

PROS AND CONS OF SANCTIONS IN THE COVID-19 VACCINATION REGULATION

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Abstract

Corona virus infection is a disease caused by the Corona virus, with the main symptom of respiratory distress. This disease first appeared at the end of 2019 in Wuhan, China, and spread rapidly to various other countries, as far as Indonesia. In Indonesia, the Covid-19 outbreak is included in a national disaster of a non-natural nature based on Law Number 24 of 2007 concerning Disaster Management. This virus is very dangerous, and many victims have died from Covid-19. Various efforts have been made to prevent and overcome the spread of the virus such as implementing lockdowns, but have not been able to contain the spread of Covid-19. The approach method uses normative juridical, the results obtained state that the pros and cons of applying sanctions in the Covid-19 vaccination regulations For those who support sanctions for those who refuse vaccination think that the government is obliged to provide good health services to fulfill the rights of its citizens and ensure that its citizens are healthy, so that legal sanctions against the Covid-19 vaccine must exist.

Keywords : Covid-19, Sanctions, Vaccinations

A. INTRODUCTION

The Corona virus (Covid-19) has become a serious concern for all countries from the end of 2019 to the present, even in the next few years. How could I not, the virus originating from one of the provinces in China has spread so fast and has a tremendous impact. Covid-19 is a virus that attacks the human respiratory tract which causes high fever to have an impact.¹

The government as a “regulator” to regulate all aspects of citizens lives as a form of advancing the general welfare for all Indonesian people.² In Indonesia, the Corona or Covid-19 virus outbreak is included in a national disaster of a non-natural nature. Based on Article 1 point 3 of Law Number 24 of 2007 concerning Disaster Management, non-natural disasters are: Disasters caused by non-natural events or series of events which include technological failure, modernization failure, epidemics, and disease outbreaks. The disaster due to the Covid-19 virus had a huge impact on the Indonesian people, and not a few people were victims of the Covid-19 outbreak.

WHO has designated Covid-19 as a global health emergency.³ Seeing a situation like this, one very

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- 1 Muh. Ali Masnun, Eny Sulistyowati, Irfan Ronaboyd, Pelindungan Hukum Atas Vaksin Covid-19 Dan Tanggung Jawab Negara Pemenuhan Vaksin Dalam Mewujudkan Negara Kesejahteraan, *DiH: Jurnal Ilmu Hukum*, Volume 17 Nomor 1 Februari 2021, page.35-47
 - 2 Anis Mashdurohatun, Gunarto, Adhi Budi Susilo, The Transfer of Intellectual Property Rights as Object of Fiduciary Guarantee, *Jurnal Akta*, Volume 9 No. 3, September 2022, page.378-392
 - 3 Pang J, Wang MX, Ang IYH, Tan SHX, Lewis RF, Chen JI-P, et al. Potential Rapid Diagnostics, Vaccine and Therapeutics for 2019 Novel Coronavirus (2019-nCoV): A Systematic Review, *J Clin Med*, 9 (3) 2020, page.623

possible way to prevent the spread of this pandemic from spreading is by developing a vaccine. Vaccines provide protection not only for the people who are vaccinated, but also for the wider community by reducing the spread of disease in a population. The SARS-CoV-2 virus spreads from person to person. Interestingly, this human-to-human transmission chain can be broken, even if there is no 100% immunity, this is referred to as “herd immunity” or “community protection”, which is an important benefit of vaccination.⁴ Although vaccines for SARS and MERS have not been found, it is possible to find a covid-19 vaccine.

Covid-19 is transmitted from human to human through droplets from sufferers who sneeze or cough and close contact with sufferers or contact with contaminated surfaces and objects. Covid-19 enters the body through the eyes, nose and mouth through hands that are contaminated with the virus. Covid-19 cases have seen a surge. The surge in positive cases of Covid-19 has occurred since January 2021. A number of areas are already short of special beds for Covid-19 patients who need treatment, besides that in some areas there is also a shortage of grave land, such as what happened in Jakarta.

Given the great danger of Covid-19, countries in the world are making various efforts to prevent and overcome the spread of this deadly virus, such as implementing lockdowns, including in Indonesia, In the last week of March, dated March 31, 2020, President Jokowi issued Government Regulation Number 21 of 2020, which regulates the enactment of Large-Scale Social Restrictions (PSBB),⁵ as regulated in Article 59 of Law Number 6 of 2018 concerning Health Quarantine, accompanied by the implementation of mandatory health protocols by all members of society, without exception.

Health protocols are rules and regulations that must be followed by every member of the community in order to be able to carry out activities safely during the Covid-19 pandemic. The purpose of the health protocol is so that people can continue their activities safely and do not endanger the safety or health of others. If the public consciously follows all the rules stated in the health protocol, then the transmission of Covid-19 can be minimized. Activities in conducting health efforts must be done by doctors and dentists who have high ethical and moral, skills and authority that continually must be upgraded through ongoing education and training, certification, registration, licensing, and coaching, supervision, and monitoring to conduct medical practice in accordance with the development of science and technology.⁶

The Ministry of Health has issued a health protocol in the context of specific prevention and control 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 (Covid-19). However, there are still many violations committed by the public against health protocols, so the Police must take action against violators in order to enforce legal regulations, and as an effort to break the chain of spreading Covid-19.

The handling of Covid 19 in Indonesia has entered a new situation, along with news that the Covid 19 vaccine process has begun to find a bright spot. Whereas the clinical trial process is still ongoing, so its efficacy cannot be ascertained, the government considers that the procurement of the Covid 19 vaccine needs

4 Orensteina WA, Ahmedb R. Simply put: Vaccination saves lives, *Proc Natl Acad Sci USA*, 114(16) 2017, page.4031.

5 Andri Winjaya Laksana, Law Enforcement Reform on Covid 19 Pandemic: a Necessity or an Innovation? *Varia Justicia*, Vol. 16 No. 2 (2020), page.170-182

6 Anis Mashdurohatun, Irsyam Risdawati, Hendro Sucipto, Mahmutarom, Protection of Doctors and Patients in Implementing Informed Consent Based on Justice Value, *Talent Development & Excellence*, Vol.12, No.2s, 2020, page.3470-3480

to be done immediately as a preventive measure for vaccine supply.⁷ The last effort in eradicating and dealing with Covid-19 is vaccination. Currently, a vaccine against Covid-19 has been found. All countries in the world vaccinate all their citizens to prevent the spread of Covid-19. The development of a safe and effective vaccine to control this pandemic is very important because it is expected to inhibit its spread and prevent its recurrence in the future.⁸

Presidential Regulation Number 14 of 2021 concerning Vaccines Procurement and Implementation of Vaccinations in the Context of the Corona Virus COVID-19 Pandemic has been enacted by President Joko Widodo on February 9, 2021. Through this Presidential Regulation, the public listed as targets for Covid-19 vaccine recipients and meet the requirements, compulsory to participate in the vaccination program which is carried out 2 (two) times in stages free of charge and contacted via SMS.

In the Presidential Decree, it is stated that for people who have been designated as vaccine recipients, but do not participate or refuse to be vaccinated against COVID-19, they will be subject to administrative sanctions in the form of postponing or stopping the provision of social security or social assistance (bansos), postponement or termination of government administrative services, and / or a fine. This rule was made because the government considers that residents who refuse to be vaccinated will hamper the implementation of controlling the spread of Covid-19.

Considering the importance of the Covid-19 vaccination program for individuals and also providing protection for people who cannot be vaccinated, and who have been held accountable by the authorities, it is mandatory and compelling. As a good citizen, these obligations must be obeyed and implemented, so that if they are violated they will get legal sanctions, the inclusion of violations (minor criminal acts).

The Indonesian government certainly does not remain silent and continues to strive so that Indonesia can get through this crisis. One of the actions taken by the government is to provide a Covid19 vaccine. However, these efforts have received mixed responses from the community. Through the news in various mass media, we can see that not all people agree with these efforts.⁹ The government itself states that criminal sanctions for rejecting the Covid-19 vaccine are a last resort for punishment if other (more persuasive) legal norms do not function. Criminal sanctions for those who reject the Covid-19 vaccine are regulated in Article 93 of Law Number 6 of 2018 concerning Health Quarantine. In the article, it is explained that for citizens who do not comply with the administration of health quarantine and/or obstruct the implementation of health quarantine, they can be sentenced to a maximum of 1 year in prison and/or a maximum fine of Rp. 100 million. The application of sanctions against people who refuse vaccination is reaping the pros and cons in the community.

The purpose of this research is to find out the pros and cons of applying sanctions in the Covid-19 vaccination regulations, for those who support sanctions for those who refuse vaccination think that the government is obliged to provide good health services to fulfill the rights of its citizens and ensure the health of its citizens, so that legal sanctions for rejecting the Covid-19 vaccine must exist.

7 Idil Akbar, Vaksinasi Covid 19 Dan Kebijakan Negara: Perspektif Ekonomi Politik, *Jurnal Academia Praja*, Volume 4 Nomor 1-Februari 2021, page.244-254

8 Liu C, Zhou Q, Li Y, Garner L V., Watkins SP, Carter LJ, et al. Research and Development on Therapeutic Agents and Vaccines for COVID-19 and Related Human Coronavirus Diseases, *ACS Cent Sci.* 6 (3), 2020, page. 315–31.

9 Mariana Augusta Noya Letuna, Instagram Sebagai Media Edukasi Vaksin Covid-19 di Indonesia, *Jurnal Communio : Jurnal Ilmu Komunikasi*, Volume 10, No. 1, Januari 2021, page.88-106

B. RESEARCH METHOD

This type of research used in this research is normative juridical. Normative juridical research is research that is focused on examining the application of the rules or norms in positive law.¹⁰ This research is descriptive analytical, because the researcher wishes to describe or describe the subject and object of the research, which then analyzes and finally draws conclusions from the research results.¹¹ Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research.¹²

C. RESULTS AND DISCUSSION

The Covid-19 vaccine program is starting to take place in various regions. Every citizen of the country must not obstruct the officers in the response to the epidemic (obligation). On the other hand, every citizen has the right to choose the necessary health services for himself. The right of the community to choose the health services that are needed for themselves is stated in Article 5 paragraph (3) of Law No. 36 of 2009 concerning Health which states that : “Every person has the right to independently and responsibly determine the health services that are needed for himself”.

On the other hand, the government says citizens who refuse to be vaccinated can be subject to criminal penalties in the form of imprisonment and fines in accordance with Article 93 of Law Number 6 of 2018. Article 93 of Law Number 6 of 2018 reaps pros and cons in the community, with various arguments. Those who support the imposition of sanctions for those who refuse vaccination think that the government is obliged to provide good health services to fulfill the rights of its citizens and ensure that its citizens are healthy, so that legal sanctions for rejecting the Covid-19 vaccine must exist. Regarding the refusal of vaccination, from the point of view of human rights, there is freedom to have the right to health be limited by the state.

As long as this does not conflict with human rights, law, general welfare and democratic values. As long as the country does not conflict with these four values, vaccine coercion is allowed. However, seeing that there are criminal sanctions for people who refuse vaccines is not appropriate because it is not a criminal act.

As a rule of law regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is fitting for citizens to implement the applicable legal regulations. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that: “The State of Indonesia is a constitutional state”. Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it has the consequence that every attitude, action, policy, and behavior of state and community apparatus must be based on and in accordance with applicable law. The principles or characteristics of the rule of law according to Immanuel Kant, namely :¹³

10 Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2011, page.295.

11 Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, page.183.

12 Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohaturun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Scholars International Journal of Law, Crime and Justice*, Vol 5 Issue 12 2022, page.513-519

13 Budiyanto, *Dasar-Dasar Ilmu Tata Negara*, Erlangga, Jakarta, 2000, page.53.

1. Recognition and guarantee of human rights;
2. Separation of powers to guarantee human rights;
3. Governance based on law;
4. Courts to resolve problems that arise as a result of human rights violations.

As mentioned, one of the characteristics of a rule of law is the recognition and guarantee of human rights. In terms, human rights are defined as rights inherent in the dignity of humans as creatures created by God, and these rights are carried by humans from birth to the face of the earth so that these rights are innate (natural), not a gift from humans or the state. Regarding human rights, it has been guaranteed in the constitution of the Unitary State of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia in its articles, namely Chapter XA Article 28A to Article 28J.

The constitution is the highest constitutional guarantee of the rights of every legal subject in the country concerned. The stronger the constitutional guarantee of human rights in the 1945 Constitution, the higher the quality of the rule of law and democracy in that country. On the other hand, if the guarantees of the 1945 Constitution are weak, it is certain that the constitutional and democratic state in that country is also fragile. Constitutional guarantees for human rights are the foundation that determines whether or not the building of a constitutional and democratic state is strong in the country concerned.¹⁴

The importance of regulating human rights in the constitution illustrates a commitment to law enforcement and human rights efforts. Efforts have been made to make the most of the various contents of human rights in the constitution to accommodate the needs and needs of protecting human rights, both in the context of individuals, families, communities and as Indonesian citizens.¹⁵

The definition of human rights according to Article 1 number 1 of Law Number 39 Year 1999 concerning Human Rights is: "A set of rights inherent in the nature and existence of humans as the being of God Almighty and constituting His gift, which must be respected, upheld, high and protected by the state, law and government and everyone for the honor and protection of human dignity".

Human rights including the right to health, which in Article 28H of the 1945 Constitution of the Republic of Indonesia states that: "Everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and the right to obtain health services, "later stated in Article 4 of Law Number 36 of 2009 concerning Health, that:" Everyone has the right to health, "further in Article 9 point 3 of Law Number 39 Year 1999 that:" Everyone has the right to health. for a good and healthy environment ". Based on the provisions of the law above, it is the right of every member of the community to live healthy and get health services from the government, so that in order to get a healthy environment, every member of the community must cooperate with each other in creating a healthy environment, especially at this time where Indonesia is facing an outbreak of the Corona or Covid-19 virus.

The Corona or Covid-19 virus outbreak is included in a national disaster of a non-natural nature. Based on Article 1 point 3 of Law Number 24 of 2007 concerning Disaster Management, non-natural disasters are: "Disasters caused by non-natural events or series of events which include technological failure, modernization failure, epidemics, and disease outbreaks. ". The disaster due to the Covid-19 virus

¹⁴ Suparman Marzuki, *Politik Hukum Hak Asasi Manusia*, Erlangga, Jakarta, 2014, p. 60.

¹⁵ Majda El-Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia, Dari UUD 1945 sampai dengan Amandemen UUD 1945 Tahun 2002*, Edisi Pertama, Cetakan Kesatu, Kencana Prenada Media Group, 2005, page.65.

has had a huge impact on the Indonesian people, and not a few people have fallen victim to the Covid-19 outbreak.

The Indonesian state is working hard to deal with the Covid-19 virus outbreak. People who are infected with the Covid-19 virus are increasing every day, but not a few have been declared cured of the disease caused by the Covid-19 virus. As a result of the spread of the Covid-19 virus, community activities are paralyzed. Some people find it difficult to make a living for their daily needs, and some even commit theft due to the absence of basic daily necessities.

At first glance the sanctions applied to target recipients are deemed inappropriate. Protection of human rights is an obligation of the government. Human rights cannot be reduced or even taken away, including by the state. For vaccines, it is more appropriate to do with the approval of vaccination, to reduce the negative impact if the vaccine product has an adverse effect on the vaccine recipient.

On the other side, if someone feels that health is a human right, then he must not violate the rights of others to be free from disease. So, if a person refuses to be vaccinated, then in fact that person has the potential to violate the human rights of other people who want to live a healthy life, and the state can enforce the application of these legal sanctions. These legal sanctions are made to protect the interests of the people, not individuals.

As stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, all actions of citizens and administrators must be in accordance with the applicable laws or regulations. Legal sanctions for those who refuse the Covid-19 vaccine are the last resort in the context of law enforcement in society. These efforts are a form of prevention and action taken through cooperation, both with the Government and with the community.¹⁶

Every legal community (*rechtsgemeenschap*), whether on a large scale, such as a state or a small one, such as a village community, always has institutions and procedures that regulate the enforcement of order or law. Without the institutions and procedures governing the enforcement of the order or the law, everyone in the community unit will personally face every violation or act against the law that threatens their family or their assets. Using the expression of Thomas Hobbes, such a situation is called: “*homo homini lupus bellum omnium contra omnes*”¹⁷

Law and society are like two sides of a coin that cannot be separated from each other. The enactment of law is indeed in a social order called society by the Romans called *ubi societas ibi ius*, which illustrates how close the relationship between law and society is.¹⁸

Law as a system (legal system), consists of various sub-systems, namely the formation subsystem, content subsystem (material), enforcement subsystem, and legal culture subsystem. The formation of laws, especially those in the form of statutory regulations, is not just a technique of systematically compiling materials collected in a normative formulation. It is not just complying with the standards of formulation and writing which have been standardized.¹⁹

Dardji Darmodihardjo and Sidharta who said that as a system, law has various functions, namely

16 Andri Winjaya Laksana, Social Analysis of Narcotics Abuse Prevention Women, *Jurnal Pembaharuan Hukum*, Volume VI No.3 September-Desember 2019, page.308-318

17 Bagir Manan, *Konsistensi Pembangunan Nasional dan Penegakan Hukum*, Makalah, Varia Peradilan, Majalah Hukum Tahun Ke-XXIII No. 275, Ikatan Hakim Indonesia (IKAHI), Jakarta, October 2008, page.7.

18 Mochtar Kusumaatmadja, *Konsep-Konsep Dalam Pembangunan*, Alumni, Bandung, 2006, p. 3.

19 *Ibid.*

among others :²⁰

1. Law functions as social control, here the law contains norms that control individual behavior in dealing with individual interests;
2. The legal system functions as a means of dispute settlement; and
3. The legal system functions to reform society.

Almost every area of life is currently governed by legal regulations. Through this normalization of human behavior, the law traces almost all areas of human life. The wider interference of law into the field of public life, causing the problem of the effectiveness of law enforcement to become increasingly important to be taken into account. That means, the law must be an institution that works effectively in society.²¹

For a society that is building law, it is always associated with efforts to improve people's lives for a better direction. Faced with this situation, the role of law is increasingly important in realizing that goal. The function of law is not sufficient only as social control, but more than that. The legal function that is expected today is to make efforts to move the people to behave in accordance with new ways to achieve an aspired goal. To act or behave in accordance with the provisions of this law, there needs to be legal awareness from the community, because this factor is a bridge that connects legal regulations with the behavior of community members.²² Public legal awareness is very important for realizing legal objectives.

The legal awareness of society, by Lawrence M. Friedman, is closely related to the problem of legal culture. What is meant by legal culture here is in the form of a category of values, views and attitudes that affect the operation of the law.²³

In all things, the law cannot be enforced, as long as there are other effective means. Laws should be used at the last level when other means are no longer able to solve the problem. As for matters relating to public awareness of the law, namely :²⁴

1. Regular legal counseling;
2. Providing a good role model for officers in compliance with the law and respect for the law;
3. Institutionalization that is planned and directed.

Public awareness of the law has resulted in community members obeying the provisions of the prevailing laws and regulations. Conversely, if the community's awareness of the law is low, the degree of obedience will also be low. Public awareness of the law has several problems, one of which is whether certain legal provisions actually function or not in society.

A nation that wants to see the achievement of order and peace in society, will continue to strive to regulate and direct the behavior of all citizens according to certain patterns. One of the ways that can be used to facilitate interaction between citizens is by issuing certain legal norms. Through this law, among other things, the roles that should be performed by members of the community are determined. However, based on observations and some research results indicate a mismatch between what is expected by law and the actual behavior of community members.²⁵

20 Edi Setiadi dan Rena Yulia, *Hukum Pidana Ekonomi*, Cetakan Pertama, Edisi Pertama, Graha Ilmu, Yogyakarta, 2010, p. 1 and 2.

21 Esmi Warassih, *Pranata Hukum, Sebuah Telaah Sosiologis*, Badan Penerbit Universitas Diponegoro, Semarang, 2011, p. 79.

22 *Ibid.*

23 *Ibid.*, p. 79 and 80.

24 Zainuddin Ali, *Sosiologi Hukum*, Cetakan Ketiga, Sinar Grafika, Jakarta, 2008, p. 65.

25 *Ibid.*, p. 96.

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So, the enforcement of a new legal rule will become a reality if it is supported by the existence of legal awareness from all members of the community. Awareness of the application of the law is the basis for the implementation of the law itself. The more equitable awareness of the application of the law, the less likely it is that behavior is not in accordance with the law.²⁶

Actions that will be taken by citizens in response to legal regulations depend on the content of legal norms themselves, the sanctions, the activities of law enforcers and all non-judicial factors working on them. Thus, it must be understood that every law issued or made will undergo changes, either through formal changes or through the methods the bureaucracy takes when acting. These changes occur because of the existence of social, economic, and other forces that work to give their impact.²⁷

Sanctions for rejecting the Covid-19 vaccine will certainly cause strong resistance from the community, but in law, there is an emergency that allows the government to impose criminal sanctions on citizens who refuse vaccines. According to him, the legal exception is justified by a legal adage, namely *Salus populi suprema lex exto*, which means “people’s safety is the highest law”. People have the right to choose and have privacy regarding their health. But in a state of emergency, sanctions can be allowed. The nature of the punishment for vaccine rejectionists should not be repressive, but must be preventive in nature. The norm must be an administrative crime. So if in the criminal provisions it is an administrative criminal norm, then the nature of the criminal handling is in the form of a last resort or *ultimum remedium*. If it has entered the realm of *ultimum remedium*, the community must be given guidance, education and education first to raise legal awareness for the community.

D. CONCLUSION

Pros and cons of applying sanctions in the Covid-19 vaccination regulations, for those who support sanctions for those who refuse vaccination think that the government is obliged to provide good health services to fulfill the rights of its citizens and ensure that its citizens are healthy, so that legal sanctions for rejecting the Covid-19 vaccine there must be. Regarding the refusal of vaccination, from the point of view of human rights, there is freedom to have the right to health be limited by the state. However, if a person feels that health is a human right, then he must not violate the rights of others to be free from disease. So, if someone refuses to be vaccinated, then in fact that person has the potential to violate the human rights of other people who want to live a healthy life and for the state to enforce the application of these legal sanctions. These legal sanctions are made to protect the interests of the people, not individuals. People have the right to choose and have privacy regarding their health. But in a state of emergency, sanctions can be allowed. The nature of the punishment for vaccine rejectionists should not be repressive, but must be preventive in nature. The norm must be an administrative crime. So if in the criminal provisions it is an administrative criminal norm, then the nature of the criminal handling is in the form of a last resort or *ultimum remedium*. If it has entered the realm of *ultimum remedium*, the community must be given guidance, education and education first to raise legal awareness for the community.

²⁶ *Ibid.*, p. 96 dan 97.

²⁷ *Ibid.*, p 103 and 104.

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