



Legal Protection of Medical Personnel during the COVID-19 Pandemic in Indonesia



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Abstract

The purpose of this research is to investigate the legal protection of medical staff in Indonesia during the COVID-19 outbreak. This study is a descriptive qualitative study that examines the legal protection of medical staff in Indonesia using positive law. Secondary legal materials, such as books, journals, articles, and other written works, as well as field phenomena, are used to write the article. According to the study's findings, the COVID-19 outbreak in Indonesia has placed a significant strain on the country's healthcare system, especially on healthcare employees. The most evident issue is the safety of medical staff at the frontline, who are extremely vulnerable to being exposed to COVID-19, risking their lives. Furthermore, issues of mental health, such as the danger of burnout syndrome, pose significant concerns. Unfortunately, there are no guidelines or practices in place to protect their mental health. Legal protection for health workers during the COVID-19 pandemic consists of preventive protection efforts and repressive protection efforts. The government provides preventive protection through a vaccination program. Repressive protection is given by the Government by imposing sanctions for perpetrators of violence and discrimination against health workers who are on duty. Besides, the Government has provided incentives and death benefits.

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1 Introduction

Almost all countries, including Indonesia, were hit by the COVID-19 pandemic, also known as the Coronavirus, around the beginning of 2020. A pandemic, according to the WHO, is a novel illness that spreads across international borders. Meanwhile, the KBBI defined a pandemic as an illness that spreads simultaneously throughout a large geographical area. WHO proclaimed COVID-19, also known as the Coronavirus, a pandemic on March 11, 2020 (Organization, 2020a). In Indonesia, the first COVID-19 case was disclosed in March (Jokowi, 2020), and since then, the number of people with the status of People Under Monitoring (ODP), Patients Under Supervision (PDP), and PDPs declared positive for COVID-19 has increased, putting the occurrence in the pandemic category (Kanishevska et al., 2022). According to the Ministry of Health website, there are three COVID-19 variants in May 2021: Alpha, Beta, and Delta (Sabyr et al., 2019). In addition, a new version of Omicron reached Indonesia in December 2019, bringing the total number of Coronavirus variants in Indonesia to four. To combat the pandemic, the National Disaster Management Agency (BNPB) declared a disaster emergency from February 29, 2020, to May 29, 2020, and is still working to implement new government measures (Sisdiyantoro & Minarni, 2021). BDR (Work From Home) to complete package immunizations are also adopted, as are PSBB (Large-Scale Social Restrictions) rules. Based on data, as of May 18, 2022, there have been 6,052,532 confirmed positive cases, with 5,891,190 recoveries and 156,498 deaths (Ihrig & Moe, 2004; Cumming, 2007). This number is spread across 34 provinces in Indonesia (covid19.go.id, 2022). The number of patients continues to rise, causing 7 provinces to be declared in an emergency alert position, 14 provinces to be declared in emergency response status, and four provinces to be declared in disaster emergency response status if specific conditions occur (Verguet et al., 2021).

Because of the significant number of new cases of the Omicron variant of COVID-19, more health workers may become infected at health care facilities. In addition to preventing transmission, the Ministry of Health requests that provincial/district health offices and all hospital directors guarantee that health workers are present in health care facilities in their area (Widjanantie et al., 2020). The rising number of COVID-19 cases, particularly the Omicron version, which has a higher transmission rate than the prior variant, contributes to a higher positive rate among health workers (Brooks et al., 2010; Braun et al., 2004). The number of infected health workers can create emergency conditions for a health workforce catastrophe. The contingency situation of health workers is a lack of health workers that can nevertheless be solved by health service facilities through human resource arrangements so that health services are not impacted (Yuliantini & Mangku, 2020). Meanwhile, the health workforce crisis is a circumstance in which there is a shortage of health workers in health care facilities, which influences health services (Karno & Sulaiman, 2021).

Aside from the safety and infection-prevention aspects, another risk that has the potential to impair the quality of life and productivity of our medical services is the mental health aspect, which includes the risk of burnout syndrome or mental fatigue (Greenberg et al., 2020). Health workers may be subjected to extremely high levels of stress, but there are no guidelines or protocols in place to protect their mental health (Awaliyah et al., 2020). The high risk of burnout syndrome sufferers as a result of exposure to unusually severe stress in health facilities during this pandemic can have long-term effects on the quality of medical services because health workers can feel depressed, extreme fatigue, and even less competent in carrying out their duties, which will, of course, have an unfavorable impact on efforts to combat COVID-19 in Indonesia (Santoso, 2021).

The difficulties encountered by health workers in carrying out their duties, as indicated above, are compounded by the presence of acts of violence for being late in handling COVID-19 patients. Furthermore, during the early phases of the COVID-19 pandemic, incentives for COVID-19 health worker volunteers encountered payment delays (Organization, 2020b). The discrimination from the community, which refuses to allow health personnel exposed to COVID-19 to self-isolate near their communities, is a concern that must be

addressed as well (Purwendah & Mangku, 2021). Some of these facts suggest that there are issues with providing legal protection for health workers in Indonesia, which have the potential to undermine legal certainty, making legal protection for medical personnel during the COVID-19 outbreak difficult to assess. The lack of legal certainty in the regulation of health workers also results in poor legal protection for health workers, resulting in ineffective health implementation carried out by health workers (Muninjaya, 2011).

2 Materials and Methods

The issue in this study is the imprecise idea of legal protection for health professionals, as well as the lack of special legislation governing legal protection for health employees, particularly those providing health services in Indonesia during the COVID-19 pandemic (Itasari, 2015). To solve the problem formulation raised. The research method employed is classed as normative or doctrinal legal research employing a juridical-normative approach. The normative legal research approach makes use of existing library items to conduct research (Abdurrahman, 2009). In collecting research data, secondary legal materials in the form of books, journals, articles, and other written works from both print and internet media that are relevant to this research were used (Sumardjono, 1989). Because this is a normative study, the data collecting technique is the study of documents or library materials, and the legal materials analysis techniques are deduction (from general to specific) and interpretation (interpretation) in analyzing existing legal materials (Sulaiman, 2018). The data in this study were analyzed using qualitative techniques, specifically to answer the question of how the quality of health services during the COVID-19 pandemic in Indonesia, the factors that affect the quality of health services, and the concept of legal protection that is not yet clear for health workers, as well as the absence of special regulations that regulate legal protection for health workers, particularly those who provide health services during the COVID-19 pandemic (Kavak et al., 2020).

3 Results and Discussions

3.1 The concept of legal protection for medical workers in Indonesia

Medical personnel or health workers are the primary components of providing health services to the community to fulfill national health development goals specified by the constitution. Of course, being the primary component of health service providers, the existence, role, and obligation of health workers are critical in health development activities (Mangku & Yuliantini, 2021). The implementation and utilization of the existence, roles, and responsibilities of these health workers are well balanced, orderly, quality maintained, and protected both for the health workers themselves and for the community who receive the health services, of course, need arrangements that are outlined in the form of laws and regulations (Karno & Sulaiman, 2021).

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) emphasizes that the purpose of the establishment of the Republic of Indonesia is to promote the general welfare and educate the nation's life (Bryson, 2021). In addition to the preamble, the state's responsibility in public services is regulated in the body, specifically in Article 34 paragraph (3) of the Republic of Indonesia's 1945 Constitution, which states, "The state is responsible for providing health service facilities and proper public facilities" (Songgigilan, 2021).

The mandate of the two provisions contained in the constitution as the supreme law (supreme law of the land) implies that the State is obliged to meet the needs of every citizen through a government system that supports the creation of public services to fulfill the basic needs and civil rights of every citizen, as stated in paragraph (1) of Article 28H of the Republic of Indonesia's 1945 Constitution (Mangku et al., 2020). "Everyone has the right to live in physical and spiritual wealth, to live in a pleasant and healthy living environment, and to health care services." (Arifin & Lestari, 2019).

Article 34 paragraph (4) of the Republic of Indonesia's 1945 Constitution additionally stated that "other requirements related to this article are regulated in legislation ([Mangku & Yuliartini, 2021](#))." As a result, the existence of a law in the health sector that guarantees the fulfillment of people's expectations for adequate health service guarantees the concretization of the provisions in Article 34 paragraph (3) and Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, the above-mentioned concretization process must also include the principles of legislation formulation, particularly justice and legal certainty, for health services to be of high quality and advantageous to all parties ([Sudiro, 2013](#)). Legal protection for citizens, in this case including medical personnel, in principle has the following objectives ([Asyhadia, 2018](#)):

- Legal protection to ensure the fulfillment of citizens' rights;
- Legal protection to prohibit actions that violate citizens' rights;
- Legal protection gives citizens the access to cease infringements and seek compensation or redress for violations of their rights;
- Legal protection in assuring the availability of compensation or redress for citizens whose rights have been violated ([Songgigilan, 2021](#)).

In terms of legal protection for medical staff, the Indonesian government employs two types of legal protective facilities as follows ([Raharjo, 2006](#)):

- Means of Preventive Legal Protection
Preventive legal protection is a procedure or method used to prevent an incident with legal ramifications, in which medical personnel (legal subjects) are allowed to raise objections or opinions before a government decision is finalized ([Rifan et al., 2020](#)). The Government of Indonesia provides preventive legal protection, specifically the implementation of the vaccination program, which prioritizes medical staff as the primary vaccine recipients.
- Means of Repressive Legal Protection
Repressive legal protection is a step or method taken if an event that results in the law has occurred. In Indonesia, the General Court and Administrative Court handle legal protection, which is included in this category of legal protection ([Laming, 2021](#)). The government provides repressive protection to medical employees by enforcing punishments on perpetrators of violence and prejudice against health workers on duty; also, the government has offered incentives and compensation for death, despite many barriers.

According to the preceding explanation, the concept of legal protection is an entity of diverse legal efforts in defending human rights and rights and obligations originating from legal relationships between human beings as legal objects ([Malik et al., 2021](#)). In other words, the concept of legal protection for medical workers is an example of a legal function, namely the concept of the law providing legal certainty, legal advantages, and justice ([Agustino, 2020](#)). The concept of legal protection for medical workers is founded on the concepts of recognition, rights protection, and the application of the concept as a framework of thought based on Pancasila as an ideology and philosophical foundation ([Szmukler et al., 2014](#); [Law et al., 2011](#)). Thus, the principle of legal protection for medical workers is the principle of recognition and protection of human dignity and value, which is founded on the Pancasila premise of the rule of law ([Adityo, 2013](#)).

3.2 Legal protection efforts for medical workers during the COVID-19 pandemic in Indonesia

Legal protection refers to all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security. Legal protection of crime victims, as part of community protection, can take many forms, including restitution, compensation, medical services, and legal assistance ([Awaliyah et al., 2020](#)). Everyone has the right to fair recognition, guarantees, protection, legal certainty, and equal treatment before the law, according to Article 28D paragraph (1) of the 1945 Constitution ([Dewi et al., 2021](#)). This is identical to Article 5 paragraph (1) of Human Rights Law No. 39/1999, which provides that every person is recognized as an

individual human being with the right to demand and receive the same treatment and protection following his human dignity before the law (Hamzah, 2010).

Health workers have the right to obtain compensation and legal protection in carrying out their tasks following their profession, according to Article 27 paragraph (1) of Law Number 36 of 2009 (Spoorthy et al., 2020). Strengthened by Article 57 letter an of Law No. 36 of 2014 Concerning Health Workers, which stipulates that health workers are entitled to legal protection while doing their tasks as long as they follow Professional Standards, Professional Service Standards, and Standard Operating Procedures (Verguet et al., 2021). The regulations above empower the government to carry out legal orders ensuring legal protection for health workers concerning the task force for dealing with COVID-19 acceleration (Magnavita et al., 2020).

The government has a legal obligation to safeguard and ensure the rights of health workers in providing services, including rewards and guarantees for safety and health while on duty, based on this legal basis. Furthermore, the government is responsible for providing healthcare facilities for healthcare employees to do their jobs (Pelafu, 2015). As a result, the availability of health service facilities in the context of achieving the highest level of health is the responsibility of the central government and regional governments (Chen et al., 2009; Newman et al., 2014). This is regulated and stated in Article 6 of Government Regulation Number 47 of 2016 concerning Health Service Facilities (Songgigilan, 2021).

Following the issuance of the Decree of the Head of BNPB Number 13 A of 2020, all levels of government are required to carry out all of their tasks as provided in the applicable legislation, given the emergence of COVID-19 in 2019. The following are some of the government's responsibilities (Karno & Sulaiman, 2021):

- Support the availability of medical equipment in the field (Joob & Wiwanitkit, 2020);
- Ensuring the fulfillment of the rights of the community and medical personnel (Vindrola-Padros et al., 2020);
- Transparency of information to the public (Ehrlich et al., 2020);
- Making policies that take into account the values of human rights and democracy (Santoso, 2021).

Determination of work-related COVID-19 as a specific occupational disease in certain occupations is determined by KMK HK.01.07/MENKES/327/2020. Minister of Manpower Decree No. M/8/HK.04/V/2020 protects doctors as medical workers in the JKK Program in PAK cases due to COVID-19 (Firmansyah et al., 2017). Protection of work norms, Occupational Health and Safety (K3) norms, and labor social security norms should all be included in health worker protection norms. Wages, working hours, rest time, and leave are all protected labor regulations for health workers (Agustino, 2020). In the context of handling COVID-19, K3 standards protection encompasses the prevention and control of work accidents and COVID-19 related to work (Pelafu, 2015).

Protection of labor social security norms for health workers by ensuring participation in the national health insurance (JKN) is carried out through the JKN-BPJS Health program as well as the Work Accident Insurance and Death Insurance organized through the BPJS Employment program (Deliana et al., 2021). For every health worker/doctor who is being treated for COVID-19, the costs related to the treatment and treatment of COVID-19 infection are borne by the government according to KMK Number HK.01.07/MENKES/446/2020 regarding Technical Instructions for Claims for Reimbursement of Services for Patients with Certain Emerging Infectious Diseases for Hospitals Providing COVID-19 Services (Muninjaya, 2011).

The final post-treatment/treatment condition, namely recovery, disability, or death, can be covered by BPJS Employment or following the insurance that has been followed, such as ASN Health Workers borne by PT. Taspen and TNI/Polri Health Workers borne by PT. ASBRI, if the Occupational Disease suffered is COVID-19 (Muchsin, 2016). Compensation in the form of money (temporary compensation for being unable to work, disability compensation, rehabilitation costs, child scholarships, mourning money, death compensation) and disability allowances were paid, among other things (Dewi & Tobing, 2021). The applicable health service facility is responsible for funding for examinations of health workers related to COVID-19 that are not assured or claims that are not sufficient in the COVID-19 coverage (Tyagi et al., 2021; Zhang & Atkins, 2019). Based on the preceding description, it may be determined that health workers' legal protection during the COVID-19 pandemic consisted of both preventive and repressive measures (Sisdiyantoro & Minarni, 2021).

In preventive protection efforts, from 2020 to 2022, health workers have received work safety guarantees in the form of obtaining complete PPE and also providing vaccinations, although previously in 2019 they had difficulty getting assistance in the form of PPE so many were exposed to COVID-19 (Purwaningtyas, 2021). This vaccination program is a form of repressive protection provided by the government in ensuring the safety of every citizen (Romawati et al., 2022). To protect the repressive, the Government has provided incentives and compensation for death to health workers as contained in Kepmenkes No. HK.01.07/MENKES/278/2020 concerning Provision of Incentives and Death Compensation for Health Workers Handling COVID-19, and Kepmenkes No. HK.01.07/MENKES/215/2020 concerning the Utilization of the Special Allocation Fund for the Health Sector for the Prevention and Handling of COVID-19 for the 2020 Fiscal Year (Satrianegara, 2014).

Even though providing incentives and pay has been fraught with difficulties, it is nevertheless done. This indicates that the Indonesian government is attempting to protect medical personnel (Widjanantie et al., 2020). In the case of health personnel who face discrimination, the Indonesian government has set up specific rooms for those who have been exposed to COVID-19, such as converting schools or campuses into autonomous isolation rooms and placing their citizens there (Bodenheimer, 1999). Professional groups and law enforcement personnel have also intervened to provide legal certainty for perpetrators of violence toward health workers on duty to deal with the COVID-19 outbreak, especially by issuing criminal sanctions (Antonijevic et al., 2020).

4 Conclusion

The rule of law is a worldwide endeavor to ensure legal protection. Legal protection consists of two forms, namely preventive legal protection and repressive legal protection, namely: Preventive legal protection means prevention. Preventive legal protection is extremely important for government acts based on freedom of action because it encourages the government to be cautious when making judgments. Preventive legal protection is a type of legal protection that is included in legislation to prevent violations and set limits on how responsibilities are carried out. The Government of Indonesia provides preventive legal protection, specifically the implementation of the vaccination program, which prioritizes medical staff as the primary vaccine recipients. Repressive Legal Protection is final protection in the form of giving sanction to the violation committed. Repressive protection is given by the government to medical staff by sentencing sanctions to violation perpetrators and discrimination against on-duty medical staff. To assure the legal protection of medical staff runs effectively, the government supposes to strengthen the public policy system related to the management of the COVID-19 Pandemic and show transparency of fund allocation given to medical staff during the COVID-19 Pandemic in Indonesia.

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