

JURIDICAL ANALYSIS OF LEGAL IMPLEMENTATION OF THOSE WHO REFUSE THE COVID-19 VACCINE

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ABSTRACT

The Covid-19 pandemic has brought many changes to the world, including economic setbacks. So, it needs to be handled with handling efforts in the form of vaccination to form herd immunity. However, this effort still has resistance from people who do not want to carry out the Covid-19 vaccination. This research aims to determine the juridical review of the implementation of the law against those who refuse the Covid-19 vaccine. This research uses normative research methods with literature study data collection techniques obtained from laws, books, journals, and various other information relevant to the research. The results showed that those who refused the Covid-19 vaccine were subject to criminal and administrative sanctions according to presidential regulation number 14 of 2021 in the form of imprisonment for six months to one year or a fine of five hundred thousand to one million rupiahs. However, the World Health Organization advises forcing individuals to vaccinate but suggests a persuasive approach. In addition, the implementation of this law is carried out by looking at the context of the event, and the condition of individuals who do not want to be vaccinated, considering that there are people who should not be vaccinated.

Keywords: *Law, Denial, Vaccines, Covid-19*

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INTRODUCTION

COVID-19 or has another name Novel Coronavirus 2019 is caused by the SARS-CoV-2 (Severe Acute Respiratory Syndrome Coronavirus 2) virus, which was first detected in Wuhan, China in December 2019 and then spread worldwide, so the WHO declared the COVID-19 pandemic in March 2020. COVID-19 spreads through airborne droplets and close contact with infected people (Rumiarta, 2021). The rapid and widespread spread of this virus has led to the Covid-19 pandemic. Factors of public non-compliance with the appeals that have been imposed are the main factors that cause the rapid transmission of Covid-19, such as non-compliance with health protocols. One of them is that there are still people who think that people exposed to Covid-19 are just fabrications. There are several cases that say that Covid-19 is a game for some people to collect coffers of money because the claims obtained from a Covid-19 patient are very large. This makes some people still doubt the existence of the Covid-19 virus (Sari et al., 2021).

The Covid-19 public health emergency was declared as a result of the extraordinary spread of the virus, which has affected political, economic, social, cultural, defense, and security aspects and led to an increase in the number of cases and deaths, across countries and regions. in addition, to individual assistance from the Indonesian government (Octafia, 2021). Countries in the world have their own ways of dealing with this pandemic, several other countries are trying to handle this pandemic by locking down or closing access in and out. The implementation of this lockdown is the most effective way to control the spread of Coronavirus infection. The implementation of this lockdown is a result of a review of past pandemic cases, such as the Spanish flu pandemic in 1918. At the time, several cities in the United States

imposed lockdown measures by closing schools, public places, and imposing restrictions on social activities to slow the spread of the virus. This helps reduce mortality and minimize the impact of the pandemic. During the COVID-19 pandemic, lockdowns were also implemented by several countries around the world to suppress the spread of the virus and limit the number of cases and deaths due to COVID-19 (Lin et al., 2020). People are expected to self-isolate or self-quarantine at home during the lockdown period, and use social distancing to avoid spreading the virus (Harapan et al., 2020).

While the Indonesian government makes its own policy in the form of large-scale social restrictions and *social distancing*, this is expected so as not to aggravate the current economic crisis (Nasution et al., 2020). However, this policy has a significant influence on community activities in Indonesia because it is limited in its space for movement. Moreover, this restriction has a continuous impact on employees who are laid off because it requires a reduction or restriction of activities in the office. In addition to being laid off, many employees are also encouraged to reduce the losses borne by the company due to the pandemic (Honoatubun, 2020). So, this problem needs to be addressed immediately, one of which is through vaccines.

Vaccines are an effort to increase individual immunity to antigens in the form of germs, bacteria, and viruses. So, if a vaccinated individual is exposed to viruses, germs, or similar bacteria, the individual will have antibodies or immunity. The implementation of vaccination is intended to prevent disease in an individual (Soegiarto, 2021). The World Health Organization (WHO) collaborates with vaccine partners ACT-Accelator Vaccine to ensure fair procurement and distribution of Covid-19 vaccines (Arina, 2021). The implementation of this comprehensive vaccination is expected to create *herd immunity*.

Herd Immunity is a state in which a large number of the population has acquired immunity to disease through vaccination or previous infection. When enough people in the population have immunity to a disease, the spread of the disease slows down and even stops because there are not many hosts that can be infected. This provides protection for individuals who are vulnerable to the disease, such as people who cannot be vaccinated for health reasons or infants who are too young to be vaccinated. Herd immunity is an important strategy in controlling the spread of infectious diseases. However, this can only be achieved with a fairly high vaccination rate in the population, which is around 70-90% depending on the type of disease (Kim et al., 2011). Vaccination activities are very important in achieving herd immunity in Indonesia. By implementing a herd immunity target of 70%, it means that 70% of the total population in Indonesia must have immunity to Covid-19. This can be achieved by mass vaccination so that the number of people exposed to and transmitting the virus is getting smaller. Thus, people who have not received vaccination will also be protected because the virus is not easily spread and eventually herd immunity occurs (Handayani et al., 2020).

However, this effort still has resistance from people who do not want to carry out the Covid-19 vaccination, one of which is due to the safety reasons of the vaccine itself. Based on the background description of the problem, researchers are interested in conducting a research entitled "Juridical Analysis of Law Enforcement Against Those Who Refuse the Covid-19 Vaccine".

METHOD

Types of Research

This research uses normative research methods, according to Marzuki (2011), normative legal research is one type of legal research that aims to find legal rules, legal principles, and legal doctrines that are relevant to the legal issue at hand.

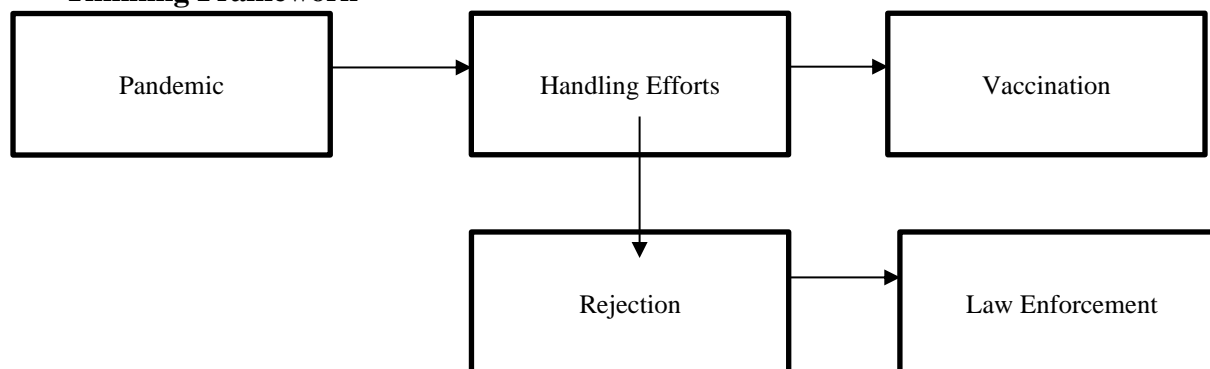
Data Sources

The data sources used in this research come from secondary data sources obtained from other sources, such as books, journals, articles, newspapers, and the internet that are related to research topics. Analysis of squander sources is carried out in a descriptive way, source squander is usually used as a reference or supporting data to answer research questions and provide a broader understanding.

Data Collection Techniques

The data collection technique in this research is by literature study, according to Zed (2008), a literature study is a method of data collection carried out by searching, reading, and analyzing various references relevant to the research topic. This activity is usually carried out by collecting various literature, such as books, journals, articles, and other important documents that can be used as data sources in research. After the data is collected, the researcher will read and record information relevant to the research topic. Furthermore, the information will be processed and analyzed to obtain accurate and accountable research results. The data collection technique is carried out through an excuse-inclusion process, the exclusion-inclusion technique is a technique of identifying relevant data and then selecting and excluding irrelevant data for research purposes. In this process, researchers must ensure that the data taken is of good quality and reliable to obtain accurate and accountable results. This process can be done using various methods such as literature review, document analysis, and structured interviews (Sukmadinata, 2005).

Thinking Framework



RESULTS AND DISCUSSION

The concept of the rule of law means that the state must exercise its power based on laws that are just and applicable to all its citizens. In this context, the state has the objective of ensuring that its power does not violate the rights of the people, and does not make laws and regulations that contradict the constitution or the rights of the people. Thus, the state is able to uphold justice for all its citizens (Mokodongan, 2021).

The government is responsible for designing, organizing, organizing, fostering, and supervising the implementation of fair and equitable health efforts in Indonesia. This is regulated in Article 5 paragraph (1) of Law Number 36 of 2009 concerning Health which states that "The government is responsible for planning, organizing, organizing, fostering, and supervising the implementation of health which includes individual, community, and environmental health efforts, which are fair and equitable, based on humanitarian and social justice principles." Government responsibility is critical in ensuring public health. In addition to the matters mentioned above, government responsibility also includes supervision and law enforcement of health practices that are illegal or harmful to the community (Notoatmodjo, 2010):

The vaccination program launched by the government currently aims to break the chain of transmission of the Covid-19 virus. In this effort, the government has set priorities for vaccine recipients, namely health workers, the elderly, public officials, and the general public. This vaccination program is expected to help protect individuals from being infected with Covid-19 and also accelerate national economic recovery. However, in addition to the vaccination program, other prevention efforts are still needed, such as wearing masks, maintaining distance, washing hands, and avoiding crowds to minimize the risk of transmission (Nurmala & Koni, 2022). The issuance of several legal products that deal with infectious disease outbreaks is one of the government's policies to protect public interests. A strong and independent legal system is one of the key factors in maintaining justice and security for society. It is also important in tackling infectious disease outbreaks, as good law enforcement can prevent the spread of outbreaks by ensuring that health rules and protocols are followed and adhered to by all parties. In addition, effective mechanisms in enforcing the law are also important to prevent manipulation or abuse of power in handling outbreaks. Openness and accountability from the government and law enforcement agencies must also be maintained so that the public can monitor and assess the actions taken by the government in dealing with infectious disease outbreaks. Thus, a strong and independent legal system can be the foundation for maintaining justice, security, and public health fairly and equitably (Aldi, 2022).

One of the government's policies to protect the interests of the public is to issue a number of legal products to deal with disease outbreaks. The positive laws in force in a country are influenced by various factors, such as the history, culture, religion, and socio-economic conditions of the people. However, law enforcement is often constrained by political factors and power that exist in a country. In some countries, existing political power tends to influence law enforcement. For example, in some cases, law enforcement is not objective and is sometimes influenced by certain political interests. This can affect order and justice in society. Therefore, effective law enforcement requires independent and objective legal power (Henny Nuraeny, 2022).

Since January 2021, Covid-19 vaccination has been carried out in Indonesia. As of March 11, 2023, data from the Ministry of Health states that the number of doses of the Covid-19 vaccine that have been injected has reached more than 235 million doses, with the number of people who have received at least one dose of vaccine reaching almost 126 million people. The Food and Drug Administration took swift steps to authorize the use in emergency conditions. The evaluation shows that PT. Bio Farma has also registered the Sinovac Biotech Coronavac vaccine in Indonesia. Although the vaccine from Bio Farma can cause mild to moderate side

effects, these effects are not dangerous and can be overcome (Novita & Ramadhani, 2021). Even though it has been tested safe and halal, there are still many wrong perceptions about Covid-19 vaccination in the community. Several reasons such as long-term side effects, hasty procurement, information confusion, and the existence of political conspiracies are the basis for rejection in society. However, please note that the Covid-19 vaccination has gone through a series of clinical trials and a strict regulatory process before obtaining approval from the Food and Drug Supervisory Agency (BPOM). In addition, the Covid-19 vaccine has also been approved by the Indonesian Ulema Council (MUI) as halal and safe for use. In terms of vaccine procurement that seems rushed, this is actually the government's response to overcome the ongoing pandemic which spread rapidly throughout the world (Putri, 2020). Therefore, to increase public awareness of the importance of Covid-19 vaccination and prevent future polemics, extensive socialization, and continuing education on this matter are needed (Novita & Ramadhani, 2021).

In the medical world, various vaccines have proven effective in tackling previous pandemics. For example, smallpox vaccines have eradicated the disease globally, TB vaccines have been used for decades and helped reduce TB cases, and polio vaccines have helped reduce the number of polio cases significantly. Therefore, vaccines are considered an effective method to prevent the spread of infectious diseases, and so on (Nicolas, 2021). In Article 14 of the Minister of Health Regulation No. 10 of 2021, "Everyone who has been determined as a target recipient of the Covid-19 Vaccine based on data collection as referred to in Article 13 must take part in the COVID-19 Vaccination in accordance with the provisions of laws and regulations". Meanwhile, in Article 14 of the Minister of Health Regulation No. 10 of 2021 "Everyone who has been determined as a target recipient of the Covid-19 Vaccine based on data collection as referred to in Article 13 must take part in the COVID-19 Vaccination in accordance with the provisions of laws and regulations". Meanwhile, the restorative justice approach can be used by considering the context of the incident, the conditions of those who oppose the vaccine, and the purpose of restorative justice as an effort to persuade. However, administrative and criminal sanctions for vaccine refusal are contained in Presidential Regulation 14 of 2021 concerning vaccine procurement in the context of tackling the COVID-19 pandemic (Sitorus et al., 2023). The sanction for refusing the Covid-19 vaccine ranges from 6 months to 1 year in prison or a fine of Rp. 500,000,- (five hundred thousand rupiah) to 1,000,000.00 (one million rupiahs). Sanctions in the form of delays or terminations in the provision of government administration services, delays or terminations of providing social security or social assistance, and sanctions (Sigalingging & Santoso, 2021).

The use of criminal sanctions as a law enforcement tool does have an important role, especially in cases of violations of the law that are criminal in nature or threaten public safety and security. However, the use of criminal sanctions must also be done wisely and proportionately, so as not to cause greater negative impacts on society. In addition, the use of criminal sanctions must be supported by integrated and systematic law enforcement, so as to provide a deterrent effect for perpetrators of law violations and prevent the occurrence of similar violations in the future (Nurmala & Koni, 2022). Provisions related to sanctions can be stated in regional regulations and laws Article 14 of Law No. 4 of 1984 concerning Outbreaks and Infectious Diseases and Law No. 6 of 2018 concerning Health Quarantine.

Consequences for people who refuse to be vaccinated not to obtain an International Certificate of Vaccination or Prophylaxis (ICVP) is an official document issued by the Ministry of Health or a designated health institution in a country. This document certifies that a person has been vaccinated or received certain prophylactic drugs required for international travel. This may result in him not being allowed to travel internationally or not being allowed to enter certain countries that require such certificates as an entry requirement. However, this depends on the policy of the country in question and the international travel requirements in force at the time (Luhukay, 2021).

From a legal perspective, people who refuse vaccination can face criminal sanctions in emergency situations such as the Covid-19 pandemic. The fact that this law has exceptions can serve as a reason to say that the law will apply to the safety and survival of citizens. so one of the government's preventive efforts is to carry out law enforcement and direct the public to stop the spread of the Covid-19 virus. The Covid-19 vaccination policy is expected to provide benefits for Indonesian citizens by imposing criminal sanctions (Nurmala & Koni, 2022).

As a result, individuals from endemic countries cannot show an International Vaccination Certificate and those who have been declared illegal must comply with health quarantine measures (Lintiulang, 2021). Then, in Article 18 paragraph (3) of Permenkes 23/2018 People leaving certain countries affected by infectious diseases, or endemic without a valid International Vaccination Certificate must be vaccinated or given prophylactic injections, their departure must be postponed, and an International Vaccination Certificate must be issued.

However, the *World Health Organization* does not advocate mandating or forcing vaccination. Countries in the world must adopt a strategy of embracing and persuading. According to an excerpt from WHO's Policy Brief, governments around the world should first encourage voluntary vaccination through discussion and argument before organizing mandatory vaccination. This method is expected to show the benefits of vaccination and the dangers of not getting it.

When it comes to vaccination, everyone has the right to choose their preferred healthcare provider. But that does not mean refusing the vaccine is right. The reason is, people who refuse can contract the Covid-19 virus, even though they have a strong immune system that prevents the virus from disrupting health. However, he risks putting others in danger or even endangering that person's life when he comes into contact with others, either directly or indirectly (such as when he coughs or touches something attached to the virus), and he does not know it. The virus is transmitted to people whose immune systems are weak (Gandryani, 2021).

As a means to avoid outbreaks, vaccination is highly recommended to achieve herd immunity. However, there are some people who should not get the vaccine for certain reasons. We have quoted several reasons why someone should not be vaccinated from the Ministry of Health's FAQ Related to the Implementation of the COVID-19 Vaccine, including the following (Ministry of Health, 2021):

1. People who are sick with fever, or other symptoms of infection, or are on medication that affects the immune system.
2. People with a history of severe allergies to any of the vaccine ingredients, such as a serious allergy to eggs in the flu vaccine.
3. People with a history of serious reactions to previous vaccines.

4. Pregnant and lactating women, because the effect of vaccines on the fetus or baby is not yet fully known and there is not enough data on the safety of vaccines in pregnant and lactating women.

However, keep in mind that any individual who has certain health conditions should consult their doctor before deciding to get vaccinated. This is to ensure that the decision to be vaccinated or not does not jeopardize the health of the individual. Vaccination as immunization service providers and patients as immunization recipients have legal responsibilities that begin with therapeutic transactions, leading to lawsuits to hold healthcare providers accountable. If a patient files a lawsuit against a health worker for allegedly failing to vaccinate and this results in harm to the patient, then the lawsuit is based on an unlawful act as stipulated in Article 1365 of the Indonesian Civil Code. Health workers have an obligation to provide quality health services in accordance with applicable standards, including providing vaccinations if needed. If the health worker fails to fulfill this obligation and this causes harm to the patient, then the health worker is responsible for the loss. The responsibility of health workers in providing vaccinations can also be based on Article 1239 of the Indonesian Civil Code which regulates contractual responsibilities. In this case, the health worker has a contract with the patient to provide quality health services and if the health worker fails to fulfill this contract, then the patient is entitled to claim compensation. In both articles, the responsibility of health workers for losses incurred can apply either if health workers commit acts intentionally or due to negligence or carelessness. In addition, Article 1367 of the Indonesian Civil Code also stipulates that a person must be responsible for losses suffered by others under his supervision, so that if the patient is under the supervision of health workers and suffers losses due to negligence or carelessness of health workers, then health workers are responsible for these losses (Sanjaya et al, 2021).

The imposition of criminal sanctions in the context of the Covid-19 pandemic must pay attention to aspects of the formation of Indonesian law based on Pancasila as the foundation of humanistic justice. In this regard, criminal sanctions should be aimed at protecting human rights and the interests of society as a whole, and taking into account the principles of justice, proportionality, and fair law enforcement. The principles of fair and proportionate law are essential in ensuring justice and human rights. Criminal sanctions must be applied with proportionality, that is, in line with the crime committed, and must not be used to oppress or violate human rights. A person has the right to refuse treatment, as stated in the Hospital Act. A person has the right to choose the type of care he wants to receive (Disemadi & Pardede, 2021).

CONCLUSION

The Covid-19 pandemic is a complex problem that occurs almost all over the world, therefore as an effort to handle the World Health Organization in collaboration so that vaccines can be distributed evenly. This vaccination is also aimed at creating herd immunity so that people can coexist with the virus. However, there are still some people who refuse to vaccinate because of the safety of the vaccine itself. The results show that those who refuse the Covid-19 vaccine are subject to criminal and administrative sanctions according to presidential regulation number 14 of 2021 in the form of imprisonment for six months to one year or a fine of five hundred thousand to one million rupiah. However, the World Health Organization

advises forcing individuals to vaccinate but suggests a persuasive approach. In addition, the implementation of this law is carried out by looking at the context of the event, and the situation of people who do not want to be vaccinated considering that there are people who should not be vaccinated.

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