

# The Pattern of Law Enforcement Violations of Health Protocols in the Time of COVID-19 in Indonesia

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## ABSTRACT

This study aims to identify and analyze the pattern of law enforcement for violations of health protocols during the COVID-19 period which was implemented by the Government based on statutory regulations. For this reason, legal research is carried out using a normative juridical approach which refers to the statutory regulations and legal concepts obtained through the literature. In order to get answers to the problems that are the focus of this research, a qualitative analysis was carried out and the results were described. Based on the above analysis, it is found that law enforcement for violations of health protocols in Indonesia is carried out through 2 (two) patterns of law enforcement which are based on laws on the one hand and regional regulations on the other. the law. Moreover, each region based on the principle of blood autonomy can form regional regulations by imposing different sanctions as an effort to enforce the law. The existence of differences in the application of legal rules for violations of health protocols like this, creates disparities in law enforcement and ultimately affects the sense of justice for the community.

**Keywords:** *Law Enforcement, Health Protocol Violation, Covid-19.*

## 1. INTRODUCTION

The spread of a virus called Corona Virus Diseasea 2019, abbreviated as COVID-19, is currently a world problem and has had a considerable impact on various aspects of life. The World Health Organization (WHO) on 30 Janurai 2020 declared COVID 19 a public health emergency of international concern.[1] Various countries in the world, including Indonesia, continue to strive to anticipate the spread of Covid 19 through various means to provide protection for citizens using various approaches, such as: health, social, legal, economic and welfare. Moreover, Covid-19 can threaten not only health and even to the safety of the soul of every citizen.

The presence of the Government in a situation like this is very much needed as a form of state responsibility towards citizens as a consequence of the state's promise in the Preamble to the 1945 Constitution. But it cannot be denied that the Government in fulfilling its responsibility to provide protection for every citizen from the threat of Covid-19 requires

support and cooperation. from various parties including citizens. Without the support of all parties, the Government will undoubtedly find it difficult to overcome the spread of Covid-19. Due to the spread of Covid-19 through direct human physical contact, it is transmitted through the mouth, nose and eyes.[2] Harrichandra A, Lerardi AM, Pavilonis B. argue that transmission of COVID-19 occurs droplet or through the air (airborne) from person to person at a short distance of about 1 meter.[3]

The establishment and enforcement of statutory regulations as one of the efforts to overcome and prevent the spread of COVID-19 is a concrete manifestation of the state's responsibility. On the one hand, the existence of laws and regulations provides legal certainty for state administrators - the government - to take various kinds of measures deemed necessary, and on the other hand, citizens are required to obey or obey them. The existing laws and regulations contain guidelines on what can and or should not be implemented to the extent that it stipulates the provisions of sanctions for violators. The presence of this statutory

regulation is intended as an effort to accelerate the spread of COVID-19 through changes in people's lifestyles in their daily activities.

Realizing that Indonesia's territory is so vast that it is divided into Provinces and Regencies / Cities, the prevention of COVID-19 through law is not only limited to the application of laws and includes regional regulations. The presence of local regulations in dealing with the spread of COVID-19 does not mean that there are no problems in law enforcement, especially with regard to the application of sanctions for violations that occur. In addition, the regulation of sanctions provisions differs from region to region. On the one hand the perpetrators of violations are only prosecuted based on the provisions of regional regulations and on the other hand are prosecuted by law. Zuleha stated that when it is found that there is rejection, non-compliance or other efforts to enforce regional regulations / regional head regulations regarding the application of health protocols, strict law enforcement efforts are carried out by enforcing the Criminal Code, Law Number 2 of 2002, and Law Number 6 of 2018 concerning Health Quarantine.[4]

This difference is due to regional regulations which are derivatives of Central Government regulations which are implemented by taking into account the situation and conditions of each region as a result of the implementation of the principle of regional autonomy. This causes each region to impose different sanctions from one another. In the case of Covid-19 by the Government on March 14, 2020, it was declared a national disaster which was further outlined in Presidential Decree No.12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster on April 13, 2020.

The different use of laws and regulations like this can lead to selective logging in the application of legal sanctions and even law enforcement.[5] Which in the end can interfere with the sense of justice for the community. The authority of the law will fall so that what is the goal of the regulations that are related to efforts to prevent and overcome COVID-19 will be difficult to achieve. For this reason, this study tries to examine the pattern of law enforcement for violations of health protocols during the Covid 19 pandemic in Indonesia.

## **2. RESEARCH METHOD**

The approach method used in this research is juridical normative with a focus on the statute approach and legal concepts obtained through literature study. The specification of this research is descriptive with the main data source in the form of secondary data. Secondary data in the form of laws and regulations, books and other sources are inventoried and studied, then recorded based on their relevance to the object of the problem. The data obtained were analyzed qualitatively.

## **3. FINDINGS AND DISCUSSION**

### ***3.1. Legal Regulations for Health Protocols During The Covid -19 in Indonesia.***

The term health protocol comes from 2 (two) words, "protocol" and "health". The word Protocol is defined as "rules or standards governing a thing"[6], or it is also interpreted as "a series of rules issued by the state and as citizens must obey what has been the government's decision in maintaining the economic stability of society."[7] Furthermore, the word "health" based on Article 1 number 1 of Law Number 36 Year 2009 is a healthy state, both physically, mentally, spiritually and socially which allows everyone to live. Productive socially and economically. So the term "health protocol" can be interpreted as a series of rules or standards of health, whether physically, mentally, spiritually or socially, which enables everyone to live productively socially and economically.

Basically, the health protocol is formed with the aim that the community can continue to do activities safely and not endanger the safety or health of others. Health protocols serve as rules and regulations that must be followed by all parties in order to be able to carry out activities safely when a pandemic occurs.[8] Obedience and compliance of all parties is needed to minimize the occurrence of disease transmission that affects public health.

In line with the COVID-19 pandemic situation that has hit Indonesia since the beginning of 2020 which has been prolonged to the present (2021), encouraging the Government as the main person in charge in the health sector to implement policies in the form of health quarantine actions through Large-Scale Social Restrictions, and Enforcement of Restrictions

on Community Activities until the end. take the New Normal policy. The policy on health quarantine measures as an effort to prevent and control COVID-19 is a mandate of Article 15 paragraph (2) of Law Number 6 of 2018 concerning Health Quarantine, which is then reinforced through Government Regulation Number 21 of 2020 concerning Large-Scale Social Combating in the Context of Acceleration of Handling of Corona Virus Disease 2019 (COVID-19). The government implements this health quarantine measure by implementing health protocols. The health protocol is used as a rule or standard in health quarantine measures during the COVID-19 pandemic as desired Article 15 paragraph (4) of Law Number 6 of 2018 is as follows: "Further provisions regarding health quarantine measures as referred to in paragraph (2) shall be regulated with a Ministerial Regulation".

Based on the above provisions, the Government establishes a health protocol through 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. The existence of this ministerial decree placing health protocols as a reference for public activities during the COVID-19 pandemic and a reference for supervision for the government in efforts to prevent and control COVID-19.

For the effectiveness of the health protocol, it is strengthened by Executive Order of the Republic of Indonesia Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019. The executive order places the health protocol as a reference for supervision for the central government and local governments on community activities in the future pandemic COVID 19. Although the legal position of the executive order is an order from a superior to subordinates that is individual, concrete, and completed once (final, *einmahlig*).

The formation of this presidential instruction is intended so that the central government and regional governments play an active and coordinated role in efforts to accelerate the prevention and control of COVID 19 in their respective communities and regions based on

their respective powers with reference to the Decree of the Minister of Health of the Republic of Indonesia Number: HK.01.07 / MENKES / 382/2020. The enactment of the Decree of the Minister of Health regarding health protocols is not only closely related to executive order including Government Regulation Number 21 of 2020, Presidential Decree Number 11 of 2020 and Presidential Decree Number 12 of 2020.

Referring to the above laws and regulations, the application of health protocols is applied in the following cases:

- 1) Determination of the implementation of health quarantine measures, and
- 2) Determination of public health emergencies and the state of non-natural national disasters has not been declared over by the government.

This means that as long as health quarantine measures are enforced and public health emergencies as well as established non-natural national disasters continue, health protocols will remain in effect as a reference in efforts to prevent and control COVID 19. Article 1 number 1 of Law Number 6 of 2018 defines "Health quarantine is an effort to prevent and ward off the entry or exit of diseases and /or public health risk factors that have the potential to cause a public health emergency."

Likewise, the state of a non-natural national disaster caused by the spread of COVID 19 is an implication of determining public health emergencies. The government determines a state of public health emergencies, because it endangers and worries public health so that special handling is needed.[9] Article 1 number 2 of Law Number 6 Year 2018 defines "Public health emergencies are public health events of an extraordinary nature marked by the spread of infectious diseases and /or incidents. Which are caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food which cause health hazards and have the potential to spread across regions or across countries. "

The existence of a special COVID-19 handler with a health protocol is intended according to the Decree of the Minister of Health of the Republic of Indonesia Number: HK. 01.07 / MENKES / 382/2020 is directed at changing the pattern of life with a new order and adaptation of habits (new normal) in order to live productively and avoid infection. Due.

public places and facilities are areas where people carry out social life activities and activities to fulfill their daily needs, have a fairly large potential for transmission.

These public places and facilities include:

- a) Offices/workplaces, businesses and industries;
- b) Schools/other educational institutions;
- c) Places of worship;
- d) Stations, terminals, ports and airports;
- e) Public transportation;
- f) Private vehicles;
- g) Shops, modern markets and traditional markets;
- h) Pharmacies and drugstores;
- i) Food stalls, restaurants, cafes and restaurants;
- j) Street vendors/hawker stalls;
- k) Hotel / other similar accommodation
- l) Tourism places;
- m) Health service facilities;
- n) Public areas, other places that can cause mass crowds; and
- o) Public places and facilities in other health protocols in accordance with statutory provisions.

In accordance with the provisions of Part Two number 6. b. 4 Executive Order Number 6 of 2020, health protocols are enforced on individuals, business actors, managers, organizers, or people in charge of public places and facilities. For all parties, a health protocol is prepared to increase the role and vigilance in anticipating transmission in public places and facilities and can help minimize the impact caused by COVID 19.

### ***3.2. The Patterns of Law Enforcement of Health Protocol Violations During the Covid-19 Period in Indonesia.***

Realizing the extent of the impact caused by the spread of COVID-19 in Indonesia, it encourages the government to impose various kinds of laws and regulations intended to protect the public and the business world. One of the applicable laws and regulations is the health protocol as stipulated in the Decree of the Minister of Health of the Republic of Indonesia Number: HK.01.07 / MENKES/382/2020.

The implementation of health protocols is intended so that people can adapt to new habits towards a productive society during the COVID-19 pandemic. Many call this new habit

pattern the New Normal or the new life order. Adisasmita, new normal is a change in behavior to continue carrying out normal activities, but coupled with the application of health protocols to prevent transmission of COVID-19 This means that people are required to change or adjust their lifestyle in their daily activities according to health protocols in order to avoid transmission of COVID-19. This is in accordance with the function of law as a means of social renewal, in a sense, as a means aimed at changing the behaviour of citizens, in accordance with predetermined goals. [10]

The goal of the health protocol is to increase efforts to prevent and control COVID-19 for people in public places and facilities in order to prevent the occurrence of new epicenter/clusters during the pandemic period.

The success of achieving the goals of the COVID-19 health protocol is largely determined by legal obedience or legal compliance from the community. Legal obedience is an obligation that must be carried out and if it is not implemented, sanctions will arise.[11] Not different from legal compliance, in essence, is the awareness and loyalty of the community towards the law that applies as a rule, as a consequence of living together where loyalty is manifested in actual behaviour, obey the law (between *das sein* and *das sollen* are the same in fact).[12]

Moreover, the health protocol is a legal provision that regulates and serves as a minimum guideline in daily activities during a pandemic, which requires the growth of legal awareness of the community to comply with it. Ewick and Silbey view legal awareness as a matter of "law as behavior" and not "law as rules of norms or principles.[13] Public legal awareness greatly influences law obedience, both directly and indirectly. Although sometimes a person's legal awareness does not automatically obey the law because there are many social indicators that influence it.[14]

Kecuk Suhariyanto stated 3 main reasons for the community not to comply with health protocols, namely:[15]

- 1) No sanctions;
- 2) The absence of positive cases of Covid-19 in their environment;
- 3) Work becomes difficult having to implement health protocols.

Thus, the enforcement of health protocols requires law enforcement efforts. Law enforcement is one of the important efforts in increasing legal awareness[14] and legal compliance of the community.

Law enforcement is an activity to harmonize the relationship of values that are outlined in solid principles and attitudes as a series of final-stage value descriptions, to create, maintain and maintain social peace in life.[16] Jimly Asshiddiqie emphasized that law enforcement is the process of making efforts to uphold or function real legal norms as a code of conduct in traffic or legal relations in social and state life. Law enforcement is aimed at improving law order and legal certainty in society.[17]

Referring to the above definition, health protocol law enforcement is intended as a process of functioning of life guidelines that have been formulated as legal norms in the midst of society for activities during the COVID-19 pandemic in achieving specified goals. People with health protocols are able to adapt or adapt in their daily activities during the COVID-19 pandemic.[18] According to the Decree of the Minister of Health of the Republic of Indonesia Number: HK.01.07 / MENKES / 382/2020 that law enforcement of health protocols involves all parties, not only the government, law enforcers, including the community, in determining policies, fostering business and community activities, and conducting surveillance in order to prevent the occurrence of new epicenter / clusters during the COVID-19 pandemic period.

Efforts to enforce the health protocol law are emphasized in Presidential Instruction Number 6 of 2020 through approaches, namely: Socialization, education and dissemination and application of sanctions for violations of the application of health protocols. This means that enforcement of health protocol laws during the COVID 19 pandemic was carried out through two approaches, namely: preventive law enforcement and repressive law enforcement.

Preventive law enforcement, namely preventing the occurrence of crimes or violations by eliminating the opportunity factor. The implementation of preventive law enforcement is divided into 2 (two) major groups, namely physical prevention which is carried out by regulating, escorting, guarding and patrolling, then prevention, namely

coaching which is carried out through counseling, coaching, and direction to create a lawful society that is aware and obedient and has prevention and crime. Repressive action is an act to take action against a crime or violation that disturbs public security and order. The action referred to is an action taken by an officer if he finds a criminal act that disturbs public security and order as regulated in the Criminal Procedure Code (KUHAP).[19]

The implementation of socialization, education, dissemination and physical prevention as a form of preventive law enforcement is intended to increase public awareness of the importance of health protocols during the pandemic. Unlike the case with the application of sanctions as repressive law enforcement, it is intended that the public has legal compliance or legal compliance with health protocols. Jimly Asshiddiqie, law enforcement can be viewed from 2 angles, namely: 1) seen from the subject, and 2) seen from the object. Judging from the subject, law enforcement can involve all legal subjects in every legal relationship and the role of law enforcement officials in an effort to guarantee and ensure that a legal rule runs as it should. Meanwhile, from the point of view of the object, namely from a legal perspective it includes; law enforcement of the formal rules and the values of justice contained therein.[18]

The health protocol law enforcement policy through the application of sanctions has been stipulated in Presidential Instruction Number 6 of 2020, which includes:

- a) Verbal warning or written warning;
- b) Social work;
- c) Administrative fines
- d) Termination or temporary closure.

The various forms of sanctions above are provisions that can be imposed for violators of health protocols. However, the imposition of various sanctions for violations of health protocols is established through the implementation of regional regulations that are tailored to the conditions of each region. Generally, the provisions for violations of health protocols are regulated in regional head regulations such as governor regulations, mayor regulations and district head regulations. Which generally contains regulating the use of face masks and fines or social sanctions in the event of a violation. [20] As with the second Dictum, the number 6.c. Executive Order Number 6 of 2020 specifies: "In the preparation and

stipulation of governor regulations/regent/mayor regulations as referred to in letter b, pay attention and are adjusted to the local wisdom of each region."

Law enforcement of health protocols through regional head regulations has weaknesses. Because governor regulations, mayor regulations, and regent regulations cannot contain criminal provisions. In accordance with Article 15 of Law Number 12 Year 2011 concerning the Formation of Legislation, the material regulating criminal provisions can only be contained in regional laws and regulations. In order for criminal provisions to be enforced against violations of health protocols it should be established by local regulations. Article 238 of Law Number 23 of 2014 concerning Regional Government implies that in addition to criminal sanctions, administrative sanctions can also be applied.

However, regional head regulations can still impose sanctions that are limited to administrative sanctions. The enforcement of administrative sanctions in regional head regulations in accordance with Article 8 paragraph (2) of Law Number 12 of 2011 is recognized and has binding legal force as long as it is ordered by higher laws and regulations or established based on authority."

Law enforcement of violation of health protocols apart from the Regional Regulations and Regional Head Regulations, the provisions contained in Article 84 of Law Number 2 of 2002 concerning the Indonesian National Police, Article 93 of Law Number 6 of 2018 concerning Health Quarantine shall also be enforced and apply several articles regarding against the order of an official or a ruler regulated by the Criminal Code.

The enactment of such provisions is based on the Telegram Letter of the Head of the Criminal and Investigation Section of the Republic of Indonesia Police Number: ST / 3220 / XI / KES.7 / 2020 dated 16 November 2020, in the case of:

"If in the enforcement of regional regulations / regional head regulations regarding the implementation of the COVID-19 health protocol, there are attempts to refuse, non-compliance or other efforts that cause public unrest and disturb the stability of the social and security

services, then efforts will be made to enforce the law firmly against anyone."

This telegram letter is in accordance with Executive Order Number 6 of 2020 which is addressed to the Chief of Police of the Republic of Indonesia to streamline law enforcement efforts against violations of health protocols. This is in accordance with the functions and duties of the Police in the field of maintaining security and public order, law enforcement, protection and protection, and services to the community as regulated in Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia. Based on its duties and authorities, it is very necessary for the Police for the public interest to act according to their own judgment by taking into account the prevailing laws and regulations.

In addition, the determination of public health emergencies is used as the basis for implementing Law Number 6 of 2020 and the Criminal Code. The implementation of this provision is based on the act of not obeying and / or obstructing efforts to deal with public health emergencies. Basically, the determination of public health emergencies is intended as an effort to tackle COVID-19 as stated in Presidential Decree No. 11 of 2020. As a result, violations of various legal rules that are treated in an effort to overcome public health emergencies are subject to imprisonment and / or fines.

Even so, the Police who are given the authority to enforce the law during a health emergency in accordance with Article 19 paragraph (2) of Law Number 2 of 2002 should prioritize preventive measures. Preventive action is intended so that carrying out duties in protecting the community can act professionally which is one of the Police.[21]

#### **4. CONCLUSION**

Law enforcement of health protocols is a process of functioning life guidelines that have been formulated as legal norms in the midst of society for activities during the COVID-19 pandemic in achieving the stated goals. Enforcement of health protocols can be done in several ways, namely: first, increasing legal awareness through socialization, education and dissemination, and second, law compliance or legal compliance with law enforcement efforts through the application of sanctions. The application of sanctions is based on the

provisions of regional regulations, regional head regulations, Law Number 6 of 2018 and the Criminal Code. However, health protocol law enforcement should prioritize the implementation of existing regional regulations rather than statutory provisions. Moreover, the central government requires the regulation and implementation of health protocols to be based on consideration by taking into account the conditions of each region. Despite the fact that such an arrangement creates problems in providing legal certainty. This is because the application of sanctions for violating health protocols can differ from one region to another. To overcome this difference, the central government should need to establish guidelines for the form and amount of sanctions that can be applied by local governments in law enforcement of health protocols. Based on the consideration of the daily mobility of the community, which is still a lot to do between regions, especially with adjacent geographical areas.

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