


## Legal Formulation of Imposing Administrative Sanction for Anti-Covid-19 Vaccinations Movement



Rusdianto Rusdianto<sup>1</sup>, Diva Pitaloka<sup>2</sup>

<sup>1,2</sup> University of Mataram, Nusa Tenggara Barat, Indonesia

 arusdi161@gmail.com

### ARTICLE INFORMATION

#### *History of Article*

Submitted : January 23, 2022

Revised : February 1, 2022

Accepted : March 23, 2022

#### *Copyrights*



Copyrights is on Author(s), and publishing rights on Publisher. This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

#### *Conflicting Interest Statement*

All authors declared that there is no potential conflict of interest on publishing this article.

#### *Funding*

None

#### *Publishing Ethical and Originality Statement*

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

#### *Cite this article as:*

Rusdianto, R., & Pitaloka, D. (2022). Legal Formulation of Imposing Administrative Sanction for Anti-Covid-19 Vaccinations Movement. *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 8(1), 21-38. <https://doi.org/10.15294/ulj.v7i1.54017>

## Legal Formulation of Imposing Administrative Sanction for Anti-Covid-19 Vaccinations Movement

Rusdianto Rusdianto, Diva Pitaloka

**ABSTRACT.** In order to accelerate the handling Covid-19, the Government has issued a policy that impose administrative sanction for those refusing Covid-19 vaccination. This journal underlines and focuses the administrative sanction for those who refuse to take the vaccinations. Those sanctions could be social security termination, and/or administrative service moratorium. While it is assumed that this policy is urgently needed in addressing the pandemic issue, it also leads to other issues. The first is that whether those administrative sanctions are compliant with law principles and human rights protection. Another is whether there are legal implications for those who refuse to take vaccinations. Method adopted in this research is normative law research method based on facts, issues, regulations, analysis, and conclusion (FIRAK). This journal points out two results. Firstly, the right to obtain health service is a part of human rights. In order to fulfill that right and to achieve a greater good, the Government is responsible to create a clean and healthy environment. Thus, providing Covid-19 vaccinations and imposing administrative sanction comply with law principles and human rights protection. The latter, legal implication from such policy is that the vaccination is mandatory. Thus, those refusing it would be imposed administrative sanctions. It is expected that this policy would become a legal formulation in addressing and handling the Covid-19 pandemic.

**KEYWORDS.** Covid-19 Pandemic, Administrative Sanction, Vaccination

# Legal Formulation of Imposing Administrative Sanction for Anti-Covid-19 Vaccinations Movement

Rusdianto Rusdianto, Diva Pitaloka

## Introduction

Corona Virus Disease 2019 (Covid-19) pandemic has been an unsolved global issue worldwide. The virus has been massively and rapidly spread to nearly all countries, including Indonesia. This causes world to suffer in all aspects of life and costs millions of lives. In Indonesia, in particular, the virus has detrimentally affected political, economical, social, culture, defense, security, and social-welfare aspects, not to mention health and life. Addressing the issue, Indonesian Government has issued several policies such as Large-Scale Social Restrictions (PSBB), New Normal, and Emergency Restrictions on Community Activities (PSBB).<sup>1</sup>

---

<sup>1</sup> The Indonesian Government has been implemented some step of PSBB and in some studies showed that this PSBB policy has been significantly impacted to various sectors. See Ulil Albab Junaedi, "Analysis of Covid-19 Impact for Law and Society". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 219-234. <https://doi.org/10.15294/ijicle.v2i3.38330>; Ratna Desinta Mega Kumala, "Legal Analysis of Government Policy on Large Scale Social Restrictions in Handling Covid-19". *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 181-200. <https://doi.org/10.15294/ijicle.v2i2.38326>; Namira Ivanka, "Large-Scale Social Restrictions: What's Next?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 201-214. <https://doi.org/10.15294/ijicle.v2i2.38324>. Concerning to determination and limitation of emergency situation during Covid-19,

Nonetheless, those policies' implementation is not effective enough in addressing and tackling the spreading of Covid-19 and problems it causes. On the contrary, the 'positive' case of Covid-19 has been upsurging with the newly identified virus variants (*alpha, beta, delta, and kappa*).<sup>2</sup> Tjandra Yoga Aditama, a Professor of Medical School of University of Indonesia, points out that the two mutation groups of SARS-CoV-2 has spread to different regionals.<sup>3</sup>

The first mutation group consists of three variants. The first variant is B117, which has spread to 130 countries, including Indonesia. The second is B135, which has spread to more than 80 countries and being discovered for the first time in South Africa. The last is B11281, which first cases were found in Brazil and Japan, and has spread to around 50 countries. The last mutation group is B1617, which first cases were detected in India and has spread to approximately 120 countries.<sup>4</sup> On March, 1<sup>st</sup> 2021, it was summarized that from 465 cases in Indonesia, 2 of them are identified as new variants of B117. During a one-month period, On April, 23<sup>rd</sup> 2021, the case had risen to 1191, which 10 of them was the new variant of B117.<sup>5</sup>

Addressing the issue and due to the availability of newly discovered vaccine, at the end of the 2020, the Government unremittingly distributed vaccines for all people. Following the distribution, to back up and support the implementation of vaccination, the Government issued the Regulation of

---

*please see* Muhammad Haikal Fathan, "COVID-19 Emergency Regulation: How We Survive?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 301-314. <https://doi.org/10.15294/ijicle.v2i3.38376>; Elsa Mellinda Saputri, "Determination of Emergency Conditions: How Government Fulfill the Workers Rights During Large-Scale Social Restrictions?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 287-300. <https://doi.org/10.15294/ijicle.v2i3.38374>.

<sup>2</sup> Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional. "Upaya Tingkatkan 3T dan Vaksinasi di Masa PPKM Darurat". *Online News*. Retrived from <https://covid19.go.id/p/berita/upaya-tingkatkan-3tdan-vaksinasi-di-masa-ppkm-darurat>

<sup>3</sup> Chandra Yoga Aditama, "[Kolom Pakar] Prof Tjandra Yoga Aditama: Mutasi B117 COVID-19 Sudah di Indonesia", *Liputan 6 News* (March, 2021). Retrieved from <https://www.liputan6.com/health/read/4497142/kolom-pakar-prof-tjandra-yoga-aditama-mutasi-b117-covid-19-sudah-di-indonesia>

<sup>4</sup> Andi Firdaus, "Guru Besar FKUI ungkap dua kelompok besar mutasi virus di India" *ANTARA News* (April, 2021). Retrieved from [https://www.antaranews.com/berita/2125070/guru-besar-fkui-ungkap-dua-kelompok-besar-mutasi-virus-di-india?fbclid=IwAR3\\_uqCtQ7KwJ6cUr5Yi2aYnDoiD81wEH0eDRsVm5HQY9kZ8MT862tcG8fA](https://www.antaranews.com/berita/2125070/guru-besar-fkui-ungkap-dua-kelompok-besar-mutasi-virus-di-india?fbclid=IwAR3_uqCtQ7KwJ6cUr5Yi2aYnDoiD81wEH0eDRsVm5HQY9kZ8MT862tcG8fA)

<sup>5</sup> Humas Litbangkes. "10 Kasus Varian Baru Covid-19 B.1.1.7 ditemukan di Indonesia". *Online News*. Retrived from <https://www.litbang.kemkes.go.id/10-kasus-varian-baru-covid-19-b-1-1-7-ditemukan-di-indonesia/>

## ADMINISTRATIVE SANCTION FOR ANTI-COVID

*Administrative Law, Law and Public Policy*

Minister of Health No 10 of 2021. Main provisions of the regulation are reducing the spreading of Covid-19, lowering the positive cases and mortality rate, building herd immunity, and maintaining people's social and economical productivity.<sup>6</sup>

Nonetheless, although the Government's efforts were undertaken relentlessly, several parts of society refuse to take the vaccination. This refusal was due to several excuses. Taking from research results of SMF Pulmology and Respiratory Medical of Internal Disease Laboratory of Medical School of Mulawarman University, the excuses were the doubt about vaccine safety (30%), skeptical of its efficacy (22%), afraid of its side effects such as fever and other effects (12%), distrust the vaccine (13%), religious reason (8%), and other excuses (15%).<sup>7</sup> This refusal was a serious obstacle for the Government's efforts in protecting the people from Covid-19.

Responding the vaccination refusal, the Government revised prior regulation. It issued Presidential Regulation No 14 of 2021 of the Revision for Presidential Regulation No 99 of 2020 of Vaccine Procurement and Vaccination in Tackling and Handling Corona Virus Disease-19 (Covid-19) pandemic. One of the provisions in the regulation is the strict policy of the Government for those refusing the vaccination. In Article 13A paragraph (4), it is stated that every person that is eligible for vaccination but refuse to take it could be imposed administrative sanctions such as: (i) social security postponement and/or termination, (ii) administrative service postponement and/or termination, and (iii) fine.<sup>8</sup> The term eligible here refers to those who passed the health screening conducted by medicals.

In this journal, the main topic that will be discussed is regarding the administrative sanction imposition, reviewed from the perspective of Constitutional Law. The sanction imposition would be examined by human rights concept, in particular, right of obtaining health service. In addition, this

---

<sup>6</sup> See also Tessa Septy Dynesia, "The Effectiveness of Indonesian Government Assistance in Handling and Breaking Covid-19 Chains". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 245-256. <https://doi.org/10.15294/ijicle.v2i3.38417>.

<sup>7</sup> Marwan. "Peran Vaksin dalam Penanganan Pandemi Covid-19". *Online Retrieved from* <http://lp2m.unmul.ac.id/webadmin/public/upload/files/9584b64517cfe308eb6b115847cbe8e7.pdf>

<sup>8</sup> Republic of Indonesia. *Peraturan Presiden Republik Indonesia Nomor 14 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 99 Tahun 2020 Tentang Pengadaan Vaksin dan Pelaksanaan Vaksinasi Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (COVID-19)*.

topic also would be reviewed from Administrative Law, as theoretically, Administrative Law is a particular part of Constitutional Law. This is in line with Kraneburg, stating that Constitutional Law and Administrative Law have no fundamental distinction. They are analogous to that of Civic Law and Business Law.<sup>9</sup>

According to Constitutional Law's perspective, the policy of administrative sanction imposition is conceptionally feasible to devise one of effective legal formulations in coping with Covid-19, which is due to the coercion of the policy. Nonetheless, this coercive policy needs examination, whether it is in line with legal and human rights principles or not, and whether this policy could be effective in overcoming the pandemic and its related problems or not. Following this topic's background, this research is limited to analyze and answer these questions:

1. What is vaccination as a concept of one of human rights of obtaining health service?
2. What are legal implications of administrative sanction imposition for those refusing vaccination?

## Method

This research is normative legal research. This sort of research seeks answers for existing legal issues by examining them with legal principles, concepts, and sources.<sup>10</sup> In this journal, arguments are presented based on facts, issues, regulations, analysis, and conclusion (FIRAK), and analyzed through statute, conceptual, and case approaches.<sup>11</sup>

---

<sup>9</sup> Dian Aries Mujiburohman, *Pengantar Hukum Tata Negara*. (Yogyakarta, STPN Press, 2017).

<sup>10</sup> Teguh Prasetyo, *Penelitian Hukum Suatu Perspektif Teori Keadilan Bermartabat*. (Bandung, Nusa Media Pureklolon, 2019).

<sup>11</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. (Jakarta, Kencana Prenada Media, 2017).

### **Administrative Sanction Imposition for Those Refusing Vaccination**

#### ***A. Vaccination Concept reviewed by Human Rights Point of View***

Human Rights is a fundamental instrument to be protected by the state. They are not rights granted by the state according to the positive law, but are innate rights of every human being.<sup>12</sup> Therefore, the state must provide protection, guarantee, and enforcement for the fulfillment of human rights for every individual.

Conceptually, the term human rights is defined by Jan Materson, a member of Human Rights Commission of United Nations. According to him, “human rights could generally defines as these rights which are inherent in our nature and without which we can not live as human being”. From his statement, it can be implied that (i) human rights is the innate rights of every human beings that is attached to them since their birth. Thus, human rights cannot be illegally taken, and (ii) human rights is an instrument to protect value and dignity of human being. Thus, any violation against human rights is comparable with violation against humanity, and human beings’ value and dignity as the Almighty God’s creatures.<sup>13</sup>

Conforming the belief that protecting human rights is the basic obligation of the state for its citizen, Indonesia’s 1945 Constitution guarantees the protection of human rights by stating it in the constitution, from Article 28A to Article 28J. Nonetheless, although human rights is fundamental, it does not imply that the rights to be had irresponsibly. One is able to have their rights as long as their action does not violate others’ rights. Therefore, the state through the Government establish instruments and procedures to prevent one’s rights from violating others. The provision is stated in Article 28J, stating that an individual in having their freedom and rights is obliged to comply with restrictions established by the Law, in order to protect and respect others freedom and rights, as well as to maintain public safety and order in the democratic society.

As obtaining health service is one of the human rights, the constitution also states in Article 28H paragraph (1), “every person is entitled ... to have a good and health environment and to obtain health service”. This provision

---

<sup>12</sup> Majda El Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia dari UUD 1945 Sampai dengan Perubahan UUD 1945 Tahun 2002*. (Jakarta, Kencana, 2005).

<sup>13</sup> Sri Widayati, *Hak Asasi Manusia*. (Tangerang, Loka Aksara, 2019).

of the constitution, then, is followed up with the establishment of derivative laws and regulations, such as the Law of Human Rights, the Law of Health Quarantine, and the Law of Health.

Comparing the concept, the concept of “rights” is something that is different of that of “obligation”. While right is the freedom to act according to one’s will, obligation is a coercive order that has consequence or sanction if ignored or refused.

Regarding vaccination, it is legitimate that every individual is entitled to decide health service they wish. Normatively, the right to determine health service is stated in the Law No 39 of 2009 of Health Article 4. In this Article, it is stated that every individual is entitled to be healthy. The following article, Article 5 paragraph (3) states that every person is entitled independently and responsibly to decide health service they need. Further, in Article 56 paragraph (1) it is stated that “every individual is entitled to take or refuse a part, parts, or entire health-service-related actions that are provided for them after receiving information and understanding the actions comprehensively”.

However, that right of deciding health service to take is not obsolete, and is possible to be restricted. There are exception in that right. In Article 56 paragraph (2), it is stated that the right of deciding health service to take is not applicable for: (i) patients who suffer diseases that are highly and contagious and pose a threat to society, (ii) unconscious patients, and (iii) patients with severe mental disorder.

Referring to Article 56 paragraph (2), it can be implied that obliging Covid-19 vaccination complies with the first exception as Covid-19 is a detrimental and highly contagious disease. This is based on the fact that positive cases of Covid-19 and mortality rate due to Covid-19 keep increasing. Therefore, in Covid-19 vaccination case, the right of deciding health service to take is omitted.

The right omission as in Article 56 paragraph (2), reviewed from the perspective of human rights, is in line with the provision and objective of human rights restrictions. It is restricted to protect and respect other people’s rights and freedom, in this case, others’ rights to be safe and healthy. Moreover, it is also to maintain public safety and public order. In short, it is pointed out that the right to be healthy and the right to access health service are parts of human rights that are able to be omitted for a greater good.



## ADMINISTRATIVE SANCTION FOR ANTI-COVID

*Administrative Law, Law and Public Policy*

### **B. *Administrative Sanction in People's Safety Perspective***

In alenia 4 of the Preamble of Indonesian 1945's Constitution, it is maintained that objectives of the Nation of Indonesia are protecting entire people of Indonesia, developing social welfare, educating nation, and taking an active role in promoting the world security and safety. Those objectives represent the welfare state concept. This concept derived from the principle that every person is entitled to obtain support, protection, and social service for their problems, whether the problems are due to illness, old age, unemployment, and other circumstances such as economic crisis.<sup>14</sup>

In order to achieve the Nation's objectives, the state guarantee its every citizen to have their rights by establishing a constitution regarding human rights, among them, right in obtaining social security, legal protection, and official administrative service. Provision related to these rights is maintained in Article 28H paragraph (3), which manages the right on social security that could drive oneself to be developed as a dignified person. It is also stated in Article 28D paragraph (1), which explains that every individual is entitled to obtain legal protection and guarantee, including official administrative service.

Those rights guarantee are further followed up by establishing laws and regulations, such as the Law of Social Welfare, the Law of Public Service, and the Law of Population Administration. Take Article 9 of the Law of Social Welfare as an example. This provision manages that social security is provided to guarantee the lives of the poor, abandoned orphans, people with disabilities, mentally disabled people, people with severe illnesses, and those with economic and social incapacity, by providing welfare insurance and sustainable cash transfers. In the other Article, Article 14 of the same Law, it is further explained that providing social security such cash transfers aims to prevent a person's, a family's, a group's, and/or society's social vulnerability, so that they are able to fulfill their basic needs.

The same goes for administrative service. It is managed in the Law of Population Administration Article 5 to 9 that all level of Government, from the Central Government, Provincial, to Local Government are obliged and responsible for running population administration and provide its related service. In the Law of Public Service Article 5, it is even emphasized that

---

<sup>14</sup> E. Elvinandari, Khuzdaifah Dimiyati, and Absori Absori. "Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia". *Mimbar Hukum* 31, No. 2 (2019): 252-266. <https://doi.org/10.22146/jmh.32986>

administrative service is a part of public service, including (i) mandatory administrative service according to the laws and regulation, provided by the Government for protecting individuals, families, dignity, and property of citizens, and (ii) mandatory administrative service provided by non-government institutions that is conducted based on agreement of requested service.

From examples presented before, it is inferred that in order to actualize the concept of welfare state according to the constitution and its derivative laws and regulations, the Government is obliged to provide service for its people, including providing social security and excellent administrative service. Nonetheless, to achieve the same objective and even for a greater good, the Government, at the same time, must make exceptions. They are able to postpone or even terminate the service under certain circumstances.

Corresponding to the exception according to regulation and the upsurge of Covid-19 case, the Government has to issue a coercive policy to protect Indonesian people the disease, as per July 30<sup>th</sup> 2021, there has been 92.311 lives taken by the disease, and 3.373.374 people that were infected.<sup>15</sup> This policy is in line with the idea of Marcus Tullius Cicero, quoting that “*salus populi suprema lex esto*” (the safety of the people is the supreme law).<sup>16</sup>

Therefore, the policy of administrative sanction imposition, social security and administrative service moratorium or termination, for those who refuse Covid-19 vaccination is justified. This policy is an attempt to establish the law as a tool of social engineering, which is expected to drive society to accept vaccination, in order to create the herd immunity in the society as the shield fending Covid-19 attack.<sup>17</sup>

---

<sup>15</sup> Satuan Gugus Tugas Penanganan Covid-19. “Data Sebaran Covid-19 di Indonesia per 30/7/2021”, (July, 2021) *Online*, Retrieved from <https://covid19.go.id/>

<sup>16</sup> Satjipto Rahardjo, *Mendudukan Undang-Undang Dasar Suatu Pembahasan dari Optik Ilmu Hukum Umum*. (Semarang, Badan Penerbit Universitas Diponegoro, 2007).

<sup>17</sup> Nazaruddin Lathif, “Teori Hukum Sebagai Sarana/Alat Untuk Memperbaharui atau Merekayasa Masyarakat”. *Pakuan Law Review* 3, No. 1 (2017): 73-94. <https://doi.org/10.33751/palar.v3i1.402>

## Legal Imposition of Administrative Sanction Imposition

On 2020-2021 is a vulnerable period for Indonesia. During this period, in particular in one last year, the positive case of Covid-19 had been upsurging. This condition even deteriorated with the new virus variants emergence, alpha, beta, delta and kappa.<sup>18</sup> Addressing the issue and due to the availability of newly discovered vaccine, at the end of the 2020, the Government unremittingly distributed vaccines for all people. Following the distribution, to back up and support the implementation of vaccination, the Government issued the Presidential Regulation No 99 of 2020 of Vaccine Procurement and Vaccination for Tackling the Spread *Corona Virus Disease* 2019 (COVID-19).

Due to newly identified virus, several countries and research institutions has been developing a number vaccine varieties. As for Indonesia, the Minister of Health issued Decision No HK.01.07/Menkes/12758/2020 of Approved Vaccines for Covid-19 Vaccination. According to this Decision, approved vaccines are the vaccine produced by PT. Bio Farma (Persero), *AstraZeneca*, *China National Pharmaceutical Group Corporation (Sinopharm)*, *Moderna*, *Novavax Inc*, *Pfizer Inc*. And *BioNTech*, dan *Sinovac Life Science Co., Ltd.*<sup>19</sup>

According to the research conducted by the Indonesian Ministry of Health, vaccination using sinovac is able to reduce the risk of being infected by Covid-19 by 94%. Panji Dhewantara, the Head of the Research Team, present that from the day of vaccination to 63 days later, the mortality rate could be reduced by 98%.<sup>20</sup> Thus, vaccination is the appropriate policy in tackling Covid-19.

However, the policy is hampered in its practice as a number of parts of society refuse vaccination or are anti-vaccination. Several of them even disbelief the existence of Covid-19. While parts of them consider vaccination

---

<sup>18</sup> Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional, 2022

<sup>19</sup> Republic of Indonesia. *Keputusan Menteri Kesehatan Republik Indonesia Nomor HK.01.07/Menkes/12758/2020 Tentang Penetapan Jenis Vaksin Untuk Pelaksanaan Vaksinasi Corona Virus Disease 2019 (COVID-19)*.

<sup>20</sup> Rahel Narda Chaterine, "Kemenkes: Sinovac Efektif Turunkan Risiko Kematian Akibat Covid-19 Hingga 98 Persen". *KOMPAS Online* (May, 2021). Retrived from <https://amp.kompas.com/nasional/read/2021/05/14/08320761/kemenkessinovac-efektif-turunkan-risiko-kematian-akibat-covid-19-hingga-98>

is not the appropriate solution for Covid-19. Regarding this policy's obstacles, Ministry of Health, together with Indonesian Technical Advisory Group on Immunization (ITAGI), which supported by UNICEF and WHO, conducted a research on September 2020. The research results show that 64,8% of Indonesian accepted vaccination, 27,6 % of them were hesitant, and 7,6% refused vaccination. Despite the minor percentage of citizen refusing vaccination, the minority would affect the whole society and reduce the policy's effectiveness. This is because this minority group is susceptible to the virus and their refusal might prevent the virus from being eradicated.

Responding the issue, in early 2021, the Government revised the Presidential Regulation No 99 of 2020 with Presidential Regulation No 14 of 2021. One of revised provisions is administrative sanction imposition for those refusing vaccination. In Article 13A paragraph (4), it is stated that every person that is eligible for vaccination yet refusing could be imposed administrative sanctions such as: (i) social security postponement and/or termination, (ii) administrative service postponement and/or termination, and (iii) fine.

It is assumed that this policy would be effective in combatting Covid-19 and creating herd immunity in society by driving all parts of society to take the vaccination due to several reasons:

1. Social security moratorium or termination is believed to drive those, especially from vulnerable group in society, who previously refuse vaccination to take it. This is because if they continue to refuse the vaccination, the social security they need for fulfilling their basic need and used to receive would no longer be available. Thus, to survive, they have no other way than to take the vaccination.
2. While social security moratorium or termination is expected to be effective to coerce those who are financially relatively unstable to comply with the policy, it might not affect those who are financially stable. Addressing this issue, administrative service moratorium or termination would assist the Government to completely execute the policy. Moratorium or termination on administrative service would inevitably hamper nearly all parts of society's necessity, as administrative service is the key on accessing other services, facilities, and necessities. Administrative service moratorium or termination applies for all sorts of administrative service, including ID cards, police clearance, passport, visa, and driving licence. Thus, with this moratorium

# ADMINISTRATIVE SANCTION FOR ANTI-COVID

*Administrative Law, Law and Public Policy*

or termination, every person is urged to comply with the policy by taking vaccination.

By imposing moratorium or termination on social security and administrative service, it is expected that this policy would cover all groups in society, both those from financially vulnerable ones to those wealthy ones, to comply with the policy. Therefore, in the case where all citizens have been vaccinated, the country would be declared free from Covid-19.

Notwithstanding with the moratorium or termination on social security and administrative service, a proper and persuasive dissemination is also essential. This is required in gradually lessen the hesitation, confusion, and even disbelief regarding vaccination. With the rising of society's awareness and the comprehensive execution of the policy, the way out of current negative condition would appear. Thus, it can be inferred that issuing policy of moratorium or termination social security and administrative service is justified and is an effective legal formulation in handling the Covid-19 pandemic.

## Conclusion

In a nutshell, it pointed out that the right of being healthy and obtaining health service is a part of human rights that is stated in Article 28 H paragraph (1) of Indonesian 1945's Constitution juncto Article 4 and Article 5 of the Law No 36 of 2009 of Health. In addition, in Article 56 paragraph (1) of the Law of Health, it is managed that every person is entitled to decide the health service they wish or refuse. Yet, in Article 56 paragraph (2) of the sama Law, there are 3 category exceptions omitting the right of deciding of taking or refusing particular health service. One of them is when the disease is highly contagious and is potentially detrimental for general public. Therefore, the policy of administrative sanction imposition complies with the regulation and human rights in wider perspectives. Furthermore, according to welfare state principle and the Law of Social Welfare Article 9 and 14, the Law of Public Service Article 5, and the Law of Population Administration Article 5 to 9, the state is obliged to provide service to its people, including providing social security and administrative service. However, the state has to prioritize the safety of its people (*salus populi suprema lex esto*) and might omit its obligation. Thus, the policy of imposing administrative sanction is legally justified and valid. Furthermore, complementing the policy, it is required that the Government conduct a comprehensive and persuasive dissemination.

This attempt is essential for the policy to be effectively implemented as it could increase the society's trust in the Government, and gradually diminish the hesitation, confusion, of even disbelief if the vaccination's efficacy.

## References

- Aditama, Chandra Yoga. “[Kolom Pakar] Prof Tjandra Yoga Aditama: Mutasi B117 COVID-19 Sudah di Indonesia”, *Liputan 6 News* (March, 2021). Retrieved from <https://www.liputan6.com/health/read/4497142/kolom-pakar-prof-tjandra-yoga-aditama-mutasi-b117-covid-19-sudah-di-indonesia>
- Asshiddiqie, Jimly. *Perihal Undang-Undang*. (Jakarta, Rajawali Pers, 2010).
- Calvin, Calvin. "Handling Covid-19 Related to Regional Security According to ASEAN Political-Security Community." *Lex Scientia Law Review* 4, No. 1 (2020): 18-30. <https://doi.org/10.15294/lesrev.v4i1.38195>
- Chaterine, Rahel Narda. “Kemenkes: Sinovac Efektif Turunkan Risiko Kematian Akibat Covid-19 Hingga 98 Persen”. *KOMPAS Online* (May, 2021). Retrieved from <https://amp.kompas.com/nasional/read/2021/05/14/08320761/kemenk-essinovac-efektif-turunkan-risiko-kematian-akibat-covid-19-hingga-98>
- Diantha, I Made Pasek. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. (Jakarta, Kencana Prenada Media, 2017).
- Dynesia, Tessa Septy. “The Effectiveness of Indonesian Government Assistance in Handling and Breaking Covid-19 Chains”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 245-256. <https://doi.org/10.15294/ijicle.v2i3.38417>.
- Elvinandari, E., Khuzdaifah Dimiyati, and Absori Absori. “Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia”. *Mimbar Hukum* 31, No. 2 (2019): 252-266. <https://doi.org/10.22146/jmh.32986>
- Fathan, Muhammad Haikal. “COVID-19 Emergency Regulation: How We Survive?”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 301-314. <https://doi.org/10.15294/ijicle.v2i3.38376>.
- Fauzia, Ana, Bayu Yusya Al Khori, and Puji Rahayu. “Constitutionality of Implementing Asymmetric Lockdown (Regional Quarantine) When Covid-19 Increases to Accelerate Health Emergency Management”. *Law Research Review Quarterly* 8, No. 1 (2022). <https://doi.org/10.15294/lrrq.v8i1.54359>.
- Firdaus, Andi. “Guru Besar FKUI ungkap dua kelompok besar mutasi virus di India” *ANTARA News* (April, 2021). Retrieved from

## ADMINISTRATIVE SANCTION FOR ANTI-COVID

*Administrative Law, Law and Public Policy*

- [https://www.antaraneews.com/berita/2125070/guru-besar-fkui-ungkap-dua-kelompok-besar-mutasi-virus-di-india?fbclid=IwAR3\\_uqCtQ7KwJ6cUr5Yi2aYnDoiD81wEH0eDRsVm5HQY9kZ8MT862tcG8fA](https://www.antaraneews.com/berita/2125070/guru-besar-fkui-ungkap-dua-kelompok-besar-mutasi-virus-di-india?fbclid=IwAR3_uqCtQ7KwJ6cUr5Yi2aYnDoiD81wEH0eDRsVm5HQY9kZ8MT862tcG8fA)
- Foraldy, Thendy. "Sejarah Vaksin: Berawal dari Cacar Sapi hingga ke Rabies". *Online*. Retrived from <https://hellosehat.com/parenting/sejarah-vaksin-imunisasi/>
- Fuadi, Ahmad, and Tentiyo Suharto. "Vaksinasi Sebagai Penanggulangan Pandemi Covid-19 Perspektif Fiqh Islam". *El-Ghiroh: Jurnal Studi Keislaman* 19, No. 1 (2021): 33-46. <https://doi.org/10.37092/el-ghiroh.v19i1.269>.
- Hadjon, Philipus M. *Pengantar Hukum Administrasi Indonesia*. (Yogyakarta, Gadjah Mada University Press, 2008).
- Humas Litbangkes. "10 Kasus Varian Baru Covid-19 B.1.1.7 ditemukan di Indonesia". *Online News*. Retrived from <https://www.litbang.kemkes.go.id/10-kasus-varian-baru-covid-19-b-1-1-7-ditemukan-di-indonesia/>
- Indrati, Maria Farida. *Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan*. (Yogyakarta, PT Kanisius, 2017).
- Isbaniah, Fathiyah, et.al. *Pedoman Kesiapsiagaan Menghadapi Coronavirus Disease 2019 (COVID-19)*. (Jakarta, Direktorat Jenderal Pencegahan dan Pengendalian Penyakit, 2020).
- Ivanka, Namira. "Large-Scale Social Restrictions: What's Next?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 201-214. <https://doi.org/10.15294/ijicle.v2i2.38324>.
- Junaedi, Ulil Albab. "Analysis of Covid-19 Impact for Law and Society". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 219-234. <https://doi.org/10.15294/ijicle.v2i3.38330>.
- Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional. "Upaya Tingkatkan 3T dan Vaksinasi di Masa PPKM Darurat". *Online News*. Retrived from <https://covid19.go.id/p/berita/upaya-tingkatkan-3tdan-vaksinasi-di-masa-ppkm-darurat>
- Kumala, Ratna Desinta Mega. "Legal Analysis of Government Policy on Large Scale Social Restrictions in Handling Covid-19". *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 181-200. <https://doi.org/10.15294/ijicle.v2i2.38326>.
- Lathif, Nazaruddin. "Teori Hukum Sebagai Sarana/Alat Untuk Memperbaharui atau Merekayasa Masyarakat". *Pakuan Law Review* 3, No. 1 (2017): 73-94. <https://doi.org/10.33751/palar.v3i1.402>
- Marwan, Marwan. "Peran Vaksin dalam Penanganan Pandemi Covid-19". *Online*. Retrieved from <http://lp2m.unmul.ac.id/webadmin/public/upload/files/9584b64517cfe308eb6b115847cbe8e7.pdf>

- Muabezi, Zahermann Armandz. “Negara Berdasarkan Hukum (Rechtstaat) Bukan Kekuasaan (Machtsstaat)”. *Jurnal Hukum dan Peradilan* 6, No. 3 (2017): 421-446. <https://www.doi.org/10.25216/JHP.6.3.2017.421-446>
- Muhtaj, Majda El. *Hak Asasi Manusia Dalam Konstitusi Indonesia dari UUD 1945 Sampai dengan Perubahan UUD 1945 Tahun 2002*. (Jakarta, Kencana, 2005).
- Mujiburohman, Dian Aries. *Pengantar Hukum Tata Negara*. (Yogyakarta, STPN Press, 2017).
- Muntoha, Muntoha. *Negara Hukum Indonesia Pasca Perubahan UUD 1945*. (Yogyakarta, Kaukaba, 2013).
- Nariswari, Yasminna. “Infectious Disease Outbreaks Act and Its Implication for Handling Corona Virus Spreading in Indonesia”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 257-270. <https://doi.org/10.15294/ijicle.v2i3.38327>.
- Prasetyo, Teguh. *Penelitian Hukum Suatu Perspektif Teori Keadilan Bermartabat*. (Bandung, Nusa Media Pureklolon, 2019).
- Rahardjo, Satjipto. *Mendudukan Undang-Undang Dasar Suatu Pembahasan dari Optik Ilmu Hukum Umum*. (Semarang, Badan Penerbit Universitas Diponegoro, 2007).
- Ramadani, Rizki, Yuli Adha Hamzah, and Arianty Anggraeni Mangerengi. “Indonesia's Legal Policy During COVID-19 Pandemic: Between the Right to Education and Public Health.” *JILS (Journal of Indonesian Legal Studies)* 6, No. 1 (2021): 125-156. <https://doi.org/10.15294/jils.v6i1.43555>
- Ramadhian, Ricky and Ridho Pambudi. “Efektivitas Vaksinasi Hepatitis B untuk Menurunkan Prevalensi Hepatitis B”. *Medical Journal of Lampung University* 5 No. 1 (2016): 91-95. <https://juke.kedokteran.unila.ac.id/index.php/majority/article/view/987/715>
- Republic of Indonesia. *Keputusan Menteri Kesehatan Republik Indonesia Nomor HK.01.07/Menkes/12758/2020 Tentang Penetapan Jenis Vaksin Untuk Pelaksanaan Vaksinasi Corona Virus Disease 2019 (COVID-19)*.
- Republic of Indonesia. *Peraturan Menteri Kesehatan Republik Indonesia Nomor 10 Tahun 2021 Tentang Pelaksanaan Vaksinasi Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (COVID-19)*.
- Republic of Indonesia. *Peraturan Presiden Republik Indonesia Nomor 99 Tahun 2020 Tentang Pengadaan Vaksin dan Pelaksanaan Vaksinasi Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (COVID-19)*.
- Republic of Indonesia. *Peraturan Presiden Republik Indonesia Nomor 14 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 99 Tahun 2020 Tentang Pengadaan Vaksin dan Pelaksanaan Vaksinasi*



## ADMINISTRATIVE SANCTION FOR ANTI-COVID

*Administrative Law, Law and Public Policy*

- Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (COVID-19).*
- Republic of Indonesia. *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.*
- Republic of Indonesia. *Undang-Undang Republik Indonesia Nomor 11 Tahun 2009 Tentang Kesejahteraan Sosial.*
- Republic of Indonesia. *Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-undangan.*
- Republic of Indonesia. *Undang-Undang Republik Indonesia Nomor 23 Tahun 2006 Tentang Administrasi Pemerintahan.*
- Republic of Indonesia. *Undang-Undang Republik Indonesia Nomor 25 Tahun 2009 Tentang Pelayanan Publik.*
- Republic of Indonesia. *Undang-Undang Republik Indonesia Nomor 36 Tahun 2009 Tentang Kesehatan.*
- Safrizal, Z. A., et.al. *Pedoman Umum Menghadapi Pandemi Covid-19 Bagi Pemerintah Daerah Pencegahan, Pengendalian, Diagnosis dan Manajemen.* (Jakarta, Kementerian Dalam Negeri Republik Indonesia, 2020).
- Saputri, Elsa Mellinda. "Determination of Emergency Conditions: How Government Fulfill the Workers Rights During Large-Scale Social Restrictions?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 287-300. <https://doi.org/10.15294/ijicle.v2i3.38374>.
- Saputro, Hendro Cahyo. "How Does the Law Solve the Covid-19 Problem?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 331-344. <https://doi.org/10.15294/ijicle.v2i3.38418>.
- Satuan Gugus Tugas Penanganan Covid-19. "Data Sebaran Covid-19 di Indonesia per 30/7/2021", (July, 2021) *Online*, Retrieved from <https://covid19.go.id/>
- Setiadi, Wicipto. "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum dalam Peraturan Perundang-undangan". *Jurnal Legislasi Indonesia* 6 No. 4 (2009): 603-614. <https://doi.org/10.54629/jli.v6i4.336>
- Susanto, Sri Nur Hari. "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi". *Administrative Law & Governance Journal* 2, No. 1 (2019): 126-142. <https://doi.org/10.14710/alj.v2i1.126-142>.
- Suseno, Franz Magnis. *Etika Politik Prinsip Moral Dasar Kenegaraan Modern.* (Jakarta, PT. Gramedia Pustaka Utama, 2001).
- Token, Thomas. *Negara Hukum Dalam Pemikiran Politik.* (Yogyakarta, PT Kanisius, 2020).

- Wicaksono, Muhammad Bagas Ragil, and Ayu Lestari. "Assessing The Rights of Women Victims of Home Violence During The COVID-19 Pandemic." *Lex Scientia Law Review* 4, No.2 (2020): 13-24. <https://doi.org/10.15294/lesrev.v4i2.40946>
- Widayati, Sri. *Hak Asasi Manusia*. (Tangerang, Loka Aksara, 2019).

#### **About the Author(s)**

**Rusdianto**, born in Dompu, April 19th, 2000, is a student of the Faculty of Law of the University of Mataram. He has been taking an active role in campus life, such as legal debate, academic writing, and social activities. He is a several times winner of debate contests. One example is the winner in Provincial Economic Debate Contest for University Students, held by HMJ IESP FEB of the University of Mataram. Furthermore, he was the 3rd place in National University Students essay, held by MUSKERNAS IMPERTI. He also takes an active role in social activities. Among them are being granted YBM BRI 2020 Scholarship Awardee and GenBI NTB 2021 scholarship awardee, by volunteering, educating, and providing social assistance for those in need in villages.

**Diva Pitaloka, S.H., M.H.**, born in Mataram, May 28th, 1987. Graduating her bachelor with Cumlaude in 2009 in Faculty of Law, University of Mataram. In 2011, she completed her Post-Graduate in Padjajaran University majoring in International Law. She has been a lecturer in University of Mataram since 2012, and has been taking an active role in research, volunteering, and social activities.