



Law Enforcement Against Health Protocol Covid-19 Violations In Indonesia

(Case Study Decision Number: 173/PID.SUS/2021/PT.DKI)

Moch. Muslihuddin^{1*}, Yahman²

¹mchdidin@gmail.com ²yahmanaldi12@gmail.com

Bhayangkara University

*Corresponding Author: Moch. Muslihuddin

Email: mchdidin@gmail.com

ABSTRACT

Corona Virus or Covid-19 since the beginning of 2019 has spread throughout Indonesia. This virus arose initially in connection with an animal market located in Wuhan, China. The spread of the Covid-19 Virus has made all citizens around the world panic and anxious. The cooperation of all existing communities must be required in handling the virus from spreading around. In this case, all the Police in each region are applies the rules based on Chief of Police suggestion. In this case, the apparatus is also directly involved in preventing the transmission of Covid-19 virus. In handling its duties, the Police synergize together with related agencies, Indonesian National Army (TNI), Ulama and all levels of society. This research aims to find out which police policies and enforcement rules from the government in handling the prevention of virus transmission. The research uses this type of research with studies of government regulations, police chief policies, and related legal sources. This research was obtained from the results of the sources of Police legal regulations and government in implement the law which is in accordance with its roles and duties. The apparatus conducts an approach, socializing values and norms to become part of the community, in terms of providing a witness for violations during their duties. This regulation are still requires discipline and open action regarding the information related to protocol violations during the pandemic.

Keywords: Covid-19, Law enforcement, Sanctions.

INTRODUCTION

Health is the most important thing and the main goal to build the social and economic world to all human beings in their daily lives. The diseases that exist in many countries until covid-19 virus appears initially appeared and spread in various countries. The term of corona and covid-19 is increasingly being heard in various communities since this virus has various understanding known by society. Until today, the virus has often become a topic of discussion among citizens since the increasing cases day by day in various countries. The World Health Organization (WHO) makes this virus as a pandemic, where the virus is also part of a disease that can cause it to occur in animals or humans. Those who are affected can show signs of a slightly serious respiratory tract infection from flu or Middle East Respiratory Syndrome (MERS) and also Saver Acute Respiratory Syndrome (SARS) or called acute respiratory syndrome during 2 weeks and become more serious 13 times after.

There are three general things that indicated when a person is infected with Covid-19, which is fever (human body temperature can be above 38 degrees Celsius); along with a dry cough and shortness of breath and flu, on the other hand there are also side symptoms such as diarrhea; headache (dizziness); loss of taste, sense of smell and rashes on the skin although it is not clearly seen.¹ These symptoms can appear within 2 (two) days to an estimated 2 (two) weeks after people are infected with Corona virus. It is not easy to confirm the symptoms that occur by naked eye or by self-hardening, in order to ascertain these symptoms with certainty and accuracy through the rapid test and polymerase chain reaction (PCR), which is a medical method and can detect viral DNA that is infected.

The efforts to prevent and break the chain of the virus in Indonesia require discipline in all aspects and prioritizing the social life of the community. During the pandemic, it is need very strict discipline on social life which is implement "physical distancing".² This effort is also considered as a very effective effort in preventing and reducing the virus to spread. Each local government provides the obligation of "physical distancing" through Government Regulation Number 21 of 2020 concerning Large-Scale Social Cancellation (PSBB) and Ministry of Health Regulation (Permenkes) Number 9 of 2020. The National Police become the most important aspect in dealing with efforts to prevent and break the transmission of Covid-19 virus.

The police policy in preventing the transmission of the virus also has a very important meaning and purpose for research when the number of cases are increased and the cases are very dynamic with community behavior, even with a sanction or

¹ Syafrida Syafrida and Ralang Hartati, "Bersama Melawan Virus Covid 19 Di Indonesia," *SALAM: Jurnal Sosial dan Budaya Syar-i* 7, no. 6 (April 14, 2020): 495–508, <http://journal.uinjkt.ac.id/index.php/salam/article/view/15325>.

² Eko Zulfikar, "Tindakan Preventif Atas Penyebaran Covid-19 Dalam Perspektif Hadis," *Diroyah : Jurnal Studi Ilmu Hadis* 5, no. 1 (September 30, 2020): 31–44, <https://journal.uinsgd.ac.id/index.php/Diroyah/article/view/8924>.

affirmation action that has been regulated and contained in a government regulation. The National Police as the main guard to conduct and implement the regulations that have been confirmed by the local government, which includes the main tasks of the National Police in realize the goal of dealing with the pandemic, which is very important and dominant in society. Based on the description above, the authors are very interested in conducting research on: "LEGAL ENFORCEMENT ON VIOLATIONS OF HEALTH PROTOCOL COVID-19 IN INDONESIA" (Case Study Decision Number: 173/PID.SUS/2021/PT.DKI). This research aims to find out which legal provision are given to violators and to find how to implament legal action against perpetrators of health protocol during the pandemic.

LITERATURE REVIEW

Based on legal and medical sources, Covid-19 was actually transmitted through direct contact with people affected, not from the air. People with high risk of infection are direct contact with the patients. The effort to prevent transmission are the most important aspect to implement the health and community services. The effect of this virus is worldwide which quickly spreads to all humans with physical contact or types of moist air or objects that become the medium in spreading the corona virus.

The regulation of Minister of Health Republic Indonesia Number 19 of 2020 (Concerning Guidelines for Large-Scale Social Restrictions in Handling Corona Virus Disease 2019), Regulation of Minister of Health Republic Indonesia Number 18 of 2021 (Concerning Regulation of Minister of Health Number 10 of 2021 concerning Implementation of Vaccinations as the Prevention of 2019 Corona Virus Disease Pandemic) and there is also a Regulation of Minister of Health Republic Indonesia Number 23 of 2021 (Concerning the Third Amendment to the Regulation of the Minister of Health Number 10 of 2021 concerning the Implementation of Vaccination in Combating the 2019 Corona Virus Disease Pandemic).

The role of health workers includes legal certainty which is an instrument to ensure the health workers safety for the government be capable of take authority actions to assign health workers to implement the task in handling the virus extensively, where there is no legislation that guaranteeing legal certainty for health workers even though the Law No. 36 of 2014 concerning Health Workers exist, for which there are still no implementing regulations and technical instructions. Along with this case, the author arranges these research topics, such as:

1. The handling prevention of Covid-19 transmission can be conducted through checking body temperature, spraying disinfectants or hansanitaizers, wearing masks and maintaining distance or not gather in the crowd. All of these aspects

are also prevention efforts which can be easily applied to minimize the virus spread in providing service or security for every shop, minimarket, workplace or agency by checking the visitors' body temperature or those who come to the room with a maximum temperature of 37.5 Celsius, for whose has fever or the body temperature are above 37.5 are not allowed to visit or going anywhere before check-up.

2. The prevention action by not using public transportation for more than 2 people, keeping a distance of 1 meter away from other people, do not touch public stuff, wash the hands with soap or hand sanitizer before eating and always wear mask outside the house.³
3. Legal regulations, which aims to provide community welfare that have values and norms to obey and sanction to whom violated the law.

This research focuses on understanding global insights in prevention to support government policies, internal and external prevention. In this research, the author focuses more on the police role against health protocol violators in dealing with transmission in Indonesia generally. This research provides the following understanding:

1. Legal Protection Concept

Systematically, legal protection belongs to everyone's rights, where everyone has the right get the legal protection. In this case, legal protection has two meanings, which are "Protection" and "Law", on this side it has its own meaning in terms of protection which relates to things or actions that protect or are protected, when the law can also be interpreted as a regulation or legally binding custom which is made or regulated by the government.

2. Criminal Law Concept

The criminal law has many interpretations and it is difficult to relate it to any element, it has its own meaning and concept. According to Notohamidjojo, the law as all written or unwritten rules which are coercive and also have the aim of providing a sense of peace that humanizes humans in social life. According to Soedarto, criminal law is aimed at providing intentional suffering to give a burden to people who violate the rule.

3. The Definition of Criminal Law

The sanction can be imposed because there are violations of criminal law norms, and criminal regulations. The violations can be the types of civil violations that have civil sanctions or penalties, administrative sanction for administrative violations, and criminal action which have criminal penalties or imprisonment.

4. The Purpose of Criminal Law

The meaning of legal objectives that will bind and have a role in national and international scope, the purpose of law is born to provide limits on people

³ Novita Maulida Ikmal and Machdian Noor, "Kebijakan Pemerintah Indonesia Dalam Penanganan Covid-19," *Jurnal Litbang Provinsi Jawa Tengah* 19, no. 2 (January 19, 2022): 155–167, <http://ejournal.bappeda.jatengprov.go.id/index.php/jurnaljateng/article/view/910>.

activities to respect each other and actualize a comfortable, peaceful, and protected life from all forms of things that threaten in everyday life. In the purpose of criminal law, it can be formulated that it is the law intention.

5. The Character of Criminal Law

The criminal has two main elements which is norms and sanctions with the aim of having provisions that must be obeyed by everyone who is living in society. The criminal law aims to ensure public discipline. The law has a binding and coercive character in order to make anyone will obey a regulation that has been issued. Whoever violate the law will be subject to criminal sanctions or pinalizes depending on the kind of violated. Also, to provide the insight about the law characteristic in a broad or small scope.

6. Unlawful Acts Theory

Unlawful Acts which refer to the normative in Article 1365 of the Civil Code (that any unlawful act that brings harm to another person, obliges the suspect to replace the loss).

7. Intentional Theory

The intentional means that the suspect knew what he will do conscious mind and do it do it consciously. The explanation in the Dutch Criminal Code states that "intentional" or can be called *Opzet* can be interpreted as the suspect want and know what he will do.

RESEARCH METHODS

This research is descriptive research method. Descriptive research is defined as a research method used to describe the existing phenomena as accurately as possible. The word "existing phenomena, but also the phenomena after a certain period of treatment. The author got the source of the efforts to enforce the law against health protocol violators during the pandemic as follows:

1. Research Type

The specifications in this research are field research, through collecting legal sources and information that obtained directly, or from internet media by grouping legal sources of material according to the theme. This study cites legal materials and sources through the types of legislation, government regulations, ministerial regulations and also decrees from various agencies related to the discussion material of the research content.

2. Law Sources

The data obtained from reading results, analysis, notes, sub-fields reports, libraries and thesis results that has a relationship with rules or law enforcement against violators of the pandemic protocol. Also, the legal material that control everyone with the existing laws and regulations. The aims of the law source is the doctrine of an opinion expressed by experts as well as from legal observers.

3. The Method of Legal Material Collection

Legal Source Processing

Legal materials obtained then examined thoroughly by sorting theories which have legal provisions and legal regulations related to enforce regulations for violating health protocols in Indonesia. The obtained legal materials will be customized to the material which will be a case study for written results development from various laws and regulations, government regulations, ministerial regulations and local government regulations that have the same goal and are related to suppressing the spread of the virus in affected countries or regions.

RESULT AND DISCUSSION

Law Understanding Against Covid-19

Law is a form of scope that is many and broad in terms of dimensions. Since the law will regulate in all life aspect in society all around the world which is experiencing a development and advancement.

The definition of legal provisions is also widely discussed in general and broadly as well as in various aspects, according to C.S.T. Kansil stated that the law can create the discipline in society which is used to maintain security and self-control in social life. According to R. Soeroso, the law is a set of regulations made by the authorities with the aim of regulating the discipline of people's lives, that the meaning of law is that there are commands, prohibitions and also coercion by imposing legal sanctions for the violator.⁴

The examples of national law are regulation that apply in one country and there is a positive law and a law that is aspired to; according to the content, it can be seen in private law or public law; from existence, it can be said that the law is objective and subjective; by its nature, law has a coercive and regulatory nature; the law is divided into two aspects based on how to defend, regulating interests and relationships in the form of orders and prohibitions; from its source, regulation is divided into laws, customs, treaties, jurisprudence and legal doctrine.

Definition of Violation

The meaning of violation according to Bambang Poernomo states that a violation is politic-on-recht and crime is crimineel-on-recht. From a political-on-recht perspective, it is an act that does not comply with the prohibitions or requirements that will be determined by the state authorities. Regarding the

⁴ Sherly Adam et al., "Penegakan Hukum Terhadap Pelanggaran Protokol Kesehatan Yang Dilakukan Masyarakat Pada Masa Pandemi Covid-19 Di Kota Ambon," *SASI* 27, no. 2 (June 5, 2021): 230, <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/441>.

meaning of violation according to Bambang Poernomo, as for the disciplinary violations according to the Police which have been regulated in the provisions of Article 1 Number 4 of Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Republic Indonesia Police, namely violation of disciplinary regulations is a word, writing, or act of police member force which violates disciplinary regulations.

A statutory offense is an act that is contrary to what is expressly included in a criminal law, regardless of whether the act is contrary to the legal awareness of the community or not. The Criminal Code (KUHP) makes a distinction between a crime and a violation.

A crime is listed in book II of the Criminal Code, while the violation is reported in book III of the Criminal Code which provides a principled distinction, such as:

- a. The crime action has more intense sanction than the violation
- b. The crime attempts are punishable, while the attempt of violation shall not be punished
- c. The expired date for criminal act is longer than the violation act

Legal Basis for Covid-19 Handling Policy

A legal rule can be considered good when it can fulfill these criteria, such as: globally applicable, can be announced, not retroactive, compiled in a formula that can be understood, there is a match between the rules and their implementation. The principle of equality before the law is a principle in which there is legal equality for every individual without any exceptions. The principle of equality before the law operates within the law that applies in general and singular, and can become a complete way between social dimensions and phenomena that occurred in today's society.

From the context of legal protection for citizens, the moral law is a legal reference that is able to guarantee its existence from government authority. In that context, a procedural framework is established to provide a bridge in forming laws that are in accordance with religious values. Then, liberation is an act of not discriminating against every human being or equating all human beings as with their peace. Based on the law used by the government in managing stable state finances during pandemic, which has a very large opportunity to minimize the abuse authority action. This is possible for legal protection for the government when an error occurs in the middle of law implementation.

The Integrity of Covid-19 Handling Policy

The prophetic science emphasizes an important position in transcendence after humanize and liberation, the transcendence wants to make this value as an important part in building civilization process. The transcendence is an effort to direct the life goals of all human being for their meaningfully life. The divine values

that can empower humans to determine the value of human ancestors, which invite people to conduct the human values in order to lead to noble values of divinity.

General Understanding of POLRI Role

The Definition of Police

Police have various concepts in terms of their roles and performance. In Indonesia, the meaning of police is quoted from Greek word "politeia", which means to protect the community, realizing the nation goals, and defend from evil and greedy state officials. The term police in Article 1 of Law Number 2 of 2002 concerning the Police, it also contains two meanings from its function and institution. In terms of its function, it stated in Article 2 of Law Number 2 of 2002 concerning the Police claims that the function of the police is as one of the government functions in maintaining security and public order, law enforcement and protecting the community.

Duties and Authorities of the Police

The main tasks of National Police of the Republic Indonesia are regulated in Article 13 of Law Number 2 of 2002, in this article the National Police has three classifications in general, from maintaining security and community discipline; law enforcement in the community; also provide a protection, and service to the community. According to Soedjono Dirdjosisworo the discipline is a limited atmosphere that aims to creat safe and peaceful environment for the community. Discipline also used as a parameter and guide for each individual for living in society.

Law Enforcement of Health Protocols Violators

From the Presidential Instruction (Inpres) Number 6 of 2020 in the act for handling health protocols that are implement in a disciplined manner and obeyed by all relevant parties, this Presidential Instruction has specifically four points for the Police:

- a. Command the National Police to participate in supporting and supervising the health protocol implementation
- b. National Police also cooperate with Indonesian Natioanl Army Forces (TNI) and logal government (Pemda) in conducting the patrols
- c. National Police also will provide the guidance to the community with the aim that the community will participate in preventing the spread of Covid-19 virus
- d. National Police will implement the law enforcement in dealing with health protocol violations

The success of a PSBB rule depends on the obedience, awareness and sense of discipline of each individual.⁵ The assistance of National Police is very necessary in helping this regulation running well. The Police have an important role during the pandemic to provide boundaries and prohibit individuals to gather with another.

The existence of legal rules for implementing health protocols is not directly proportional to the optimization of their implementation. Violators of the health protocol currently only receive administrative sanctions and social work as stipulated in Article 14 of DKI Jakarta Governor Regulation No. 41 of 2020. This sanction has not been able to provide a deterrent effect to violators.⁶

Law Enforcement during PSBB (Large-Scale Social Restrictions)

Starting in June 2020, the government has implemented transitional PSBB in some red zone areas, including Jakarta and East Java, despite the surge in case numbers.⁷ In the implementation of the law conducted by National Police that similar from the main tasks of the Police which have been regulated in Law Number 2 of 2002 concerning the Police, Article 2 of this Law states that one Police role is the function of the state government in safeguarding, society security and discipline, community protection, law enforcement as well as community service.

CONCLUSION

In handling the police environment, the police have the duty and authority in handling cases, when the case requires action to go to the court, the police delegate all cases to the prosecutor's office to be followed up and determine whether the defendant is guilty or not and determined at the court, when the case is already in court, all duties by the police have been completed and the cases are transferred to other law enforcers, called Public Prosecutor and Judge. These law enforcement officers have different parts of the task, the Public Prosecutor gives demands and indictments, the judge gives a verdict on the results of the final trial. In cases written by the author according to court decisions at the first level and appeals, each cases are having their own policies that will give their decisions, then all humans can get rights and justice in accordance with Pancasila when their lives follow in accordance with the applicable regulations.

⁵ I Wayan Wiryawan, "KEBIJAKAN PEMERINTAH DALAM PENANGANAN PANDEMI VIRUS CORONA DISEASE 2019 (COVID-19) DI INDONESIA," *Prosiding Webinar Nasional Universitas Mahasaraswati Denpasar 2020* (2020): 179–188.

⁶ Denico Doly, "LAW ENFORCEMENT IMPLEMENTATION OF HEALTH PROTOCOL IN SHOPPING CENTERS," no. 9 (2021).

⁷ Helen Andriani, S.Si, Apt, M.Sc, Ph.D, "Effectiveness of Large-Scale Social Restrictions (PSBB) toward the New Normal Era during COVID-19 Outbreak: A Mini Policy Review," *Journal of Indonesian Health Policy and Administration* 5, no. 2 (May 10, 2020), <http://journal.fkm.ui.ac.id/ihpa/article/view/4001>.

SUGGESTION

Giving an litigate to all levels of society without exception, to participate in the Covid-19 prevention. Without any support from the community, and from the police it will not get maximum results in handling the eradication of the spread of covid-19 virus. The awareness is very important for all levels of society in preventing the spread of the virus, not only for the police. The police also need to act decisively to give the sanction to violators.

The lack of community participation in handling the spread of the existing virus, and the lack of officers in implementing the enforcement actions for health protocol violations, when there is a community activity that has more participants than officers, it is difficult to enforce. When an activity is associated with religion in a pandemic condition which will be detrimental to the community and also make the inconsistent between religion and its expectations.

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