

Application of General Criminal Articles in Cases Related to Covid-19

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Abstract. COVID-19 outbreak in Indonesia has brought forth several regulations created as efforts to overcome the COVID-19 outbreak. However, violations are still committed by the community in dealing with the outbreak, for example, rejection of the COVID-19 patients' bodies being laid to rest, family's rejection of the handling of COVID-19 patients, and a case in which a hospital director was sentenced to 1 year prison time for reporting false positive-PCR-swab results. In the last example, the article imposed is of the general criminal article, namely the first paragraph Law No. 1 of 1946, Concerning the Regulation of Criminal Procedure Law, Article 14 The purpose of this research is to examine whether the use of standard criminal articles in circumstances involving COVID-19 is appropriate even though special law regulating outbreaks has been made. We expect this paper to be able to consider carrying out law enforcement cases in the health sector in which a special law regulating them has been made before Normative legal procedures were used to perform this study, consisting of primary and secondary legal materials as well as by conducting interviews with related parties. A study found the application of general criminal articles to violations of the COVID-19 outbreak was not appropriate.

Keywords: Coronavirus Disease; general criminal articles special laws

1 Introduction

The Coronavirus the Disease 2019 (COVID-19) has been declared a pandemic by the World Health Organization (WHO). 11th of March, 2020, also hit Indonesia and caused various problems including the implementation of laws and regulations in handling violations of the COVID-19 outbreak prevention. The definition of an outbreak is mentioned in Law No. 4/1984 on Communicable Disease Outbreaks, which refers to an infectious disease in a population with a growing number of victims dramatically expanded above the normal condition at a specific time and location and has the potential to cause devastation. This Epidemic Act aims to protect the public from epidemic-related calamities as soon as possible, to enhance people's lives. likelihood to maintain a healthy lifestyle.

There are several strict regulations intended as measures to overcome the COVID-19 outbreak in Indonesia, but violations are still committed by the community, for example, refusal of the burial procedures for COVID-19 patients in Banyumas Regency ; family refusal to the COVID-19 Task Force to treat patients positive for COVID-19 who must be referred to hospitals in Surabaya ; and a hospital director who was sentenced to 1 year in prison for falsifying his patients' positive-PCR-swab result documents.

The author is interested in analyzing the case of the Hospital Director who was given a 1-year prison sentence by the East Jakarta District Court based on Decision number 223/Pid.Sus/2021/PN Jkt.Tim, because the author observes misuse of general criminal articles in the health sector cases while a law that regulates such cases has existed.

The research will examine whether the application of general criminal articles on violations of the COVID-19 outbreak control is appropriate. The practical benefits of the results of this research are expected to be used as reference material for policymakers and law enforcement officers in dealing with the COVID-19 is a virus that has been circulating in the United States. Normative research with primary data was employed as the research approach derived from interviews with parties related to the COVID-19 response.

2 Theoretical Framework

There are several definitions of law, but to put it simply, the law is a rule. One of the legal definitions is a collection of provisions, regulations, or rules made by the authorities to regulate what is done by humans, having the nature of regulating, forcing, and giving sanctions to violators, which has the aim of acquiring public order. The pursuit of justice, legal clarity, and social benefits is the goal of law enforcement. In the meantime, criminal law enforcement is on the job in an attempt to realize the idea of justice in criminal law in legal certainty and social benefits into legal reality in every legal relationship.

In carrying out law enforcement, there are several factors influencing it. These factors are legal, law enforcement, infrastructure, community, and cultural. Criminal acts are actions that are constructed by the Criminal Code as crimes or criminal acts. An act can also be called a criminal act if it fulfills the elements, of a subject; error; whether it is against the law (of the action); an action that is forbidden or mandated by law/regulation, and the offender faces a penalty criminal offense; time, place, and circumstances (other objective elements).

The purpose of punishment is to treat humans if they violate the norms and therefore, they are reproached. The imposition of a crime that contains elements of the crime is none other than to achieve the purpose of punishment. The law must be strengthened with sanctions and criminal sanctions are the last step to strengthening legal norms. This means that criminal sanctions are used if other legal sanctions are deemed unable to strengthen legal norms. This is known as the *Ultimatum Remedium*.

The emergence of 2019-nCoV has attracted global attention, and The World Health Organization classified COVID-19 a Covid health emergency of global significance on January 30, 2020. Epidemic control includes epidemiological investigations; which includes assessment, treatment, care, and isolation of patients, including quarantine; prevention and immunity; elimination of the disease's cause; body management owing to epidemics; public health socialization; and other duties corrective measures.

One of the problems faced in handling the COVID-19 outbreak is the opinion that the identity of the patient diagnosed as a suspect of COVID-19 is medical privacy that must be kept confidential and must not be known by anybody, not even the authorities for outbreak control measures. Medical confidentiality is one of the patients' rights which is also the obligation of healthcare workers. Medical confidentiality is one part of the health doctrine which is linked to medical actions in health services.

There are several violations against COVID-19 in Indonesia that are subject to criminal sanctions. Some of these cases are:

- a. The case of burial process refusal of a body that was confirmed positive for COVID-19 in Patikraja Village, Banyumas Regency on March 31, 2020, which was subject to Law No. 4 of 1984 Concerning Infectious Disease Outbreaks Diseases, Article 14 paragraph 1.
- b. The case of ambushing an ambulance carrying the body of a COVID-19 patient in Tumiyang Village, Pekuncen District, Banyumas Regency on April 1, 2020, which was subject to Article 214 paragraph (1) of the Criminal Code, and has been legally and convincingly convicted of threatening to use violence against officials who are executing out their duties carried out by two or more people in the alliance.
- c. The case of refusal to evacuate a patient confirmed positive for COVID-19 who will be referred to a hospital in Surabaya on September 29, 2020, which is subject to Law No. 4 of 1984 Concerning Infectious Disease Outbreaks, Article 14 paragraph 1.
- d. The case of violating health protocols and keeping the positive swab results secret at the Ummi Hospital, Bogor on November 24, 2020, was subject to In conjunction with Article 55 paragraph (1) of Republic of Indonesia Law Number 1 of 1946 concerning Criminal Law Regulations, Republic of Indonesia Law Number 1 of 1946 concerning Criminal Law Regulations, Article 14 paragraph (1) of Republic of Indonesia Law Number 1 of 1946 concerning Criminal Law Regulations 1st KUHP.

Although efforts have been made by the government in handling COVID-19, citizens still have not complied with the regulations issued.

Covid-19 Violation Case Analysis

The chronology of the case with the defendant dr. Andi Tata Bin M. Azhar Toha, who is a doctor and also the President Director of the Ummi Hospital, Bogor started when Habib Rizieq and his wife were treated at the Ummi Hospital, Bogor on November 24, 2020, for testing reactive on antigen swab examination. After an examination by the doctor in charge (DPJP) at the hospital, Habib Rizieq was diagnosed with lung infection due to COVID-19, commonly referred to as COVID-19 pneumonia.

On November 26, 2020, at around 13:00 WIB, the Defendant as the President Director of the Ummi Hospital, Bogor stated TV One media and Askar TV media which were uploaded on their respective Youtube channels stating that Habib Rizieq was being treated for fatigue and the diagnosis did not lead to the COVID-19 disease, even though Habib Rizieq and his wife would only have a PCR swab done the next day on November 27, 2020. The indictment made by the Public Prosecutor against Defendant dr. Andi Tatat Bin M. Azhar Toha with Case Register Number: PDM-014/Jkt.Tim/Eku/03/2021 is an indictment in the form of a combination, which is a combination of an alternative charge and a subsidiary charge.

The indictments from the Public Prosecutor are:

1. First Indictment
 - a. Primary

The act of in combination with Article 55 paragraph (1) of the 1st Criminal Code, Article 14 paragraph (1) of the Law of the Republic of Indonesia Number 1 of 1946 about the Criminal Law Regulations regulates and threatens broadcasting false news or news to intentionally generate discord among the people.;
 - b. Subsidiary

In conjunction with Article 55 paragraph (1) of the 1st Criminal Code, Article 14 paragraph (2) of the Law of the Republic of Indonesia Number 1 of 1946 concerning Regulations Criminal Law regulates and threatens the act of broadcasting news or issuing a notification that can cause trouble among the people when he believes the news or notification is a lie.;

- c. More Subsidiaries
The act of broadcasting uncertain, excessive, or incomplete news while knowing or suspecting that such news will or can easily cause trouble among the people, as regulated and threatened by Article 15 of Law No. 1 of 1946 concerning the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code;
- OR
- 2. Second Indictment
Actions that intentionally hinder the implementation of epidemic control, as regulated and threatened with In connection with The Republic of Indonesia No. 4 of 1984 enacted Article 55 paragraph (1) of the 1st Criminal Code and Article 14 paragraph (1) of the Law of the Republic of Indonesia No. 4 of 1984 concerning Outbreaks of Infectious Diseases.;
- OR
- 3. Third Indictment
The act of deliberately disobeying orders or requests made by officials whose job it is to supervise or by officials based on their duties, as well as those who are authorized to investigate or examine criminal acts, as regulated and threatened by Article 216 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code; likewise, whoever intentionally prevents, hinders, or thwarts actions to carry out the provisions of the law carried out by one of these officials, a criminal offender. (1) 1 KUHP.
After the Panel of Judges of this case considered the aggravating and mitigating circumstances of the defendant, the Panel of Judges decided:
 - a. To state that the defendant, dr. Andi Tata Bin M. Azhar Toha was Participating in criminal conduct after being legally and decisively proven guilty of it an act by broadcasting false news, deliberately causing trouble among the people, as stated in the first alternative indictment of the Public Prosecutor.
 - b. Sentence the defendant to prison, therefore, with imprisonment for 1 (one) year.

3 Discussion

There is 1 (one) wrong wording among the community which has caused a series of undesired events to occur in this case. It was said that the antigen swab results of Habib Rizieq and his wife were positive. The results interpretation of the antigen swab examination should have been Reactive or Non-Reactive, instead of positive or negative. This has confused citizens for the result of a reactive antigen swab does not confirm whether a patient has been exposed to COVID-19 or not. To determine whether someone has COVID-19, they must get a Polymerase Chain Reaction (PCR) swab examination done.

The article in The Criminal Law Regulations Act, No. 1, was enacted in 1946. imposed on the Director of the Ummi Hospital, Bogor is an article that is no longer relevant to be applied to the current situation. This law was created 75 years ago and when it comes to the law, there are 2 (two) perspectives, namely Law on The Paper and Law in Action. In this case, 4 (four) things must also be considered, namely text, context, proportionality, and rationality.

Article 14 in Law number 1 of 1946, judging by the text, carries a threat of 10 (ten) years in prison, with the context at the time of the law was enacted, Indonesia was just newly becoming independent so this law was being drafted during a transitional period and there were dangerous possible situations that were supposed to be anticipated and protected from the possibility of being broadcasted as false propaganda to cause trouble. In terms of proportionality and rationality, the articles in The first law regulating criminal law was passed in 1946 are only

intended for extremely serious crimes that endanger the existence of the state, such as treason and power struggles that will shake the Unitary State of the Republic of Indonesia.

What is done by the Director of the Ummi Hospital, Bogor may be subject to articles from other laws that are more relevant, for example, Law no 4 of 1984 concerning Infectious Disease Outbreaks, Law no 6 of 2018 concerning Health Quarantine, or Law no 11 of 2008 concerning Information and Electronic Transactions.

The author agrees with the statement delivered by the Head of the DKI Jakarta Provincial Health Service in an interview on December 15, 2021, which stated that the COVID-19 disease is a new thing experienced by the Indonesian people, so it is not a threat to imprisonment that should be prioritized in dealing with this disease, but rather the readiness of the Government and its staff in providing solutions to the community in dealing with the COVID-19 disease together as a community. Has the government facilitated what the community needs before imposing strict sanctions? Socialization and education of the community are efforts that must be carried out continuously. Cooperating with religious leaders and community leaders who are community role models can be beneficial to achieving this goal.

In sociology, there is a Role and Status Theory, namely the Contagion theory and the Patron Client theory which can be used to improve public compliance with health protocols to prevent the transmission of COVID-19. The higher a person's status and influence, the higher the public trust towards him. Likewise, if a leader becomes a role model for his subordinates. The higher the role of the leader, the greater the influence he has -especially on those who have the same ideology, peers, religion, and school of thought, the stronger the bond will be, the greater the influence he has on his subordinates.

The author also agrees with the statement of Dr. Nasser, Sp. KK., D. Law, dermatologist and Doctor of Law, in an interview on December 17, 2021, that the defendant should have been Article 14 paragraph (1) of Law No. 4 of 1984 about Infectious Disease Outbreaks or Article 93 of Law No. 6 of 2018 concerning Health Quarantine, however, this was redirected into Law No. 1 of 1946 concerning Criminal Law Regulations. The Director of the Ummi Hospital, Bogor was charged with the general crime, of broadcasting trouble.

In the case of dr. Andi Tata is a follow-up case. To those who participate in the health sector and the principles of health law, articles 55 and 56 of the Criminal Code of medical crimes are very unlikely to be used or almost unknown. Whereas the defendant is in the capacity of a doctor and the capacity of the Head of a hospital, if the defendant made a mistake, it should be directed, for example, to Law number 44 of 2009 concerning Hospitals or to related regulations, for example, Article 93 of the Law No. 6 of 2018 on Health Quarantine, or 14 paragraph (1) of the Law No. 4 of 1984 on Infectious Disease Outbreaks. It is clear that there is a principle of *lex specialist derogate legit general* and the actual form of the indictment is an alternative subsidiary charge wherein Law number 4 of 1984 concerning the Outbreak of Infectious Diseases has been included in one of the indictments.

According to the author, cognizance regarding medical confidentiality must also be re-socialized because there is an assumption that all patient health data is confidential. Whereas in certain circumstances, such as during an outbreak, medical confidentiality may be disclosed to the authorities or related parties to follow up on the spread of the epidemic.

4 Conclusion

Based on the previous descriptions of the research that the author has done; it can be concluded that the application of the general criminal article on violations of the COVID-19 outbreak control is not appropriate because there is a *lex specialist derogate lex general* principle. Instead, the law that should be used in cases of violations of epidemic prevention should have been Infectious Disease Outbreaks Law No. 4 of 1984 or Health Quarantine Law No. 6 of 2018.

Based on the conclusions obtained by the authors from this study, the suggestions that can be given are:

- a. The need for continuous socialization and education in the community by the government regarding the COVID-19 disease, which is new and foreign to the general public. The government must provide supporting facilities in dealing with COVID-19 before imposing sanctions on violations committed by the community. Such supporting facilities include the provision of masks and hand sanitizers at cheap and affordable prices through the market operations, as well as the provision of adequate hand washing facilities in public places;
- b. The need for mastery and understanding of the rules that *lex specialist* by law enforcement officers so that if a special case occurs, for example in the health sector, they can analyze the case comprehensively and indirectly using general criminal articles.

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