

CURRENT COMMENTARY

ADVOCACY AND LEGAL AID DURING COVID-19 PANDEMIC: HOW INDONESIA SURVIVES?

Galuh Dwi Novanda

Justice for Society Forum, Semarang, Indonesia

Email: galuhnovanda@gmail.com

The spread of the corona virus or better known as covid-19 in Indonesia is a serious matter that needs to be dealt with immediately considering the number of victims caused by the virus that was first discovered in Wuhan. As in mid-March, after the first death in Indonesia due to the corona virus and the designation of the catastrophic virus as a global pandemic by WHO or the World Health Organization, this indicates that the government must be tougher in controlling corona virus transmission in Indonesia. Even since March 15, 2020 Indonesia has determined the status of the co-19 distribution as a national disaster. The implications of the outbreak of the pandemic are the impact on problems both in the health and economic fields. In connection with health issues, the Indonesian government itself has established a public health emergency as stated in the Decree of the Head of the National Disaster Management Agency. This is as stated in Article 10 of Law Number 6 Year 2018 on Health Outrageousness as seems to be a lockdown consideration, there are large-scale social restrictions which are clearly evident in article 59 paragraph (2) which includes the consolation of schools and workplaces, restrictions on religious activities and / or restrictions on activities at public places or facilities.

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I. INTRODUCTION

The spread of the corona virus or better known as covid-19 in Indonesia is a serious matter that needs to be dealt with immediately considering the number of victims caused by the virus that was first discovered in Wuhan. As in mid-March, after the first death in Indonesia due to the corona virus and the designation of this catastrophic virus as a global pandemic by WHO or the World Health Organization, which indicates that the government must be more stringent in controlling the transmission of the corona virus in Indonesia. Even since March 15, 2020 Indonesia has determined the status of the co-19 distribution as a national disaster. The implications of the outbreak of the pandemic are the impact on problems both in the health and economic fields. In connection with health issues, the Indonesian government itself has established a public health emergency as stated in the Decree of the Head of the National Disaster Management Agency. This is as stated in Article 10 of Law Number 6 of 2018 on Health Outrageousness as seems to be a lockdown consideration, there are large-scale social restrictions which are clearly evident in article 59 paragraph (2) which includes the consolation of schools and workplaces, restrictions on religious activities and / or restrictions on activities at public places or facilities.

In a further context regarding legal aid and legal issues when the Covid Pandemic 19, based on the results of the Jakarta LBH study related to handling the COVID-19 virus pandemic outbreak and the application of PSBB in Jabodetabek where LBH Jakarta emphasized that existing policies must pay attention to human rights and fulfillment citizen rights. This Position Paper was launched as part of the response and recommendations to policies made by the Government, both the Central Government, Regional Governments, Ministry officials, to law enforcement officials related to the outbreak of the COVID-19 virus pandemic.¹

¹ LBH Jakarta, "Penanganan Wabah Pandemi Virus Covid-19 dan Penerapan PSBB di Jabodetabek Harus Memperhatikan Hak Asasi Manusia dan Pemenuhan Hak Warga", *Position Paper*, 28 April 2020. Retrieved from <https://www.bantuanhukum.or.id/web/penanganan-wabah-pandemi-virus-covid-19-dan-penerapan-psbb-di-jabodetabek-harus-memperhatikan-hak-asasi-manusia-dan-pemenuhan-hak-warga/>. Even further, it was stressed that the legal aid process experienced several challenges in a pandemic situation. In fact, many legal issues have arisen in this situation, ranging from termination of employment, payment of salaries, distribution of community assistance, health insurance, the right to information disclosure and so on. *See also*, Cara E. Davies and Randi Zlotnik Shaul. "Physicians' legal duty of care and legal right to refuse to work during a pandemic." *Cmaj* 182(2), 2010, pp. 167-170; Bradly J. Condon, and Tapen Sinha. *Global lessons from the AIDS pandemic: Economic, financial, legal and political implications*, London, Springer Science & Business Media, 2008; Kenneth De Ville, "Legal preparation and pandemic influenza." *Journal of Public Health Management and Practice* 13(3), 2007, pp. 314-317.

One of the highlights of the Jakarta Legal Aid Foundation is the lack of seriousness of the Government in carrying out the mandate of Law No. 6 of 2018 concerning Health Quarantine, where the Government seems reluctant to implement the overall quarantine policy. The government only applies Large-Scale Social Restrictions (hereafter PSBB) which incidentally only wants to limit the activities of citizens, but does not want to be truly responsible for fulfilling the basic rights of citizens as long as their activities are restricted.²

This position paper also highlights the PSBB policy at the level of the Ministry of Health of the Republic of Indonesia to the level of regional government, where the PSBB applied goes beyond and confuses the authority of the PSBB in Law No. 6 of 2018 concerning Health Quarantine and Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating Handling of COVID-19 (PP PSBB). This can be seen from the PSBB policy which actually limits the mobility and transportation of citizens (even to the issue of the prohibition of going home), which in fact is the limitation of mobility policy that is not properly applied in the PSBB scheme, but in the Quarantine (Home Quarantine, or Hospital Quarantine or Hospital Quarantine) scheme.³

The impact of implementing PSBB that is not balanced by the Government's obligation to fulfill the rights of the basic needs of its citizens consequently is mass layoffs happening everywhere, a crisis of economic resilience of citizens, residents threatened with no place to live because they cannot afford to pay rent for housing, the threat of excessive criminalization by the apparatus under the pretext of law enforcement on the PSBB, the rise of terror victims of the intimidation of collectors from online loan services, etc.⁴

For the COVID-19 pandemic outbreak handling policy at the local government level so far there are no specific policies that are contextual and in accordance with Jabodetabek complexity, where in Jabodetabek there are many densely populated settlements and urban poor groups, vulnerable minority groups, the working class, etc. Whereas the application of COVID-19 handling policies does not necessarily only talk normatively, but it needs special policy contextualization strategies according to the complexity of the region.⁵

At the field level, there are still many minority and vulnerable groups (such as disability groups, gender-sexual minorities, the elderly, etc.) who are threatened with survival and do not get access to fulfill the needs of the government. In addition, on the ground, the Government did not provide effective solutions to the working class victims of mass

² LBH Jakarta, *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

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layoffs. In a restrictive situation such as the CDBR, the working class victim of mass layoffs is clearly one of the vulnerable classes to survive.⁶

In addition to threats to the stability of citizens' rights and human rights, the policy of handling the COVID-19 pandemic outbreak in Jabodetabek is still supported by an adequate healthcare system and according to the ideal amount. But if it is not accompanied by preparations for the expansion of the healthcare system infrastructure, there is a prediction of threats where in the next 2 or 3 months (if the number of people infected with COVID-19 continues to increase), the healthcare system in Jabodetabek will not be sufficient to accommodate and provide health services to residents.⁷

Both the Central Government and Regional Governments currently 'rely' on social assistance policies to citizens as an effort to meet the needs of citizens. But what needs to be highlighted from this kind of policy is that the Government does not consider that the fulfillment of citizens 'needs is the fulfillment of citizens' rights. The social assistance policy itself is a scheme of charity, wherein there is no absolute responsibility for the Government's obligations. In addition, the social assistance policy itself is highly dependent on the condition of the budget post situation in each local government agency.⁸

The practice in the field shows that the social assistance policies implemented by the Government (both the Regional Government and the Central Government through the Ministry of Social Affairs) are actually experiencing problems, such as not being targeted for the assistance, those who are categorized as vulnerable and prioritized not getting help, and so on. One of the factors why this can occur is due to the absence of synchronization and updating of population data.⁹

The Jakarta Legal Aid study highlights the government's obligation scheme in fulfilling citizens 'rights, which should refer to the regime of fulfilling citizens' rights, which is stated in at least 3 (three) laws: the Health Outrageous Law, the Infectious Disease Act, and the Managing Agency Act National Disaster. The Government's maneuver making social assistance policies which incidentally is outside the 3 (three) law scheme shows that the Government does not want to take responsibility in meeting the basic rights of its citizens.¹⁰

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

II. LEGAL AID & ADVOCACY DURING COVID-19 PANDEMIC

As is well known, the government on March 31, 2020 has issued several legal products regarding the response to the covid pandemic that are attacking as a form of efforts to tackle the pandemic. The legal products include Government Regulation in Lieu of Law / Perppu Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling Corona Virus Disease 2019 or Covid-19 and in order to face the threat of threats affecting the national economy or financial system stability. The next legal product is the Decree of the President of the Republic of Indonesia Number 11 of 2020 regarding the Establishment of the Corona Virus Disease Public Health Emergency 2019, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease / Covid-19.¹¹

The issuance of Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Handling Corona Virus Disease / Covid-19 is part of the implementation of Law Number 6 of 2018 on Health Health Qualiosity which clearly states four types of actions referred to as part from health quarantine, namely home quarantine, hospital quarantine, regional quarantine, and large-scale social restrictions. When referring to the current conditions associated with the spread of the corona virus in various regions and the ongoing mobility of community movements, it is actually better to suppress the rate of corona virus spread precisely by imposing limits on the rate of mobility to move from one region to the same region. others so that at least people who are already exposed to the covid virus do not then transmit it to others as a result of a direct relationship between the two. Besides that, it is also a problem when the Government issues Number 1 of 2020 regarding policies to maintain the country's economic stability. When viewed at a glance, the policy as issued by the government will

¹¹ Related to the lockdown policy, actually it has also been regulated in Law Number 6 of 2018 regarding Health Quarantine. Quarantine is the limitation of activities or separation of someone who is exposed to an infectious disease as stipulated in the legislation, even though they have not shown any symptoms or are in the incubation period, or the separation of containers, conveyances, or any items suspected of being contaminated from persons or goods contain causes of disease or other sources of contamination to prevent the possibility of spread to people or goods around it. See Nur Rohim Yunus, and Annissa Rezki. "Kebijakan Pemberlakuan Lock Down Sebagai Antisipasi Penyebaran Corona Virus Covid-19." *Salam: Jurnal Sosial dan Budaya Syar-i* 7(3), 2020, pp. 227-238; Muh Barid Nizarudin Wajdi, et al. "Education Policy Overcome Coronavirus, A Study of Indonesians." *EDUTECH: Journal of Education And Technology* 3(2), 2020, pp. 96-106; Sandhy Handika, Muhammad Ibnu Fajar Rahim, and Rudi Pradisetia Sudirdja. "Virtual Court Policy For Criminal Justice on Corona Virus Disease Pandemic." *Substantive Justice International Journal of Law* 3(1), 2020, pp. 74-93.

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have a positive impact, but if it looks substantially, the regulation has several problems that have the potential to create moral risks and acts of corruption. This can be seen from the several Articles contained in the Perppu, as follows.

First, article 27 paragraph (1) of the Government Regulation in Lieu of Law Number 1 of 2020 which in essence explains that the costs arising from the government's financial rescue policies related to the crisis, he said as part of the economic costs for efforts to rescue the economic crisis, not is a state loss. The provisions as stipulated in the said apsal can be a shield for the government not to conduct an evaluation and have the potential to cause acts of corruption from the government itself in the midst of Covid's current emergency.

Second, article 27 paragraph (2) of the Government Regulation in Lieu of Law Number 1 of 2020 which in essence explains the policy-making officials cannot be prosecuted by criminal or civil judges if in carrying out these tasks is based on good faith and in accordance with statutory regulations. Just as what was stated in the previous paragraph, it can be a shield for the government or policy-making officials so that it appears immune to applicable law or there is no need for evaluation.

Third, article 27 paragraph (3) of the Government Regulation in lieu of Law Number 1 of 2020 which in essence explains that all actions including decisions taken by officials or government agencies based on the Perppu are not objects of a lawsuit that can be submitted to the state administrative court. This can be the culmination of government efforts so that it can realize absolute power which then seems as if the actions taken by the government are always right and cannot be sued or prosecuted in court.

Furthermore, related to economic problems, the spread of the corona virus has an impact on, for example, diminishing shopping center visitors, or delays in the process of shipping goods. This has an impact on workers whose bargaining position is the lowest or the weakest, so it has the potential to be dismissed from his job.¹² Furthermore, with the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 concerning Worker/Labor Protection and Business Continuity in the Context of Preventing and Countering Covid-19.¹³ In Part IV Number 4 is explained in essence, that changes in the amount and

¹² Muhammad Nur Abdi, "Krisis Ekonomi Global dari Dampak Penyebaran Virus Corona (COVID-19)." *AkMen Jurnal Ilmiah* 17(1), 2020, pp. 90-98; Silpa Hanoatubun, "Dampak Covid-19 terhadap Prekonomian Indonesia." *EduPsyCouns: Journal of Education, Psychology and Counseling* 2(1), 2020, pp. 146-153; I. Ketut Budastra, "Dampak Sosial Ekonomi Covid-19 dan Program Potensial untuk Penanganannya: Studi Kasus di Kabupaten Lombok Barat." *Jurnal Agrimansion*, 21(1), 2020, pp. 48-57.

¹³ Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 concerning Worker / Labor Protection and Business Continuity in the Context of Preventing and Countering Covid-19. Retrieved from <https://jdih.kemnaker.go.id/katalog-1653-Surat%20Edaran%20Menteri.html>

payment of wages of workers or laborers are made in accordance with the agreement between employers and workers or laborers. The provision is actually detrimental to the worker himself because the worker or laborer is in an unequal position and results in receiving an inadequate wage. Even though decent wages are a human right that everyone has. Looking at the right to decent work and livelihood, it is natural for the government to ensure that there is no termination of employment by the company as well as the provision of adequate wages according to the provisions of the applicable laws and regulations.¹⁴

The wage system has been regulated in Article 90 of Law Number 13 of 2003 concerning Manpower which basically explains that employers are prohibited from paying wages lower than the minimum wage as referred to in article 89. So that this shows that as long as there is no suspension period, wages must be still paid according to applicable regulations. Also in Article 151 paragraph (1) of the Manpower Act explains that employers, workers/labors, trade unions/labors, and the government must make every effort to avoid termination of employment so that the government has the obligation to make efforts so that no workers are terminated work relationship.¹⁵

Seeing some of the problems from the issuance of several policies by the government it can actually be said to be contradictory to the interests of the people as well as the rescue efforts of the co-19 pandemic that hit the country of Indonesia. So it is fitting that the government can immediately improve the provisions as stipulated in the Government Regulation in Lieu of Law Number 1 of 2020 which is incompatible or

¹⁴ Aknolt Kristian Pakpahan, "Covid-19 Dan Implikasi Bagi Usaha Mikro, Kecil, dan Menengah." *Jurnal Ilmiah Hubungan Internasional* 15(1), 2020, pp. 59-64; Heri Kurniawansyah, et al. "Konsep Kebijakan Strategis dalam Menangani Eksternalitas Ekonomi dari Covid-19 Pada Masyarakat Rentan di Indonesia." *Indonesian Journal of Social Sciences and Humanities* 1(2), 2020, pp. 130-139; Fauzan. "Menjaga Keragaman Ekonomi Rakyat di Tengah Pandemi Covid-10 (Suatu kajian Islam untuk Bangsa Indonesia)." *Pendidikan Multikultural* 4(1), 2020, pp. 112-123; Wibowo Hadiwardoyo, "Kerugian Ekonomi Nasional Akibat Pandemi Covid-19." *BASKARA: Journal of Business & Entrepreneurship* 2(2), 2020, pp. 83-92.

¹⁵ A number of companies cut employee salaries as a result of the Corona virus. This had to be done because the Covid-19 pandemic caused business activities to be negatively affected. Even the Ministry of Manpower has not been able to decide on sanctions against companies that cut employee salaries in the midst of the Corona outbreak. See Law Number 13 of 2003 concerning Manpower; Article 57 paragraph (1) Government Regulation Number 78 of 2015 concerning Wages; Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Worker / Labor Protection and Business Continuity in the Context of Prevention and Control of COVID-19. See also R. Maria del Rio-Chanona, et al. "Supply and demand shocks in the COVID-19 pandemic: An industry and occupation perspective." *arXiv preprint arXiv:2004.06759*, 2020; Veronica Guerrieri, et al. *Macroeconomic Implications of COVID-19: Can Negative Supply Shocks Cause Demand Shortages?*. No. w26918. National Bureau of Economic Research, 2020; George Psacharopoulos, et al. "Lost Wages: The COVID-19 Cost of School Closures." *World Bank Policy Research Working Paper* 9246, 2020.

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contrary to human rights and democratic principles of the rule of law, especially articles that tend to be anti-rule of law such as Article 27 verses (1) to paragraph (3). Furthermore, the government needs to focus on ensuring efforts to protect the rights of its citizens in the event of a public health emergency as a result of a co-pandemic that has plagued the country such as meeting the basic needs of citizens and expanding access to the right to health services, including also fulfilling decent wages for workers and protection from termination of employment.

III. CONCLUSION

I underline that legal issues in the co-19 pandemic situation require special attention, especially with regard to citizens' rights and access to justice in disaster situations. The challenge of advocacy and legal aid in this situation is not only related to health issues, but also government policy. Things that are awry and unfavorable, become a process of legal assistance and community advocacy do not run effectively in a co-19 pandemic situation because they are limited by various policies to prevent disease.

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