
| RESEARCH ARTICLE

Harmonization of Regulations of the General Election Commission to Guarantee Legal Certainty: Overview of the 2020 Regent and Deputy Regent Elections

Aswika Budhi Arfandy¹ ✉ and Hari Purwadi²

^{1,2}Universitas Sebelas Maret, Surakarta, Jawa Tengah, Indonesia

Corresponding Author: Aswika Budhi Arfandy, **E-mail:** maswika85@gmail.com

| ABSTRACT

This paper aims to analyze the ideal form in the process of harmonization of the General Election Commission (PKPU) Regulations which experienced disharmony in connection with the 2020 election arrangements, as well as the formulation of legal certainty that it can use. The 2020 election will go down in history as a democratic party that goes hand in hand with the COVID-19 pandemic. The implementation is carried out with various rules, especially PKPU, which in practice is known as two types: the technical PKPU for the performance of stages and the COVID PKPU. This regulatory dualism creates a form of disharmony of legal norms so that the condition of legal certainty becomes something that has a high level of importance. Based on doctrinal research, it can be explained that the harmonization carried out on PKPU in implementing the 2020 Election is in the form of horizontal harmonization based on several existing legal principles. This principle justifies that the COVID PKPU can override the PKPU regarding the technical implementation of the stages. The harmonization also provides a form of legal certainty that can realize through sound and apparent normalization as well as the hierarchy of laws and regulations and is effective.

| KEYWORDS

Harmonization, General Election Commission Regulations, Legal Certainty, Election 2020

| ARTICLE INFORMATION

ACCEPTED: 01 October 2022

PUBLISHED: 09 October 2022

DOI: 10.32996/ijlps.2022.4.2.2

1. Introduction

In Indonesia, as in many democracies, the norms that govern governance by the branches of government – which we might think of as structural *norms*– make concrete and mediate between competing values at the core of democracy; separate constitutional and power systems. Structural bars are imperfect; they do not achieve the ideal balance between branches, representative democracy, or fidelity to the law. Structural norms are also temporary; they simultaneously settle constitutional obligations temporarily and direct competition over what behavior should be acceptable. Structural models, however, cannot be understood in contravention of a fixed constitutional design.

On the contrary, the norm shows the changing nature of the constitutional order itself (Renan, 2018). The election of regents and deputy regents in 2020 (now referred to as the 2020 Elections) was passed with various dynamics. Faced with the *pandemic of coronavirus disease 2019* (COVID-19), this local-level democratic party must be passed with various existing rules, especially in the form of the General Election Commission Regulation (PKPU), which contains structural norms. The number of rules in the PKPU norms, some have been disharmony. The shadow of legal uncertainty from this disharmony has always haunted the organizers, especially the General Elections Commission (KPU). Both at the central, provincial and especially district/city levels. All of them are required to harmonize these rules, even though no one in the world has experience holding general elections (elections) or regional head elections during the COVID-19 pandemic.

The urgency of harmonization can be compared and consider several problems of PKPU disharmony that had occurred before, such as what happened during the holding of the 2019 general election. The first example is disharmony between PKPU Number 20 of 2018 concerning the Nomination of Members of DPR, Provincial DPRD, and Regency/City DPRD with the Act. Number 7 of 2017 concerning General Elections (starting now referred to as the Election Law). The source of the problem is the content of Article 4 paragraph (3) which states that the selection of candidates for DPR, Provincial DPRD and Regency/Municipal DPRD does not include former convicts of drug dealers, sexual crimes against children and corruption. On its way, the Supreme Court annulled the article after a *judicial review* was submitted by several parties (Ayu, 2019). Thus, these provisions are no longer legally binding.

The following example is the disharmony between PKPU Number 6 of 2018 concerning Registration, Verification and Determination of Political Parties Participating in the Election for Members of the DPR and DPRD, as well as Regulation of the Minister of Home Affairs (Permendagri) Number 18 of 2018 concerning Village Community Institutions and Village Customary Institutions. This problem began when PKPU Number 6 of 2018 did not explicitly stipulate the requirements for the validity of political party membership originating from elements of village community institutions (LKD). According to PKPU Number 6 of 2018, the invalidity of membership in a political party is only limited to two elements, namely the element of work (a ban for members of the TNI/Polri and ASN) and an age element (a ban for those who are not yet 17 years old and/or unmarried). On the other hand, Permendagri Number 18 of 2018 confirms that LKD administrators are prohibited from being political party members. The prohibition is also regulated in Government Regulation 11 of 2017 concerning Management of Civil Servants, stipulating that civil servants are prohibited from becoming members or administrators of political parties or engaging in practical politics. The absence of regulation prohibiting LKD management from becoming members of political parties in PKPU Number 6 of 2018 can be concluded as a disharmony of PKPU with other laws and regulations. This also impacts the emergence of multiple interpretations of implementing these regulations.

At the moment of the 2020 election, thousands of violations were recorded as findings by the Election Supervisory Body (Bawaslu). These violations include administrative violations of 1010 cases, 185 cases of code of ethics violations, 80 criminal cases and other violations of 1233 cases (Wardi, 2020). These violations, among others, relate to the campaign stages, the stages of updating voter data, to the recruitment of *ad hoc*. The high number of violations, one of which stems from disharmony relating to the alignment of the technical PKPU in the implementation of the stages with the PKPU in the implementation of elections in conditions of the Covid-19 pandemic, which incidentally regulates health protocols.

The rules regarding the technical implementation of each stage, determined through several PKPUs before the pandemic, still have relevance to the stages that will be carried out. Furthermore, an obstacle arose that PKPU, which regulates the technical implementation of these stages, has not accommodated health protocols. Finally, the PKPU was set to regulate the implementation of stages during the COVID-19 pandemic. To be precise, PKPU Number 6 of 2020 concerning the Implementation of the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors simultaneously continue in Non-Natural Disaster Conditions *Coronavirus Disease 2019* (COVID-19) as amended several times, most recently by PKPU Number 13 of 2020 concerning the Second Amendment to PKPU Number 6 of 2020. Like *a sweep of the universe*, PKPU, which is often referred to as "PKPU COVID", in addition to regulating health protocols at all stages, there are also several regulations regarding the technical implementation of the stages that have previously been regulated through PKPU technical implementation. This closing arrangement from the COVID PKPU confirms that all PKPU implementations of the previously determined stages are still valid. This condition resulted in a single-stage condition experiencing regulatory dualism.

Departing from several practices of organizing democratic parties that have been running before, it is never free from violations committed by participants, candidate pairs, campaign teams, and/or members of the public or voters, even election organizers (Sekarwidhi, 2015). The number of problems and the parties involved shows the complexity of the existing legal issues. Election organizers are required not only to implement the existing rules but also to understand the rules, which of course, require extra energy, including dealing with potential violations. Both are because of factors that do not support the rules, as well as law enforcement and legal culture (Fahmi, 2015).

In some cases, to create legal certainty, these conditions are resolved by the emergence of more technical rules, such as decrees, circulars or official letters (Lazuardi, 2020). Although not a statutory hierarchical category, this internal rule has legal consequences binding outwards (Fatma, 2020). Several disharmony conditions seem to have significant potential in any future implementation of democratic parties. The spirit of legal certainty remains a fixed price that must be carried out whenever elections or regional head elections are held. Concrete and implementable rules are crucial to ensure legal certainty and justice. Thus, in addition to creating the legality and legitimacy of an election and regional head election, it also produces legitimate leaders from the results of broad community support (Andrizal, 2017). The implementation of the 2020 Election is a democratic party that has not been long after its implementation. Aside from being a routine five-year democratic momentum, the 2020 election is likely to go down

in history as a democratic party that goes hand in hand with a pandemic occurring in all parts of the world. Departing from this background, this paper focuses on discussing PKPU harmonization, especially during the 2020 Election, in order to ensure legal certainty, as the big title appointed, with an emphasis on problem formulation in the form of the ideal form of PKPU harmonization and legal certainty for the 2020 Election.

2. Research Methods

This study is doctrinal in nature, which makes laws and PKPU primary legal materials and literature related to harmonization theories, statutory regulations and legal certainty theory as secondary legal materials. The approach used is a statutory approach using legislation and regulation products, as well as a conceptual approach which refers to existing legal doctrines.

The legal materials used are in the form of primary legal materials sourced from statutory regulations and PKPU, as well as secondary legal materials in the form of scientific publications on the harmonization of regulations to ensure legal certainty. These legal materials are in the form of legal journal articles, legal textbooks, legal scientific reports, and news in the mass media that are related to the subject matter.

The analysis in this study first describes the form of disharmony in PKPU in the implementation of the 2020 Election, balanced with the presentation of existing legal facts and correlated with theories regarding harmonization, the hierarchy of laws and regulations and legal certainty. Analysis of legal materials focuses on systematic interpretation techniques. In the form of interpretation according to the existing system in the legal formulation, which occurs when one legal text and another legal text both regulate the same thing, then they are connected and compared with each other. This effort is carried out by examining the relationship between norms in the general election commission regulations in the 2020 election.

3. Results and Discussion

As a manifestation of the constitutional mandate as regulated in Article 22E of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia), the General Elections Commission (KPU) as the institution administering the general election (pemilu), has the authority to formulate, compile and establish a number of regulations relating to the holding and conduct of elections. In particular, is the KPU Regulation (PKPU). Thus, the KPU has an obligation to form more technical regulations relating to the implementation of the election stages. The existence of PKPU is the highest legal hierarchy (under the law) in the technical rules for the implementation of elections and regional head elections. The legality of this PKPU is also interpreted as part of the regulation in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation. Regulations made by the KPU as a commission established by law are recognized for their existence and have binding legal force.

The PKPU preparation process is carried out on the basis of statutory orders. In every general election or regional head election, PKPU is the backbone that serves as a guideline for the RI KPU, Provincial KPU and Regency/Municipal KPU. As an elaboration of the law, PKPU materials must have clear substance and content and be easily understood by regional administrators (Dedi Sumanto, 2020) so that the potential for legal problems or forms of legal uncertainty in the implementation of the election stages can be minimized.

With regard to the election of regents and deputy regents in 2020 (hereinafter referred to as the 2020 Elections), refer to PKPU Number 15 of 2019 concerning Stages, Programs and Schedules for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors 2020, the stages begin on September 30, 2019. From the beginning to the end of the stages, there are at least 19 PKPUs that regulate the technical implementation of the 2020 Election. The total number of PKPUs that have been set by the Indonesian KPU in 2019 was 19 PKPUs, and in 2020 there were also 19 types of PKPUs.

Of the dozens of PKPUs, in principle, there are two existing PKPU classifications, namely the PKPU regarding the technical implementation for each stage and the PKPU for the implementation of further simultaneous elections in the non-natural disaster conditions of Covid-19. PKPU regarding technical implementation is determined for each stage. Meanwhile, the PKPU for Covid-19 conditions is specifically regulated in PKPU Number 6 of 2020 concerning the Implementation of the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors Simultaneously Continued in Non-Natural Disaster Conditions *Coronavirus Disease 2019 (Covid-19)*.) as amended several times, most recently by PKPU Number 13 of 2020 concerning the Second Amendment to PKPU Number 6 of 2020 (hereinafter referred to as PKPU COVID).

1. Necessity and Model of PKPU Harmonization

Referring to *Black's Law Dictionary*, harmonization is defined as changing differences to different sizes and procedures or plans that make the differences uniform and suitable (Dictionary, nd). According to Ahmad M Ramli, harmonization comes from the word harmony, which means harmony, compatibility and harmony. The elements that can be drawn from the notion of

harmonization include the existence of contradictory matters, irregularities, and harmonizing contradictory matters to form a system. Another element is a process to realize harmony, suitability, compatibility, balance and cooperation between various factors in such a way as to produce unity (Ramli, 2008).

In general, harmonization can be interpreted as an effort to harmonize, integrate, match, harmonize and balance contradictory things to become an ideal system. The purpose of harmonization, according to Plato, in his book *The Timaeus*, as quoted by Patrick Glenn, is to find good and rational things, as well as control conflict and inequality (Glenn, 2003).

When classified, Setio Sapto Nugroho divides the harmonization of legal regulations into two types, namely vertical harmonization and horizontal harmonization (Nugroho, 2009). A vertical harmonization is a form of harmonization between one regulation and the regulations above it. While horizontal harmonization is more a form of harmonization between one regulation and regulations that have an equal hierarchy based on the hierarchical order of laws and regulations.

Associated with the context of the discussion on PKPU harmonization in the 2020 election, horizontal harmonization tends to be close to being the subject of discussion in finding the ideal form of harmonization. Because, in practice, in democratic contestation, there are two types of arrangements that have the same high degree in the norms of statutory regulations. The two are between PKPU regarding the technical implementation of stages and PKPU regarding the implementation of further simultaneous elections in conditions of non-natural disasters COVID-19.

Before describing the concept of harmonization, several forms of disharmony between the two types of regulations can be described in three types of stages as follows:

a. The stages of forming an *ad hoc*

Disharmony norms at the stage of forming an *ad hoc*, including Article 18 letter b of PKPU Number 12 of 2017 concerning Amendments to PKPU Number 3 of 2015 concerning Work Procedures for KPU, Provincial KPU/Aceh KIP and Regency/Municipal KPU/KIP, Formation and Work Procedures of PPK, PPS and KPPS in Organizing the Election of Governors and Deputy Governors, Regents and Deputy Regents and/or Mayors and Deputy Mayors, it is regulated that the requirements to become members of PPK, PPS and KPPS are at least 17 (seventeen) years old. . Meanwhile, in the regulation of Article 20 paragraph (2) of the COVID PKPU, it is regulated that the requirements to become a KPPS are a minimum of 20 (twenty) years and a maximum of 50 (fifty) years.

b. The stages of updating data and compiling the voter list

Disharmony norms at this stage include Article 10 paragraph (2) of PKPU Number 19 of 2019 concerning Amendments to PKPU Number 2 of 2017 concerning Updating of Data and Compilation of Voter List in the Election of Governor and Deputy Governor, The Regent and Deputy Regent, and/or Mayor and Deputy Mayor it is regulated that the preparation of the voter list is carried out by dividing the voters for each TPS at most 800 (eight hundred) people. Meanwhile, in the regulation of Article 21 paragraph (4) of the COVID PKPU, it is regulated that the preparation of the voter list is carried out by dividing the voters for each TPS at most 500 (five hundred) people.

c. The stages of nominating

Disharmony norms at this stage include Article 70 paragraph (2) of PKPU Number 1 of 2020 concerning the Third Amendment to PKPU Number 3 of 2017 concerning Nominations for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and The Deputy Mayor emphasized that the plenary meeting for the draw for the serial number of candidate pairs was attended by pairs of candidates, representatives of political parties or coalitions of political parties that proposed pairs of candidates, individual candidate pairs, campaign teams, provincial or regency/city Bawaslu Bawaslu, mass media, and community leaders. Meanwhile, this condition is limited to the clause in Article 55 of the COVID PKPU, which confirms that the plenary meeting is open for drawing the serial number of pairs of candidates in the continued simultaneous elections provided that only pairs of candidates are attended, 2 (two) representatives of the provincial Bawaslu or Regency/City Bawaslu according to their level. , 1 (one) liaison person for pairs of candidates, and 7 (seven) or 5 (five) members of the provincial KPU, or 5 (five) members of the Regency/Municipal KPU.

The three stages show that there is still a form of norm disharmony from the two regulations that are still in the same degree of legislation. This condition requires a form of horizontal harmonization. In this harmonization, two principles apply, namely the *lex posteriori derogat legi priori* (new regulations override or defeat the old regulations) and the *lex specialis derogat legi generalis* (more specific regulations override or override more general regulations). Harmonization efforts based on these two principles have a high level of urgency. Because, in essence, the preparation of regulation is a form of cross-sectoral regulation and cannot

stand alone. If this harmonization fails, of course, there will be conditions of overlapping arrangements with massive and dangerous impacts. This is because it can create legal uncertainty and ambiguity in the application of these regulations and has the potential to cause election disputes. In the end, it can thwart the legal purpose that arises from the existence of these arrangements, which according to Mochtar Kusumaatmadja, is to create an orderly society, create order, balance and justice so that human interests will be protected (Kusumaatmadja, 2012).

From the point of view of the principle of *lex posteriori derogat legi priori*, horizontal harmonization in practice is regulated in the closing provisions of a drafted regulation. In the closing provisions, it is usually stipulated that the status of the existing regulations is declared to remain valid as long as it does not conflict or is declared null and void or revoked so that there is no dualism in the regulation of the same legal rule in several other regulations (Juwana, 2006). In the closing provisions of the COVID PKPU, it was emphasized that at the time this regulation came into effect, PKPU related to technical implementation was declared still valid. This confirms that both the PKPU regarding the technical implementation and the COVID PKPU provide arrangements. So it can be concluded that this principle cannot be applied to harmonize the dualism of the regulation.

Meanwhile, from the point of view of the principle of *lex specialis derogat legi generalis*, horizontal harmonization is needed to form a regulation that has special and different forms and characteristics (*sui generis*) with other regulations, to achieve certain goals. This condition requires attention so that the formation of regulations remains within an existing legal system unit. This is important, considering that the regulations that are drawn up are a subsystem of a legal system. This includes ensuring that regulation is compatible with the legal system. So that it does not cause negative impacts on the implementation of the provisions contained therein, this principle justifies the existence of the COVID PKPU. This is because the stipulation process has a specific purpose, but it is still part of the existing legal system. Thus, the norms in the COVID PKPU, as a special norm, override the more general norms regulated in the PKPU regarding the technical implementation of stages.

In practice, the presence of the COVID PKPU is expected to emphasize the regulation regarding the use of health protocols. However, a number of norms that are regulated actually confirm several norms regarding the technical implementation of the next simultaneous election stages in the non-natural disaster conditions of COVID-19, thus resulting in disharmony of regulations. However, the regulation of norms regarding the technical implementation of stages in the COVID PKPU seems to consider health protocol standards. Such as limiting the age of the *ad hoc*, regulating the number of voters in one polling station, to limiting the parties that can be invited in certain stages of implementation. Moreover, health protocol standards are not only related to the application of a healthy lifestyle but also certain restrictions, which of course, have implications for efforts to prevent the COVID-19 pandemic outbreak.

The law sets its own criteria as long as a legal norm determines how other norms are created, as well as the content of those norms. As long as the norm is made in a way that is determined by another legal norm, the last norm is the first reason for validity. These relationships can be referred to as super and subordinate relationships in a spatial context. The norms that determine the making of other norms are superior, while the norms that are made are inferior (Safa'at, 2006). Kelsen's theory provides a justification for the application of the *lex specialis derogat legi generalis* to the existence of the COVID PKPU, especially for the 2020 Election. So in the future, if there is dualism in the regulation of PKPU, horizontal harmonization based on these principles is the best solution.

2. Legal Certainty in the Election of Regents and Deputy Regents

Democratic general elections are like the theory of "*predictable procedures but unpredictable results*" (Hermansyah, 2013). The main principle in making procedures and mechanisms for the stages of activities and supporting stages is carried out with predictable *procedures* but ends with unexpected results. Legal certainty in an election, especially the election of regents and deputy regents, can create justice for all parties, especially the participants. This can be realized by the existence of effective arrangements in solving all the problems contained in election law. This means that the provisions regarding the election process for regents and deputy regents are carried out with procedures and mechanisms that can be known and accessed by all voters, political parties, pairs of candidates and so on to ensure transparency and accountability. With this process, competition or competition in the election is expected to run free and fair (*free and fair*) so that the elected candidate is not known or determined in advance.

This condition states that all stages in the election of regents and deputy regents must have legal certainty. Especially the written regulations, which are the basis for implementation at each stage. This can be implemented through effective arrangements to resolve all the problems contained in a written legal regulation (Wijaya, 2020). In every election of regent and deputy regent, KPU always completes a number of implementing regulations at each stage. Starting from the initial stage in the form of program and budget preparation until the end of the stage, namely proposing the approval and appointment of the selected candidates, followed by evaluation and reporting stages.

Legal certainty requires legal arrangements to have a juridical aspect. So that it can guarantee certainty, and the law functions as a rule that must be obeyed. Every legal action taken must guarantee legal certainty. The law is unclear; it is necessary to carry out an interpretation or interpretation of the existing norms. Legal certainty is not only about the purpose of the law but also relates to the atmosphere of the judiciary, human rights and democracy (Andrianto, 2020). On the other hand, the principle of legal certainty is a principle in a state of law that prioritizes the basis of legislation, as well as compliance and justice in every policy of state administration. This needs to be maintained in order to achieve order (Manan, 2009). With legal certainty, the public will know the clarity of their rights and obligations according to the law. Without legal certainty, a person will not know what to do, what is right or wrong, and what is prohibited or not prohibited by law. This legal certainty can be realized through good and clear normalization in statutory regulation. That is, this legal certainty guarantees the existence of regulation, especially with regard to the subject, object and sanctions in it.

The existence of two arrangements in the same degree of legislation, such as between PKPUs, has created differences regarding which norms must be implemented and which are prohibited or not prohibited by law. That is why legal certainty in the form of harmonization of the dualism of the regulation also needs to be done. In addition to harmonization, the concept of stricter regulation without having to carry out legal interpretation through a harmonization process may be applicable in the future. This further confirms the form of legal certainty that will be achieved. One of these efforts is making special arrangements in an umbrella rule or *omnibus law* as an effort to simplify regulations. This mechanism will form, amend, revoke and ratify a number of PKPUs in one PKPU.

During the 2020 Election, the presence of PKPU COVID is expected to become a new norm. However, in reality, the conditions that occur actually provide a change to the old norms of the technical PKPU arrangement for the implementation of the previously determined stages. Thus, the formation of PKPU through the *omnibus law* can be a regulation that gives rise to new norms as a form of achieving legal certainty.

The existence of regulatory clauses that are considered to be inharmonious, out of sync or overlapping with regard to the conditions that occur requires a form of simplification of strict regulations, one of which can use the *omnibus law*. This effort simultaneously accelerates the implementation of the stages that will be carried out in the form of legal certainty and eliminates various obstacles through the simplification of regulations. Moreover, in the implementation of the stages of the election and the election of regional heads, legal legitimacy is also needed to avoid misuse of the actions of the election organizers. The law, in this case, in Mochtar Kusumaatmadja's opinion, must play a role in creating an orderly society, creating order, balance and justice, and not hindering various reforms and developments so that human interests will be protected (Kusumaatmadja, 2012).

In the historical context, *omnibus law* as a concept in the preparation of regulations has been practiced since 1970 (Supriyadi, 2021). However, the application of this method in Indonesia has only been specifically applied in legislative techniques whose scope is to change several norms in the laws that have been enacted. However, the use of this method at the PKPU degree level, of course, can be adapted in accordance with the applicable statutory procedures. The concept of *omnibus law* in its drafting mechanism must still comply with the procedures in Law Number 15 of 2019 concerning the Formation of Legislation (Fitriyantika, 2019), starting from planning, drafting, and discussion to ratification.

In the adaptation method, *omnibus law* in PKPU arrangement is expected to be able to resolve conflicts in PKPU norms both vertically and horizontally quickly, effectively and efficiently. Its use is expected to guarantee legal certainty and legal protection based on higher quality regulatory products. This condition certainly requires a measurable, open and participatory formation mechanism. The use of the *omnibus law* will certainly not be effective if there is no clear harmonization mechanism in the realization of legal certainty. This condition is not difficult enough for KPU to do. This is because the KPU is the only institution authorized to form and determine the PKPU, so this effort is also a form of centralized harmonization and the sole authority of the KPU to reduce overlapping arrangements.

When viewed from the implementation of the 2020 Election, the PKPU *omnibus law* can certainly be the key to changes in the regulation of a number of PKPUs that regulate the technical implementation of stages. Meanwhile, the COVID PKPU can be carried out as the main basis for implementing health protocols without having to change a number of norms in PKPU regarding the technical implementation of stages fact, if a short time is needed, this *omnibus law* also does not rule out changing the norms in a number of PKPUs regarding the technical implementation of stages, plus a new norm regarding the application of health protocols. PKPU *omnibus law*, of course, can be applied with a certain time limit so that the level of relevance is incidental. While the technical PKPU for the implementation of the stages can continue to apply as long as its relevance can still guarantee the form of legal certainty from the implementation of the stages of the election of regents and deputy regents regulated through the norms in the PKPU.

4. Conclusion

1. Harmonization can be interpreted as an effort to harmonize, integrate, match, harmonize and balance contradictory things so that it becomes an ideal system. When classified, it consists of vertical harmonization and horizontal harmonization. A vertical harmonization is a form of harmonization between one regulation and the regulations above it. While horizontal harmonization is more a form of harmonization between one regulation and regulations that have an equal hierarchy based on the hierarchical order of laws and regulations. In the context of PKPU harmonization in the 2020 election, horizontal harmonization tends to be close to being the subject of discussion in finding the ideal form of harmonization. Because, in practice, there are two types of arrangements that have the same high degree in the norms of legislation. Both are PKPU regarding the technical implementation of stages and PKPU COVID. From the point of view of the principle of *lex posteriori derogat legi priori* in horizontal harmonization, it can be concluded that this principle cannot be applied to harmonize the dualism of the arrangement. Meanwhile, from the point of view of the *lex specialis derogat legi generalis*, horizontal harmonization justifies the existence of the COVID PKPU. This is because the stipulation process has a specific purpose, but it is still part of the existing legal system. Thus, the norms in the COVID PKPU, as a special norm, override the more general norms regulated in the PKPU regarding the technical implementation of stages.
2. A democratic general election is like the theory of "*predictable procedures but unpredictable results*", carried out with an unexpected procedure but ends with unexpected results. Legal certainty in an election, especially the election of regents and deputy regents, can create justice for all parties, with effective arrangements in resolving all election legal problems. Legal certainty requires legal arrangements to have a juridical aspect. The law is unclear; it is necessary to carry out an interpretation or interpretation of the existing norms. This legal certainty can be realized through good and clear normalization in statutory regulation. In addition to harmonization, in the future, it may be possible to make special arrangements in an umbrella rule or *omnibus law* as an effort to simplify regulations. This mechanism will form, amend, revoke and ratify a number of PKPUs in one PKPU. In the 2020 election, the presence of PKPU COVID is expected to become a new norm. However, in reality, the conditions that occur actually provide a change to the old norms of the technical PKPU arrangement for the implementation of the previously determined stages. Thus, the presence of PKPU through the *omnibus law* can be a regulation that creates new norms as a form of achieving legal certainty. In the adaptation of the *omnibus law* in PKPU arrangement, it is expected to be able to resolve conflicts in PKPU norms both vertically and horizontally quickly, effectively and efficiently. Its use is expected to be a guarantee of legal certainty and legal protection. Judging from the implementation of the 2020 Election, the PKPU *omnibus law* can be the key to changing the arrangements for a number of PKPUs that regulate the technical implementation of stages. Meanwhile, the COVID PKPU is the main basis for implementing health protocols fact, this *omnibus law* also does not rule out the possibility of changing the norms in a number of PKPUs regarding the technical implementation of stages, plus a new norm regarding the application of health protocols. PKPU *omnibus law*, of course, can be applied with a certain time limit so that the level of relevance is incidental. Meanwhile, the technical PKPU for the implementation of the stages can continue to apply as long as its relevance can still guarantee a form of legal certainty.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

References

- [1] Andrianto, F. (2020). Kepastian Hukum dalam Politik Hukum di Indonesia. *Administrative Law and Governance Journal*, 3(1), 122. doi:<https://doi.org/10.14710/alj.v3i1.114-123>
- [2] Andrizar. (2017). Penyelesaian Hukum Pelanggaran Pemilu Dalam Pemilihan Kepala Daerah Kota Pekanbaru Berdasarkan Undang-Undang Nomor 10 Tahun 2016. *Jurnal Hukum Respublica*, 17 (1), 167. doi:<https://doi.org/10.31849/respublica.v17i1.1454>
- [3] Ayu, A. Z. (2019). Filosofi Penemuan Hukum dalam Konstruksi Putusan Mahkamah Agung No 46P/HUM/2018. *Jurnal Hukum Peratun*, 2(1), 5. doi:<https://doi.org/10.25216/peratun.212019.75-97>
- [4] Dedi Sumanto, S. N. (2020). Kedudukan Peraturan Komisi Pemilihan Umum (PKPU) dalam Tata Susunan Peraturan Perundang-Undangan Republik Indonesia. *Datuk Sulaiman Law Review (DaLRev)*, 1 (1), 46-47. doi:<https://doi.org/10.24256/dalrev.v1i1.1594>
- [5] Dictionary, B. L. (n.d.). Retrieved Agustus 6, 2022, from The Law Dictionary: <https://thelawdictionary.org/harmonization/>
- [6] Fahmi, K. (2015). Sistem Penanganan Tindak Pidana Pemilu, System for The Crime of Election,. *Jurnal Konstitusi*, 12 (2), 265. doi:<https://doi.org/10.31078/jk1224>
- [7] Fatma. (2020, September 25). *Berita Kota Kendari*. Retrieved Juli 26, 2022, from <https://beritakotakendari.com/2020/09/kpu-resmi-terbitkan-pkpu-nomor-13-tahun-2020-larang-konser-di-pilkada/>
- [8] Fityrantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia melalui Konsep Omnibus Law. *Jurnal Gema Keadilan*, 6(3), 312. doi:<https://doi.org/10.14710/gk.2019.6751>

- [9] Glenn, P. (2003). Harmony of Laws in the Americas. *The Inter-American Law Review*, 34 (2), 234. Retrieved from <https://www.jstor.org/stable/40176536>
- [10] Hermansyah, d. (2013). *Hitam Putih Pengadilan Khusus*. Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia.
- [11] Juwana, H. (2006). *Penyusunan Naskah Akademik Sebagai Prasyarat dalam Perencanaan Pembentukan RUU*. Jakarta: Departemen Hukum dan HAM.
- [12] Kusumaatmadja, M. (2012). *Mochtar Kusumaatmadja dan Teori Hukum Pembangunan*. Jakarta: Epistema Institute dan Huma.
- [13] Lazuardi, G. (2020, Juni 20). *Tribun News*. Retrieved Juli 26, 2022, from <https://www.tribunnews.com/nasional/2020/06/20/kpu-terbitkan-surat-edaran-2020-atu-pelaksanaan-tahapan-pilkada-sesuai-protokol-kesehatan>
- [14] Manan, B. (2009). *Menegakkan Hukum Suatu Pencarian*. Jakarta: Penerbit AAI.
- [15] Nugroho, S. S. (2009). *Harmonisasi Pembentukan Peraturan Perundang-Undangan*. Jakarta: Biro Hukum dan Humas Sekretariat Negara. Retrieved from <https://adoc.pub/harmonisasi-pembentukan-peraturan-perundang-undangan.html>
- [16] Ramli, A. M. (2008). Koordinasi dan Harmonisasi Peraturan Perundang-Undangan. *Semiloka Keselamatan dan Kesehatan Kerja* (p. 4). Jakarta: Dewan Keselamatan dan Kesehatan Kerja Nasional.
- [17] Renan, D. (2018). Presidential Norms and Article II. *Harvard Law Review*. 131. (2187-2282). https://harvardlawreview.org/wp-content/uploads/2018/06/2187-2282_Online.pdf
- [18] Safa'at, J. A. (2006). *Teori Hans Kelsen Tentang Hukum*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- [19] Sekarwindhi, N. (2015). Penyelesaian Pelanggaran Pemilu Tahun 2014 Dan Pemilu Kepala Daerah Dan Wakil Kepala Daerah Tahun 2015 Di Jawa Tengah, Completion Of 2014 Election Violation And Regional Election And Regional Head Of Region In 2015 In Central Java. *Journal of Politic and Government Studies*, 9 (3), 213. Retrieved from <https://ejournal3.undip.ac.id/index.php/jpgs/article/view/21133/19760>
- [20] Supriyadi, A. I. (2021). Gagasan Penggunaan Metode Omnibus Law dalam Pembentukan Peraturan Daerah. *Jurnal Ilmiah Kebijakan Hukum*, 15(2), 261. doi:<http://dx.doi.org/10.30641/kebijakan.2021.V15.257-270>
- [21] Wardi, R. (2020, November 29). *Berita Satu*. Retrieved Juli 26, 2022, from <https://www.beritasatu.com/politik/703983/bawaslu-temukan-2508-pelanggaran-pilkada-2020>
- [22] Wijaya, H. (2020). Menakar Derajat Kepastian Hukum dalam Pemilu Pada Undang-Undang Nomor 7 Tahun 2017. *Jurnal Ilmiah Dinamika Sosial*, 4 (1), 83. doi:<https://doi.org/10.38043/jids.v4i1.2276>