

PROTECTION AND FULFILLMENT OF THE RIGHT TO A HEALTHY ENVIRONMENT DUE TO PANDEMIC OF THE CORONA VIRUS DISEASE (COVID-19)

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ABSTRACT

The right to health is part of the right to a good and healthy environment and this right is included in the right to economic, social and cultural rights (Ecosoc). The Covid-19 pandemic has created problems with the right to health. The problem in this article is regarding the protection and fulfillment of the right to health for the Covid-19 pandemic outbreak. Protection and fulfillment of the right to health in relation to statutory regulations as a legal basis. The research method used is a normative or normative juridical descriptive method. Research with the juridical normative method or normative legal research is research that aims to find and formulate legal arguments through analysis of the main problem. The goal to be achieved in this article is the need to protect and fulfill citizens' rights to health within the framework of a good and healthy environment due to the Covid-19 pandemic. The results of this study indicate that efforts to protect and fulfill the right to public health due to the Covid-19 pandemic have not been maximized. This can be seen that some people affected by the Covid-19 pandemic do not get proper eco-social rights, even though some citizens get the fulfillment of these rights.

Keyword: Protection, fulfillment, Pandemic, Human Rights

A. Introduction

The right to health is part of the right to a good and healthy environment and is included in the right to economy, social and culture (Ecosoc). The 1945 Constitution affirms this economic, social and cultural rights, especially in Article 28H paragraph (1) which states "Every person has the right to live in physical and mental well-being, to have a place to live, and to have a good and healthy living environment and the right to obtain health services". The right to obtain a good and healthy living environment and good health services is a human right, therefore, the 1945 Constitution is clearly very pro-environment, so it can be called a green constitution.¹ Ecosoc rights will always be related to protecting the environment. Health issues are closely related to environmental issues, because the environment is a place for humans to carry out activities as an ecosystem. Therefore, the right to health includes getting a healthy and clean environment (right to a healthy and clean environment). The category of right to have a good

¹ Jimly Asshiddiqie, (2009), *Green Constitutional*, Jakarta, Rajawali Press, p.90.

and healthy environment includes the right to live, the right to a decent life, the right to health and the right to freedom over property, including the right to defend property.

Health factors cannot be separated from environmental problems, so environmental issues and human rights are two things that are interconnected and can strengthen each other. Therefore, if a country has many violations of human rights, environmental damage often occurs. This means protecting human rights is also a way to protect the environment.

The outbreak of an infectious disease in the form of a corona virus known as Covid-19 has spread throughout the world, and has become a pandemic, destroying and eliminating the rights to health of some people in the world, including in Indonesia. It says that “Coronavirus Disease 2019 or better known as COVID-19 is a virus that originates from non-humans transmitted to humans”² The transmission pattern of COVID-19 is from “human to human”, to cause the spread of COVID-19 transmission so quickly that it reaches all parts of the world including Indonesia. At present, due to the spread level, severity, and inaction of COVID-19 countermeasures, the World Health Organization (WHO) categorizes COVID-19 as a pandemic.³

The result of the Covid-19 pandemic resulted in a violation of people's rights to health, because with the Covid-19 pandemic then it was transmitted from human to human and the effects of contracting this virus caused human health to be insured and even resulted in death. Because public health is disturbed, the surrounding environment also does not make the environment healthy and clean anymore.

Protection and fulfillment of people's rights to health has become a problem with the outbreak of the Covid-19 pandemic. The issue of protection and fulfillment of the community's right to health is the main thing considering that the community's right to health must be protected and fulfilled before other social and political rights. The protection and fulfillment of people's right to health are issues that need to be reviewed in statutory regulations. The government must not be negligent in protecting and fulfilling the people's right to obtain the health in question. The purpose achieved in this paper is to find out how the government can protect and fulfill the people's right to health related to the environment. The benefits obtained can be used as input for the government in making policies to protect and fulfill people's rights to health due to the Covid-19 pandemic.

B. Research Methods

² Hari Sutra Disemadi and Denis Oxy Handika, “Community Compliance with the Covid-19 Protocol Hygiene Policy in Klaten Regency, Indonesia”, in Journal *Legality*, Vol. 28. No. 2. 2020, p. 122.

³ World Health Organization. (2020). Novel Coronavirus (2019-nCoV) Situation Report-51.

The research method is a normative or normative juridical descriptive method, according to Philipus M. Hadjon that, normative juridical research or normative legal research is research aimed at finding and formulating legal arguments through analysis of the subject matter⁴. The main problem referred to in this study is the protection and fulfillment of the right to public health because the community's environment is unhealthy due to an outbreak of infectious diseases, namely the Covid-19 pandemic. The subject matter is analyzed and studied scientifically through legislation and its implementation. Amiruddin stated that, in a normative legal approach, law is conceptualized as what is written in legislation (law in book) or law is conceptualized as a rule or norm which is a benchmark for proper human behavior⁵. The data sources come from laws and regulations, articles in journals, websites and books. The data obtained were then analyzed using qualitative analysis, namely by selecting and sorting data in accordance with the subject matter discussed.

C. Analysis

1. The Right to Health Due to the Covid-19 Pandemic

The Covid-19 pandemic is the result of natural destruction by humans. This was stated by the leaders of the United Nations (UN), the World Health Organization (WHO), and WWF International which is a non-profit organization focused on the largest conservation in the world. The Guardian said the illegal and unsustainable wildlife trade and the destruction of forests and other wild places were still the driving force behind the increasing number of diseases that jumped from wildlife to humans. They are calling for a green and healthy recovery from the Covid-19 pandemic, in particular by reforming destructive agriculture and unsustainable diets⁶. Natural resources should not be disturbed because it will eliminate the balance of the ecosystem, ecology which results in damage to the environment.⁷

Because of the Covid-19 outbreak which originated from environmental damage, in the form of environmental exploitation by killing wild animals which are then for human consumption or foodstuffs, while these wild animals are components of the environment that need to be preserved. It is said that, this virus is known to have first appeared in an animal and seafood market in Wuhan City. It was later reported that many of the patients had the virus and

⁴ Philipus M. Hadjon dan Tatiek Sri djamiati, (2005), *Argumentasi Hukum*, Yogyakarta: Gadjah Mada University Press, hlm. 3.

⁵ Amiruddin dan Zainal Asikin, (2006), *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, hlm. 118.

⁶ <https://galamedia.pikiran-rakyat.com/news/pr-35573618/pandemi-corona-disebut-berasal-dari-kerusakan-lingkungan-akibat-ulah-manusia>, (downloaded, 13 October 2020)

⁷ Nurul Listyani, "Impact of Mining on Life Environment in South Kalimantan And Implication for Rights of Citizens, Jurnal, Al'Adl, Volume IX Nomor 1, Januari-April 2017, p. 69.

were linked to the animal and seafood market. The first people to fall ill with the virus are also known to be traders in the market⁸. The city Guangdong, China observed first incidence of SARS-CoV in 2002–2003 as a typical pneumonia marked by fever, headache and subsequent onset of respiratory symptoms such as cough and pneumonia, which may further develop into life-threatening respiratory failure and acute respiratory distress syndrome.⁹ Quoted from the BBC, BBC health and science correspondent, Michelle Roberts and James Gallagher said, the wholesale market for animals and seafood sells wild animals such as snakes, bats and chickens. They suspect that the new corona virus has almost certainly come from a snake. It is also suspected that this virus spreads from animals to humans, and then from humans to humans¹⁰, until now the corona virus has become a pandemic worldwide.

The impact of the Covid-19 pandemic has resulted in people being infected with respiratory problems, according to several references, the corona virus or Covid-19 attacks the human respiratory system¹¹, and is deadly. In addition, it can cause permanent injury to the lungs of patients who are already infected and are healing. In general, if someone experiences a fever, flu, cough, and shortness of breath within a certain time limit, this is a symptom of Covid-19.¹² Thus, the people's rights to health are being violated. Because the Covid-19 pandemic has spread throughout the world, countries in the world need to protect and fulfill people's rights due to the Covid-19 pandemic. This also applies in Indonesia, so the Indonesian government must protect and fulfill the right to public health from the Covid-19 pandemic. Actually, laws and regulations in protecting and fulfilling the right to public health already exist. The Indonesian government needs to enforce the rules or laws referred to in order to protect and fulfill the right to health as a result of the impact of Covid-19.

This Covid-19 pandemic has violated the people's right to health, which means that it has also resulted in damage and pollution to the environment. Environmental protection and human rights in the Covid-19 pandemic have a link between the two. The existence of environmental protection which simultaneously protects and fulfills human rights. This is because in protecting the environment and its natural resources it has a dual purpose, namely serving the interests of

⁸ <https://bali.idntimes.com/health/medical/denny-adhietya/asal-muasal-dan-perjalanan-virus-corona-dari-wuhan-ke-seluruh-dunia-regional-bali/2>, (download, 10 October 2020).

⁹ Graham R L, Donaldson E F and Baric R S (2013) A decade after SARS: strategies for controlling emerging coronaviruses *Nature Reviews Microbiology* 11(12):836-848.

¹⁰ <https://bali.idntimes.com/health/medical/denny-adhietya/asal-muasal-dan-perjalanan-virus-corona-dari-wuhan-ke-seluruh-dunia-regional-bali/2>, (download, 10 October 2020).

¹¹ Artikel ini telah tayang di serambinews.com dengan judul Pengaruh Corona terhadap Kehidupan Sosial Masyarakat, <https://aceh.tribunnews.com/2020/03/21/pengaruh-corona-terhadap-kehidupan-sosial-masyarakat>.

¹² Artikel ini telah tayang di serambinews.com dengan judul Pengaruh Corona terhadap Kehidupan Sosial Masyarakat, <https://aceh.tribunnews.com/2020/03/21/pengaruh-corona-terhadap-kehidupan-sosial-masyarakat>.

the whole and serving the interests of individuals¹³. Therefore, it can be explained that the right to health is part of the right to a good and healthy environment.

The right to a good and healthy environment is a right derived from economic, social and cultural (ecosoc) rights. This Ecosoc is universally affirmed in the United Nations Charter (UN Charter), one of which aims (Article 1 paragraph 3) is to promote and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The follow-up to these provisions is strengthened in the ECOSOC Charter (The Charter of the Economics and Social Council), especially Article 62 paragraph 2, namely recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedom for all. This declaration was then followed by the enactment of the International Covenant on Civil and Practical Right (ICCPR) and the International Covenant on Economic, Social and Cultural Rigths, hereinafter referred to as the ICESCR through UN General Assembly Resolution No. 2000 A (XXI) on December 16, 1966. Article 12 of the International Covenant on Economic Social and Cultular Rights (ICESCR) regulates the right to a good and healthy environment, namely, "the state parties to the present Covenant recognize the right to everyone to the enjoyment of the highest attainable standard of physical and mental healthy".

The right of every person to get physically and mentally healthy needs protection and fulfillment, furthermore every country must take action against:

- a. the improvement of all aspects of environmental and industrial hygiene;
- b. the prevention, treatment and control of epidemic, endemic, occupational and other diseases¹⁴.

Furthermore, Article 6 of the Stockholm Declaration regulates that the state must support all measures to combat pollution¹⁵. This is so that human health is maintained because pollution has a negative impact on human health, and if human health is disturbed it will facilitate the spread of the corona virus.

2. Protection of Community Rights to Health

The document on the right to health in Indonesia is contained in Article 28H paragraph (1) of the 1945 Constitution which states that, "every person has the right to live in physical and mental well-being, to have a place to live, and to have a good and healthy living environment

¹³ Sodikin, *Penegakan Hukum Lingkungan Tinjauan Atas Undang-Undang Nomor 23 Tahun 1997*, (Jakarta: Djambatan, 2007), hlm. 44.

¹⁴ Pasal 12 ayat 2 ICESCR.

¹⁵ Prinsip 6: ...*The just struggle of the peoples of all countries against pollution should be supported.*

and the right to obtain health services. Because the right to health is part of the right to economic, social and cultural rights, to implement the provisions of Article 28H paragraph (1) of the 1945 Constitution, the Indonesian government has ratified the international covenant on economic, social and cultural rights with Law Number 11 of 2005. Furthermore, there is also Law Number 32 Year 2009 concerning Environmental Management and Protection, especially Article 65 paragraph (1) which states, "Everyone has the right to a good and healthy environment as part of human rights". Article 65 paragraph (1) of Law Number 32 Year 2009 provides confirmation that environmental damage is also a violation of human rights. Law Number 39 Year 1999 regarding Human Rights also affirms the right to a good and healthy environment, namely in Article 9 paragraph(3). A more specific law regulating the degree of public health as a human right is Law Number 36 of 2009 concerning Health. Article 6 of Law Number 36 Year 2009 which more specifically regulates the linkage between health degrees and environmental problems, while the explanation is, "everyone has the right to a healthy environment for the achievement of a health degree". Law Number 36 of 2009 concerning Health guarantees public health by providing health services that are competent and on the basis of non-discrimination, although in practice the fulfillment of the right to health is not free from violations¹⁶. Law Number 36 of 2009 concerning Health is the government's effort to increase the degree of health and a clean and good environment. The purpose of Law Number 36 of 2009 concerning Health is to increase awareness, willingness and ability to live healthy for everyone so that the highest degree of public health is realized, as an investment for the development of socially and economically productive human resources¹⁷.

Actually the regulation as a form of protection regarding infectious disease outbreaks in Indonesia, namely through Law Number 4 of 1984 concerning Infectious Disease Outbreaks, because in this Act it has the purpose and objective of protecting the population from the catastrophe caused by the outbreak as early as possible, in order to increase their capacity. society to live healthy¹⁸. Law No. 4/1984 describes an outbreak of an infectious disease which is an outbreak of an infectious disease in a society where the number of sufferers has increased significantly more than the usual conditions at a certain time and in a certain area and can cause disasters. The corona virus is an epidemic of infectious diseases that transmits from human to human, and has become a pandemic.

The Covid-19 virus pandemic is not only in Indonesia, but has transmitted between countries and almost all countries have contracted the corona virus outbreak. Because of the

¹⁶ Lembaga Bantuan Hukum Masyarakat, *Buku Saku Hak Atas Kesehatan*, (Jakarta: LBHM,2019).

¹⁷ Pasal 3 Undang-undang Nomor 36 Tahun 2009 tentang Kesehatan.

¹⁸ Pasal 2 Undang-undang Nomor 4 Tahun 1984 tentang Wabah Penyakit Menular.

impact of globalization which has an impact on the health factors of the Indonesian public, due to the transmission of Covid-19 from one country to another, to stop the transmission of Covid-19 there is Law Number 6 of 2018 concerning Health Quarantine. Health quarantine is an effort to prevent and prevent the exit or entry of diseases and/or public health risk factors that have the potential to cause a public health emergency¹⁹, and the outbreak of the corona disease (Covid-19) has caused health emergencies for the people of Indonesia and also other countries have cases the same one.

Government policy in the context of protecting the community due to the Covid-19 pandemic which results in economic, social and cultural rights is the promulgation of Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 pandemic. This law anticipates the impact of the Covid-19 pandemic to fulfill the people's ecosoc.

3. Efforts to Fulfill the Right to Health Due to the Covid-19 Pandemic

Several provisions of these laws and regulations can be used as a basis for the government in fulfilling the right to health due to the Covid-19 pandemic. Covid-19 is a contagious disease with characteristics of rapid transmission between humans, so it requires more intensive handling. The state, as the holder of the obligation to fulfill human rights, has a responsibility to comply with several provisions of laws and regulations relating to the people's right to health due to the Covid-19 pandemic. Responsibility as an effort to fulfill human rights can be done by providing good services, goods and facilities, providing non-discriminatory economic, social and cultural services, developing policies / laws and special action plans, or other similar steps. for the full realization of the right to health, as well as human rights.

The existence of health insurance is a tangible manifestation of the ecosoc for all members of the community, and health insurance is also applied to people or groups who are vulnerable to the Covid-19 outbreak. Vulnerable groups include the elderly, infants / toddlers, children, people who are sick (people infected with the virus but have companions), mothers who are pregnant or breastfeeding and other persons with disabilities, all of whom must be given special protection.

Apart from health issues, because access to and use of health services can prevent and treat diseases that affect health, other rights that must be fulfilled by the state regarding the right to ecosoc, are the right to information, the right to privacy and the right to work. Information

¹⁹ Pasal 1 angka 1 Undang-undang Nomor 6 Taun 2018 tentang Keekarantinaan Kesehatan.

about the Covid-19 outbreak is needed by the public, in Article 19 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) and Paragraph 18 General Comment No. 34 to Article 19 of the ICCPR, the state is obliged to guarantee the right of everyone to seek and receive information, including information held by public bodies. The government has the obligation to determine and announce the types and spread of diseases that have the potential to be contagious and/or spread in a short time, as well as mention the areas that can be the sources of transmission²⁰.

The Covid-19 outbreak also threatens the right to privacy, the government can provide correct information that does not spread hoax information. Furthermore, regarding the right to work, because with the implementation of Large-Scale Social Restrictions (PSBB) with social distancing and work from home policies, workers in the formal to informal sectors, from home industry workers to micro-businesses, small and medium enterprises (MSMEs), so that casual daily workers and other low-income workers are vulnerable to the risk of wage cuts, denial of leave rights, being laid off without wages, and termination of employment (PHK)²¹. The State Budget must also ensure the fulfillment of these community rights.

Because the corona virus outbreak (Covid-19) is related to the environment, the problems with the fulfillment of ecosoc are related to the physical environment such as clean water, clean air, healthy workplaces, pollution-free which can contribute to creating a healthy environment. Many humans forget about environmental factors to carry out their daily activities, so that ecosystem problems (humans and their environment have a relationship with each other and are cyclic) are disrupted. What then happened, the human right to get a healthy life (the right to healthy environment) due to uncontrolled development became violated. Environmental problems are actually a result of human desire to develop and build a better life. Therefore, in the framework of human rights, this desire is said to be the right to development.

In fact, the transmission of the corona virus can be anticipated as early as possible, if the government carries out policies as soon as possible to enforce Law Number 6 of 2018 concerning Health Quarantine, even though in the end it also implements Large-Scale Social Restrictions or lockdowns. The lockdown policy or Large-Scale Social Restrictions are one of the policies originating from Law Number 6 of 2018 so that the spread of Covid-19 does not become more widespread and the environment is protected from the transmission of Covid-19. Therefore, health regulation as a health effort is any activity to maintain and improve health carried out by the government and/or the community, which is also a form of fulfilling the right to development.

²⁰ <https://www.amnesty.id/covid-19-dan-hak-asasi-manusia/>, (download, 17 October 2020)

²¹ *Ibid.*

D. Conclusions and Recommendations

Efforts to protect and fulfill the right to public health from the government due to the Covid-19 pandemic have not been maximized. This can be seen from some of the people affected by the Covid-19 pandemic who do not rights to ecosoc, even though some community members get the fulfillment of these rights. The right to a good and healthy environment, especially the right to health, is the main one, because good health will affect and obtain other rights to ecosoc. The existing laws and regulations, both in the form of laws and other regulations, even the UN Human Rights Charter and other UN human rights covenants can be used as a legal basis for fulfilling the right to a good and healthy environment due to the Covid-19 pandemic.

Recommendations from the author, that the laws and regulations that protect and fulfill the rights of economic, social and cultural issues are mainly the right to a good and healthy environment, namely the right to health is sufficient. The government can immediately and without hesitation enforce economic, social and cultural rights with existing laws and regulations. This is because the government has the obligation and authority to protect its people from the dangers of the Covid-19 pandemic.

References

Book

- Amiruddin dan Zainal Asikin, (2006), *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada.
- Jimly Asshiddiqie, (2009), *Green Constituional*, Jakarta, Rajawali Press.
- Philipus M. Hadjon dan Tatiek Sri djamiati, (2005), *Argumentasi Hukum*, Yogyakarta: Gadjah Mada Unversity.
- Sodikin, (2007), *Penegakan Hukum Lingkungan Tinjauan Atas Undang-Undang Nomor 23 Tahun 1997*, Jakarta: Djambatan.

Journal/Website/Article

- Akmal, (2011), "Pemenuhan Hak Ekonomi Sosial dan Budaya (EKOSOB) Bagi Masyarakat Nelayan di Kota Padang, *Journal, DEMOKRASI* Vol. X No. 2.
- Artikel ini telah tayang di serambinews.com dengan judul Pengaruh Corona terhadap Kehidupan Sosial Masyarakat, <https://aceh.tribunnews.com/2020/03/21/pengaruh-corona-terhadap-kehidupan-sosial-masyarakat>.
- Artikel ini telah tayang di serambinews.com dengan judul Pengaruh Corona terhadap Kehidupan Sosial Masyarakat, <https://aceh.tribunnews.com/2020/03/21/pengaruh-corona-terhadap-kehidupan-sosial-masyarakat>.

Graham R L, Donaldson E F and Baric R S (2013) A decade after SARS: strategies for controlling emerging coronaviruses *Nature Reviews Microbiology* 11(12):836-848.

Hari Sutra Disemadi and Denis Oxy Handika, (2020), "Community Compliance with the Covid-19 Protocol Hygiene Policy in Klaten Regency, Indonesia", in *Jurnal Legality*, Vol. 28. No. 2.

<https://galamedia.pikiran-rakyat.com/news/pr-35573618/pandemi-corona-disebut-berasal-dari-kerusakan-lingkungan-akibat-ulah-manusia>, (downloaded, 13 October 2020).

<https://bali.idntimes.com/health/medical/denny-adhietya/asal-muasal-dan-perjalanan-virus-corona-dari-wuhan-ke-seluruh-dunia-regional-bali/2>, (download, 10 October 2020).

<https://bali.idntimes.com/health/medical/denny-adhietya/asal-muasal-dan-perjalanan-virus-corona-dari-wuhan-ke-seluruh-dunia-regional-bali/2>, (download, 10 October 2020).

<https://www.amnesty.id/covid-19-dan-hak-asasi-manusia/>, (download, 17 October 2020).

Lembaga Bantuan Hukum Masyarakat, (2019), *Buku Saku Hak Atas Kesehatan*, Jakarta: LBHM.

Nurul Listyani, (2017), "Impact of Mining on Life Environment in South Kalimantan And Implication for Rights of Citizens, *Jurnal, Al'Adl*, Volume IX Nomor 1, Januari-April.

Prinsip 6: ...*The just struggle of the peoples of all countries against pollution should be supported.*

World Health Organization. (2020). Novel Coronavirus (2019-nCoV) Situation Report-51.