

Reconstruction of Legal Protection Policy for Occupational Safety for Health Personnel Due to a Transmitted-Disease Pandemic Based on Justice Value

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Abstract

Health workers need to get legal protection from the government as the executor of the task of handling Covid-19. The author raises this problem in a study with the main problem What are the obstacles that occur that make the legal protection policy for occupational safety for health workers due to the infectious disease pandemic is not based on the value of justice yet and How is the reconstruction of this law based on the value of justice which will be researched using the socio-legal research method which is on the qualitative data obtained by the author in the field where the results are processed using data triangulation to obtain a relevant and accurate analysis. The results of the study indicate that there are obstacles that occur as a result of a very complicated local government bureaucracy. In addition, health workers who work in the task force to accelerate the handling of the pandemic have not received occupational health and safety guarantees, only PPE (Personal Protective Equipment), Vitamins, food, and temporary Home Stay that must be provided while on duty, even the insurance is financed by their agency and not from their Local government. The reconstruction proposed by the author is in Article 9 paragraph 1 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, which stipulates that certain officers who carry out efforts to control the epidemic as referred to in Article 5 paragraph (1) must be rewarded for the risks involved that are borne in carrying out their duties.

Keywords: Reconstruction, Health Personnel, Pandemic, Justice Value.

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INTRODUCTION

Legal protection for health workers is very necessary because health workers are vulnerable to occupational health and safety hazards. Occupational health and safety (K3) management in Indonesia is regulated in the Decree of the Minister of Health of the Republic of Indonesia Number 432/MENKES/SK/IV/2007 concerning Guidelines for Management of Occupational Health and Safety (K3) in Hospitals and The Decree of the Minister of Health of the Republic of Indonesia Number 1087/MENKES/SK/VIII/2010 concerning Occupational Health and Safety Standards in Hospitals and Regulation of the Minister of Health of the Republic of Indonesia Number 66 of 2016 concerning Occupational Health and Safety in Hospitals.

A hospital is a place of work that has a high risk to the safety and health of its human resources, namely health workers Therefore Hospitals as employers for health workers must provide protection

as according to Law Number 13 concerning Manpower, an employer is an individual, entrepreneur, legal entity, or other entity that employs workers by paying wages or other forms of remuneration.

Covid-19 is one of the infectious disease outbreaks that occur in the world and in Indonesia. According to the Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Diseases, Article 1 states in case of an outbreak of infectious disease, hereinafter referred to as an epidemic, is an outbreak of an infectious disease in the community whose number of sufferers has significantly increased beyond the usual situation at a certain time and area. and can wreak havoc. Then the sources of disease which is humans, animals, plants, and/ or objects that contain and/or are contaminated with disease germs, as well as those that can cause epidemics need to be quarantined.

In relation to this, Coronavirus Disease 2019 (COVID-19) has been declared by WHO as a global

pandemic, and in Indonesia it is declared as a type of disease that causes public health emergencies and non-natural disasters, which not only cause death but also cause substantial economic losses, so it is necessary to do something about it immediately by preparing countermeasures including prevention and control.

According to the Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Infectious Diseases, Article 5 states that efforts to control infectious disease outbreaks are epidemiological investigations; examination, treatment, care, and isolation of patients, including quarantine measures; prevention and immunity; the extermination of the cause of the disease; handling of corpses due to epidemics; outreach to the public; and other countermeasures that are deemed necessary.

Coronavirus Disease 2019 (COVID-19) is an infectious disease caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARSCoV-2). SARS-CoV-2 is a new type of coronavirus that has never been previously identified in humans. There are at least two types of corona virus that are known to cause diseases that can cause severe symptoms such as Middle East Respiratory Syndrome (MERS), and Severe Acute Respiratory Syndrome (SARS). Common signs and symptoms of COVID-19 infection include symptoms of acute respiratory distress such as fever, cough, and shortness of breath. The average incubation period is 5-6 days with the longest incubation period being 14 days. In severe cases of COVID-19, it can cause pneumonia, acute respiratory syndrome, kidney failure, and even death [1].

Based on data published by the Indonesian Task Force for the Acceleration of Handling Covid-19 on September 30, 2020, data from 216 countries confirmed 17,660,523 people who were positive for Covid-19 and 680,894 people died. Meanwhile, in Indonesia, there were 287,008 people who tested positive for Covid-19, 214,947 recovered and 10,740 people died. Based on data from the Mitigation Team for the Indonesian Doctors Association (PB IDI), the Indonesian Dentist Association (PDGI) and the Indonesian National Treatment (PPNI) stated that as of September 29, 2020, 127 doctors, 9 dentists and 92 nurses had died [2].

Health workers and non-health workers in carrying out their work to deal with Corona Virus Disease 2019 (COVID-19) are at high risk of being exposed to Corona Virus Disease 2019 (COVID-19). To ensure the fulfillment of the rights of every worker against risks in dealing with Corona Virus Disease 2019 (COVID-19), the government has determined Corona Virus Disease 2019 (COVID-19) as an occupational disease as regulated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/ 327/2020 concerning the

determination of Corona Virus Disease 2019 (Covid-19) As a Specific Occupational Disease in Certain Jobs.

Corona Virus Disease 2019 (COVID-19) that the worker is infected with due to their work is since then treated as an occupational disease that is specific to a particular job where In an outbreak condition and a Public Health Emergency has been established, health services and efforts to handle COVID-19 are types of work that have a high risk of being exposed to the SARS-COV-2 Coronavirus can get benefits and priorities.

Yet, the facts have shown that the spread of Covid-19 is very aggressive and health workers are a profession that is at the forefront of handling Covid-19 which has a high risk of being affected by Covid-19 and this law shows no adequate protection as many still suffer from it. Therefore, health workers need to get legal protection from the government as the executor of the task of handling Covid-19.

These problems are what urges the author to study it further in research with the main problem as follows:

- a. What are the obstacles that occur that make the legal protection policy for occupational safety for health workers due to the infectious disease pandemic is not based on the value of justice yet?
- b. How is the reconstruction of legal protection policies for occupational safety for health workers due to an infectious disease pandemic based on the value of justice?

METHOD OF RESEARCH

This type of research is a kind of empirical juridical, or referred by field research that examines the provisions of applicable law and what happens in reality in society.[3] Juridical empirical research is legal research on the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society. Or in other words, a research conducted on the actual situation or real conditions that occur in the community with the intention of knowing and finding the facts and data needed and to differentiate with previous research whether it is intended or not [4], after the required data has been collected then leads to the identification of the problem which in turn leads to problem solving.

RESEARCH RESULT AND DISCUSSION

1. Obstacles That Occur That Make The Legal Protection Policy For Occupational Safety For Health Workers Due To The Infectious Disease Pandemic Is Not Based On The Value Of Justice Yet

As with many things in life, one can find obstacles and some find ease in the implementation of something. Then, without exception, in the implementation of legal protection for health workers in hospitals, the same also implies. Some of these

obstacles and ease in the implementation of legal protection for health workers, namely:

1. Economic protection, namely protection in the form of compensation for services or wages. In the implementation of economic protection as regulated in Article 88 paragraph 3 of Law Number 13 of 2003 and Article 57 of Law Number 36 of 2014. Meanwhile, the convenience as mentioned above, is that in terms of implementing laws and regulations regarding wages or the fulfillment of economic protection for health workers, there are no obstacles.
2. Social protection, this social protection itself has been regulated in Article 99 of Law Number 13 of 2003, Article 100 of Law Number 13 of 2003, Article 57 of Law Number 36 of 2014, Article 50 of Law Number 29 of 2004. Meanwhile, the ease of implementing social protection as regulated in Article 99 of Law Number 13 of 2003, Article 100 of Law Number 13 of 2003, Article 57 of Law Number 36 of 2014, Article 50 of Law Number 29 of 2004 Hospital social services are helped by the JKN program in the form of BPJS Health.
3. Technical protection, technical protection is protection in the form of occupational safety and health. This protection is regulated in Article 86 paragraph 1 of Law Number 13 of 2003, Article 57 letter d of Law Number 36 of 2014 concerning Health Workers.

Article 28H paragraph (1) of the 1945 Constitution explains that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and have the right to obtain health services. This is further reinforced by Article 4 of Law No.36/2009 on Health which states that everyone has the right to health. Followed by Article 19 which states that the Government is responsible for the availability of all forms of quality, safe, efficient, and affordable health efforts.

Article 5 paragraph (1) and Article 9 paragraph (3) of Law no. 1/1970 concerning Occupational Safety, states that the Government through the Manpower Office is obliged to supervise and foster occupational safety and health for workers. Then, as stated in Article 86 paragraph (1) letter a of Law no. 13/2003 concerning Manpower, it is explained that every worker/laborer has the right to obtain protection for occupational safety and health. Followed by paragraph (2) which explains that in order to protect the safety of workers/laborers in order to realize optimal work productivity, work safety and health efforts are carried out.

Article 6 letter a of Law no. 24/2017 concerning Disaster Management states that in the implementation of disaster management, states that the Government is responsible for protecting the community from the impact of disasters. A pandemic is

one of the global disasters faced by the whole world, including Indonesia, so that as people who are given the task of overcoming this pandemic, health workers deserve to be given health and safety guarantees in order to achieve health development. If it is associated with Article 82 paragraph (1) of Law No. 36/2009 on Health which states that the Government, Regional Government, and the community are responsible for the availability of resources, facilities, and the implementation of comprehensive and sustainable health services in disasters, then in a pandemic The government must also ensure the availability of tools that support occupational safety and health for health workers.

Article 1 PP No. 50/2002 concerning the Implementation of Occupational Health and Safety Management System, called occupational safety and health, hereinafter abbreviated as K3, are all activities to ensure and protect the safety and health of workers through efforts to prevent occupational accidents and occupational diseases. Occupational safety and health are important for the company, because the impact of occupational accidents and diseases not only harms employees, but also the company, either directly or indirectly.

Occupational health and safety (K3) is philosophized as a thought and effort to ensure the integrity and perfection of both the physical and the spiritual workforce in particular and humans in general, the results of their work and culture towards a prosperous and prosperous society, while scientific understanding is a science and technology in its application in an effort to prevent the possibility of accidents and occupational diseases. The Exposure to workers (medical, paramedical, and non-medical personnel) in health facilities in an environment contaminated with germs originating from patients receiving treatment or being treated, transitions in the epidemiology of diseases and health problems must be followed by the entry of advanced science and technology that requires talented and skilled workers so that it cannot always be met with the risk of work accidents.

Occupational safety and health is the right of every worker [5]. In the policies regulated by the Government mentioned above, the Government has guaranteed the existence of occupational safety and health for health workers in the task force for the acceleration of handling infectious disease pandemics, but the facts that occur in the field are that there are still some obstacles that occurred as the result of complicated local government bureaucracy. In addition, health workers who work in the task force to accelerate the handling of the pandemic have not received occupational health and safety guarantees, as they only received PPE (Personal Protective Equipment), Vitamins, food, Home Stay that are provided while on

duty, and their BPJS Insurance is financed by their agency and not from the government nor their Local government.

Health workers in the task force for the acceleration of handling infectious disease pandemics do receive guarantees and protection of occupational safety and health while on duty from the Regional Government as instructed in the Legislation, but the guarantee and protection are still experiencing problems, including caused by the Regional Government bureaucracy, which is very complicated, and the distribution of PPE is unequal for health workers on duty. As workers who are given the authority in the task force to accelerate the handling of infectious disease pandemics, in their implementation, these health workers have not received health and safety guarantees at all. Only some of them get guarantees in the form of PPE, Vitamins, food and Home Stay, and even then not all of them get it, even though it is the responsibility of the Regional Government to carry out attribution orders from laws and regulations.

2. Reconstruction Of Legal Protection Policies For Occupational Safety For Health Workers Due To An Infectious Disease Pandemic Based On The Value Of Justice

Referring to the argument that Pancasila is the basis of the state philosophy that underlies "*legal protection for the people*", the concept of legal protection in Indonesia must be interpreted as an appreciation of the awareness of protection for human dignity which is rooted in the principle of the State of Law Pancasila. The literature theoretically analyzes the "means of legal protection for the people", where the central point is "the government's legal action", because it states that there are two means, namely: (1) preventive legal protection and (2) repressive legal protection. In the literature, it is stated that preventive legal protection facilities aimed at preventing disputes from developing are a bit behind compared to repressive legal protections aimed at resolving disputes. However, it is also recognized that preventive legal protection has an important role.

Legal protection pursued through legislation has an underlying legal principle. Likewise, legal protection is pursued through efforts to make and include steps through legislation that has a purpose, the scope is planned through strategies and policies. All of these things can be found in every legislation, the main thing being held with the same goal, namely legal protection. Pound classifies the interests protected by law into 3 (three) main categories, including public interests, social interests, and private interests. Dworkin [6] stated that rights are what everyone should uphold. As Dworkin wrote, "*Rights are best understood as trumps over some background justification for political decisions that serve as a goal for the community as a whole however when faced with a conflict between the*

exercise of rights and the public interest, it is justified to omit rights". This concept of thought is not in line with the concept of justice offered by John Rawls Whereas Dworkin admits that interference in the lives of individuals to negate rights is justified, if a specific basis can be found. According to Dworkin, as quoted by Peter Mahmud Marzuki [7], "*rights are not what is formulated but the values that underlie that formulation*". The nature of rights is so valuable that it gave rise to the theory of interest and the theory of will, as put forward by Jeremy Bentham [8] who views that, "*rights are interests protected by law, morals, human rights, inventions, health, and racial unity, the environment, individual interests, family interests. With the guarantee of equal freedom and equality for everyone, justice will be realized*". Rights are powers given by law to a person, a close relationship between rights and obligations, rights are paired with obligations, meaning that if a person has rights, then his partner is an obligation to the person to other people. Rights are something inherent in humans by nature and because of this right, a law is needed to maintain the continuity of the existence of rights in the pattern of social life, and because of this right, the law was created. These interests are not created by the state because these interests already exist in social life and the state only chooses which ones to protect. According to Peter Mahmud [9] there are 3 (three) elements in a right, namely 1. The element of protection; 2. The element of recognition; and 3. The element of will. If the principle of justice is implemented, a good and ethical business is born.

Protection is an important element in rights, the author argues that rights as an interest that is protected by law in a certain way. The law must consider interests carefully and strike a balance between these interests. Law must function in achieving the goal of peace and prosperity, the goal of achieving peace and prosperity can be realized if the law provides as much as possible a fair arrangement.

The legal protection given to the Indonesian people is an implementation of the principle of recognition and protection of human dignity which is based on Pancasila and the principle of a constitutional state based on Pancasila.

One of the principles of law is that everyone has the right to protection from the law as almost all legal relationships must receive protection from the law. Therefore, there are many kinds of legal protection. According to Teguh Prasetyo [10], "*The theory of dignified justice does not only look at Indonesia's positive legal system in a closed manner in the sense that where there is a society there is always law*". He further explained that "*The Pancasila legal system is a legal system that belongs to the Indonesian nation itself as part of the heritage of world civilization (the product of civilization). The Pancasila legal system is an*

authentic, unique legal system or later people like to call it original.” Thus, in an effort to formulate the principle of legal protection for the people based on Pancasila, it begins with a description of the concept and declaration of human rights. Pancasila is used as the ideological basis and the philosophical basis of the Indonesian nation-state. Therefore, the recognition of the dignity of the Indonesian people is not the result of years of struggle, but that recognition is intrinsically attached to Pancasila which is reflected in its precepts.

M. Isnaeni [11] argues that basically the issue of legal protection in terms of its source can be divided into two (2) types, namely "*external*" legal protection and "*internal*" legal protection. The parties at the time of making the agreement, where at the time of packing the contract clauses, both parties want their interests to be accommodated on the basis of an agreement. Likewise, all types of risks are endeavored to be prevented through filing through clauses that are packaged on the basis of agreement, so that with this clause the parties will receive balanced legal protection based on their mutual consent. The parties to such internal legal protection can only be realized when their legal standing is relatively equal in the sense that the parties have relatively balanced bargaining power so that on the basis of the principle of freedom of contract, each of the contracting partners has the freedom to express their will according to their interests. This pattern is used as the basis when the parties assemble the clauses of the agreement they are working on, so that the legal protection of each party can be realized in a straightforward manner on their initiative. The nature of the laws and regulations that should not be one-sided and impartial, must also be given proportional legal protection that is balanced as early as possible to other parties.

Legal protection for the safety of health workers is an important aspect in the midst of a pandemic. In practice, health workers often do not get the rights that should be fulfilled, such as the availability of personal protective equipment (PPE). In fact, the government must also pay attention to the safety of health workers in dealing with the pandemic by meeting the availability of PPE. Legally, health workers are equipped with obligations and legal rights and protections regulated in the legislation.

Based on Permenkes No. 66/2016 concerning Occupational Health & Safety in Hospitals, health workers must also follow occupational safety and health protocols while dealing with the pandemic. The protocol guidelines are regulated in Permenkes No. 27/2017 on Guidelines for Infection Prevention & Control in Health Facilities. However, these provisions do not specifically regulate the potential danger of spreading the disease. Regarding the rights of health workers who are protected by law. Therefore, referring to Article 57 of the Health Manpower Act, states that

health workers in carrying out their practice have the right to:

- a) Obtain legal protection as long as they carry out tasks in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures;
- b) Obtain complete and correct information from health service recipients or their families;
- c) Receiving fees for services;
- d) Obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency, and religious values;
- e) Get the opportunity to develop their profession;
- f) Refuse the wishes of the recipient of health services or other parties that are contrary to professional standards, codes of ethics, service standards, standard operating procedures, or provisions of laws and regulations; and
- g) Obtain other rights in accordance with the provisions of the legislation.

From the sound of Article 57 of the Health Manpower Act above, the profession of health workers really needs to get legal protection in carrying out their duties and has the right to occupational safety and health in providing health services.

However, during a pandemic, many health workers have to sacrifice their lives to prevent the spread of disease. Not only that, the government also is responsible for providing health service facilities for health workers to carry out their work. Therefore, the Central Government and Regional Governments are responsible for the availability of health service facilities in order to realize the highest degree of health. This is regulated and stated in Article 6 of Government Regulation Number 47 of 2016 concerning Health Service Facilities. In view of the outbreak of a disease that has the status of a disaster after the issuance of the Decree of the Head of BNPB Number 13 A of 2020, all levels of the Government are obliged to carry out all their obligations as stipulated in the applicable legislation. Obligations that should be fulfilled by this Government, including:

- a. Support the availability of medical equipment in the field;
- b. Ensuring the fulfillment of the rights of the community and medical personnel;
- c. Transparency of information to the public;
- d. Making policies that pay attention to the values of human rights and democracy.

Based on the above description, the Reconstruction of Legal Protection Policy for Occupational Safety for Health Workers Due to the Infectious Disease Pandemic Based on Justice Values in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower and Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers because Article 9 Paragraph 1 of Law Number

4 of 1984 concerning Outbreaks of Infectious Diseases is not explicitly explained, so that the clarity of the word "can" for health workers due to an infectious disease pandemic and Article 57 letter d of Law Number 36 of 2014 concerning Health Workers is not explicitly explained, so that it is not known to what extent the handling of occupational safety for health workers due to an infectious disease pandemic is necessary so that the reconstruction required is an explanation of the types of awards and the certainty of obtaining awards for health workers and an explanation of the extent of the handling for medical personnel whose health is in danger due to being exposed to infectious diseases due to a pandemic.

CONCLUSION

1. Barriers to legal protection for occupational safety for health workers due to pandemics of infectious diseases have not been based on the value of justice, namely because of the existence of obstacles in fulfilling occupational safety and health guarantees for health workers in the task force for accelerating pandemic handling. Many of the obstacles that occur are the result of complicated local government bureaucracy. In addition, health workers who work in the task force to accelerate the handling of the pandemic have not received any occupational health and safety guarantees, they only receive PPE (Personal Protective Equipment), Vitamins, food, Home Stay that are provided while on duty, even their BPJS insurance is financed by their agency and not from the government or local government.
2. Reconstruction of legal protection policies for occupational safety for health workers due to pandemics of infectious diseases based on the value of justice are in the Infectious Disease Outbreak Act and the Health Workforce Act. Reconstruction in Article 9 paragraph 1 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, which stipulates that certain officers who carry out efforts to control the epidemic as referred to in Article 5 paragraph (1) can be rewarded for the risks borne in carrying out their duties. The article does not explain explicitly yet the word "can" is clearly for health workers due to an infectious disease pandemic. Reconstruction in Article 57

letter d of Law Number 36 of 2014 concerning Health Workers stipulates that health workers are entitled to protection for occupational safety and health, treatment in accordance with human dignity, morals, morality, and religious values. The article does not explain explicitly, so it is not known to what extent the handling of occupational safety for health workers due to an infectious disease pandemic is unknown therefore a reconstruction needed to emphasize the reward given to Health worker to achieve a just system.

REFERENCES

1. Setiati, S., & Azwar, M. (2020). *COVID-19 and Indonesia*. Acta medica Indonesiana, 52, 84-89.
2. Fatmawati, A., & Hendrayani, S. (2020). The Risk Perception Of Covid-19 In Indonesia. *Jurnal Vokasi Keperawatan (JVK)*. 3. 103-108. 10.33369/jvk.v3i2.11271.
3. Peter Mahmud, M. (2006). *Penelitian Hukum*, Prenada Media, Jakarta, p. 5.
4. Pratama, T. G. W. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514.
5. Wahyu, W., & Toebagus, G. (2019). *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019), Dx.Doi.Org/10.2991/Icglow-19.2019.65
6. Kaufman, A. (2021). *Liberalism: John Rawls and Ronald Dworkin*. 10.1017/9781108775748.004.
7. Peter Mahmud, M. (2006). *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, p.176.
8. Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13(8), 1307-1311.
9. Peter Mahmud Marzuki, *Op. Cit*, p.155.
10. Teguh, P. (2015). *Keadilan Bermartabat Perspektif Teori Hukum*, Nusa Media, Bandung, p.58.
11. Moch, I. (2016). *Pengantar Hukum Jaminan Kebendaan*, Revka Petra Media, Surabaya, p.159.