

Government Policy in Managing Covid 19 in Perspective of Human Rights and Social Justice

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Abstract

The state guarantees all residents in Indonesia health. The state also has full responsibility for the fulfilment and provision of health facilities to all its people. It has been almost two years since the COVID-19 pandemic has hit all parts of the world, including Indonesia. The Indonesian government has made various efforts to deal with COVID-19, starting from the implementation of PSBB to emergency PKKM. The government should not need to do the two methods above because the Health Quarantine Law has regulated regional quarantine if an outbreak attacks Indonesia. Healthy living is a right for all Indonesian people who must guarantee the rights of the Indonesian people. It is the state because the state is the holder of full responsibility for its people. Justice is needed in a pandemic situation like today. The government takes the policies so far are still not in line with the interests of the people and always conflict with the people's interests.

Keywords

covid-19; policy; human rights; social justice



I. Introduction

The World Health Organization (from now on abbreviated as WHO) has announced the global pandemic status for coronavirus disease 2019 or COVID-19 on March 11, 2020. In health terms, a pandemic means an outbreak of a disease that attacks many victims simultaneously in various countries. Meanwhile, in the case of COVID-19, the World Health Organization (WHO) has declared this disease a pandemic because all citizens of the world have the potential to be infected with COVID-19. With the stipulation of the global pandemic status, WHO also confirmed that COVID-19 is an international emergency. This means that every hospital and clinic worldwide is advised to be able to prepare themselves to treat patients with the disease even though no patients have been detected yet.

Based on data from The Indonesian COVID-19 Handling Task Force stated that until March 13, 2021, the total number of Covid-19 cases in Indonesia was 1,140,134 people, who recovered as many as 1,231,497 people, and died as many as 38,229 people (Covid-19 Handling Task Force, 2021). The number of people infected with the corona virus in North Sumatra Province in the same period, has reached 25,913. Furthermore, 873 people died from Covid-19, and 2,509 were still sick (actively positive), and 22,531 people were declared cured. (Andrafarm in Pohan, I et al. 2021)

The coronavirus pandemic has resulted in humans having to maintain their immunity so they don't get infected from this virus, take vitamins, avoid crowds, wash their hands frequently, use hand sanitizer, and most importantly, wear masks. The use of masks was initially only used by sick people, and the masks used previously were medical masks. In 2020 WHO issued a recommendation that everyone must use masks, be it medical or non-medical masks or cloth masks. Currently, with many new variants of the virus, Corona people

are advised to use double masks. The delta variant that will occur in 2021 will cause the spread of the virus to be faster and difficult to control. Based on the map of the spread of covid in Indonesia as of July 17, 2021, it shows that:

1. 2,780,803 Confirmed +54,000 Cases
2. 504,915 (18.2%) Active Cases + 24,716 Active Cases
3. 2,204,491 (79.3%) Cured + 28,079 Cases Cured
4. 71.397 (2.6%) Died + 1,205 Cases Died
5. 40,228,811 1st Vaccination + 600,662
6. 15,940,729 2nd Vaccination + 130,630

Healthy living is the most basic right for a person to be able to live everyday life. A person's normal function is to grow and develop, play when a baby reaches school age, learn when he is of school age, work after an adult, and live a healthy life, fostering children and grandchildren when they are old. In addition, health is a human right and a necessary condition for the fulfilment of other internationally recognized rights. The right to health includes the right to a healthy life and work, the right to health services, and special attention to maternal and child health. The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) Article 28 H paragraph (1) affirms that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to get health services.

Getting health insurance is a basic right as a human being. Health is a human right to have the existence and protection of human life. This is in line with the human concept of himself. Human rights are fundamental rights that everyone has. This fundamental right is integrated with the identity of each person. The existence of rights in each person means that he has privileges that allow him to be treated according to his privileges . On December 10, 1948, a Universal Declaration of Human Rights was born. In Indonesia is better known as the Universal Declaration of Human Rights. This declaration contains the principles of freedom, equality, ownership of property, rights in marriage, education, work rights and freedom of religion.

The emergence of a political response and appreciation of the international community towards promoting human rights is evidence of an intelligent form of political accommodation. The Universal Declaration of Human Rights is the pinnacle of the conceptualization of universal human rights. As a human being, the right to life is guaranteed in Article 28A of the 1945 Constitution (UU 1945), which reads: "Everyone has the right to live and has the right to defend his life and life."

The Indonesian government has determined the status of the Covid 19 virus as an infectious disease that causes a public health emergency in Presidential Decree No. 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid 19) Public Health Emergency. The spike in the number of Covid 19 patients continues to rise, and the capacity of hospitals to accommodate Covid 19 patients is no longer able to accommodate patients. Many health workers are overwhelmed and fall. The handling of Covid 19 carried out by the Indonesian government has not been fully effective. The death rate is increasing in line with the unemployment rate, which impacts the current covid-19 pandemic. Indonesia already has Law Number 6 of 2018 concerning Health Quarantine (hereinafter referred to as the Health Quarantine Law) that what is meant by health quarantine is an effort to prevent and prevent the entry or exit of diseases and/or public health risk factors that have the potential to cause public health emergencies.

Public health emergency is an extraordinary public health event marked by the spread of infectious diseases and events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food that poses a health hazard and can spread across regions or regions. Article 4 of the Health Quarantine Law mandates that the Central Government and Local Governments are responsible for protecting public health from diseases and public health risk factors that can cause public health emergencies through the implementation of health quarantine. Article 52 of the Health Quarantine Act is as follows:

- 1) During the implementation of home quarantine, basic living necessities for people and animal feed that are in-home quarantine are the responsibility of the central government.
- 2) The responsibility of the central government in implementing home quarantine, as referred to in paragraph (1), is carried out by involving the regional government and related parties.

The Health Quarantine Act has become a guideline for the government in implementing and realizing health which is a basic right for its citizens. The basic rights of these citizens must be carried out with the principle of justice that prioritizes the interests of the Indonesian people. Human rights have the existence and protection of human life, which is in line with the human conceptualization of himself. Therefore, it means that the optimization of the reformulation of strategic thinking on the protection of basic human rights continues to develop.

HAM are part of basic human rights. Fundamental rights are integrated with human identity. The existence of a right on a person means that he has a "privilege" that opens the possibility for him to be treated according to his "privilege". Also, an obligation on a person means that an attitude is required from him, which corresponds to the "privilege" that is in the other person. The health and welfare of a person is part of the rights of citizens, which are protected by the constitution. This COVID-19 pandemic must be resolved with a human rights and social justice approach. There is no conflict of interest between government sectors and can be controlled effectively. This Covid-19 has harmed many people and sectors ranging from the education sector, the trade sector and especially the health sector. The government is the main centre in handling the COVID-19 pandemic, which is also happening in Indonesia. The policies taken must accommodate all sectors to create social justice for all Indonesian people.

II. Review of Literature

The Covid-19 pandemic, which has been going on for more than a year, is certainly a challenge for the government in handling. Although the government, in an effort to administer the state, must be within the existing legal corridor, the government cannot act without having the authority. The authority in question is usually contained in the provisions of the legislation, which refers to Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation. At the theoretical level, the authority of the laws and regulations is referred to as bound authority (*gebonden bevoeg*). According to Ten Berge, as quoted by Hadjon, free authority is divided into two categories: freedom of wisdom (*beleidsvrijheid*) and freedom to judge (*beoordelingsvrijheid*). The difference between the two powers is that the freedom of policy aims to decide independently, while the freedom of judgment interprets the norms that are disguised (*verge norms*).

According to Hadjon, the policy regulation aims to "show out a written policy" and function as part of the operations and implementation of government tasks. At a dogmatic level, the use of policy freedom is regulated in the provisions of Article 22 paragraphs (1) and (2) of the Government Administration Law which stipulates that:

- 1) Discretion can only be exercised by authorized government officials;

- 2) Every use of the discretion of government officials aims to:
- a) Streamlining the administration of government;
 - b) Filling legal voids;
 - c) Provide legal certainty; and
 - d) Overcoming government stagnation in certain circumstances for the benefit and public interest.

The policy (beleidsregel) is associated with the Covid 19 pandemic, so point b in the important sense that policy regulations are appropriate to state that policy regulations are necessary instruments in the administration of government during a pandemic. With

Presidential Decree Number 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 Public Health Emergency (hereinafter referred to as the Covid 19 Presidential Decree), the government has declared the Covid 19 pandemic that took place in Indonesia as an emergency, a sign that there must be extra efforts in government administration both at the center as well as area. Demanding the government's efforts to deal with Covid 19, such as the issuance of Government Regulation Number 21 of 2020 concerning large-scale social restrictions in order to accelerate the handling of Corona Virus Disease 2019 (Covid 19) on March 31, 2020.

Law No. 4 of 1984 concerning Infectious Disease Outbreaks (hereinafter referred to as the Infectious Disease Outbreak Act) explains that an infectious disease outbreak, hereinafter referred to as an epidemic, is an outbreak of an infectious disease in a community where the number of sufferers has significantly increased beyond the usual situation. at certain times and areas and can cause havoc. Efforts to control the epidemic Article 5 (1) of the Law on Outbreaks of Infectious Diseases, namely:

- a. Epidemiological investigations;
- b. Examination, treatment, care, and isolation of patients, including quarantine measures;
- c. Prevention and immunity;
- d. extermination of the cause of the disease;
- e. Handling of corpses due to epidemics;
- f. Counseling to the community;
- g. Other countermeasures.

Article 10 of the Infectious Disease Outbreak Law, the government is responsible for carrying out efforts to control the epidemic as referred to in Article 5 paragraph (1) of the Infectious Disease Outbreak Law. Law of the Republic of Indonesia Number 11 of 2009 concerning Social Welfare (hereinafter referred to as the Law on Social Welfare) in Article 4 of the State is responsible for the implementation of social welfare. The Indonesian government, based on the Disease Outbreak Law, is fully responsible for resolving the epidemic and must continue to be able to prosper the people by guaranteeing all the rights of the Indonesian people, the government is obliged to protect public health in overcoming the Covid 19 outbreak.

III. Discussion

The government has issued many policies that are not in line with the interests of the people. The government has campaigned a lot to stay at home and limit activities that invite many people, the government does not consider that there are still many people who have to work outside the home. So far, the government has not been serious in overcoming the covid-19 pandemic, in 2020, the assistance provided to the community was corrupted by the social minister and his colleagues, this shows that there is a degradation of the morality of the power holders. Assistance provided by the government during a pandemic, with various

names including; Lockdown, Large-Scale Social Restrictions (hereinafter abbreviated as PSBB), and most recently the Imposition of Emergency Community Activity Restrictions (hereinafter referred to as PPKM) issued by the government to avoid the name "quarantine" because in Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency Corona Virus Disease 2019 (Covid 19), then this is in line with the Health Quarantine Law, where the government's actions to carry out PPKM can be referred to as regional quarantine. The following reads the rules or orders of the Health Quarantine Act:

Article 53

1. Regional quarantine is part of the response to public health emergencies.
2. The regional quarantine as referred to in paragraph (1) is carried out to all community members in an area if from the results of laboratory confirmation there has been a spread of disease among community members in the area.

Article 54

1. Health quarantine officials are obliged to provide explanations to the community in the local area before implementing the regional quarantine.
2. Quarantined areas are given a quarantine line and are continuously guarded by health quarantine officials and the state police of the Republic of Indonesia who are outside the quarantine area.
3. Community members who are quarantined are not allowed to enter and exit the quarantine area.
4. During the regional quarantine period, it turns out that one or several members in the area are suffering from an ongoing public health emergency, isolation measures are carried out and immediately referred to a hospital.

Article 55

1. During the regional quarantine, the basic living needs of people and food for livestock that are in the quarantine area are the responsibility of the central government.
2. The responsibility of the central government in implementing the regional quarantine as referred to in paragraph (1) is carried out by involving the regional government and related parties.

The Indonesian government has issued various legal products to suppress the spread of the Covid-19 virus. The government must be more responsive in dealing with the spread of the Covid-19 virus so that the spread of the virus is not more controlled. Policies taken by the government in suppressing the spread of the COVID-19 virus must be based on the general principles of good governance, and these policies must have the value of justice for all Indonesian people. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the state of Indonesia is a state of law. The consequence of the statement as a law places legislation in a central position, especially in running the wheels of government.

Policies have a very important function because policies contain rules that guide all activities carried out by the government. A policy is the basis for government action to enter and regulate the lives of individuals, but it is possible that conflicts will occur when the government exercises its authority. The government is not only active in implementing regulations, but also in efforts to achieve people's welfare. The formation of legislation must take into account the principles of the formation of legislation as regulated in Article 5 and Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation as follows:

Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislation:

- a) The principle of clarity of purpose; Every establishment of laws and regulations must have a clear goal to be achieved.
- b) Institutional principles or appropriate forming officials; each type of Legislation must be made by a state institution or an authorized official forming the Legislation. These laws and regulations can be canceled or null and void if they are made by state institutions or officials who are not authorized.
- c) The principle of conformity between the type, hierarchy, and content of the material; is that in the Formation of Legislations, it must really pay attention to the right content material in accordance with the type and hierarchy of the Legislation.
- d) Principles can be implemented; Every establishment of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically.
- e) The principle of usability and usability; Every statutory regulation is made because it is really needed and useful in regulating the life of society, nation and state.
- f) The principle of clarity of the formulation; Every Legislative Regulation must meet the technical requirements for the preparation of Legislative Regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation.
- g) The principle of openness; in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining, and enacting transparent and open legislation. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations.

Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation:

- a) The principle of protection; Each Content Material of Legislation must serve to provide protection to create public peace.
- b) Humanity principles; Each Content Material of Laws and Regulations must reflect proportionally the protection and respect for human rights as well as the dignity and worth of every citizen and resident of Indonesia.
- c) The principle of nationality; Each Content Material of the Laws and Regulations must reflect the nature and character of the pluralistic Indonesian nation while maintaining the principles of the Unitary State of the Republic of Indonesia.
- d) Family principles; each Content Material of the Laws and Regulations must reflect deliberation to reach consensus in every decision making.
- e) Archipelago principles; Each Content Material of Laws and Regulations always pays attention to the interests of the entire territory of Indonesia and Content Material of Laws and Regulations made in the regions is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
- f) The principle of Bhinneka Tunggal Ika; The content of legislation and regulations must pay attention to the diversity of the population, religion, ethnicity and class, special conditions of the region and culture in the life of society, nation and state.
- g) The principle of justice; is that each Content Material of Laws and Regulations must reflect proportionally justice for every citizen.
- h) The principle of equality of position in law and government; Each Content Material of Laws and Regulations may not contain things that are distinguishable based on background, among others, religion, ethnicity, race, class, gender, or social status.
- i) The principle of order and legal certainty; Each Content Material of Legislation must be able to create order in society through guarantees of legal certainty.

- j) The principle of balance, harmony, and harmony; Each Content Material of Laws and Regulations must reflect balance, harmony, and harmony, between the interests of individuals, society and the interests of the nation and state.

Health care service is the right of every person guaranteed in the 1945 Constitution of the Republic of Indonesia to make efforts to improve the health status of both individuals, groups or society as a whole. In Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it has been stated that "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to health services". In addition to the recognition stated in the 1945 Constitution of the Republic of Indonesia, the right to health is also stated in a number of international conventions, namely:

- a. *Article 25 (1) Universal Declaration of Human Rights*
- b. *Article 12 The International Convenan on Economic, Social and Cultural Rights (ICESCR);*
- c. *Article 35 Charter of Fundamental Right of The European.*

The provision of the right to health services in Article 28 H of the 1945 Constitution of the Republic of Indonesia and Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights, means that the right to health services is a human right that has received recognition from state and must be implemented by the government as an effort to fulfill these human rights.

Based on this regulation, the right of citizens to obtain health services is a form of social rights in fundamental rights, this is in accordance with the opinion of Philipus M Hadjon that: natural rights and human rights that are converted into legal rights are called fundamental rights. The essence of social rights is rights to receive. The right to obtain health has been regulated in the Indonesian constitution and the state has full responsibility for health services and guarantees for the health of its citizens. During this COVID-19 pandemic, the state must be present in the community to provide solutions through policies that favor the people.

Indonesia is a country that has a state foundation of Pancasila, which is a norm or principle that guides and guides the 1945 Constitution of the Republic of Indonesia, other laws and regulations. Because Pancasila as a fundamental norm in which the rules it makes must reflect tiered norms, it must not conflict between lower norms and higher norms. Policies made by the government must show the principles contained in Pancasila, the principle of divinity, the principle of humanity, the principle of unity, the principle of democracy and the principle of justice. The policies made must reflect human values and social justice so that the handling of COVID-19 is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

IV. Conclusion

Indonesia already has a Regional Quarantine Law which regulates regional quarantine in the event of a disease outbreak in Indonesia, as is currently happening in all parts of the world, including in Indonesia there is also a COVID-19 pandemic. The Regional Quarantine Law should be used by the government to ensure the welfare of its people during the COVID-19 pandemic. The government has never carried out a complete regional quarantine, only changed the name from PSBB to emergency PPKM, campaigning at home, so many workers were laid off. The government has never fully met the needs of its people, the community is always confronted with their needs and the health workers are overwhelmed because of the uncontrolled Covid-19 outbreak. Policies made by the government never pay attention to the

context of human rights and there is no value of social justice for the community, so that the pandemic is out of control, health workers are overwhelmed and the community is getting worse when a policy is made that is not integrated with one another.

The government must use the Territorial Quarantine Law and fully guarantee the needs of people's lives. There must be integration between institutions and the government, the provincial government and local governments must be bound to each other in carrying out efforts to overcome COVID-19.

References

- El Muhtaj, Majda. (2013). Dimensi-Dimensi HAM Mengurai Hak Ekonomi, Sosial, dan Budaya, Rajagrafindo Persada, Jakarta.
<https://covid19.go.id>
<https://www.jawapos.com/opini/04/04/2020/isolasi-sosial-di-ruang-metrosapiens/pada>
Keputusan Presiden Nomor 11 Tahun 2020 Tentang Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (Covid 19).
- M.Hadjon, Philipus. (1993). Pengantar Hukum Administrasi Indonesia, Cetakan ke II, Yogyakarta, Gadjah Mada University Press.
- Pohan, I et al. (2021). The Role of Bhabinkamtibmas in Efforts to Press the Spread of the Virus Covid-19. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 3945-3953.
- Pudjiastutik, Lilik. (2013). Prinsip Hukum Pengaturan Perizinan Kefarmasian, Disertasi, Fakultas Hukum Airlangga, Surabaya.
- Rosadi Ootong dan Andi Desman. (2013). Studi Politik Hukum, Thafa Media, Yogyakarta.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 4 Tahun 1984 tentang Wabah Penyakit Menular. Lembaran Negara Republik Indonesia Tahun 1984 Nomor 20, Tambahan Lembaran Negara Republik Indonesia Nomor 3273.
- Undang-Undang Nomor 11 Tahun 2005 tentang Pengesahan Konvenan Internasional Tentang Hak-Hak Ekonomi, Sosial Dan Budaya.
- Undang-Undang Republik Indonesia Nomor 11 Tahun 2009 tentang Kesejahteraan Sosial. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 12, Tambahan Lembaran Negara Republik Indonesia Nomor 4967.
- Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82 dan Tambahan Lembaran Negara Republik Indonesia Nomor 5234.
- Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan. Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292 dan Tambahan Lembaran Negara Republik Indonesia Nomor 5601.
- Undang-Undang Nomor 6 Tahun 2018 tentang Kekarantinaan Kesehatan. Lembaran Negara Republik Indonesia Tahun 2018 Nomor 128, Tambahan Lembaran Negara Republik Indonesia Nomor 6236.