

JURIDICAL REVIEW OF HEALTH PERSONEL PROTECTION AS A LEADING GUARD IN EFFORTS TO ACCELERATE THE HANDLING OF COVID-19: A NARRATIVE REVIEW

By Vera Rimbawani Sushanty

Review Article

JURIDICAL REVIEW OF HEALTH PERSONEL PROTECTION AS A LEADING GUARD IN EFFORTS TO ACCELERATE THE HANDLING OF COVID-19: A NARRATIVE REVIEW

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Abstract

Health workers who are handling patient of SARS-CoV-2 (Severe Acute Respiratory Syndrome Corona Virus 2) or better known as the Coronavirus are legal subjects who carry out their obligations properly at their leader command, ruled accordance with the legal corridors, obtained the law right and protected from positive legal norms. This narrative research aims juridical review for protection the health workers during coronavirus pandemic. Using literature that obtained by looking materials and sources that match the theme and related them. Protection of health workers as the frontline in efforts to accelerate the handling of the coronavirus pandemic. Civil Servants who served during the Covid-19 pandemic will get a promotion one level higher. The incentive budget for medical personnel comes from a budget reallocation that has been set by Mr. President Joko Widodo for 16.63 trillion in 2020. This award is in the form of compensation and for health workers who fail, the government awards "Bintang Jasa Pratama" and "Bintang Jasa Nararya". The government provides protection by issuing various policies to protect health workers as the frontline in efforts to accelerate the handling of coronavirus disease 2019.

Keywords: *Health workers, legal protection, Covid-19.*

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INTRODUCTION

SARS-CoV-2 (Severe Acute Respiratory Syndrome Corona Virus 2) or better known as the Corona virus is a new type of virus that is transmitted to humans. The groups that can be attacked by this virus are all ages, from babies, children, adults and the elderly. It even attacks breastfeeding mothers and pregnant women. The beginning of this virus infection known as Covid-19 was from China, in December 2019. The spread of this virus throughout the world is

very fast, including Indonesia which is only a few months.

The human respiratory system is one that is infected or attacked by this Corona virus. Not a few cases of severe respiratory infections, for example pneumonia. Transmission of this virus can be through saliva splashes (droplets) or droplets of saliva from the respiratory tract. A busy open space or a closed space with limited air circulation can be a medium for distribution. In addition, if we hold our mouth or nose without washing our hands after touching an

object that has been splashed with the saliva of a Covid 19 sufferer and having close contact with a person with Covid 19. Sometimes someone who is infected with this virus does not experience any symptoms (happy hypoxia) or known as People Without Symptoms in Indonesian Language called *Orang Tanpa Gejala (OTG)*. Meanwhile, someone who is infected with symptoms usually has fever, dry cough, runny nose, and sore throat. Severe symptoms include high fever, shortness of breath and chest pain.

Someone whose immune system is weak, the elderly, has a history of congenital diseases, smokers and pregnant women are the groups that are very at risk of contracting it. The ease with which this virus is transmitted has made medical personnel who treat Covid 19 patients a high-risk group for infection. One of the efforts to reduce this risk is to wear Personal Protective Equipment (PPE).

As of May 09, 2021, according to data from Government Sites <https://covid19.go.id/>, positive cases in Indonesia were 1.719.684 recovered 1.568.277 and died 47.012. During the Covid 19 pandemic, seeing the very aggressive spread of this virus, it was the health professionals who fought directly and stood at the forefront. In these conditions, health workers risk and sacrifice their lives in order to protect the community. Based on data from the Indonesian Doctors Association (IDI) up to January 2021, there were 647 health workers who died. Consisting of 289 doctors (16 professors) and 27 dentists (3 professors), 221 nurses, 84 midwives, 11 pharmacists, and 15 medical lab personnel.

This fact is an irony that must be considered and should be guaranteed legal protection from the government. The recognition that every human being has the same rights is a fundamental principle of justice, in addition to the obligations that should be carried out. Legal protection is an effort to protect humans or citizens from the arbitrariness of a ruler who is not in accordance with the law which aims to achieve order and peace. Likewise with health workers who are at

the forefront of the task force to accelerate the handling of Covid-19, as one of the health resources who are obliged to professionally carry out its services. Health workers are legal subjects, so the legal relationship that is created is the relationship between health workers, patients and health facilities. Legal relations always provide rights and obligations for the parties involved. Health workers as legal subjects who have carried out their obligations properly in accordance with the corridor of law have the right to obtain their rights, in this case they receive legal protection from positive legal norms.

Law 1945 Article 28D paragraph 1 states that everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law. Law Number 36 of 2014 concerning Health Workers Article 57 letter a, also states that in carrying out practices, health workers have the right to legal protection as long as they carry out their duties in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures. Therefore, the state has an obligation to respect, protect and fulfill human rights as the bearer of the people's mandate to realize the welfare state.

DEVELOPMENT

The preparation of this study used a normative juridical research type, namely doctrinal research or library research. Also called document study. This research is conducted or aimed at regulations and other materials related to the theme raised. Doctrinal research will be conducted in March 2020 to April 2021. Using literature from 2003 to 2021, including laws and regulations, government regulations, regulations of the minister of health, scientific journals and articles. The research topic in this study is the rules regarding the protection of health workers as the frontline for accelerating the handling of the coronavirus pandemic. The collection of materials, in this case the regulations, is carried out by means of an inventory, classification and systematization. The inventory step is carried

out by collecting related legal materials through libraries. The materials are classified based on the need to analyze the themes presented. The rules that have been collected are described and linked with related material, then presented in a more systematic form by means of an overall and in-depth analysis. In this case, it uses the deductive syllogism analysis method, which is derived from general regulations implemented to produce specific answers.

DISCUSSION

According to Van der Mijn, laws that are directly related to health care include civil, criminal and state administrative law instruments. The definition given by Leenen is that health law is about what is meant by a new branch of law science, namely matters related to health care (*zorg voor de gezondheid*). Health law (Medical) is all legal regulations that directly relate to the provision of health services. And its application to civil relations, administrative law and criminal law. The meaning of regulation here does not only include international guidelines, customary law, jurisprudence law, but science & literature can also be a source of law. Here it can be illustrated that the source of law in health law includes written law. Jurisprudence, and doctrine judging from its object, health law includes all aspects related to health care (*zorg voor de gezondheid*). Thus, it can be imagined that health law is quite broad and complex. Regulations in the field of health law as currently used as a reference in organizing anything related to health problems are Law Number 36 of 2009 concerning Health (Law No. 36 of 2009). Several important matters stipulated in the Health Law are regarding health efforts, health workers, health facilities, medicines and medical devices, including:

1. Health Effort: Any activity that is carried out in an integrated and sustainable manner to maintain and improve the degree of public health in the form of disease prevention, health promotion, and disease treatment by the government and society.

2. Health Personnel: Anyone who devotes himself / herself to the health sector and has knowledge or skills through education in the health sector which for certain types requires the authority to carry out health efforts.
3. Health Facilities: Placing the number of health personnel with equal distribution of health service facilities.
4. Drugs and Medical Devices: With the availability of pharmaceuticals are medicinal ingredients, traditional medicines, and cosmetics and that medical devices are a resource in the health sector.

Legal protection for health workers is often neglected, as if society is apathetic and believes that it is their duty and responsibility as medical personnel. Article 1 letter a of Law Number 4 of 1984 concerning Communicable Disease Outbreaks regulates that an outbreak of an infectious disease, hereinafter referred to as an epidemic, is an outbreak of an infectious disease in a community whose number of sufferers has increased significantly more than the normal situation at a certain time and in a certain area and can wreak havoc. The transmission of Covid-19 is categorized as an epidemic considering that transmission is very fast and the number of sufferers is increasing at certain times and areas. Efforts to control contagious epidemics are carried out by actively involving the community as regulated in Article 5 of the Communicable Disease Outbreak Law, including by:

1. Epidemiological investigations;
2. Examination, treatment, care and isolation of sufferers, including quarantine measures;
3. Prevention and immunity;
4. Destruction of disease causes;
5. Handling of bodies due to the plague;
6. Community outreach; and
7. Other countermeasures.

Given that the Covid-19 outbreak is a pandemic that threatens the health of the world community, optimal and responsive handling efforts are needed to stop its spread. World Health Organization (WHO) provides recommendations for handling and overcoming coronavirus disease. By definition in article 1 of the International Health Regulation 2005 it is explained that quarantine: "... the restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination.". Comprehensively, the implementation of quarantine is a step that must be carried out wisely by prioritizing human rights. This is in accordance with Article 3 of the International Health Regulation 2005, "The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons".

In order to implement these regulations, the state must make and establish health policy regulations. A public policy must be born and presented as a concrete form of the state's role in providing protection. Because the state is essentially present to guarantee protection and certainty. By definition, public policy is "anything a government chooses to do or not to do". In terms of regulatory settings as public policy, legally formally a public policy can be manifested in the form of Laws, Government Regulations, Provincial Government Regulations, City/ Regency Government Regulations, and Mayor/ Regent Decrees.

However, as an effort to optimize the implementation of a policy, a policy must be supported by several aspects. There are at least 4 aspects that can fundamentally affect the existence of the policy. According to George Edward III, there are four aspects which include communication, sources, attitudes and behavior, and the structure of the bureaucracy. This aspect is an integral part of the effort to support the successful implementation of a policy, so that this aspect must be carried out optimally and mutually. If you reflect on

several countries by looking at this pandemic phenomenon, at a practical level, various countries take their respective policies to protect their respective countries. As with China, to be precise in the city of Wuhan, which was first infected with the virus, implemented a policy of lockdown in Wuhan City and after this virus subsided in Wuhan, lockdown was also implemented in the City of Jia to break the chain of its spread. The handling is also carried out by the Italian State, where the country determines the total lockdown policy. In the context of the current pandemic, the state must protect and implement the edicts contained in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia that: "Everyone has the right to live in physical and spiritual prosperity, have a place to live and have a good living environment and healthy and entitled to health services".

As the front guard in handling Covid-19, which is at high risk of infection, health workers should be at the top in terms of obtaining protection guarantees. Referring to the Health Workforce Law Number 36 of 2014 Article 57 states the rights of health workers in carrying out practices, including:

1. Receive legal protection as long as carrying out tasks in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures.
2. Obtain complete and correct information from health service recipients or their families.
3. Receive fees for services.
4. Receive protection for occupational safety and health, treatment in accordance with human dignity, morals, decency and religious values.
5. Get the opportunity to develop his profession.
6. Refuse the wishes of recipients of health services or other parties that are contrary to professional standards, code of ethics, service standards, standard operating procedures, or provisions of laws and regulations.

7. Obtaining other rights in accordance with the provisions of laws and regulations.

Not only do they get legal protection, occupational safety and health, but the government is obliged to provide health service facilities for health workers in carrying out their obligations. This is regulated in Government Regulation Number 47 of 2016 concerning Article 6 of Health Service Facilities which states that the Central Government and Regional Governments are responsible for the availability of health service facilities in order to realize the highest degree of health.

Protection of health workers is also stated in the Decree of the Head of BNPB Number 13A of 2020 dated February 29, 2020 concerning the Extension of the Status of Certain Disaster causes by Outbreaks of Corona Virus in Indonesia. Regulation requires the government to:

1. Support the availability of medical equipment in the field.
2. Ensure the fulfillment of the rights of the community and medical personnel.
3. Transparency of information to the public.
4. Making policies that pay attention to human rights values and democracy.

Law Number 39 of 1999 concerning Human Rights Article 27 paragraph (1) states that every person is recognized as an individual who has the right to demand and receive the same treatment and protection in accordance with their human dignity before the law. Strengthened by Law Number 36 of 2009 concerning Health, Article 21 paragraph (1) of the Law states that health workers have the right to receive compensation and legal protection in carrying out their duties according to their profession. On this basis, the government has the authority to provide protection, legal guarantees, safety guarantees, health insurance and protection for health workers in carrying out their duties in the context of accelerating the handling of Covid-19.

Various efforts have been made by the government to stop the pace of Covid-19. One of them is giving vaccines. Vaccines are prioritized for health workers as the spearhead of handling Covid-19. The following is the complete list of groups that are targeted for vaccines according to the Director General of Disease Prevention and Control (P2P), Ministry of Health:

1. Front guard: Medical officers, contact tracing paramedics, military supports, and legal officers. The number is estimated at 3,497,737 people.
2. Religious or community leaders: Starting from the regional apparatus (sub-district, village, RT/RW), and some economic actors as many as 5,624,106 people.
3. Education personnel: Starting from Kindergarten Teachers, Primary School Teachers, Elementary School Teachers, Senior High School Teachers and College Lecturers. For this group it is estimated that there are 4,361,197 people.
4. Government officials: Central, regional, and legislative as many as 2,305,689 people.
5. BPJS PBI Participants: Contribution Assistance Recipient BPJS Group of 86,622,867 people.
6. Society and economic actors: This group numbered 57,548,500 people.

One of the efforts to tackle infectious diseases is the empowerment of health personnel by the central and local governments. This is in accordance with the Regulation of the Minister of Health Number 84 of 2014 concerning Prevention of Infectious Diseases Article 41 paragraph (3). The following are various efforts to protect health workers during the Covid-19 pandemic:

Education and Training

Training during the emergency period of the Covid-19 disaster aims to provide an explanation of the basic concepts and situation of Covid-19, systematically and continuously observing data and information about the

incidence of disease or health problems and conditions that affect the increase and transmission of diseases or health problems for obtain and provide information to direct control and control measures effectively and efficiently, prevent and control Covid-19 infection, manage specimens and confirm laboratories, clinical management, psychosocial support and mental health PFA (Psychological First Aid). PFA is a short, practical, and flexible psychological intervention in the form of providing assistance to individuals, families, and communities who suffer from a recent crisis, emergency, or disaster, community empowerment risk communication and KIE (Information and Education Communication) in prevention and control of Covid-19 as well as management of drugs and Medical Consumables (BHMP) in handling Covid-19.

Awards

It is a form of the highest respect and deep sorrow for all medical personnel who are at the forefront of efforts to accelerate the handling of Covid-19. This award is in the form of compensation and to health workers who fail, the government conferred the "*Bintang Jasa Pratama*" and "*Bintang Jasa Nararya*".

Promotion

Health workers with the status of civil servants who served during the Covid-19 pandemic will get one level higher. This was disclosed by the Minister of State Apparatus Empowerment and Bureaucratic Reform, Mr. Tjahjo Kumolo.

Accident Insurance

Health workers are part of workers who have the right to work security in the event of a work accident or contracted occupational disease. ⁴ The regulation that regulates this matter is Law Number 40 of 2004 concerning the National Social Security System. Health workers get ⁵ this facility or guarantee if they are already participants in the Social Security Administrator for Health (BPJS) employment.

Minister of Manpower Circular Number M / 8 / HK.04 / V / 2020 concerning Protection of Labor Workers in the Work Accident Security Program in Cases of Work-related Diseases due to Corona Virus Disease 2019 (Covid-19) that workers have never been registered as BPJS employment participants then the employer is obliged to provide work accident insurance if there are workers who suffer from occupational diseases, in this case exposed to the Covid-19 Virus.

Incentives

² Secretary General of the Ministry of Health of the Republic of Indonesia, Mr. drg. Oscar Primadi, MPH said that the government provides IDR 9 trillion incentives for health workers to health workers at both the central and regional levels. The budget allocations include incentives for health workers, compensation for death, cost of vaccination for health workers and the public, patient care, medicines, isolation costs, costs for tracking tracing and treatment, and procurement of medical devices. This is a basic requirement that must be funded by the government. Indonesian President Joko Widodo officially provides incentives to medical personnel who treat patients exposed to corona. Incentives are given based on the calculation of the Ministry of Finance and are given monthly. Incentives are divided into a number of clusters. The decision to give incentives is taken from the results of a meeting that takes place within a few days. The government has carried out the calculations and has determined the nominal amount obtained by medical personnel and doctors. The incentive budget for medical personnel comes from a budget reallocation that has been set by President Joko Widodo at IDR 16.63 trillion in 2020. The government has budgeted assistance for medical personnel dealing with the corona virus from the budget reallocation costs that have been carried out by the government with a budget that has increased to IDR 254 trillion. Specialists and doctors who participate in the utilization of specialist doctors will get IDR 15 million per month,

General practitioners and dentists as well as doctors who take part in special assignments for residents and doctors who take part in the Indonesian doctor internship program at a hospital involved in handling Covid-19 will get IDR 10 million per month, while midwives and nurses will be given IDR 7.5 million per month and other medical personnel including doctors who take part in the internship program for doctors in Indonesia at the public health center involved in the treatment will receive IDR 5 million per month. If medical personnel die while handling a corona positive patient and are exposed to Covid-19, they will receive compensation of IDR 300 million. Providing incentives to doctors, medical personnel and nurses to receive compensation in the form of money for their hard work is at the forefront of dealing with the Corona COVID-19 virus. Paramedics who treat COVID-19 patients are given the announced incentives. The incentive was given as a token of appreciation to the medical team and all individuals involved in handling the corona virus, because the medical team was most at risk of being exposed. The incentive policy is in line with the Minister of Finance Regulation Number S-239 / MK.02 / 2020 concerning Monthly Incentives and Death Compensation for Health Workers Handling Covid-19. The amount of incentives received by each health worker varies according to the workload and responsibilities they carry.

1 *Protection of Occupational Safety and Health (K3)*

According to the ILO and WHO, it is defined as efforts to increase and maintain the highest degree of physical, mental and social welfare of workers in all jobs. In carrying out their practice, health workers have the right to receive protection in the form of occupational safety and health. This provision is in Law Number 36 of 2014 concerning Health Workers Article 57. This rule is in line with Law Number 13 of 2003 concerning Manpower Article 86 which regulates the normative rights of workers to obtain K3 protection. The two formulations of the articles above both provide protection to

get treatment in accordance with religious values, morals, morals and human dignity.

The government issued various policies to protect health workers as the frontline in efforts to accelerate the handling of Covid-19, including education and training, awarding, promotion, occupational accident insurance, incentives, protection of occupational health and safety.

The government needs to issue special regulations on health services and legal protection for health workers, so that it can have a calming psychological effect in carrying out its obligations to treat Covid-19 patients.

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3 DECLARATION OF CONFLICTING INTEREST

No conflict of interest in this study.

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AUTHOR CONTRIBUTION

Vera Rimbawani Sushanty: Contribution in design perform collecting article and analyze the literature.

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