

Legal Protection of Patients and Health Workers Rights in the Covid-19 Pandemic

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Abstract. Until now, the Covid-19 pandemic has become a serious threat on a global scale, including in Indonesia and seriously threatens public health, so that all parties are trying to eradicate Covid-19. The right to health services for patients is one of the constitutional rights mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia, and parties who have the capacity and ability to carry out health services are health workers. However, until now, legal protection for the rights of patients and health workers has not been maximally implemented, especially in the aspect of fulfilling medical facilities, infrastructure and equipment that not yet to be distributed fairly and equitably, so that legal protection of health and safety must be guaranteed. This journal research method is *juridical-normative legal research* with secondary data which includes primary legal materials: UUD NRI 1945; UU Number 36 of 2009 concerning Health; and Presidential Decree Number 12 of 2020; secondary legal materials: books, journals, and scientific research on health law; Tertiary legal materials: Big Indonesian Dictionary (KBBI) and Black's Law Dictionary.

Keywords: Rights of Patients and Health Workers, Legal Protection, Covid-19 Pandemic.

1. Introduction

Welfare is a human right that must be obtained by every human being. The concept of welfare can be formulated as the equivalent meaning of the concept of human dignity which can be seen from 4 (four) indicators, namely: (1) a sense of security, (2) welfare, (3) freedom, and (4) identity. [1] Prosperity or prosperity can have four meanings (Big Indonesian Dictionary), namely safe and prosperous; safe (apart from all kinds of distractions). [2]

Indonesia as a country based on a welfare state guarantees the public's need for health as one of the human rights guaranteed in Article 28H of the 1945 Constitution as the Constitution of the Republic of Indonesia, which states that "everyone has the right to live in physical and spiritual prosperity. have a place to live, and get a good and healthy living environment and have the right to health services".

In that article as a manifestation of the existence of a state that was formed to protect the interests of the community, especially in the aspect of fulfilling and improving health. For this reason, human rights, especially the right of the community to obtain health services, are the responsibility of the State, one of which is the state providing health facilities based on Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "The state is responsible for the provision of health care facilities and service facilities decent general."

Fulfillment of Human Rights, especially the fulfillment of health services for the community is the responsibility of the State, especially the government as a representation of the State where based on Article 28I paragraph (4) of the 1945 Constitution of the Republic

of Indonesia stipulates that: "Protection, promotion, enforcement and fulfillment of human rights are the responsibility of state, especially the government."

Health is a component of welfare as an important aspect of human rights as stated in Article 25 paragraph (1) of the United Nations (UN) Declaration of Human Rights dated November 10, 1948, that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family".

Health is a healthy state, both physically, mentally, spiritually and socially that allows everyone to live more productively socially and economically in carrying out their lives in society. [3] Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in the Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia.

Health law includes components of health law that intersect with one another, namely medical/dentist law, nursing law, clinical pharmacy law, hospital law, public health law, environmental health law and so on. [4] For this reason, the laws and regulations, especially those that regulate health, regulate parties who can provide health services to patients, or can be referred to as health workers.

Based on Article 23 paragraph (1) of Law Number 36 of 2014 concerning Health, which states as follows: "Health workers are authorized to provide health services." As for what is meant by Health Workers based on Article 1 point 1 of Law Number 36 of 2014 concerning Health Workers, which states as follows: "Health Workers are every person who devotes himself to the health sector and has knowledge and/or skills through education in the field of health. certain types of health that require the authority to carry out health efforts."

Health workers are grouped based on Article 11 paragraph (1) of Law Number 36 of 2014 concerning Health Workers, which states as follows:

"Health workers are grouped into:

- a) medical personnel;
- b) clinical psychology staff;
- c) nursing staff;
- d) midwifery staff;
- e) pharmaceutical personnel;
- f) public health personnel;
- g) environmental health personnel;
- h) nutritionist;
- i) physical therapy personnel;
- j) medical technicians;
- k) biomedical engineering personnel;
- l) traditional health workers; and
- m) other health workers."

Based on Article 11 paragraph (2) of Law Number 36 of 2014 concerning Health Workers, which states that: "The types of Health Workers included in the group of medical personnel as referred to in paragraph (1) letter a consist of doctors, dentists, specialist doctors , and specialist dentists."

Based on the article, it is stated that medical personnel consisting of doctors, dentists, specialist doctors, and specialist dentists are classified as health workers. However, with the issuance of the Constitutional Court Decision Number 82/PUU-XIII/2015 where in the consideration section it is stated that doctors and dentists are professions that have special positions related to the human body and life, so that doctors and dentists can independently perform technical and medical interventions. surgical intervention of the human body that other types of health workers do not have that are carried out independently. Medical personnel are professionals who are different from vocational personnel whose nature of work is the delegation of authority from medical personnel. Due to the different nature and nature of medical personnel with other health professions and vocational personnel, the

regulation of the substance of the medical profession cannot be combined or generalized with other professions.

Legal certainty for medical personnel must be able to promote and guarantee medical services that are different from other health workers, so that in the Constitutional Court Decision Number 82/PUU-XIII/2015 it is stated that Article 11 paragraph (1) letter a of Law Number 36 Year 2014 concerning Health Workers is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, so that medical personnel are no longer classified as health workers. Doctors as medical personnel are tasked with providing health services to patients based on their profession.

Doctors based on Article 1 point 2 of Law Number 29 of 2004 concerning Medical Practice, states that: "Doctors and dentists are doctors, specialists, dentists, and specialist dentists who have graduated from medical or dental education both inside and outside the country. country recognized by the Government of the Republic of Indonesia in accordance with the laws and regulations."

The medical profession in its development in Indonesia is regulated in Law Number 29 of 2004 concerning Medical Practice where the medical profession is a work carried out based on a science, competence, which is obtained through tiered education, and a code of ethics that is of service to the community. Thus it can be seen that the presence of the medical profession aims to provide health improvement and protection for the community, especially patients within the scope of health services, therefore the rights of doctors need to be the full attention of the Government.

The emergence of the Covid-19 pandemic has so far threatened public health, so all parties are trying to eradicate Covid-19, including health workers. Legal protection is an effort to protect a person's interests by allocating a Human Rights power to them to act in the context of their interests. [5]

Legal protection is a right that should be obtained by all citizens equally without exception. However, until now legal protection for health workers has not been implemented optimally, starting from the fulfillment of health facilities, infrastructure and equipment that have not been distributed fairly and equitably, longer working hours for health workers, implementation of the Covid-19 health protocol in providing services. health. This virus seriously threatens the health and safety of health workers which can even result in the death of health workers due to being infected with Covid-19 when carrying out their duties, even though health workers are at the forefront of fighting Covid-19 so that legal protection of their occupational health and safety is a matter of concern. which should be a top priority, as well as legal protection for patients.

The research method in writing this journal is juridical-normative law research with secondary data that includes:

- (1) Primary legal materials, namely:
 - a. the 1945 Constitution of the Republic of Indonesia;
 - b. Law Number 36 Year 2009 concerning Health;
 - c. Law Number 36 of 2014 concerning Health Workers;
 - d. Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases;
 - e. Government Regulation Number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases;
 - f. Regulation of the Minister of Trade Number 28 of 2020 concerning the Eighth Amendment to the Regulation of the Minister of Trade Number 87 M-DAG/PER/10/2015 concerning Provisions for the Import of Certain Products (as amended by Regulation of the Minister of Trade Number 51 of 2020 concerning Inspection and Supervision of Import Trade After Passing through the Region Customs (Post Border);
 - g. Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as National Disasters;

- h. Decree of the Minister of Health Number HK.01.07/MENKES/278/2020 of 2020 concerning Provision of Incentives and Death Compensation for Health Workers who Handle Corona Virus Disease 2019 (Covid-19); and
 - i. Decree of the Minister of Health Number HK.01.07/MENKES/392/2020 of 2020 concerning Provision of Death Incentives and Compensation for Health Workers Handling Corona Virus Disease 2019 (Covid-19).
- (2) Secondary legal materials, namely books, journals, and scientific research on health law;
 - (3) Tertiary legal materials, which include the Big Indonesian Language Dictionary (KBBI) and Black's Law Dictionary.

The problem formulations that can be discussed in this study are as follows:

- 1) How is the legal protection for the rights of health workers in carrying out their duties to provide health services to the people during the Covid-19 Pandemic?
- 2) How is the legal protection for patient rights during the Covid-19 Pandemic?

2. Discussion

2.1. Legal Protection for The Rights of Health Workers in Carrying Out Their Duties to Provide Health Services to The People During The Covid-19 Pandemi

Health services are an obligation that must be fulfilled by parties who work as health workers, one of which is a doctor. Health services or in the law called health efforts are regulated in Article 1 paragraph (11) of Law Number 36 of 2009 concerning Health which reads: "Health efforts are every activity and/or series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the health status of the community in the form of disease prevention, health improvement, disease treatment, and health recovery by the government and/or society."

According to Mochtar Kusumaatmadja, an adequate understanding of law must not only view the law as a set of rules and principles that regulate human life in society, but must also include the institutions and processes needed to realize the law in reality. The definition of legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection is a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. [6] Medical Law or Medical Law is part of Health Law with a scope that only covers the medical field, namely doctors and people under their control covering the fields of criminal, civil, and administrative law. [7]

The profession requires competence ("the condition of being capable" or "the capacity to perform tasks and roles") so that professional stakeholders can carry out their roles, duties and responsibilities properly and correctly. [8] The Doctor's Profession is a profession that is accompanied by high morality to provide help to anyone who needs it. Professionals always carry out moral and intellectual orders and together with them want to show people what is good for them. [9]

Meanwhile, based on the study of the Legislation, that the rights of health workers are detailed in Article 57 of Law Number 36 of 2014 concerning Health, namely:

"Health workers in carrying out their practice are entitled to:

- a. obtain legal protection as long as carrying out their duties 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. receive service fees;
- 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. reject the wishes of Health Service Recipients or other parties that are contrary to professional standards, code 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."

The regulation regarding the rights of medical personnel, namely doctors, is generally regulated in Article 50 of Law Number 29 of 2004 concerning Medical Practice, namely:

"Doctors or dentists in carrying out medical practice have the right:

- a. obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures;
- b. provide medical services according to professional standards and standard operating procedures;
- c. obtain complete and honest information from patients or their families; and
- d. receive a service fee."

Coronaviruses are a group of viruses that can cause disease in animals or humans. Several types of corona viruses are known to cause respiratory tract infections in humans ranging from coughs and colds to more serious ones such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). A new type of corona virus was discovered as the cause of the disease Covid-19.

The World Health Organization (WHO) has declared Covid-19 as a Global Pandemic on March 11, 2020. [10] This is confirmed by the issuance of Presidential Regulation Number 12 of 2020 concerning Determination of Non-Natural Disasters in the Context of Spreading Corona Virus Disease 2019 (Covid-19) as a National Disasters, where non-natural disasters caused by the spread of the Covid-19 Pandemic are designated as national disasters.

Referring to Article 82 of Law Number 36 of 2009 concerning Health which regulates health services during disasters, that the Government, regional governments, and communities are responsible for the availability of resources, facilities, and the implementation of comprehensive and sustainable health services in disasters. The government guarantees the financing of health services sourced from the state revenue and expenditure budget, regional revenue and expenditure budget, or public assistance in accordance with statutory regulations.

Based on Article 5 paragraph (1) letter b of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, it is emphasized that one of the efforts to control the epidemic is examination, treatment, care, and isolation of patients, including quarantine measures. These efforts are the responsibility of the government, so that all costs incurred in efforts to control the epidemic are charged to the budgets of the respective agencies concerned based on Article 30 paragraph (1) of Government Regulation Number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases.

Therefore, the Government is also responsible for ensuring the availability of Medical Equipment and Personal Protective Equipment (PPE) which assists and supports the duties of Health Workers and Medical Workers in providing health services to the community in order to carry out health services to cope with the spread of the Covid-19 Pandemic.

The Ministry of Trade in collaboration with relevant ministries and institutions including the National Disaster Management Agency continues to strive to maintain the availability of Medical Devices and PPE in the midst of the outbreak of the Covid-19 Pandemic. Steps by the Ministry of Trade to accelerate the import of medical devices and personal protective equipment by issuing the Regulation of the Minister of Trade Number 28 of 2020 concerning the Eighth Amendment to the Regulation of the Minister of Trade Number 87 M-DAG/PER/10/2015 concerning Provisions for the Import of Certain Products

(as amended by the Regulation of the Minister of Trade Number 51 of 2020 concerning Inspection and Supervision of Import Trade After Passing the Customs Area (Post Border).

Medical Devices based on Article 1 number 5 of Law Number 36 of 2009 concerning Health, that Medical Devices are instruments, apparatus, machines and/or implants that do not contain drugs that are used to prevent, diagnose, cure and alleviate disease, treat the sick, restore health in humans, and/or form structures and improve body functions.

Health workers and medical personnel are required to wear Personal Protective Equipment (PPE) when working. PPE based on Article 1 point 2 of the Regulation of the Minister of Trade Number 23 of 2020 concerning Temporary Prohibition of Exports and Antiseptics, Mask Raw Materials, Personal Protective Equipment, and Masks is a tool that has the ability to protect a person whose function is to isolate part or all of the body of human resources and potential hazards in health care facilities.

Based on Article 9 paragraph (1) of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, it is explained that certain officers who carry out efforts to control the epidemic as described in Article 5 paragraph (1) of Law 4/1984 can be rewarded for the risks borne in carrying out his job. The award given can be in the form of material and/or other forms. The article can be used as a legal basis in giving appreciation to health workers and medical personnel who play a role in efforts to overcome the Covid-19 outbreak, so that they are entitled to an award in the form of material and/or other forms.

As a form of appreciation and appreciation, the government does provide incentive funds for health workers dealing with Covid-19 through the Decree of the Minister of Health Number HK. (Covid-19). Based on the attachment to the regulation, health workers who handle Covid-19 who are entitled to receive incentives are:

- a. Health workers who provide Covid-19 services in hospitals include specialist doctors, general and dental doctors, midwives and nurses, and other medical personnel.
- b. Doctors who take part in special assignments for residents and doctors who take part in the Indonesian Doctor Internship Program in hospitals and health centers.
- c. Doctors who follow the Utilization of Specialist Doctors.
- d. Health workers at the Center for Environmental Health and Disease Control Engineering (BTKL-PP) and the Center for Environmental Health Engineering and Disease Control (BBTKL-PP) Technical Implementation Unit of the Ministry of Health.
- e. Health workers at the Port Health Office (KKP), Provincial Health Offices and District/City Regional Health Offices, Puskesmas including health workers who take part in the Special Assignment of Health Workers in support of the Healthy Nusantara Program.
- f. Health workers and other personnel involved in direct examination of Covid-19 Pandemic specimens in laboratories designated by the Ministry of Health.
- g. Health workers at the Center for Community Lung Health, Technical Implementation Unit of the Ministry of Health.
- h. Health workers who take part in the Special Assignment of Health Workers in support of the Healthy Nusantara Program in hospitals.

The appendix to the regulation also mentions the amount of incentives for health workers and media personnel who handle the Covid-19 Pandemic with the following provisions:

- a. Health workers who provide Covid-19 Pandemic services in hospitals for a maximum of 15 million rupiah for specialist doctors; General practitioners and dentists for 10 million rupiah; Midwives and nurses amounted to 7.5 million rupiah; and other medical personnel 5 million rupiah.
- b. Doctors who take part in special assignments for residents and doctors who take part in the Indonesian Doctor Internship Program in hospitals are at a maximum of 10 million rupiahs, and if they are at the Puskesmas it is 5 million rupiahs.

- c. Doctors who participate in the Utilization of Specialist Doctors are at a maximum of 15 million rupiah.
- d. Health workers at the Center for Environmental Health and Disease Control Engineering (BTKL-PP) and the Center for Environmental Health Engineering and Disease Control (BBTKL-PP) Technical Implementation Unit of the Ministry of Health, are given according to the amount of each type of health worker.
- e. Health workers at the Port Health Office (KKP), Provincial Health Offices and District/City Regional Health Offices, health centers including health workers who take part in the Special Assignment of Health Workers in supporting the Healthy Nusantara Program a maximum of 5 million rupiah equivalent to the amount of incentives for medical personnel other.
- f. Health workers and other personnel involved in direct examination of Covid-19 Pandemic specimens in laboratories set by the Ministry of Health of a maximum of 5 million rupiah, equivalent to the amount of incentives for other medical personnel.
- g. Health workers at the Center for Community Lung Health, the Technical Implementation Unit of the Ministry of Health, are equivalent to the incentives for health workers at the puskesmas.
- h. Health workers who take part in the Special Assignment of Health Workers in supporting the Healthy Nusantara Program in hospitals are given according to the size of each type of health worker who handles the Covid-19 Pandemic in hospitals.

In addition, the Government has determined the provision of incentives and death benefits to health workers who are handling Covid-19 Pandemic. This policy is stated in the Decree of the Minister of Health Number HK.01.07/MENKES/278/2020 of 2020 concerning Provision of Death Incentives and Compensation for Health Workers who Handle Corona Virus Disease 2019 (Covid-19), where the amount of death compensation is 300 million rupiahs given to health workers who died in providing health services due to exposure to Covid-19 Pandemic while on duty.

2.2. Legal Protection for Patient Rights During The Covid-19 Pandemic

Legal protection consists of two words, namely protection and law, where protection is a series of activities to guarantee and protect a person, while the law is the whole of the rules that must be obeyed by everyone and those who violate them are subject to sanctions. [11] The rights of patients both during the Covid-19 pandemic are also regulated in several laws and regulations, one of which is Article 52 of Law Number 29 of 2004 concerning Medical Practice, that:

“Patients, in receiving services in medical practice, have the right:

- a. obtain a complete explanation of the medical action as referred to in Article 45 paragraph (3);
- b. seek the opinion of a doctor or other doctor;
- c. get services according to medical needs;
- d. refuse medical treatment;
- e. obtain the contents of the medical record.”

In addition, patient rights are also stated in Article 32 of Law Number 44 of 2009 concerning Hospitals, that:

“Every patient has the right:

- a. obtain information regarding the rules and regulations that apply in the Hospital;
- b. obtain information about the rights and obligations of the patient;
- c. obtain services that are humane, fair, honest, and without discrimination;
- d. obtain quality health services in accordance with professional standards and standard operating procedures;

- e. obtain effective and efficient services so that patients avoid physical and material losses;
- f. file a complaint on the quality of service obtained;
- g. choose a doctor and treatment class in accordance with his wishes and the applicable regulations in the Hospital;
- h. ask for consultation about the disease he is suffering from to other doctors who have a Practice License (SIP) both inside and outside the Hospital;
- i. obtain privacy and confidentiality of the illness, including medical data;
- j. obtain information which includes the diagnosis and procedures for medical action, the purpose of medical action, alternative actions, risks and complications that may occur, and the prognosis of the actions taken and the estimated cost of treatment;
- k. giving approval or refusing the action to be taken by the health worker regarding the illness he or she is suffering from;
- l. accompanied by his family in critical condition;
- m. perform worship according to their religion or belief as long as it does not disturb other patients;
- n. obtain security and safety for himself while in hospital treatment;
- o. submit proposals, suggestions, improvements to the Hospital's treatment of him;
- p. refuse spiritual guidance services that are not in accordance with their religion and beliefs;
- q. sue and/or sue the Hospital if the Hospital is suspected of providing services that are not in accordance with standards, either civilly or criminally; and
- r. complain about hospital services that are not in accordance with service standards through print and electronic media in accordance with the provisions of laws and regulations.

Discussing the rights of patients in health services, that the patient's position is as a consumer as stated in Article 1 point 2 of Law Number 8 of 1999 concerning Consumer Protection, that: "Consumers are every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people and other living creatures and not for trading." Because patients are consumers who receive health services provided by doctors, in general patients are also protected by Law Number 8 of 1999 concerning Consumer Protection, where their rights are stated in Article 4, that:

"Consumers' rights are:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c. the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
- d. the right to have their opinions and complaints heard on the goods and/or services used;
- e. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- f. the right to receive consumer guidance and education;
- g. the right to be treated or served correctly and honestly and not discriminatory;
- h. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- i. rights regulated in the provisions of other laws and regulations."

In consumer protection law, due to the patient's position as a consumer receiving health services, the patient also gets legal protection based on Law Number 8 of 1999 concerning Consumer Protection, so that legal efforts can be made to resolve disputes or disputes that

refer to the Consumer Protection Act, namely in the form of filing a lawsuit against business actors, both to the general justice institution and to the general court. an institution specifically authorized to resolve disputes between consumers and business actors.

3. Conclusion

Based on the discussion of this research, the conclusions that can be conveyed are as follows:

- 1) The rights of health workers are detailed in Article 57 of Law Number 36 of 2014 concerning Health, and the rights of medical personnel, namely doctors, are generally regulated in Article 50 of Law Number 29 of 2004 concerning Medical Practice, Referring to Article 82 of Law Number 36 of 2009 concerning Health which regulates services health during a disaster, that the Government, local government, and the community are responsible for the availability of resources, facilities, and the implementation of comprehensive and sustainable health services in a disaster. Therefore, he is also responsible for ensuring the availability of Health Equipment and Personal Protective Equipment (PPE) in order to carry out health services to overcome the spread of the Covid-19 Pandemic. As a form of appreciation and appreciation, the government provides incentive funds and death compensation for health workers who handle the Covid-19 pandemic through the Decree of the Minister of Health Number HK. Virus Disease 2019 (Covid-19).
- 2) The rights of patients both during the Covid-19 pandemic are also regulated in several laws and regulations, namely Article 52 of Law No. 29 Number 2004 concerning Medical Practice, and Article 32 of Law Number 44 of 2009 concerning Hospitals, because patients are consumers who receive health services provided by doctors, in general patients are also protected by Law Number 8 of 1999 concerning Consumer Protection, where the rights are listed in Article 4 of the law. In addition, patients also get legal protection based on Law Number 8 of 1999 concerning Consumer Protection, so that legal efforts can be made to settle disputes or disputes that refer to the Consumer Protection Act.

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