

The Vaccination Policy Dilemma: Between Government Responsibility and the Rights of Citizens

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ABSTRACT

The effort to restructure people's lives in this epidemic era has focused on public health conditions. Therefore, mass vaccines were enacted as an effort to handling Covid 19. The obligation for vaccines has been announced several times, referring to Law No. 6 of 2018 and most recently is The Presidential Regulation No. 14 of 2021. However, these obligations are not in line with Law No. 36 of 2009, Article 9, which states that every person has the right to independently determine health services for themselves, which means that every individual has the right to choose whether to be vaccinated or not. Many reasons to refuse vaccines have been delivered, such as anxiety about the impact, religious factors about halal or haram, and distrust of policymakers. However, the regulations imposed on the community are an effort for the benefit of the community. This effort is based on an understanding of the condition of knowledge, culture, and community comfort. The analysis method has been used in this research was legal research, a study of literature, and self-experience. Based on the results of legal research, the study of literature, and self-experience with data collection from various constitutions, presidential regulations, ministerial regulations of health and governor regulations related to vaccines and health, it can be explained that vaccines in the current pandemic era need to be done by every citizen with full of awareness without coercion, moreover criminal threat.

Keywords: *Restructuring, Vaccine Obligations, Citizen Rights, Regulation Health.*

1. INTRODUCTION

Indonesia has experienced Covid-19 since March 2020. Based on data from the Covid-19 Task Force on April 25, 2021, the total Covid-19 cases in Indonesia have reached 1.65 million people, and the total number of patients who have died after contracting Covid-19 are 44,771 peoples (<https://covid19.go.id/>).

The Indonesian government has implemented various policies to prevent the spread of Covid-19 from becoming more widespread while ensuring economic stability is maintained. Among them is the Decree of the Minister of Health of the Republic of Indonesia Number: HK.01.07/Menkes/382/2020 concerning Health Protocols for Communities in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease 2019 (Covid-19) [1]. The policy explains that the community must make changes to their lifestyle with the order and adaptation of new habits (new normal) in order to live productively and avoid the transmission of Covid-19. Some of these adaptations include wearing a mask when going out of the house or interacting with other people, cleaning your hands regularly with water or hand sanitizer, keeping your distance when interacting, and increasing the body's power by adopting a clean and balanced diet lifestyle. This policy was followed by other policies, including the Enactment of Restrictions on Micro-

based Community Activities, which had been extended several times.

The effort to stop the spread of Covid-19, which will be a mainstay, of course, is the mass vaccine program is currently still ongoing until all Indonesian citizens get the vaccine. Efforts that are considered effective in reducing this pandemic are not without obstacles because there are some people who refuse to be vaccinated for various reasons.

Researchers conducted a preliminary study by interviewing 20 closest people who refused to be vaccinated for various reasons such as anxiety about the impact, religious factors, namely halal or haram, and distrust of policymakers; even the latest one stated that vaccines are the right of every individual. This is not just a perception or opinion but is protected by Law No. 36 of 2009 article 5, paragraph 3, which states, "Every person has the right to independently and responsibly determine his own service for him" [1]. In addition, the preliminary study carried out received a similar answer stating that vaccines are a way for business people, WHO, and pharmaceutical entrepreneurs to seek profits due to the global crisis.

(<https://www.gatra.com/detail/news/507260/milenial/dua-teori-konspirasi-vaksin-ini-paling-dipercaya-warganet>)

Rejection after rejection is a challenge for the government in the success of administering mass vaccines in Indonesia. Therefore, the government, through Presidential Regulation no. 14 of 2021 concerning Vaccines Procurement and Vaccine Administration, article 5, paragraph 2 stipulates, "Everyone who is designated as a vaccine recipient target based on data collection is obliged to take part in the Covid-19 vaccination [2]." This is further reinforced by the provision of Article 5, Paragraph 4, which states that everyone who has been assigned and does not participate in the vaccine can be subject to administrative sanctions, even legal experts Prof. Edward Oemar Syarief, who is currently Deputy Minister of Law and Human Rights, considers that there are criminal sanctions for citizens who refuse to be vaccinated in an era of contagious plague situations like today. Regarding the sanctions, he referred to article 9 in conjunction with article 93 of Law No. 6 of 2018.

Disagreement based on the law becomes a dilemma and complicated things that must be discussed to find out the right policy in administering vaccines to the public as an effort to cope with the Covid-19 pandemic.

2. RESEARCH METHOD

This research is legal research. The type of research is doctrinal research. Doctrinal research is described as a research method that is often considered as "normal judicial research. The term doctrine comes from Latin and means "to instruct, read, or understand." Doctrinal research is a study of constitutional principles, i.e., "It inquires about the rule on a specific subject." It's all about examining legal theory and how it's been formed and implemented [3]. The approach used in this research is the conceptual approach and statute approach related to handling the Covid-19 pandemic.

The collection of legal materials, both primary legal materials (statutory regulations and their treatises) and secondary legal materials (books, journals, and articles), is obtained through library research. All existing legal materials are selected, described, and analyzed, and then linked to the legislation and then formulated systematically according to each subject. After all legal materials are organized and classified, then an interpretation method is carried out to examine the problem in this research. The method of interpretation in this study uses the method of grammatical interpretation, the method of systematic interpretation, the method of historical interpretation, and the method of sociological interpretation.

Research on Vaccine Obligations between Government Responsibilities and Citizen Rights is also a type of literature study. Research in Literature Studies is research conducted by researchers by collecting a number of books, magazines related to research issues and objectives.

The nature of the research that used in this writing is descriptive-analytical. What is meant by descriptive-analytical here is a method used to describe a condition or

situation that is happening. Data Source that used in this research are classified into two materials, i.e.:

a. Primary Legal Materials

Primary legal material is data obtained by conducting literature studies or literature studies, obtained by taking data from the Law, regulations related to the title of writing, namely: Health Law, Plague Law, Health Quarantine Law, Presidential Regulation and Regional Regulations on Vaccine Administration.

b. Secondary Legal Materials

Secondary legal materials are materials that provide an explanation of primary legal materials, whether in the form of legal journals, books on legal science, legal reports, and printed and electronic media, as well as opinions of legal experts.

This research also using the self-experience method. The researchers' personal experience and discussions with other people are used to support data from primary legal materials and secondary legal materials. This research was carried out starting from April 21, 2021, until the latest development on May 28, 2021.

3. FINDING AND DISCUSSION

A. Reviewed from Law

The first law regulating pandemics, infectious diseases, or epidemics, including the latest Covid-19 case, is Law No. 14 of 1984, which was signed by the President at that time, namely Suharto. The law aims to protect the population from plagues as early as possible in order to increase the community's ability to live healthily. This is stated in article 2.

Law No. 14 of 1984 also describes the types of diseases that can cause epidemics, prevention efforts, and rights and obligations [4]. Before discussing rights and obligations, it is necessary to pay close attention to the efforts to overcome the epidemic, which is stipulated in Article 5, paragraph 1 letter c, namely prevention and immunization, which includes the mass vaccination program. Furthermore, tackling the epidemic is the responsibility of the government as stipulated in Article 10 of Law No. 14 of 1984. Thus, the government's implementation of epidemic control includes criminal provisions to discipline society and succeed in overcoming the epidemic, one of which is the mass vaccination program.

Therefore, this describes that Law no. 14 of 1984 concerning Outbreak Control imposes criminal sanctions on people or residents who obstruct the implementation of epidemic control, one of which is the mass vaccine program. With the implicit imposition of criminal sanctions, it can also be said that the mass vaccine program as a form of epidemic control implemented by the government is mandatory to be followed.

Another law that regulates health but is closely related to

the administration of vaccines is Law No. 36 of 2009 concerning Health. In accordance with article 2, health development is carried out on the basis of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination, and religious norms. Then continue in article 3, Health development aims to increase awareness, willingness, and ability to live healthy for everyone so that the highest degree of public health can be realized, as an investment for the development of socially and economically productive human resources [1].

More specifically related to vaccines, Article 5, Paragraph 3 of Law 36/2009 states, "Everyone has the right to independently and be responsible for determining their own health services for themselves." The regulation states that vaccination is a person's choice. A person is free to pick his choice of treatment, including whether to use the vaccine or not.

This law has become a guideline against some people who refuse to be vaccinated by force, especially with the threat of punishment, and some legal experts have also put forward this law as a limitation for the government to uphold citizens' rights in relation to determining health services.

In addition, what is important to pay attention to is the sound in Article 14, paragraph 1, which states: The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of health efforts that are evenly distributed and affordable to the community. This responsibility and authority indicate the need for the government to impose steps in the form of socialization and appeals rather than immediately imposing mandatory vaccine status and threatening sanctions, including criminal threats for those who do not want to be vaccinated [5].

Then there is Law No. 6 of 2018 concerning Health Quarantine. Health Quarantine is an effort to prevent and prevent the exit or entry of diseases and/or public health risk factors that have the potential to cause a public health emergency, in accordance with the provisions of Article 1 paragraph (1) [6].

In Article 3, the implementation of Health Quarantine aims to:

- 1) Protect the public from diseases and/or Public Health Risk Factors that have the potential to cause a Public Health Emergency;
- 2) Prevent and ward off disease and/or Public Health Risk Factors that have the potential to cause a Public Health Emergency;
- 3) increasing national resilience in the field of public health; and
- 4) provide protection and legal certainty for the public and health workers.

Chapter III of the Health Quarantine Law explains the

rights and obligations, which are as follows;

Article 7, Everyone has the right to receive equal treatment in the administration of Health Quarantine.

Article 8, Everyone has the right to basic health services according to medical needs, food needs, and other daily needs during quarantine.

Article 9, (1) Everyone is obliged to comply with the implementation of Health Quarantine. (2) Everyone is obliged to participate in the implementation of Health Quarantine.

The consequences of a violation in the Health Quarantine are regulated in the criminal provisions in Chapter XIII, Article 93, which states, "Everyone who does not comply with the implementation of Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of Health Quarantine so causing a Public Health Emergency to be sentenced to imprisonment of a maximum of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs).

In addition, President Joko Widodo, through a Presidential Regulation, regulates the administration of vaccines through Presidential Decree No. 14 of 2021 concerning the procurement of vaccines and the implementation of vaccinations in the context of overcoming the pandemic coronavirus disease (Covid-19). In relation to mandatory vaccine status, in Presidential Regulation No. 14 of 2021, it is explicitly stated in article 13 A, paragraph 2, which states that every person who has been designated as a target recipient of the Covid-19 vaccine based on the data collection as referred to in paragraph (1) is obliged to participate in the Covid-19 vaccination. Article 13A, paragraph 4 stipulates that every person who has been designated as a target recipient of the Covid-19 vaccine who does not participate in the Covid-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, in the form of:

- a. Postponement or termination of guarantee granting social or social assistance;
- b. Suspension or termination of administrative services government; and/or
- c. Fine.

Presidential Regulation No. 14 of 2021 is also strengthened by the Decree of the Minister of Health Number HK.01.07/MENKES/12757/2020 concerning Determination of the Target for the Implementation of Corona Virus Disease 2019 (Covid-19) Vaccination and regional regulations such as DKI Jakarta. In DKI Jakarta, through Regional Regulation No. 2 of 2020, Article 30 stated, "Every person who deliberately refuses to undergo Covid-19 treatment and/or vaccination, will be punished with a maximum fine of Rp.5,000,000 [7]."

B. Reviewed From Expert Opinion

Rimawati, a health law expert and lecturer at the Faculty of Law at Gajah Mada University, explained that the application of sanctions for people who refuse vaccination

could not be applied immediately. According to him, it is necessary to further examine the causes or conditions of the community of those who refuse the vaccination [8].

"This is a discussion that really doesn't need to be convoluted. In terms of *lex-generalis* (Covid-19 vaccination) is in the Plague Law. But you have to look at the existing articles clauses. Regarding the Plague Law in Article 5, there are stages or processes for overcoming the epidemic starting from epidemiological investigations to prevention. If identified, one of the countermeasures is prevention and immunity, "explained Rima in the Legal Discussion on the Academy with the theme "Our Right to Be Healthy! Understand the Covid-19 Vaccine Policy."

Then, Airlangga University Epidemiologic Expert Windhu Purnomo asked the government not to categorize people's reluctance to be injected by the Covid-19 vaccine as a rejection that results in sanctions.

According to him, the public's reluctance was caused by a variety of factors, ranging from personal fear to concerns over the safety of vaccines. For this reason, vaccines are a right of citizens that should not be criminalized. Windhu explained, in principle, every citizen has the right to receive health services, while the government has an obligation to fulfill these health service facilities.

Thus, he said, the government should not impose people's rights into an obligation. Instead of using 'threat mode,' Windhu asked the government to boost persuasive and educative efforts.

As written on an online article on hukumonline.com about *program-vaksinasi-kewajiban-atau-sukarela*, legal expert Prof. Edward Oemar Syarif, now a Deputy Minister of Law and Human Rights, has a different view regarding vaccine violations. He considers vaccines to be mandatory, and there are even sanctions for citizens who refuse to be vaccinated in an era of infectious epidemics like today. Regarding the sanctions, he referred to article 9 in conjunction with article 93 of Law No. 6 of 2018.

Even though there are sanctions and even criminal sanctions, Prof. Edward Oemar Syarif further explained that the formulation of these norms is so easy to ensnare health quarantine offenders, but the criminal law is an *ultimum remedium* (last resort). This means that criminal law is used as the last means of law enforcement (after other efforts have been made).

Lecturer in Criminal Law, Faculty of Law, Trisakti University, Abdul Fickar Hadjar, assessed that Wamenkumham's interpretation was excessive. The choice of prevention and treatment of disease is a person's right as regulated by Law No.36 of 2009 on Health. Article 5 paragraph (3) of the Health Law states, "Everyone has the right to independently and responsibly determine their own health services for themselves."

"It is a person's choice of treatment, including whether to use vaccines or not. So, it is not appropriate for vaccination to be compulsory. "

According to Fickar, vaccination is essentially a human effort to prevent the transmission of the Covid-19 outbreak, which should be appreciated. Therefore, the approach should not use a fine/imprisonment sentence instrument but be persuasive.

C. Reviewed from Self-Experience

Researchers also have experience related to the response to the Covid-19 pandemic, especially the issue of vaccines. These experiences are also personal or a result of discussions with the researchers' closest people. The four research team members have the same opinion of the importance of holding a mass vaccine program. Researchers also have concerns about whether the vaccines received are in accordance with clinical trials, whether the vaccines do not contain illegal ingredients, whether the vaccines that will be received really make it immune, not the other way around, which will make our bodies undergo health problems. Over time, these various concerns have been resolved because, to date, there is no effective program to stop the pandemic. The only thing that can be done is to trust the legitimate authorities.

This also applies to several people who refused to get vaccinated. They have the same concerns, but that often happens is they do not trust the authority or competence of the government. Some of them even believe that Covid-19 is a conspiracy to bring down a group of people to benefit other human groups [9]. Apart from that, religious factors also played a role in making people who were invited to the discussion not do vaccines. They firmly believe that the fate of sickness, death, and health is the prerogative of God, and humans must accept it. In addition, there are rumors that the vaccine ingredients contain pork which is haram for Muslims.

D. Reviewed from Religion Point of View

In Islamic teaching, maintaining health (*hifzu al-Nafs*) for oneself and others is one of the five main principles (*al-Dhoruriyat al-Khoms*). Vaccination is a medical measure to prevent the spread of the disease and transmission of Covid-19. Maintaining health, in practice, can be done through preventive measures, where one of the efforts can be made by means of vaccination, including actions that are justified in Islam.

In the law of fiqh, it is stated, "Danger (*al-Dharar*) must be prevented as early as possible." According to the Deputy Head of the Nahdlatul Ulama Higher Education Institute (LPT NU), Dr. Phil. Syafiq Hasyim, MA, basically giving vaccines is a way to maintain health. It is also in accordance with Islamic teaching where we must protect someone's life. The reason is, vaccines are used to protect a person from the threat of disease.

Chairman of the MUI for Fatwa, KH. Asrorun Niam Sholeh said, "Regarding the halal aspect, after a long

discussion of the auditor's explanation, the Fatwa Commission meeting agreed that the Covid-19 vaccine produced by Sinovac Lifescience Co whose certification was submitted by Biofarma is sacred and halal."

Chairman of the MUI for Da'wah and Ukhuwah, KH Muhammad Cholil Nafis, said that cooperation was needed because the Covid-19 pandemic was still ongoing. He said what can be done is to keep reminding the public about the importance of health protocols, even though, according to him, most people already understand it. In addition, he encouraged religious leaders to also assist in disseminating vaccinations. Therefore, it is also necessary that religious themes always touch on the importance of vaccination for a period of one month, three months until the end of the year, to the community so that the public is also aware. The point is to continue encouraging the public about maintaining health and encouraging the community in a conscious and humanist approach.

Alternative Solution

The dilemma in determining vaccine status needs to be found alternative solutions so that the starting point is to provide safety for citizens in times of emergency, and one that is considered effective through the vaccine program can be realized. In addition, the government, which is responsible for the vaccine issue, should be sensitive in dealing with social anxiety and symptoms that occur in society instead of imposing policies with strong administrative sanctions and even criminal penalties.

An alternative solution that can be drawn from a common thread in facing the dilemma between vaccine obligations and citizen rights protected by law is an adjustment to public anxiety and rejection of the vaccine program policy. Things that the government can do based on the mandate of the law relating to the vaccine program and the opinions of health experts and legal experts, as well as recommendations of religious leaders through the Indonesian Council of Ulama, are:

1. If the refusal is due to the belief that vaccination is very dangerous for them, the government is obliged to (a). explain the less risk of side effects than not getting the vaccine, (b) provide up-to-date information, (c) describe any confusion or misperceptions they may have.
2. If the reason is due to cost, then provide assurance and guarantee that all vaccine costs are borne by the government, in other words, free of charge.
3. If the refusal is due to concerns about the halal ingredients of the vaccine, then leaders from the top level, in this case, the Ministry of Religion and the Indonesian Council of Ulama, to religious leaders in the community circle, must help in socializing.

4. CONCLUSION

Based on the explanation above, it can be concluded that vaccination is an effort that is currently considered the most effective in preventing the spread of Covid-19 and is a government program in protecting the community from diseases and/or Public Health Risk factors that have the potential to cause a Public Health Emergency.

Through the analysis of laws relating to health, especially regarding vaccines, opinions of health experts and legal experts, recommendations from religious leaders as well as individual research experiences and discussions with some of the closest people, the researchers concluded that the dilemma of vaccine status between rights and obligations tends to adjust Individual rights, of course, are based on the implementation of the vaccine program completely, without conflict and promoting togetherness in achieving goals. The trend in determining vaccine rights was also strengthened by Article 5, Paragraph 3 of Law 36/2009 states, "Everyone has the right to independently and be responsible for determining their own health services for themselves."

Referring to the research results and conclusions that have been described, the following suggestions can be made:

1. Towards the government, the community needs to be carried out on a massive and comprehensive basis. The government can involve officials from the municipal level, village heads, and the communities' chairpersons in socializing the importance of being vaccinated to prevent the spread of Covid-19. Instead of making regulations on vaccine obligations with the threat of fines and penalties, the socialization of the importance of being vaccinated in a pandemic situation will be more effective in the success of the vaccine program for realizing Public health.
2. Apart from the government, of course, another role that is no less important is religious leaders in bridging the aims and objectives of the government, because often religious leaders from the top level to religious leaders in the villages are more trusted and approved by their opinions than from other groups including the government. Therefore, religious leaders are expected to be more active in voicing the importance of carrying out vaccines and campaigning more broadly that vaccines are lawful and need to be done.
3. For researchers who work at the Ministry of Law and Human Rights, these results can be a basis to participate in socializing the vaccine program to people who are associated with the Ministry of Law and Human Rights, especially the Correctional section, because correctional clients need to be informed about the importance of joining the vaccine program as part of efforts to overcome the pandemic and for the sake of common health. In addition, this theme is also interesting to be studied more deeply by the Legal and Human Rights Research and Development Agency so that the results of the research are much more diverse and in sync with the Directorate of Legislation in preparing or revising Laws related to health, especially vaccines to be more adapted to the community unrest

- and actually become a solution in determining policies.
4. Future researchers who wish to continue this research are expected to pay attention to the following matters, including enriching data from various literary sources and possibly combining it with regulations or laws in other countries. Secondly, it would be better to interview legal and health experts more deeply so that the data obtained would be more real and comprehensive.

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