

Rejection of the Implementation of the Covid- 19 Protocol on Patients who Died: A Discourse between Human Rights and Health Law in Indonesia

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Submission date: 06-Mar-2022 02:12AM (UTC+0000)

Submission ID: 1777344363

File name: erican_Journal_of_Multidiciplinary_Research_and_Develompment.pdf (413.67K)

Word count: 4482

Character count: 24165

Rejection of the Implementation of the Covid- 19 Protocol on Patients who Died: A Discourse between Human Rights and Health Law in Indonesia

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ABSTRACT: The refusal to implement the handling of corpses using the COVID-19 health protocol still occurs in Indonesia in general and in Gorontalo Province in particular, even though there are legal regulations that regulate and even strengthen the fatwa of the Indonesian Ulema Council. The research approach method used is a case approach, a conceptual approach and statute approach. In the author's conclusion, there is a guarantee of human rights to the bodies of Covid-19 patients.. Even though there are special medical procedures that are applied, in essence, there is a legal guarantee that all procedures carried out continue to pay attention to religious law so as not to injure the rights of the corpse. Therefore, the refusal to handle the bodies of Covid-19 patients using the Covid-19 funeral health protocol is certainly something that must be intervened so that their dignity is then returned following existing regulatory provisions. From the perspective of human rights law, the actions of the patient's family who refuse their relatives who died due to Covid-19 indications being buried using the Covid-19 health protocol endanger others and increase the potential for the spread of the Covid-19 virus so that it will cause harm to the wider community. The implication is that human rights violations occur. Meanwhile, if examined from the perspective of health law, there are criminal sanctions that are ready to ensnare parties who are not cooperative and do not want to submit to the applicable rules.

Keywords - Health Law, Humanrights, Indonesia Patient Dies, The Covid-19 Health Protocol.

I. INTRODUCTION

The pandemic caused by the Novel coronavirus 2019 (2019-nCoV) or Coronavirus Disease (COVID-19), "which the International Committee on Taxonomy of Viruses refers to as Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2)" [1]. Has brought a paradigm new in Indonesia, namely the implementation of the Corona Virus Disease 2019 Health Protocol in social life which is regulated among others in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/382/2020 concerning Health Protocols for the Community in Places and Facilities. General in the Context of Prevention and Control of Corona Virus Disease 2019 (Covid-19), Then the relation with confirmed COVID-19 patients who died and died patients who are still waiting for the results of the RT-PCR Lab examination, the handling refers to the Decree of the Minister of Health Number HK.01.07/Menkes/413/2020 concerning Guidelines for Prevention and Control of Corona Virus Disease 2019 and Prevention Protocols. Covid-19 Transmission and Community Protection Handling Covid-19 bodies or PDP bodies awaiting RT-PCR lab results. These legal regulations are intended to "anticipate the transmission of the virus from corpses so that the government issues new protocols or funeral procedures during the pandemic" [2]. "The bodies stipulated in this protocol include the bodies of suspects, bodies of COVID-19 patients, and bodies from outside the hospital that meet the criteria for COVID-19" [3]. Since Indonesia consists of a majority Muslim population, the protocol related to the handling of corpses is also legitimized through the fatwa of the Indonesian Ulema Council Number 18 of 2020 concerning Guidelines for the Management of Bodies (Tajhiz Al-Jana'iz) Muslims infected with Covid-19. "These regulations are all a reflection of the function of law that integrates all interests and resources that exist in society, so that order, security and peace can be created in people's lives, where in the eyes of positive law place the law as an instrument to regulate and direct people's lives. towards the desired goals" [4]. It is clear that in determining the direction of the policy during the Covid-19 pandemic government priorities must refer to the health sector, not to other fields such as the economy. This is important in

ensuring the health of citizens because the economy can still be sustained resurrect when the Covid-19 pandemic period is over, but the citizens who become The loss of life is irreversible for sure, because actually in the slogan of the law, "it is also clearly stated that the safety of citizens is the highest law or *Salus Populi Suprema Lex Esto*"[5]. The problem is that even though several regulations regulate health protocols for handling corpses, they are also strengthened with the fatwa of the Indonesian Ulema Council (MUI), the rejection of the application of handling corpses using the Covid-19 health protocol is still happening in Indonesia in general and in Gorontalo Province in particular. It is interesting then to examine this phenomenon from the perspective of human rights and health law. This research is following the title raised, focused on the rejection of the application of handling corpses using the covid-19 health protocol, where this reality in the author's opinion can cause human rights violations for the community at large because it can endanger public entities considering the vicious spread of Covid-19 and these cases are also indicated as acts against the law, especially related to regulations in health law. The presence of legal arrangements related to Human Rights (HAM) where the substance, in this case, is correlated with health law is of course "essentially as a framework for protecting and enforcing the law on human rights where violations of human rights can be subject to criminal sanctions"[6]. The substance of the criminal sanctions are contained in the health law, namely Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases. This regulation certainly further legitimizes the "respect and guarantee the protection and fulfillment of human rights effectively"[7], as mandated by Law Number 39 of 1999 concerning Human Rights which defines Human Rights as "*seperangkathak yang melekat pada hakikat dan keberadaan manusia sebagai makhluk Tuhan Yang Maha Esa dan merupakan anugerah-Nya yang wajib dihormati, dijunjung tinggi dan dilindungi oleh negara, hukum, Pemerintah, dan setiap orang demi kehormatan serta perlindungan harkat dan martabat manusia*". (a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity)

II. METHODS

The research method is "a series of processes that are consistent, systematic and measurable in exploring and deepening a particular phenomenon to produce a series of research processions that can be accounted for based on a parameter of scientific truth"[8] The approach method used in this study is a "case approach through the study of legal cases related to the legal issues faced and also a conceptual approach which makes doctrines and theories in legal science as a basis for building legal arguments to resolve legal cases being studied."[9] This research also uses a statute approach, "namely research conducted by examining all laws and regulations related to the legal issues being handled."[10] The data used in this study were concentrated on the mid-September 2020 to May 2021 data at the Prof. Regional General Hospital. Dr. H. Aloei Saboe, Gorontalo Province.

III. RESULT AND DISCUSSION

Since Covid-19 has spread globally, Indonesia in general and Gorontalo Province in particular, have also not been spared from this virus attack. "On March 2, 2020, for the first time, the Government of Indonesia announced two cases of positive Covid-19 patients in Indonesia"[11]. Since it was confirmed to have entered Indonesia, Based on Worldometers data, "Indonesia, which has not been spared from the spread of this virus, has become the affected country with the highest number of COVID-19 deaths in Asia"[12]. This is also validated from the results of the Indonesian Covid-19 Data Analysis as of May 30, 2021 below

PERKEMBANGAN JUMLAH KASUS AKTIF NASIONAL MINGGUAN

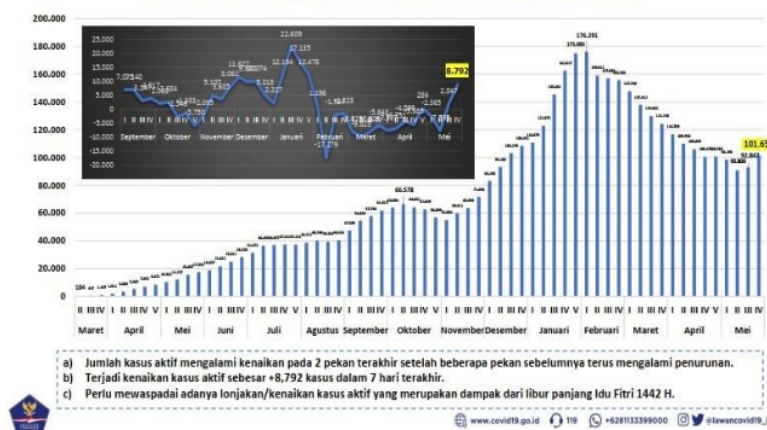


Figure 1. Development of Weekly National Active Cases[13]

On the other hand, "the number of deaths until May 30, 2021 is 50,404 people or is at a percentage of 2.78% which of course is above the world average of only 2.08%"[13].

Based on data from the Covid-19 Task Force, it is clearly seen that the development of cases in Indonesia has shown a significant increase nationally. From March 2020 to early June 2021, specifically for Gorontalo Province, the number of confirmed Covid- 19 patients was 903 people, of which 9 people were being treated until June 1, 2021, 786 people recovered and 108 people died, while for patients Suspect numbered 792 people, being treated until June 1, 2021, totaled 1 person, 711 people recovered and 80 people died. The total number of confirmed and suspected Covid-19 patients was 1,695 people as of June 1, 2021, 1497 people were declared cured, 188 people died and 10 people are being treated.

Table 1.

Covid-19 Patient Care

Patient Status	Amount	Being Treated	Healed	Die
Confirmation	903	9	786	108
Suspect	792	1	711	80
Total	1695	10	1497	188

Source: RSUD Prof. Dr. H. AloeiSaboe Gorontalo

Based on the observations made by the author, from September 2020 to May 2021, 21 patients died who were not buried using the Covid-19 Health Protocol due to refusal by the family of the corpse. On the other hand, during this period, 45 people died who were buried using the Covid-19 Health Protocol. The data matrix is described as follows :

Table 2.

Patient Data Accepts And Rejects The Application Of Health Protocols To The Corpses Of COVID-19 Patients

No	Month	Accepting the Implementation of the Covid-19 Health Protocol on the corpse	Rejecting the Implementation of the Covid-19 Health Protocol on the corpse
1	September 2020		
2	Oktober 2020		2
3	November 2020	3	1
4	Desember 2020	4	9
5	Januari 2021	6	4
6	Februari 2021	17	4
7	Maret 2021	6	
8	April 2021	7	1
9	Mei 2021	3	2
	Total	45	21

Source: RSUD Prof. Dr. H. AloeiSaboe Gorontalo

During the period from September 2020 to May 2021, the percentage of rejection of the implementation of the Covid-19 health protocol at funerals reached 46.6%. The figure is quite high considering that between those who accept and reject it, it is almost balanced. The rise of this rejection is an interesting phenomenon to be observed from the perspective of human rights law and health law, considering that the refusal of funerals according to the Covid-19 health protocol procedure could turn into a bad precedent that has the opportunity triggering public disobedience to official policies for preventing and preventing the pandemic, which has implications for the increasing number of Covid-19 spreads. This is also of course a challenge as well as increasing the workload for the Covid-19 Handling Task Force, as mandated by Article 3 letter c of Presidential Decree No. 7 of 2020 concerning the 2019 Corona Virus Disease Handling Acceleration Task Force, namely increasing anticipation of the

development of the escalation of the spread of COVID-19. ZulkarnainHasibuan pathetic

"The factor of legal awareness and legal compliance has a role in important in the development of law, which means the weaker the level of awareness community law, the weaker the legal order, the stronger it is the stronger the legal awareness, the stronger the law obedience factor. Legal awareness society which in turn will create an atmosphere of law enforcement that good, which can provide a sense of justice, create legal certainty in community and provide benefits to community members"[14].

Referring to Circular Letter Number P- 002/DJ.III/Hk.00.7/03/2020 concerning Appeals and Implementation of Covid-19 Handling Protocols in Public Areas within the Directorate General of Islamic Community Guidance, in Point 4 Letter A regarding the Management of Bodies, the provisions are mention

1. The management of the corpses of Covid-19 patients is carried out by health workers from the Hospital who have been appointed by the Ministry of Health of the Republic of Indonesia;

2. The bodies of Covid-19 patients are covered with a shroud/plastic material (impermeable to water). Can also be covered with wood or other materials that are not easily polluted;

3. A wrapped corpse may not be opened again, except in urgent circumstances such as an autopsy and can only be performed by an officer; and

4. The Corpse is buried no more than 4 hours

If examined from Human Rights Law, Article 16 of the International Covenant on Civil and Political Rights states that "everyone has the right to be recognized as a person before the law wherever he is." Based on the article, Marthin Francisco Manihuruk is of the view

"Everyone's right to be recognized as a person before the law, which means the right of everyone to be recognized by law and protected as a legal subject. People are legal subjects who have rights and obligations. In civil law, a person is a legal subject and is recognized from birth or still in the womb until death. From this we can see that people have the right to be treated well even when they die"[15].

This proper treatment is then applied with the provisions in the contents of the Circular Number P- 002/DJ.III/Hk.00.7/03/2020 concerning Appeals and Implementation of the Covid-19 Handling Protocol in Public Areas within the Directorate General of Islamic Community Guidance. It is also following the provisions contained in the fatwa of the Indonesian Ulema Council Number 18 of 2020 concerning Guidelines for the Management of Corpse (Tajhiz Al- Jana'iz) Muslims infected with Covid-19 were in the second part: legal provisions, number 1 there is an affirmation regarding "Funeral management (tajhiz al- jana'iz) Those who are exposed to COVID-19, especially in bathing and shrouding must be carried out according to medical protocols and carried out by the competent authorities, with due regard to the provisions of the Shari'a. Meanwhile, praying and burying him is done as usual while keeping it from being exposed to COVID-19.

It can be seen that there are guarantees of human rights for the bodies of Covid-19 patients. Even though there are special medical procedures that are applied, in essence there is a guarantee that all procedures carried out continue to pay attention to religious law so as not to injure the rights of the corpse as an individual who was originally alive and is no longer alive. Of course, the presence of these regulations is in line with Thomas Jefferson's view that "human rights are human freedoms that are not granted by the state. This freedom comes from God which is inherent in individual human existence. The government was created to protect the implementation of human rights"[16].

The refusal to handle the bodies of Covid-19 patients using the Covid-19 funeral health protocol is certainly something that must be intervened so that their dignity is then returned following existing regulatory provisions. This is because the corpses of Covid-19 patients and PDP bodies awaiting RT-PCR Lab results that are not handled according to existing protocol procedures, of course, have the potential to endanger other living entities, in this case, humans and this action is contrary to human rights because it has the potential to harm human rights, cause harm to other people and the environment as described in the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 28J paragraph (1) which reads :

(1) "Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state."**)

The meaning contained in Article 28J paragraph (1) of the 1945 Constitution clearly illustrates that humans have the right and are free to exercise their rights but there are still limits that must be obeyed because other people also have the same exclusive rights so that they need to be respected so that as independent individuals Humans should not act arbitrarily, as they please. Humans as social beings must have moral awareness in the life of the nation and state. Where according to Immanuel Kant, "The superiority and supremacy of humans compared to other living beings is in their morals because with morals, humans become perfect humans"[17]. The affirmation related to the limitation of the implementation of these rights and freedoms is stated in Article 28J paragraph (2) of the 1945 Constitution, namely:

(2) "In exercising their rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to

fulfill fair demands following considerations of morals, religious values, security, and public order in a democratic society.”**)

The 1945 Constitution has adopted the universal principle of human rights in which the constitution guarantees the protection and implementation of human rights for every citizen. Therefore, a special policy is needed from the government, both the central government and regional governments to address the widespread rejection of the implementation of the Covid-19 protocol on the bodies of Covid-19 patients and PDP bodies awaiting RT-PCR Lab results because from a human rights perspective, this phenomenon still not justified because it is not following the values of human rights contained in the state constitution. Mahmud Muhsinin emphasized “it is important to understand that human rights are not absolute because they are limited by respect for the freedom/interests of others. Respecting and maintaining the existence of individual rights is as important as respecting and maintaining the rights of the community”[18].

The intervention effort itself in Kutalek et al's view, “that it must optimize communication with the community and involve the community as a policy subject must be carried out”[19]. The Gorontalo Provincial Government itself through the Gorontalo Governor, “instructed all hospitals to prepare a statement of willingness for the patient's family where if confirmed positive for Covid and later died, the patient's family is willing to bury the patient's body using the standard Covid-19 protocol procedure”[20]. A real step from the Government to protect its citizens as a preventive measure to provide awareness to the public about the importance of obeying the Covid-19 health protocol to ensure the protection of human rights, as in the author's view, the legal policy is the embodiment of the principle of impartiality of Article 28D paragraph (1) where “everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law.”**)

On the other hand, the phenomenon of refusal to handle the corpses of Covid-19 patients and PDP bodies awaiting RT-PCR Lab results using the Covid-19 health protocol if observed from a health law perspective is appropriate to pay attention to Article 5 paragraph (1) letter e of the Law Number 4 of 1984 concerning Infectious Disease Outbreaks which contains one of the efforts to overcome the epidemic is the handling of corpses due to the epidemic. Every effort that hinders the handling will be subject to strict sanctions in the form of criminal sanctions as regulated in Article 14 of Law Number 4 of 1984 concerning infectious disease outbreaks, which reads:

a. Whoever deliberately obstructs the implementation of the epidemic control as regulated in this Law, is threatened with imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of Rp. 1,000,000 (one million rupiah).

b. Whoever due to negligence causes the implementation of the epidemic control to be hindered as regulated in this Law, is threatened with imprisonment for a maximum of 6 (six) months and/or a maximum fine of Rp. 500,000,- (five hundred thousand rupiah).

c. The crime as referred to in paragraph (1) is a crime and the crime as referred to in paragraph (2) is a violation

So based on the substance of the article in the regulation regarding this infectious disease outbreak, the act of refusing to handle the bodies of Covid-19 patients and PDP bodies awaiting RT-PCR Lab results using the Covid-19 protocol essentially has consequences for criminal sanctions, where according to Roby Anugrah as adapted by Noveria Devy Irmawanti that from a theoretical point of view, there are 2 views on sentencing, namely

“The retributive view presupposes that punishment is a negative reward for deviant behavior committed by members of the community so that this view sees only as retaliation for mistakes made based on their respective moral responsibilities. While the relative view sees punishment in terms of its benefits or uses, where what is seen is the situation or condition that you want to produce with the imposition of the sentence”[21].

Moving on from the two views regarding the punishment, it is necessary to carry out socialization and education to the public, as mandated by the ASEAN Intergovernmental Commission on Human Rights where it is necessary to “raise public awareness of human rights through education, research and information dissemination”[22], especially the families of patient who have confirmed Covid-19 regarding the impact if they do not heed these standard procedures. Especially in the state constitution, it has been emphasized that all citizens must obey and uphold the law to create order in the social life of the nation and state as stipulated in article 27 of the 1945 Constitution paragraph (1) which reads : “All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions.”

The consequences of this criminal sanction itself are certainly needed to provide a guarantee of legal order in society as well as a deterrent effect so that it becomes a lesson for the general public so that similar cases do not recur.

IV. CONCLUSIONS

There are guarantees of human rights for the bodies of Covid-19 patients. Even though there are special medical procedures that are applied, in essence, there is a legal guarantee that all procedures carried out continue to pay attention to religious law so as not to injure the rights of the corpse. Therefore, the refusal to handle the bodies of Covid-19 patients using the Covid-19 funeral health protocol is certainly something that must be intervened so that their dignity is then returned following existing regulatory provisions. From the perspective of human rights

law, the actions of the patient's family who refuse their relatives who died due to Covid-19 indications being buried using the Covid-19 health protocol endanger others and increase the potential for the spread of the Covid-19 virus so that it will cause harm to the wider community. The implication is that human rights violations occur. Meanwhile, if examined from the perspective of health law, there are criminal sanctions that are ready to ensnare parties who are not cooperative and do not want to submit to the applicable rules.

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