing so

The North California District closed four municipal courthouses on March 17, 2020, and postponed the district-wide jury hearings and felony cases until May 1, 2020. (Gerstein, 2020). The trials will then take place via telephone or video conference. This is the first federal court mass closure since the emergency with coronavirus started. The North Ohio District continued to do business as normal, while others have announced that they would hold hearings via video conferenced documents, or extended time limits for archival documents. (Livni, 2020).

Judicial emergencies in the United States is regulated in the Judicial Emergency Act of 2004. This law allows judicial authorities authorized to declare a judicial emergency in certain circumstances. The Chief Justice, the Supreme Court of State; the Chief Judge of the Court of Justice; the Chief Judge of the Circuit Court, the State Court of Justice and the Regular Executive Director or the Head of Justice are official judiciary officials. (*Section 3. Judicial*

*Act*, 2004). In addition, a judicial emergency means an emergency declaration by the governor concerning state or state law public health emergencies; local emergencies as specified in state law and other severe emergencies and if decided by an appointed judicial officer, such an emergency would substantially threaten or impede the regular functioning of the judiciary, the ability of individuals to act in a way which would be of significant significance. (*Section 3. Judicial Act*, 2004).

Based on these laws, the following is a summary of judicial policies in each state in terms of conducting judicial operations during the Covid-19 pandemic, it can be classified into various policies, among others, first, Postponement except regarding the protection of Child Welfare; second, delays except when it comes to protecting domestic violence; third; evictions and foreclosures; fourth, the hearing process is completely deferred,; fifth, order to release the detainee city; sixth, orders for the release of detained defendants. (suspension of detention); seventh, carrying out justice as usual, but using tools, *teleconferencing*; eighth, ban on entering the court area for those who have been exposed to coronavirus; ninth, postponing jury trial sessions; and tenth, not declaring a state of emergency at least.

#### **4. Indonesia Court administration in State of Crisis of Covid-19**

In response to the Covid-19 Pandemic, the Indonesian government first established a state of emergency through National Board of Disaster Management (Badan Nasional Penanggulangan Bencana or BNPB) (*Decree of the Head of BNPB Number 9.A. Year 2020*, 2020). Not long after that, the President issued Presidential Decree No. 7 of 2020 The Task Force for the Acceleration of Handling Corona Virus Disease (COVID-19) appointed BNPB as coordinator. Regardless of various government actions in establishing emergencies, the response was considered not fast, indecisive, and seem to stutter. When referring to the history of the Pandemic of the Spanish Flu in 1918, the Dutch East Indies Government worked poorly to resolve it and depended solely on the Ordonnant Influenza, which had only been released on October 20, 1920, or two years after the pandemic spread from Europe to different countries. This situation led to many victims falling in the Netherlands East Indians between 1918 and 1920. (Chandra, 2013, pp. 185–193).

The Supreme Court and the Constitutional Court respond in different ways to this case. Such cases are understandable because they have never happened before in Indonesia's history. The Supreme Court responded by issuing the Circular of the Secretary of the Supreme Court (*Surat Edaran Sekretaris Mahkamah Agung* or SE SEKMA) No. 1 of 2020.

Some argue that SEKMA does not demonstrate the firmness of the Supreme Court in preventing the spread of Covid-19. SEKMA No. 1 of 2020 provides that criminal, military and *jinayat* trials continue as normal. (*Peta Sebaran Covid-19, 2020*). Finally, the Supreme Court was to release a Circular of the Supreme Court in response to the state of the Covid-19 pandemic (*Surat Edaran Mahkamah Agung or SEMA*) No. 1 of 2020 This circular is considered to be the basis for justice in relation to better law enforcement processes, especially in revising SE SEKMA No. 1 of 2020.

In SEMA No. 1 of 2020, there are classifications into 4 (four) forms of court policy, namely (*Supreme Court Circular Letter Number 1, 2020*). *First*, criminal, military, and civil law courts appear to be held precisely in situations where the accused is being detained, and custody cannot be extended further. During the time of prevention of the spread of Covid-19 to the Supreme Court and its subordinate judiciary. *Second*, the trial of terrorist, military and *jinayat* cases against defendants who were legally detained for extension was postponed until the end of the Covid-19 deployment. The postponement of the trial could be carried out with a single judge. *Third*, in cases which are restricted by the time limit to review by statutory provisions, the judge may defer even if the time limit exceeds the time limit to review by statutory provisions, by requiring the deputy clerk to record in the Minutes of the sitting that there are exceptional circumstances. *Fourth*, in the event that there are cases which must still be heard, then: (1) Postponement of the trial and limitation of visitors to the hearing are the authority of the panel of judges to determine; (2) The panel of judges can limit the number and safe distance between visitors to the hearing (social distancing); (3) The Panel of Judges can order the detection of body temperature and prohibit physical contact such as shaking hands for parties who will be present or be presented at the trial; (4) The judges and parties in the trial can use protective equipment in the form of masks and medical gloves in accordance with the conditions and situation of the trial; and (5) Justice seekers are encouraged to take advantage of applications e-litigation for civil, religious, and state affairs.

SEMA No. 1 of 2020 has been revised by SEMA No. 2 of 2020, SEMA No. 3 of 2020 and SEMA No. 3 of 2020. SEMA No. 2 2020 extends the SEMA No. 1 2020 date to 21 April 2020, SEMA No. 3 2020 extends the SEMA No. 1 2020 deadline to 13 May 2020, and SEMA No. 4 2020 extends the SEMA No. 1 2020 deadline to 29 May 2020. The closure of the building has also been declared by the Constitutional Court. By implementing the working from home policy since March 17 to April 21, 2020 as well as by submitting applications through *simpel.mkri.id*. (*The Secretary-General's Handbook of the Constitutional Court No. 17, 2020*). Despite the different responses of the Indonesian judiciary to Covid-19 by different

policies, there are clear weaknesses in the policy taken (*Secretary General's Circular (SEKMA) Circular No. 1*, 2020). This condition indicates that Information Technology (IT) will support and ensure good governance and judicial processes need to be accelerated (Chandranegara, 2019, p. 10). The era of the judicial process, where nepotism, collusion, and corruption undermines the power of justice (Pompe, 2012), cannot be repeated. Information Technology is required in the court process through video use, audio in conference sessions, electronic reporting, witness conference video, and file storage. In short, all decision-making processes at the conference require Information Technology (Reiling, n.d., p. 14). With the use of technology to educate the administration of justice, the Supreme Court and the Constitutional Court have accommodated this. The Constitutional Court officially launches the Information System of the Constitutional Court consisting of Applications Online, Monitoring Article, Annotations of the Constitutional Court, e-Minutes e-BRPK (electronic registration), visits to the Constitutional Court, live streaming, and video conference (*Constitutional Court Regulation Number 18*, 2009, p. 18), and Supreme Court with The issuance of the Supreme Court Rule No. 3 of 2018 on the Case Management of Electronic Courts, thus fully Constitutional Court and Supreme Court embarked on a series of innovations and reforms of the justice system (Faiz, 2018, pp. 79–80). The dissociation factor is in line with what Richard Susskind proposes that the legal profession and trial need to adapt by leveraging technology into something relevant (Susskind, 2013, p. 18).

## 5. Conclusions

The conclusion of the first issue is that the state of emergency in the United States has replied to the judiciary by extending the Judicial Emergency Act of 2004 and delegating to each Court the determination of its emergency policy and also the legality of each case and its proceedings in the light of the Covid-19 Pandemic situation. As a result, there is a wide range of court proceedings for both the state and the state. With regard to the second issue, the Indonesian judiciary reacted by coordinating its own procedural strategies and delegating more technical arrangements to the leader of the labor force, but without approving any cases to be dealt with on a daily or exceptional basis. And, according to these two variables, emergencies still depend on executive regulation. One thing to remember, though, is that the State of Law principle continues to exist. Its role is to avoid emergency access to justice in the exercise of constitutional and legal rights. Therefore, it is important to improve the law of the judiciary, which regulates, in particular, the administration of justice in emergencies and the



need for procedural changes in some jurisdictions in response to the dangerous situation of Covid-19. Learning from other countries, such as the United States and Germany, and in particular the examination of legal materials in support of health emergencies, is a necessary step in the direction of legal reforms that provide security even in times of crisis.

## References

Arde-Acquah, P. E. (2015). Salus Populi Suprema Lex Esto: Balancing Civil Liberties and Public Health Interventions in Modern Vaccination Policy. *Washington University Journal Review*, 7, 337.

Chandra, S. (2013). Mortality from the influenza pandemic of 1918-1919 in Indonesia. *Population Studies*, 67(2), 185-193.

Chandranegara, I. S. (2019). *Kemerdekaan Kekuasaan Kehakiman Pascra Transisi Politik*. Radjawali Press, Jakarta.

Chandranegara, I. S. (2020, Mei). *Komparasi Kebijakan Hukum Dalam Penanggulangan Pandemi Penyakit Menular (Covid-19) Di Berbagai Negara: Penggunaan Keadaan dan Hukum Darurat atau Optimalisasi Instrumen Hukum yang ada?*, paper presented at the National Seminar (via Zoom) "Law Enforcement and Human Rights in the midst of Covid-19" organized by the Faculty of Law, Tarumanegara University, Faculty of Law, University of Surabaya, Jimly School Law and Government, Kollegium Jurist Institute.

Chandranegara, I. S. (2020, Mei). *Diantara yang terbaik dan buruk dalam Merespon Covid-19 di Asia Tenggara*, Paper presented at the National Seminar (via Zoom) "PSBB: Tanya apa?" held by the State University of Surabaya, Indonesia.

Faiz, P. M. (2018, April). MK dan E-Court Di Era Disruptif. *Majalah Konstitusi*.

G. Josh, (2020, April). Supreme Court postpones arguments due to coronavirus: cases on access to Trump's financial records are indefinitely postponed. Recuperado de <https://www.politico.com/news/2020/03/16/supreme-court-postpones-arguments-coronavirus-131881>.



Hunter, N. D. (2017). *The Law of Emergencies Public Health and Disaster Management*. Elsevier and Butterworth, New York.

L. Adam, (2012, November). Justices Asked Whether Decision on Deportation Warnings Applies Retroactively, *New York Times*, 16.

L. Ephrat, (2020, April). The coronavirus crisis is forcing the US Supreme Court to face its technology problem. Recuperado de <https://qz.com/1832572/coronavirus-crisis-forces-scotus-to-face-its-technology-problem>.

L. Jordan, (2020, April). Trump enables Jared Kushner's coronavirus task force, revealing the dangers of nepotism. Recuperado de <https://www.nbcnews.com/think/opinion/trump-enables-jared-kushner-s-coronavirus-task-force-revealing-dangers-ncna1176511>.

Pimentel, D. (2015). Reframing the Independence v. Accountability Debate: Defining Judicial Structure in Light of Judges' Courage and Integrity. *Cleveland State Law Review* 51 (1).

Reiling, D. (2009). *Technology for Justice How Information Technology can support Judicial Reform*. Leiden University Press Law, Leiden.

Rheinstein. M. (1968). Comparative Law - Its Functions, Methods and Usages. *Arkansas Law Review*. 22(3), 415-425.

S. Austin, (2020, April). Coronavirus: Will courts continue to operate, preserving the rule of law? <https://theconversation.com/coronavirus-will-courts-continue-to-operate-preserving-the-rule-of-law-134084>.

Sheeran, S. P. (2013). Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics”, *Michigan Journal of International Law*. 34 (491), 491-557.

Susskind, R. (2013). *Tomorrow's Lawyers: An Introduction To Your Future*. Oxford University Press, Oxford.

W. Mark, (2020, April). Outbreaks of disease have shuttered the Supreme Court going back more than two centuries. Recuperado de <https://www.abajournal.com/web/article/outbreaks-have-shuttered-the-supreme-court-going-back-more-than-two-centuries>.

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