

Digital Acceleration During Covid-19 Pandemic: How the Indonesian Constitutional Court Brings the Citizens Justice



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ABSTRACT

The Covid-19 pandemic has changed all aspects of people's lives, starting from social, political and economic conditions, but not in the world of justice. Because the judicial process must continue to ensure access to justice for justice seekers, as a judicial institution, the Indonesian constitutional court will undoubtedly continue to provide justice through various methods of digital acceleration. Several accelerations successfully developed by the court include online trials, online application submissions, online decisions, and copies of decisions that can be downloaded on the website. This article will discuss how the court provides justice during the Covid-19 pandemic. Interestingly, filing requests for judicial review experienced a significant increase during 2020–2022, even though the Covid-19 pandemic was hitting the world. During that period, the court decided several times on exceptional cases restoring society's sense of justice.

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An ancient philosopher, Heracles (544–548 BC) said a legal maxim familiar to us today, i.e., “*all things change, except change itself*.”¹ Heraclitus’s expression shows that change is a phenomenon of human life that cannot be avoided. Everyone experiences change; whether they like it or not; whether they want it or not. Furthermore, the Chinese philosopher, Zhuangzi, said that we live in a world that is undergoing change and will continue to change without anyone ever knowing when the change starts and when it will stop.² The changes are occurring with increasing acceleration, both micro and macro, on a local and regional scale, both at the national and global levels.

Among the most apparent changes in the last few decades is how people move due to the influence of advances in information technology. Changes in this sector have penetrated various life sectors, including social, economic, political, legal, etc. Human activities that were previously manual-based and physical were replaced with computer-based digital patterns. Changes in activity patterns of this kind are called digital transformations.³ Interestingly, these changes also affect the legal and judicial aspects. Although the effect of technology on the shift in people’s way of life seems unstoppable, the pattern of cyber-physical systems, such as those prevalent in industrial design 4.0, is increasingly infiltrating the world of law. It brings significant changes in the law enforcement process, including in Indonesia, marked by the birth of various regulations that underlie this transformation and changes in several law enforcement patterns from conventional to digital.

As a branch of judicial power, the Indonesian Constitutional Court (hereinafter: the Court) is also included in its role in digital transformation. It is the mandate from the founders that the Court must be aware of technology to make it easier for justice seekers to have their rights restored. Although a little late, since 2017, the Court has tried to change its business process from conventional trials to modern ones based on Information and Communication Technologies (ICT). It also further strengthens the Court to change its vision and roadmap from “*to uphold Constitution to implement the state based on the rule of law and democracy for civilized life of nation life*” to “*realizing a modern and reliable judiciary*”.⁴ The Court is aware that judicial organizations must pursue technological advances by using ICT in every business process. However, if traced, this modern judicial practice has been implemented since 2007 by carrying out hearing via video conferencing, although it is applied in a limited manner due to the incomplete development of technology.

The Court has continuously developed a strategy to support the modernization of the judiciary since changing the vision. Interestingly, the Covid-19 pandemic spurred the Court to embrace this modern judiciary, ensuring that the values of justice are not crippled. Even if all aspects of life have stalled in almost all countries; including

1 Müller-Merbach, H., “Heraclitus: Philosophy of Change, a Challenge for Knowledge Management?”, *Knowledge Management Research & Practices*, 4 (2006), pp. 171–172.

2 Wang, Y., “Philosophy of Change and the Deconstruction of Self in the Zhuangzi”, *Journal of Chinese Philosophy* 27, 3 (2000), pp. 345–360.

3 See, João Carlos Gonçalves dos Reis, Marlene Amorim, and Nuno Melao, “Digital Transformation: A Literature Review and Guidelines for Future Research”, In book: *Trends and Advances in Information Systems and Technologies* (Berlin: Springer, 2018), pp. 411–421.

4 The Constitutional Court of the Republic of Indonesia, *Annual Report 2017*, (Jakarta: The Constitutional Court of the Republic of Indonesia, 2018), p. 106.

social, political, and economic conditions, the world of justice still remains. Because the judicial process must continue to ensure access to justice for justice seekers, Courts cannot stop working because of the mini supervillain; the Covid-19 virus. If there is a protracted judicial process, justice is neglected as William Gladstone stated: “*Justice delayed is justice denied.*”⁵

As one of the judicial institutions, the Court also faces the same challenges. The Covid-19 pandemic has sketched out new challenges related to judicial governance. In this context, the steps taken through strengthening the rule of law and constitutionalism using ICT. Because the Court must be flexible to follow the flow of technology to survive, move quickly, and answer the needs of the times. For this reason, the spirit of transformation and acceleration is necessary for a pandemic situation.

The fundamental question is, how does the Court provide access to justice for justice seekers amid the restrictions during the Covid-19 pandemic? This article identifies constitutional implementation through the judicial review framework in the Covid-19 pandemic era, focusing on the obligation of the court to operate amid Covid-19 and the fulfillment of citizen's justice through the court's Decision.

This article constructs the argument as follows. In the following section, the article discusses the social restrictions and their impact on justice. Meanwhile, the penultimate section argues the the court organization evolution to improve justice: the necessity to increase digital technology behavior. The third section argues the Fulfilment of Citizen's Justice in the Pandemic Era. Before the conclusion, the fourth section argues the challenges of implementing digital acceleration in the constitutional court and how to overcome them.

2. SOCIAL RESTRICTIONS DURING COVID-19 PANDEMIC AND THEIR IMPACT ON JUSTICE

The Corona Virus Disease (Covid-19) outbreak has been a global challenge since first announced in December 2019 in Wuhan, Hubei Province, China. Since the World Health Organization (WHO) first reported it as a Health Emergency of International Concern (PHEIC), almost all countries have been affected. With the WHO declaring Covid-19 as a pandemic, many countries have opted to implement either full-scale or partial lockdowns to control the spread of the virus.⁶ Countermeasures policies taken by various countries in the face of this pandemic are also diverse. Generally, they are restrictions on the movement of people, such as closing public places, crowding, closing schools, and temporarily suspending office activities.⁷

In Indonesia, it has taken at least one month since the national case of Covid-19 was first announced to take legal action to deal with this condition. The President decided to issue Presidential Decrees Number 11 of 2020 concerning the Determination of The

⁵ David Shrager, and Elizabeth Frost, eds. *The Quotable Lawyer*. (New York, London: Facts on File New England Publishing Associates, 1986), p. 83.

⁶ See, WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020, <http://WHO-Director-General's-opening-remarks-at-the-media-briefing-on-COVID-19-11-March-2020> [accessed 12 January 2023].

⁷ Rizkisyabana Yulistyaputri, Zaka Firma Aditya, and Abdul Basid Fuadi, “Social Distancing during the Covid-19 Pandemic: Overcoming or Deprivation of Individual Rights?”, *In-Prolegurit (International Proceeding: Legal, Human Rights and Technology)* 1, No. 1 (2021), pp. 176–186.

Corona Virus Disease Public Health Emergency. Then, President issued a Government Regulation in Place of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and/or Face Threats that Endanger the National Economy and/or Stability of the Financial System. One month later, the President again issued Presidential Decree Number 12 of 2020 concerning the Determination of Non-natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

As mentioned in the introduction, the pandemic also affected the Court. As a law enforcement institution, the Court faces a somewhat complicated dilemma. The judicial process is a fundamental societal necessity. A court ruling will guarantee that a person's rights violated or taken away in everyday life can be restored. The conditions of the Covid-19 pandemic require extensive restrictions for people to interact. Plus, the Indonesian government issued a large-scale social restriction policy (*Pembatasan Sosial Berskala Besar* or PSBB) after establishing a national emergency status. The fulfillment of Covid-19 handling and prevention standards that the government has set also affects the litigant process, which is usually carried out by meeting in person in court. While all the do's and don'ts for effective virus control are meaningful, they all do invariably impact the inalienable right of access to justice. Courts and the justice system, have ultimately become inaccessible. This kind of situation requires appropriate mechanisms that should enable access to justice in these trying times.

Meanwhile, additional stringent measures were issued that effectively shut down the country, with only the so-called essential services such as healthcare, food markets, and banks left in place.⁸ The administration of justice was not listed among these essential services, yet the consequences of public disobedience of the measures mean that violators are sanctionable by law. Moreover, the accessibility of judicial processes, such as arraignments, the taking of pleas, and the right to apply for bail, was given little or no thought. It makes the legally provided timeline for filing civil matters and the required efficiency in the judicial ethical code challenging to maintain.

Worse, the Court did not have specific judicial emergency procedure administration regulations during the pandemic. The Court never imagined a pandemic in those years. Hence, the Court has to work hard to regulate itself in an emergency in case of public health emergencies. These situations can lead to despotism and abuse of human rights because, where self-restraint is expected with no oversight, there is a high possibility that those implementing the well-meaning guidelines will go overboard. It poses a real danger, as it enables the possibility of compromised judicial ethical behavior. Therefore, this pandemic calls for constant reflection on the internationally agreed-upon judicial ethical standards that should be applied to suit the current challenges if any high ethical standards are to be maintained.

The PSBB Policy has undermined the organizational system in all sectors, including the Constitutional Court. The judicial processes, both those that will be and are currently underway, must be stopped. It was also exacerbated by the large number of employees of the Constitutional Court who were affected by Covid-19 and forced the Court to lock down its building. The Court eliminated the trial for approximately 2 (two) months, from March 17 to May 13, 2020. The Court applies a policy to justice seekers who will submit a lawsuit through the online system, while the organization's activities are based on work from home (WFH).

⁸ See, Minister of Home Affairs Instruction Number 15 Year 2021.

The policy of postponing the trial is a spontaneous and temporary choice. However, the move was realized only to be done for a while. In addition to no one knowing exactly when the pandemic ended, postponing the trial will also prolong the case's resolution. As a result, the certainty of law and justice through the verdict, as expected by the justice advocates, becomes hampered. At the same time, resolving a protracted case is equivalent to disregarding justice. "*Justice delayed is justice denied*",⁹ said British politician William Gladstone to illustrate how important the principle of speedy justice is.

The judicial position in a democratic society must be to protect human rights and ensure access to justice for all its citizens. This obligation is not diminished at all by the crisis (Covid-19). On the contrary, it has become more critical to protect human rights and ensure that the executive branch (government) does not abuse its additional powers to respond to national emergencies.¹⁰ As the pandemic will continue indefinitely to affect the lives and health of people worldwide, delays in cases and trials are no longer a viable option. Therefore, it is now paramount that the judiciary introduces new ways for trials and judicial procedures to ensure safety and access to justice.

The Courts in several countries continued to operate during the pandemic while changing their trial mechanisms to accommodate the protections needed to reduce the risk of COVID-19 transmission. For example, courts in Kenya¹¹ have held hearings by phone or online, depending on the power of the internet connection. In South Africa¹², courts have issued explicit guidance on how courts conduct trials during the pandemic, including limiting physical presence in courtrooms to only "urgent and important matters" and allowing civil cases not considered "urgent or important" to be held online or over the phone.¹³

Nepal and India¹⁴ also issued clear guidance on how courts can continue to operate safely during the pandemic by allowing applicants to apply and file cases via email,

9 Sourdin T., and Burstyn N. "Justice Delayed is Justice Denied", *Victoria University Law and Justice Journal*, Vol. 4 No. 1 (2014), pp. 49–62. doi: 10.15209/vulj.v4i1.61. see also, Zaka Firma Aditya, and Sholahuddin Al-Fatih, "Legal Protection of Indigenous People's Rights Through Strengthening the Licensing Principles Based on Social Sensitivity", *Journal of Indonesia Legal Studies* 6, No. 1 (2021), pp. 1–34. <https://doi.org/10.15294/jils.v6i1.44671>. Adfin Rochmad Baidhowah, "Defender of Democracy: The Role of Indonesian Constitutional Court in Preventing Rapid Democratic Backsliding", *Constitutional Review* 7, No. 1 (2021), pp. 124–152. Herbert Küpper, "The Indonesian Constitution Read with German Eyes", *Constitutional Review* 7, No. 1 (2021), pp. 53–91. Melissa Crouch, "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia", *Constitutional Review* 7, No. 1 (2021), pp. 1–25.

10 Office of the High Commissioner for Human Rights (OHCHR), *Coronavirus Emergency: Challenges for the Justice System*, Special Rapporteur on Independence of Judges (2020), <https://www.ohchr.org/en/press-releases/2020/04/coronavirus-emergency-challenges-justice-system?LangID=E&NewsID=25810> [accessed 10 January 2023].

11 Ministry of Justice And Correctional Services, *Directions Issued in Terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002*, No. R. 440, (issued March 31, 2020), https://www.gov.za/sites/default/files/gcis_document/202004/43191rg11076-gon440.pdf. [accessed 15 January 2023].

12 *Ibid.*

13 *Ibid.*

14 Supreme Court of Nepal, Press Release on COVID-19, available at http://www.supremecourt.gov.np/web/indexhttp://www.supremecourt.gov.np/web/assets/downloads/covid_19_press_20770128.pdf see also, Supreme Court of India, Circular, New Delhi, (March 14, 2020), available at https://main.sci.gov.in/pdf/Notice/14032020_093925.pdf [accessed 15 January 2023].

establishing health procedures at court premises, and allowing video conferencing for trials. In addition, courts in the Philippines¹⁵ issued administrative circulars setting out courtroom health procedures, establishing a task force to address judicial concerns, giving necessary guidelines, and outlining how the court would remain functional during the pandemic.

In Portugal,¹⁶ all lower courts are now conducting remote trials and issuing verdicts virtually. Courts in Slovenia¹⁷ now encourage applicants to submit court documents by mail or online and have implemented strict disinfectant and distancing policies for anyone who has to visit the court in person for urgent matters. In the United States,¹⁸ the Supreme Court and the Federal Court of Appeals now hear all cases remotely, and all terminations are issued virtually.¹⁹

All the efforts made by the countries above aim to make it easier for people to access justice even though the Covid-19 pandemic is still hitting the world.

3. THE COURT ORGANIZATION EVOLUTION TO IMPROVE JUSTICE: THE NECESSITY TO INCREASE DIGITAL TECHNOLOGY BEHAVIOR

The pace of digital transformation is accelerating around the world. Technology is everywhere in everyday life. People access services and information and work online every day. Yet, they expect comfort and ease of service from the government and courts, predominantly driven by the pandemic. Since its inception, the Constitutional Court has established itself as a modern and trusted judiciary,²⁰ so this situation is addressed rationally. It is proven by the video conferencing project, which has been planned since Jimly Asshiddiqie still led the Constitutional Court. At that time, the Court met with the Deans of the Faculty of Law from 33 Provinces.²¹ The meeting resulted in an agreement to hold a video conferencing tool at each tertiary institution for disputes over regional head elections and general elections.²² For example, a year

15 *Ibid.*

16 Ministry of Justice And Correctional Services, *Directions Issued in Terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002*, No. R. 440, (issued March 31, 2020), https://www.gov.za/sites/default/files/gcis_document/202004/43191rg11076-gon440.pdf. [accessed 15 January 2023].

17 *Ibid.*

18 Access to Justice During the Covid-19 Pandemic, <https://reproductiverights.org/wp-content/uploads/2020/12/Access-to-Justice-During-the-COVID-19-Pandemic-Factsheet.pdf> see also, Sarah Jarvis, Coronavirus: The Latest Court Closures and Restrictions, LAW 360, (last updated May 11, 2020), available at https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions?nl_pk=cb03fbd8-cfbf-41b8-ac9-b1c2df4487315&utm_source=newsletter&utm_medium=email&utm_campaign=special [accessed 15 January 2023].

19 *Ibid.*

20 Since 2004, the Court has obtained a public trust score of 70–78. In addition, it is consistently the top five state institutions most trusted by the public under the Indonesian National Armed Forces, the President, and the Supreme Court. See, survey from Charta Politica, Indikator Politik Indonesia, Survei Nasional, and Media Survei Nasional: Median.

21 See, *Hukum Online*, “Video Conference MK Siap Digunakan”, [Constitutional Court Video Conference Ready to Use] <https://www.hukumonline.com/berita/a/video-conferencei-mk-siap-digunakan-hol20737> [accessed 15 January 2023].

22 *Ibid.*

after its establishment, the Court held several remote hearings on resolving disputes over the 2004 election results.²³ At that time, the Court borrowed the facilities of the National Police Headquarters to conduct remote trial via video conferencing of witnesses outside Jakarta.

The Court has been a pioneer in the implementation of remote trials. Since 2007, the Court has conducted remote trial examinations online and in real-time using video conferencing technology. Thus, it is possible to see and speak to each other between the Court and the parties as in offline trials. For example, at the hearing section of the judicial review on Law Number 22 of 1997 on Narcotics, the Court listened to the expert testimony of Philip Alston, Lecturer in Law at New York University, United States. Philip, submitted as an expert by the Petitioner, submitted a statement via video conference on April 18, 2007.²⁴ Another example is when the Court listened to the information of an expert named Toby Daniel Mendel, a freedom of expression expert from Canada.²⁵ Toby was proposed as an expert by Risang Bima Wijaya and Bersihar Lubis.²⁶ Toby delivered expert information through a video conference facility at the constitutional court trial on July 23, 2008.²⁷ At that time, the Court convened for the testing case of Articles 310, 311, 316, and 207 of the Criminal Code.²⁸ Due to the success of the trial, the court then regulated online trial in Constitutional Court Regulation No. 18 of 2008 concerning Guidelines for Electronic Filing and Video Conference Examination.

Besides judicial review cases, video conferencing was also conducted during the 2008 regional head election. Article 8 paragraph (3) of Constitutional Court Regulation No. 15 of 2008 concerning Guidelines for Proceedings in Disputes over Regional Head General Election Results, stipulates that the Court can examine a remote hearing (video conference). Even though video conferencing is starting to be recognized in Court, the public still needs to understand and use it optimally. The ICT infrastructure still needs to be extensive, especially outside Java. To solve this problem, the Court then collaborated with 34 universities throughout Indonesia to provide a mini courtroom with video conference that justice seekers can use for free. The video conference device allows the Parties to no longer have to be present in person in the Constitutional court Courtroom in Jakarta. Instead, the Parties just need to contact the court to request a remote trial. After being coordinated, the petitioners only go to the nearest college with their domicile to take advantage of Constitutional Court video conference facilities on the day of the scheduled hearing.²⁹

It has also changed the Court's vision and roadmap from *"to uphold the Constitution to implement the state based on the rule of law and democracy for civilized life of nation life"* to *"realizing a modern and reliable judiciary."*³⁰ However, this transformation

²³ Ibid.

²⁴ See, the Constitutional Court Decision Number 2-3/PUU-V/2007 on Judicial Review of Law Number 22 of 1997 on Narcotics.

²⁵ See, the Constitutional Court Decision Number 14/PUU-VI/2008 on Judicial Review of Criminal Code.

²⁶ Ibid.

²⁷ Ibid.

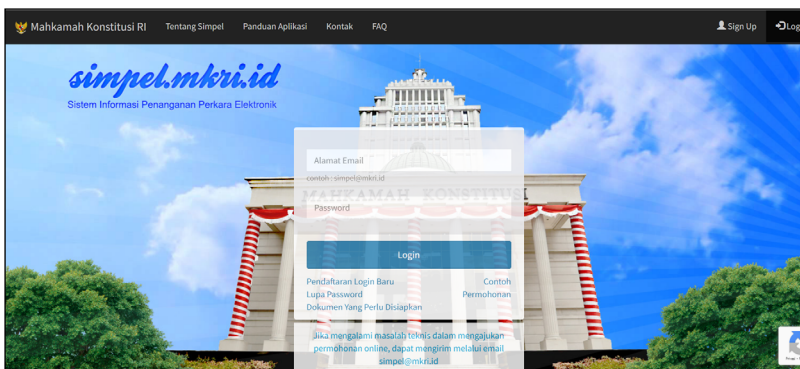
²⁸ Ibid.

²⁹ See, the Constitutional Court Regulation 18 of 2009 concerning Guidelines for Electronic Filing and Video Conference Examination.

³⁰ The Constitutional Court of the Republic of Indonesia, *Annual Report 2017*, (Jakarta: The Constitutional Court of the Republic of Indonesia, 2018), p. 106.

process is quite long because the Court must provide structure, infrastructure, work culture, and change its business processes in guarding the constitution. Fortunately, the intention of the Court is supported by the Government with Presidential Regulation Number 95 of 2018 concerning Electronic-Based Government Systems. Electronic-Based Government Systems (*Sistem Informasi Berbasis Elektronik* or SPBE) aim to realize clean, effective, transparent, and accountable governance as well as quality and reliable public services. Nationally, governance and management of electronic-based government systems are also needed to improve the integration and efficiency of electronic-based government systems.

As a result, various applications have been developed by the Court to integrate ICT in constitutional cases, such as by developing an Electronic Handling Information System (SIMPEL). Applications can be submitted online and in real-time (instantly) through SIMPEL electronic media, a web-based application to provide direct access to parties to constitutional cases, including submitting electronic applications online (online applications). With SIMPEL, parties or the public can register themselves so that they can submit petition online, monitor the progress of petition/cases, and access various service features such as trial schedules, court calls, downloading decisions, and other features. The SIMPEL application can be seen in [Picture 1](#) below.



Picture 1 Electronic Handling Information Systems (SIMPEL).

The use of SIMPEL has been tried out in the 2019 election, but it is not practical due to a lack of socialization, bugs, and inadequate servers. In addition, the people's mindset is still very traditional, where they choose to come directly to the Constitutional Court instead of using ICT facilities. In fact, with SIMPEL, parties do not need to pay extra for physical documents. Besides that, they also don't have to bother bringing their documents to court. From an organizational management standpoint, the Court does not need to assign many employees as case receivers, and of course, it will save cost and energy.

Interestingly, during a pandemic, the use of SIMPEL increased rapidly and made it easier for justice seekers. It is because people are familiar with using technology such as video meetings and mobile-based applications. In fact, with the lack of direct socialization on SIMPEL, the public can still use and take advantage of the conveniences in litigation at the Constitutional Court.

In the context of the pandemic, the speed of digital transformation has created a greater need to reduce the digital divide and demonstrated technology's importance. The Court responded to the need for accelerating technology by establishing Constitutional Regulation No. 1 of 2021 concerning implementing Remote Trials. The [Picture 2](#) below is an example of how Zoom can be used in an online trial. The regulation



Picture 2 Online trial with Zoom Meeting.

perfects the previous principle, which initially only allowed the implementation of video conferences in certain places, namely universities that have collaborated with the Constitutional Court. With this regulation, the legal framework of virtual trials in the Constitutional Court also includes video conference application devices that allow the parties to conduct trials remotely, not only limited to universities having video conference facilities but also in the office, working space, and at home via zoom meetings.

4. THE FULFILMENT OF CITIZEN'S JUSTICE IN THE PANDEMIC ERA

Justice for all. In this context; the scope of the nation, each citizen of a country has rights of which one is access to justice.³¹ Access to justice is essential for human beings to be treated fairly before the law. This concept has some recognition of human rights i.e. the right to have access to an effective remedy, equality before the law and the right to have a fair trial.³² An international instrument that covers access to justice can be found in the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and so on.³³ Access to justice is the priority for the citizens, followed by fulfilling righteousness. Notably, types of justice are categorized into four categories i.e. distributive, procedural, retributive, and restorative.³⁴ This section addresses the procedural justice of the Constitutional Court's judicial review authorities.

How to increase access to justice? For that purpose, several actors play an essential role to do, Paralegal (Legal Aid), Trusted Intermediaries (Law Foundation & NGOs), Pro Bono Lawyers, Law & Bar Associations , and University Students' Legal Clinics

³¹ Division for Social Policy and Development United Nations, *The International Forum for Social Development Social Justice in an Open World The Role of the United Nations*, (New York: United Nations, 2006), p. 13.

³² *Ibid.*, pp. 15–20.

³³ Equality and Human Rights Commission, "Following Grenfell: Access to Justice", equalityhumanrights.com/sites/default/files/following-grenfell-briefing-access-to-justice.pdf [accessed 2 February 2023].

³⁴ Morton Deutsch, "Justice and Conflict," in *the Handbook of Conflict Resolution: Theory and Practice*, Morton Deutsch, Peter T. Coleman, Eric C. Marcus, eds. (New York: John Wiley & Sons, 2011).

(Community Legal Clinics).³⁵ Inevitably, there are some barriers to accessing justice, like geography (location), social relations of place (interaction of residents to help seek), costs (legal services), digital divide (technologies), and shortages in service delivery (lack of diversity in the legal profession).³⁶ Amid the Covid-19 pandemic, this barrier became more evident, specifically to reach procedural justice. Moreover, the actors face the same problem in communicating with justice-seekers like the old days – the court can not hold the session face to face. According to Tom R. Tyler, There are four key procedural justice principles i.e. voice, neutrality, respect and trust.

1. Voice.³⁷ People want to have the opportunity to tell their side of the story in their own words before decisions are made about how to handle the dispute or problem. Having an opportunity to voice their perspective has a positive effect upon people's experience with the legal system irrespective of their outcome, as long as they feel that the authority sincerely considered their arguments before making their decision.

In the context of the Constitutional Court, this first principle relates to the principle of *audi et alteram partem* that all parties must be heard. During a pandemic, listening to both parties does not have to come to the Court but can go through a remote trial.

2. Neutrality.³⁸ People bring their disputes to the court because they view judges as neutral, principled decision makers who make decisions based upon rules and not personal opinions, and who apply legal rules consistently across people and over cases.

In relation to restrictions during a pandemic, neutrality can be seen when the Court provides the widest possible access for the public in cases before the Court. Because, related parties such as the House of Representatives and the President certainly have sophisticated technology when they are asked to provide information in court, while the public does not.

3. Respect.³⁹ Legal authorities, whether police officers, court clerks, or judges, represent the state and communicate important messages to people about their status in society. Respect for people and their rights affirm to people that they are viewed as important and valuable, and are included within the rights and protections that form one aspect of the connection that people have to government and law. People want to feel that when they have concerns and problems both they and their problems will be taken seriously by the legal system. The provision of judicial technology facilities that are easily accessible to the community shows "respect" from the Court toward the rights of the community. Because people come to the Court to seek justice, and the Court must not prevent it.

4. Trust.⁴⁰ Studies of legal and political authorities consistently show that the central attribute that influences public evaluations of legal authorities is an assessment of the character of the decision maker. The key elements in this

35 OECD, "Leveraging the SDGs for inclusive Growth: Delivering Access to Justice for All", <https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf>, [accessed 2 February 2023]: 10.

36 OECD (2016), p. 8.

37 Tom R. Tyler, "What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures", *Law & Soc'y Review* 22, 1 (1998), p. 103.

38 *Ibid.*

39 *Ibid.*

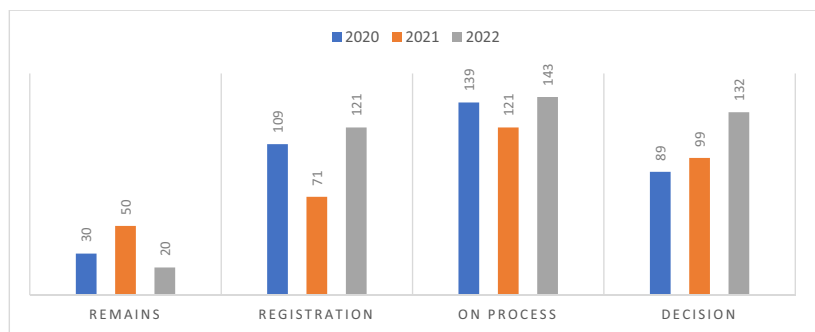
40 *Ibid.*

evaluation involve issues of sincerity and caring. People infer whether they feel that court personnel, such as judges, are listening to and considering their views; are being honest and open about the basis for their actions; are trying to do what is right for everyone involved; and are acting in the interests of the parties, not out of personal prejudices.

It means that Covid-19 brings the urgency to transform the ‘traditional’ way into the ‘modern’ form of the court session. Since the vision of the Indonesian Constitutional Court is already in a ‘modern way’, this situation makes it a shift movement from ‘normal’ to ‘accelerate’. Therefore, the Court differentiates itself into two ecosystems i.e. Judiciary Technology and Digital Transformation. The Judicial Administration System (JAS) increases the Court’s employee effectiveness and makes it easier for the public to access justice i.e. the Question and Answer Service system, and the Contact the Court, which can be accessed through the Court’s website, as well as the application of information and communication technology-based archiving system through the case file management information system (e-Minutasi), case retrieval and case tracing, digital verdict, etc..

In addition, General Administration System (GAS) is created to strengthen public services (internal and external–smartboard mini courtroom, website– www.mkri.id).⁴¹ As a result, the Court received public appreciation for court performance reflected in some received awards – ‘Very Good’ in Public Service, 8th place for the 2020 Budget Performance, ‘Without Exception’ on Financial Statements for 15 times continuously, Public Information Openness, and so on.⁴² At the very least, the Constitutional Court can provide access to justice for people who cannot come directly to the Court. Despite the nature of the Covid-19 pandemic, the Court can still exercise its authority by improving some aspects which bring public appreciation for that matter.

During the Covid-19 pandemic (2020–2022), judicial review session is carried out online as stipulated in Constitutional Court Regulation No. 9 of 2020 as it was changed by No. 2 of 2021 on Judicial Review Procedures. The regulation was made to prevent obstacles to the Court holding a session. The Court carried out its duties virtually to break the chain of Covid-19 spread. The parties involved are only allowed to attend the session via Zoom Meeting application while the Judges are present in the Plenary Court Room with strict health protocols.⁴³



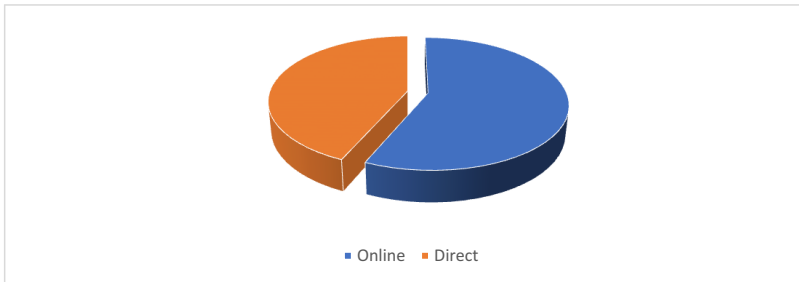
Graph 1 Case Handling
During Covid-19 Pandemic.
Source: Registrar and
Secretariat General of
Indonesian Constitutional
Court.

⁴¹ The Constitutional Court of the Republic of Indonesia, *Annual Report 2021*, (Jakarta: The Constitutional Court of the Republic of Indonesia, 2021), pp. 92–93.

⁴² *Annual Report 2021*, pp. 105–108.

⁴³ See, *Annual Report 2020* and *Annual Report 2021*.

Graph 1 above illustrates the judicial review case handling in 2020–2022. In 2020, there were 139 processed cases. In 2021, there were 121 processed cases. The Decision shows an increasing number from 89 to 99. Hence, there is an increase of 18% (2020–64%, while 2021– 82%) solved cases from the previous year. In 2022, there were 143 processed cases with 132 decisions. The Court elevates its performance to settle each judicial review case. Furthermore, if we look at the trial recapitulation of the 2020 regional head election results, it is known that out of 157 applications, 89 were submitted online, as can be seen in the Graph 2. So it shows that the citizens seeking justice need technology during the pandemic.



Graph 2 The applicant of the 2020 regional head election results.

Source: Registrar and Secretariat General of Indonesian Constitutional Court.

In Constitutional Court context, we may see that civil justice is fulfilled amid the Covid-19 pandemic era through several *landmark decisions*, such as 1) Authorities of Corruption Eradication Commission’s Supervisory Board; 2) Deadline for Validity of Law Number 2 of 2020 and Penalties for Perpetrators of Misuse Handling of Covid-19 Finance, and 3) Condisitonally unconstitutiona of Job Creation Law.

a. Authorities of Corruption Eradication Commission’s Supervisory Board

In Decision Number 70/PUU-XVII/2019, the Court emphasizes the distinctive line for the Supervisory Board of Corruption Eradication Commission in *pro justitia act*, such as wiretapping, rummage, and foreclosure. Corruption Eradication Commission does not have an obligation to ask permission for such activities (wiretapping, rummage, and foreclosure) from the Supervisory Board. Furthermore, this Decision gives a time limit to stop the investigation and prosecution of corruption which can be solved two years after the Notice of Investigation Commencement. Overall, it is contrary to the Article 24 (3) of the 1945 Constitution.

b. Deadline for Validity of Law Number 2 of 2020 and Penalties for Perpetrators of Misuse Handling of Covid-19 Finance

Decision Number 37/PUU-XVIII/2020 gives a time limit for the prevail of Law until President’s announcement to end the Covid-19 pandemic status in Indonesia no later than 2nd (second) year after the law is passed. However, supposing the condition of the Covid-19 pandemic does not end, in that case, the Law still prevails if, before the 3rd year, the budget and the limit of budget deficit to the handling of the Covid-19 pandemic have the approval of the House of Representatives and the consideration of the Regional Representative Council. Furthermore, the cost to handle the Covid-19 pandemic is not a ‘state loss’ as long as exercised with good faith and following the Law. Next, the act of the state administration is not an object of the state administrative court as long as it is related to handling the Covid-19 pandemic and exercised with good faith and following Law. Finally, it is contrary to Article 23(2), 27(1), 28D(1) of the 1945 Constitution.

c. Deletion on Conditional of Job Creation Law

Decision Number 91/PUU-XVIII/2020 is the first decision that granted the request for formal review. In legal considerations, the Court stated that the procedures for forming the Job Creation Law were not based on definite and standard methods but on the systematic formulation of laws. But, then, in the formation of the Job Creation Law, there was a change in the writing of several substances after the joint approval of the DPR and the President. Therefore, the formation is contrary to the principles of forming statutory regulations, so the Court believes that the process for forming Job Creation Law does not comply with the provisions based on the 1945 Constitution, so it must be declared formally flawed.

The Court also explained why the Job Creation Law was declared conditionally unconstitutional. The Court wants to avoid legal uncertainty and the more significant impact that may arise. The Constitutional Court further ordered the Government to suspend all strategic actions or policies with broad implications. It is also not justified to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation. Suppose within 2 (two) years, the legislator cannot complete the revision of the Job Creation Law. In that case, the Job Creation Law shall be declared valid again.

This decision directly restores the constitutional rights of citizens violated by the Job Creation Law.

d. Cancellation of the transitional Article for the management of pension funds from PT Taspen to BPJS

The Court canceled the enactment of Article 57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency (BPJS Law) related to the government's plan to divert the management of pension funds from PT Dana Tabungan and Insurance for Civil Servants (PT TASPEN) to BPJS-Employment no later than 2029. The Court's decision Number 72/PUU-XVII/2019, which was read on September 30, 2021, stated that the two articles were contrary to the 1945 Constitution and did not have binding legal force. This request was submitted by former Deputy Chairman of the Supreme Court, Prof. Mohammad Saleh, along with 14 retired PNS officials and active civil servants. The 15 petitioners are participants of the Pension and Old Age Payment Program at PT Taspen. The rule has raised the potential loss of the applicants' constitutional rights and the uncertainty of obtaining social security guaranteed by the 1945 Constitution.

e. The child's sexual abuse report may now be represented by the guardian.

The Constitutional Court expands the subject of complaints of sexual violence to children through decision No.21/PUU-XIX/2021 states Article 293 Paragraph (2) of the Criminal Code, which regulates the reporting procedures for unconstitutional child abuse cases. Two UKI students requested this case, Leonardo Siahaan and Fransiscus Arian Sinaga. Previously in the norm, reports on the case of sexual abuse of children were a unique offense because victims must act as reporter subjects and cannot be represented. Now, complaints of obscene victims of children can be made by parents, guardians, or their representatives.

Overall, the authors can convey that the Court can still bring forward the justice for citizens in the scheme of a constitutional right. Those decisions above illustrate the effort of judiciary bodies to exercise their authority while having so many restrictions

on daily activities. It is also essential to highlight citizens' justice fulfilment reflected in the form of a constitutional right as it is stipulated in the 1945 Constitution. Indonesian Constitutional Rights have launched 66 icons of citizens' constitutional rights. It can be categorized into three types such as 1) Individual Rights; 2) Collective Rights, and 3) Vulnerable Rights.⁴⁴

Over time, the meaning of fulfilling citizens' justice will continue to change and develop. Amid the Covid-19 pandemic, law and technology play an essential role, seen as two sides of the coin. The law implementation cannot separate the goal of fulfilling justice. Technology fills the gap that cannot be done by law. Court's transformation and acceleration from the old ways to modernization is a must to reach the goal. It cannot stop in a scheme of transformation – digitization, but further into digital acceleration. There is an urgency to bring justice to all as faster as possible. However, the 'faster' way does not mean doing the trial process carelessly. Each aspect should be considered carefully so that all citizens can get justice. In the next section, the challenges of the Digital Acceleration of the Constitutional Court and how to overcome them will be discussed.

5. THE CHALLENGES OF IMPLEMENTING DIGITAL ACCELERATION IN THE CONSTITUTIONAL COURT AND HOW TO SOLVE THE PROBLEMS

During the covid-19 pandemic, technology has played its role in providing society's needs in an easier way and more efficient system. It is undeniable that the development of technology in the law enforcement system also provides better access to justice for all citizens. It will be various challenges at the Court regarding the improvement of court service facilities and constitutional case services based on the results of the Survey on the Public Satisfaction Index for Constitutional Case Services. The constitutional court was ranked 3rd as the best performing state institution during the early part of the pandemic.⁴⁵

At the beginning of the application of ICT in 2007–2009, the toughest problem was the affordability of technology. At that time, the development of technology in Indonesia was still not rapid. Although the Court has collaborated with 33 universities for the provision of video conferences, it requires a very rigid procedure. As a result, the public will certainly be too 'lazy' to deal with the rigid and complicated procedures of filing trials via video conferencing. Hence, the public prefers to come directly to the Constitutional Court. To overcome this problem, the Court requested filing an online case as previously described. The following will discuss the Challenges of Digital Acceleration Implementation at the Constitutional Court and How to Solve them as follows:

⁴⁴ See, Annual Report 2020, p. 88. See also, Zaka Firma Aditya and Sholahuddin Al-fatih, "Indonesian constitutional rights: expressing and purposing opinions on the internet", *The International Journal of Human Rights* 25, 9 (2021), pp. 1395–1419., Mohamad Mova AlAfghani, "Strengths and Limitations of The Indonesian Constitutional Court's "6 Basic Principles" in Resolving Water Conflicts", *Constitutional Review* 9, 1 (2023), pp. 179–200., Heribertus Jaka Triyana, "Conscientious Objection Before the Indonesian Constitutional Court", *Constitutional Review* 8, No. 2 (2022), pp. 323–360., and Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations", *Constitutional Review* 8, No. 1 (2022), pp. 113–150.

⁴⁵ See, Charta Politica Indonesia, *Rilis Survei Nasional Refleksi Akhir Tahun 2021: Kondisi Politik, Ekonomi dan Hukum di Masa Pandemi*, (Jakarta: Charta Politica Indonesia, 2021), p. 21.

Firstly, related to virtual trials. Trials were carried out virtually during the pandemic using Zoom meetings. The problem is often related to network problems in the petitioner's unstable device. As a result, at the time of the trial, there were problems such as lost connections, sounds that were not heard clearly, and images that were not visible. Even so, before the trial, IT officers would check the applicant's network stability and ask the applicant to convey a stable network. For the Court itself, since the beginning, it has collaborated with PT Telkom to provide a super-fast WiFi network.

Another alternative, the petitioner can request trials in the 'workspace area' in other ministries/institutions. In 2021, the Court also began replacing video conference technology with a smartboard and built a mini courtroom in various universities. In the future, the petitioner can use the mini courtroom for free when they want to convey their petition in the trial.

Secondly, due to a policy for working from home, the parties will need help conducting an audience or consultation. It became a common problem at the beginning of pandemic due to Jakarta becoming an epicenter of Covid-19, so restrictions were applied to the citizens. To solve this problem, the Court provides online audience facilities and consulting through www.mkri.id or via cell phone. In addition, all trial processes can be accessed on the Constitutional Court Youtube channel in real-time, so the citizen just clicks their device to access it.

Thirdly, the use of SIMPEL is also not without problems because the socialization provided has not been able to reach all people. Here are some of the problems faced:

1. Lack of socialization

At the beginning of its appearance, the parties still rarely used SIMPEL and case tracking due to the lack of socialization. It is also due to there still being features in SIMPEL that need improvement. In addition, at that time, the court was busy preparing for the preparation of trials for disputes over the results of the presidential and legislative elections. Socialization is usually only for technical guidance participants and when the Court receives public visits. During socialization, the court would introduce the SIMPEL features, and the participants would be engaged directly. Fortunately, the Court made a breakthrough by holding massive socialization exercises. Socialization of the easy use of SIMPEL is usually inserted in almost all Court activities, including when there are speakers, seminars, FGDs, and workshops. As a result, SIMPEL applications became popular and much more used by the public.

2. Bugs and the need for strengthening servers

Sometimes, the SIMPEL application cannot be opened or is blocked by firewall. This, of course, makes the citizens unable to access SIMPEL when needed immediately. To overcome this, the court hires IT professionals to stand by if a problem occurs.

3. The petitioner did not fill in the data properly

Another problem relates to filling in incomplete petitioner data. This has resulted in delays in correspondence between the petitioner and the court, such as submitting copies of files, trial schedules, and copies of decisions. Usually, the 'caller' (*juru panggil*) will contact the petitioner to correct his/her data in SIMPEL.

About the dissemination of decisions, the Court, together with the assistance of the National Cyber and Crypto Agency (*Badan Siber dan Sandi Negara* or BSSN), makes digital signatures for employees, clerks, registrar, and constitutional judges. With

this digital signature, a copy of the decision can be immediately signed online and uploaded to the Court's website in real time, only a few hours after it was pronounced in Trial. In obtaining a copy of this decision, the petitioner only needs to download the decision on the website because the legal force is the same as the original decision. The Petitioners also do not need to ask the Court for their hard files, and of course, it is free.

6. CONCLUSION

The Covid-19 pandemic has devastated all aspects of life but has not made the Constitutional Court give up. On the contrary, this condition is a challenge and momentum for the Court to increase access to justice for justice seekers. It is evidenced by the Court's efforts to innovate in technology to adopt new habits during a pandemic. It is easy for the Courts to adapt to new technology-based routines. It is due to the Court being used to receiving online and offline case requests. Likewise, in conducting trials, the Court has been accustomed to holding trials remotely using video conferencing facilities since 2004. So that, during the Covid-19 pandemic, the Court can still hold trials online by implementing the health protocol to prevent the spread of Covid-19. In addition, the Court is also trying to bring justice seekers closer with a series of conveniences in accessing cases such as the SIMPEL application, case tracking, online hearings, online consultations, online trials via zoom meetings, provision of mini courtrooms and working spaces, and provision of a YouTube channel.

Law and technology play an essential role during the pandemic, seen as two sides of the coin. The law implementation cannot separate the goal of fulfilling justice. Technology fills the gap that cannot be done by law. Court's transformation from the old ways to modernization is necessary to reach the goal. It cannot stop in a transformation scheme – digitization, but further into digital acceleration. In the Constitutional Court context, there is an urgency to bring justice to all which should be done faster. However, the 'faster' way does not mean doing the trial process carelessly. Each aspect should be considered carefully so that all citizens can get justice.

During the pandemic, the Constitutional Court several times issued essential decisions that had a value of justice that the public felt i.e. (1) Authorities of Corruption Eradication Commission's Supervisory Board, (2) Deadline for Validity of Law Number 2 of 2020 and Penalties for Perpetrators of Misuse Handling of Covid-19 Finance, (3) Conditionally Unconstitution of Job Creation Law, (4) Cancellation of the transitional Article for the management of pension funds from PT Taspen to BPJS, and (5) The child's sexual abuse report may now be represented by the guardian.

In the future, there is a possibility of another pandemic. Therefore, the judiciary must be ready when this happens. In particular, the judiciary must utilize ICT to provide justice to justice seekers. Fortunately, the use of ICT in the judiciary has been designed and practiced since the inception of the Constitutional Court, even though the covid-19 pandemic which has exactly triggered the importance of technology in the Court. Thus, the ICT policies, such as online applications via SIMPEL and online trials, are not temporary even though the pandemic is over. Although it should also be realized, the Court must uphold conventional methods of filing cases and conducting trials. In another sense, justice seekers can choose the best way to come to Court, whether directly or via online application.

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COMPETING INTERESTS

The authors have no competing interests to declare.

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