

The State's Responsibility in Fulfilling Human Rights during the COVID-19 Pandemic

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ABSTRACT

The current COVID-19 pandemic that is hitting Indonesia requires the government to focus more on fulfilling the right to health as a form of fulfilling the human rights of its citizens. In human rights, the state is a duty bearer. The state's obligations take three forms: respect, protect and fulfill. This study aims to determine the extent to which the Indonesian government is responsible for fulfilling public health in the COVID-19 pandemic. This study employed a normative legal research method based on the human rights legal framework. The results showed that restrictions on human rights, especially derogable rights and vaccination policies, were two strategic steps taken by the government in realizing the fulfillment of the right to health as a fundamental right that cannot be separated from other human rights such as the right to life. Furthermore, the responsibility for fulfilling human rights is an obligation of the state and a shared responsibility (the state and its citizens) when the state is in a state of emergency.

Keywords: state authority, state obligations, emergencies, fulfillment of human rights, the COVID-19 pandemic.

1. INTRODUCTION

For more than a year, the Coronavirus (COVID-19) has caused Indonesia and countries in other parts of the world to experience a public health emergency of international concern. The virus, which originated in one of the provinces in China, has a particular characteristic, which is to attack the human respiratory tract. This virus spreads rapidly and tremendously affects almost all aspects of human life. Data from the Ministry of Health shows that the number of people who died from COVID-19 until August 10, 2021, was 110,619, spread across all provinces in Indonesia [1].

The policy of implementing Large-Scale Social Restrictions (PSBB), which refers to Law Number 6 of 2018 concerning Health Quarantine in conjunction with PP 21 of 2020 concerning PSBB in the context of accelerating the handling of COVID-19, shows the government's seriousness in handling this situation. In addition, the

government has also implemented other policies, such as social distancing and the mandatory use of masks in public places, that the President, heads of state institutions, and community leaders have promoted through print and electronic media. These policies are expected to overcome the spread of COVID-19. But, unfortunately, the facts show that the level of public awareness tends to be still low.

In the current pandemic period, every individual needs to pay special attention to their health since it is the basis for recognizing the degree of humanity. Without health, an individual becomes conditionally unequal. Without health, an individual will not be able to obtain his other rights. An unhealthy individual will automatically be deprived of his right to life, unable to get and live a decent job, or enjoy his rights to associate, assemble, express his opinion, and not gain access to education. In short, he

would not be able to enjoy life as a human being fully.

The primary basis for the government's obligation to protect human rights is the democratic principle that the government is entrusted with the power to protect the rights of citizens. Moreover, the welfare state as a modern state concept has given the government greater power to act [2]. This power is solely to promote and achieve the fulfillment of human rights. The government no longer only ensures that no one's rights are violated, but they must also strive to fulfill these rights [2]. It also applies to individual rights to health, whose fulfillment is also an obligation of the government.

The guarantee of the right to health has been recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights Article 25 of the UDHR, which states [3]: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including foods, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control; (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Meanwhile, in the Covenant on Economic, Social, and Cultural Rights, it is stated in Article 12 [4]: (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment, and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to

all medical service and medical attention in the event of sickness.

The 1945 Constitution Article 28I paragraph (4) states that the protection, advancement, upholding, and fulfillment of human rights are the state's responsibility, especially the government. This government obligation is also confirmed in Article 8 of the Human Rights Law no. 39 of 1999. In the health sector, Health Law no. 36 of 2009 Chapter IV describes the government's responsibility in fulfilling the right to health.

The government's normative obligations in this pandemic have finally led the government to implement several provisions and policies to overcome the spread of the COVID-19 virus and as a fulfillment of public health rights.

This article will discuss the steps taken by Indonesia as a country and an obligation holder in fulfilling the human rights of its citizens during the COVID-19 pandemic. Furthermore, this article aims to determine to what extent Indonesia, in this context, the government, is responsible for fulfilling public health rights in the COVID-19 pandemic.

2. RESEARCH METHOD

This type of research is normative legal research based on the human rights legal framework. The research material employed is literature which is commonly called secondary data [5]. Secondary data can be obtained from legal materials consisting of (1) primary legal materials or authoritative legal materials [6], which are the provisions of human rights law contained in the International Covenant on Economic, Social and Cultural Rights, the 1945 Constitution, the Human Rights Law, the Health Law, and general legal principles; (2) secondary legal materials, which are materials that provide an explanation of primary legal materials, such as the opinions of competent experts published in scientific journals, books, and related documents. Data obtained through document and library studies are classified and systematized to facilitate data analysis and description of research results. Classification and systematization are carried out to sort out

research materials such as legal provisions (*das Sollen*) and facts (*das Sein*) regarding the limitations and provisions of human rights law. The discussion of the relevant facts (*das Sein*) and legal provisions (*das Sollen*) is carried out by referring to the legal interpretation method applicable in human rights law. The classification and systematization are carried out by considering the research problems and the related variables, namely: (1) human rights restrictions imposed by the government in the COVID-19 pandemic situation; (2) the extent to which the state or government can limit these human rights.

The data that has been classified and systematized is then interpreted and evaluated. These two steps were taken to explain the correlation between variables and their alignment with the problem formulation. The interpretation and evaluation are intended to examine the government's rules and implementation of human rights restrictions as the state's responsibility in fulfilling the right to health in the COVID-19 pandemic situation through the deduction method.

The results of the interpretation and evaluation of the research materials are then prescribed. In this study, the prescription is intended to clarify the relevant context of the situation, the framework of human rights law, and general principles in human rights law. The prescriptions presented take into account the principles and values of justice, certainty, and expediency.

3. FINDINGS AND DISCUSSION

In human rights law, the state or government is a duty bearer. The state's obligations take three forms: respect, protect, and fulfill. The obligation to respect is the state's obligation to refrain from intervening, except for legitimate laws. The obligation to fulfill is the obligation of the state to take legislative, administrative, judicial, and practical steps, which are necessary to ensure the implementation of human rights. Finally, the state's obligation to protect is to protect rights against violations committed by the state and against violations or actions taken by entities or

other (non-state) parties that will interfere with the protection of these rights [7].

Currently, Indonesia is in a state of health emergency due to the COVID-19 pandemic, both de facto and de jure. De facto, it is marked by the infection of millions of people by COVID-19 to death. Data on the distribution of COVID-19 globally as of August 10, 2021, in 223 countries shows that 203,295,170 people have been confirmed positive, of which 4,303,515 have died [8]. De jure, it was marked by the enactment of several legal provisions related to the emergency of the COVID-19 pandemic, including: (1) Presidential Decree No. 11/2020 concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency, stipulated by President Joko Widodo in Jakarta on March 31, 2020; (2) Presidential Decree No. 12/2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19); (3) Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Stability of Financial Systems for the Management of Corona Virus Disease 2019 (COVID-19) and/or Encounter the Threat to National Economy and/or Stability of Financial Systems; (4) Law no. 6/2018 concerning Health Quarantine. Furthermore, the World Health Organization (WHO) has declared COVID-19 a global pandemic.

The steps taken by Indonesia as a duty bearer to fulfill the human rights of its citizens during the health emergency due to the COVID-19 virus will be explained in more detail in this discussion.

a. State Authority in Emergencies

An emergency is a situation subject to exceptions whose circumstances cannot be controlled by legal norms. In these circumstances, the authorities are empowered to take all necessary steps to ensure public safety in an emergency [9].

Hans-Ernst Folz, in his book, *A State of Emergency and Emergency Legislation (Staatsnotstand und Notstandsrecht)*, published in Germany in 1961 [10], divided

emergencies into six categories which include:

- 1) External dangers that threaten the state, such as dangerous actions from the military, military invasion, or the coordination of domestic subversive activities from the territory of a foreign country;
- 2) Domestic riots of different types, rebellions, riots, and constitutional imperatives caused by disruption of the normal functions of constitutional organs or conflicts (in a federal state) between the center and the subjects of the federation;
- 3) Disruption of the normal functioning of government authorities caused by strikes in the civil service;
- 4) Refusal to pay taxes (tax strike);
- 5) Difficulties in the economic and financial fields; and
- 6) Labor unrest and national disaster.

The legal system in all countries prescribes special measures to deal with an abnormal situation which is then referred to as an emergency. There are always elements that reduce, limit, or freeze certain human rights in an emergency regulation. However, the reduction, limitation, or suspension of such human rights must be: (1) temporary; (2) is intended to overcome a crisis; and (3) intended to return to normal conditions as usual in order to defend fundamental human rights [10].

The conditions for the restriction and reduction of human rights in the regulated state of emergency are translated in more detail in the Siracusa Principles. This principle states that restrictions on rights must not harm the essence of these rights. All restriction clauses must be interpreted expressly and are intended to support rights. This principle also emphasizes that rights restrictions should not be applied arbitrarily. Human rights restrictions can only be carried out if the following conditions are met:

- a. Prescribed by Law
- b. in a democratic society (needed in a democratic society)
- c. Public Order (to protect public order)
- d. Public Health (to protect public health)
- e. Public Morals (to protect public morals)

- f. National Security (to protect national security)
- g. Public Safety (to protect public safety)
 - h. Rights and freedoms of others or the rights or reputations of others (protect the rights and freedoms of others) [11].

The state is free to decide to what extent and means it will impose restrictions on human rights provided that they meet the requirements set out in the relevant clauses [10]. However, it must be emphasized that the conditions for these human rights restrictions are aimed at human rights that are classified as derogable rights, such as the rights to move, work, education, and assemble.

Through Presidential Decree No. 11 of 2020, the President has declared that the current emergency is categorized as a public health emergency. Therefore, the law referred to is the Health Quarantine Act. Article 1 states that a public health emergency is an extraordinary public health event marked by the spread of infectious diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food that poses a health hazard and has the potential to spread across regions or country.

The Health Quarantine Act allows for the opportunity to enforce a set of temporary measures in an emergency. Based on the interests of the general public in the health sector, the government has the authority to impose restrictions on community activities, container traffic, aviation traffic, sea and land traffic, and community activities and objects that can cause a wider spread of disease. These restrictions are an implementation of the quarantine concept [12]. Based on Article 53, there are three types of quarantine formulated in the Health Quarantine Law, namely: (1) Home Quarantine which means limiting occupants in a house and its contents suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination; (2) Hospital Quarantine is the restriction of a person in a hospital suspected of being infected with a disease and/or contaminated in such a way as to

prevent the possibility of spreading the disease or contamination; (3) Territorial Quarantine is population restriction in an area including the entrance area and its contents suspected of being infected with disease, and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination.

One of the government's strategies in dealing with the current spread of the COVID-19 virus is the implementation of Large-Scale Social Restrictions (PSBB) based on Government Regulation (PP) Number 21 of 2020 concerning PSBB and Regulation of the Minister of Health (PMK) Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in Accelerating the Handling of Corona Virus Disease 2019 (COVID-19).

Article 1 of Government Regulation Number 21 of 2020 explains that PSBB is a restriction on specific activities of residents in an area suspected of being infected with Corona Virus Disease 2019 (COVID-19). Several individual activities are restricted in the application of this rule, including: (1) activities at school and at work; (2) religious activities; (3) activities in public places or facilities; (4) social and cultural activities; (5) public transportation operations [13]. The goal is to prevent small and large crowds and suppress the spread of the coronavirus in the community.

The imposition of these restrictions directly forms the limitations of human rights. This policy extends the Siracusa Principle, which regulates the limitation of human rights related to public health. The Siracusa Principle describes public health as follows: "Public health can be imposed as a basis for limiting certain rights to enable a state to take measures relating to serious threats to the health of the population or individual members of the population. These measures should be specifically aimed at preventing illness or injury or providing care for the sick and injured. In this regard, it must use the international health regulations of the World Health Organization".

However, regardless of the emergency status, all forms and types of human rights restriction measures the

government takes during an emergency may not touch the rights classified as non-derogable rights. It is stated explicitly in Article 4 (2) of the ICCPR, Article 4 of the Human Rights Law no. 39 of 1999, and Article 28I, paragraph (1) of the 1945 Constitution that human rights are classified as non-derogable rights may not be limited under any circumstances.

b. The State's Obligation in Fulfilling the Right to Public Health

Health is a fundamental human right, invaluable, and is a condition for fulfilling other rights that have been recognized internationally. The right to health includes a healthy life and work, the right to health services, and special attention to maternal and child health. Article 25 of the Universal Declaration of Human Rights (UDHR) states:

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control."

The guarantee of the right to health is also contained in Article 12 paragraph (1) of the International Convention on Economic, Social and Cultural Rights stipulated by the UN General Assembly 2200 A (XXI) on December 16, 1966, that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Paragraph (2) C states that the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the prevention, treatment, and control of epidemic, endemic, occupational and other diseases.

Other international instruments on the right to health are also found in Articles 12

and 14 of the International Convention on the Elimination of All Forms of Discrimination against Women and paragraph 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition.

In General Comment No. 14 of The Right to the Highest Attainable Standard of Health, it is evident in point 4 that: the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

Further, in the same comment in point 8, it is stated:

The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation. By contrast, the entitlements include the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.

At the national scope, Article 28H, paragraph (1) of the 1945 Constitution states that "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care."

Article 9 of the Human Rights Law no. 39 of 1999 states that "Everyone has the right to life, to sustain life, and to improve his or her standard of living. Everyone has the right to peace, happiness, and well-being. Everyone has the right to an adequate and healthy environment". Guarantees for the right to obtain optimal health are also

contained in Article 6 of the Health Law no. 36 of 2009 [15].

Given that the right to health depends on factors internal to the individual, such as genetic inheritance, the right to health must be understood as the right to enjoy various facilities, goods, services, and conditions necessary to achieve an adequate and attainable standard of health and not the right to health. Thus, the right to health is not only related to health services but also all the factors that determine health, such as access to clean water, food supplies, nutrition, safe housing, supportive environment, access to health-related information, and, most importantly, participation of those most affected by health-related policymaking at the community, national and international levels [16].

Therefore, in this pandemic, the state and government have total obligations to provide health services to residents affected by COVID-19 and to support all factors that determine the cessation of the spread of the virus. This regard includes guarantees for food availability and access to accurate information even if the country has to adopt a lockdown policy one day.

In this context, the priority step taken by the government is the policy of implementing vaccination. Vaccination is the provision of a Vaccine that is specifically given to create or increase a person's immunity in an active manner against a disease so that they will not be sick or only experience mild illness and will not become a source of infection if they are someday exposed to such disease [17]. The implementation of COVID-19 Vaccine aims to: (1) reduce the transmission/spread of COVID-19; (2) decrease the number of illnesses and deaths caused by COVID-19; (3) achieve herd immunity; and (4) protect the public from COVID-19 in order to maintain productivity socially and economically [17].

The scope of the regulation on the implementation of vaccination includes guaranteeing the availability of vaccines, expanding access to vaccine services, and distributing and accelerating vaccinations to

all regions of Indonesia, which must be optimally pursued. This policy manifests the state's responsibility in fulfilling the right to health as a fundamental right and cannot be separated from other human rights, such as the right to life.

4. CONCLUSION

Accountability is one manifestation of the crystallization of the fulfillment of human rights during the COVID-19 pandemic. It is the basic principle of the demands on the state to respect, protect, and fulfill the human rights of every person. During the COVID-19 pandemic, the state and government must be present by providing excellent health services to the community. In addition, the state must prepare strategic steps to overcome potential crises on all fronts. Restrictions on human rights, especially derogable rights and vaccination policies, are two strategic steps taken by the government in realizing the fulfillment of the right to health as a fundamental right and cannot be separated from other human rights, such as the right to life.

The responsibility for fulfilling human rights is an obligation of the state and a shared responsibility (the state and its citizens) when the state is in a state of emergency.

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