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The urgency of arrangement legal facilities for health workers in public health emergency

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ABSTRACT

Background: The public health crisis that all countries around the world have experienced is the corona virus disease 2019 (COVID-19) pandemic. The COVID-19 pandemic exposed strengths and weaknesses in many legal frameworks. A public health emergency (PHE) is carried out quickly by health workers to save lives. This study intends to analyze legal certainty in adequate norms in the Health Law to fill the void in norms regarding guarantees of legal protection and access to government legal facilities for health workers related to PHE.

Methods: Using normative legal research methods with a statutory approach (statue approach) and a conceptual approach towards PHE.

Results: The results of this study indicate that the Health Law only regulates legal protection guarantees in general and does not regulate in detail the legal facilities that can be accessed by health workers when dealing with legal cases, so this will result in non-optimal legal protection guarantees.

Conclusion: In formulating future policies to help health workers resolve legal issues in PHE, the government must be able to develop provisions by adapting and adopting the guidelines of the International Federation of Red Cross and Red Crescent Societies for future legal framework readiness in public health emergencies and preparing institutions lawfully appointed to accommodate the government's responsibility for legal certainty for health workers. **Keywords:** legal facilities, public health emergencies, health workers.

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INTRODUCTION

Public health systems play an integral role in preparing communities to respond to and recover from health threats and emergencies. National and local governments should strengthen domestic legal preparedness for public health emergencies.¹

According to the World Health Organization (WHO), a "public health emergency" (PHE) is defined as an impending event or danger from a disease or health condition caused by bioterrorism, an epidemic or pandemic disease, or a new and very lethal disease. It can be in the form of an infectious disease or a biological toxin putting many people at risk of death accidents, or permanent disability.^{2,3}

The public health crisis as a public health emergency is not new, will continue to occur, and will have an impact on

the wider community. Conditions that include health crises include outbreaks of influenza, Ebola, and COVID. The COVID-19 pandemic has shown how the world is unprepared for a public health emergency.^{4,5}

The COVID-19 pandemic exposed strengths and weaknesses in many legal frameworks. Unprepared countries around the world are rushing to create new regulatory frameworks, impacting individual rights and freedoms and legal protections for health workers, in response to their readiness to promote public health.⁶

In the COVID-19 pandemic, to save lives or prevent disability, a public health emergency response was carried out. Bearing in mind that during the COVID-19 pandemic episode, it turned out that rights related to the health of health workers, such as the provision of

personal protective equipment (PPE), were in fact often violated,⁷

Due to the lack of PPE, health workers often use insufficient PPE, thus endangering the safety of patients and the health workers themselves. Lack of PPE results in infections that can be fatal.⁸

Another challenge faced by medical personnel during the COVID-19 outbreak was acts of violence due to delays in handling COVID-19 patients and unpaid incentives for volunteers and COVID-19 health workers.⁹

Cases like this become a source of complaints from the people served and become a big challenge because public dissatisfaction can lead to lawsuits and can become demands for non-fulfillment of the rights of health workers that have been mandated by laws and regulations.¹⁰

Health crisis management is regulated in Minister of Health of the Republic of

Indonesia Number 75 of 2019, which states the role of health workers in overcoming health crises in all phases of disasters in Indonesia, as explained in the regulation. Each level of intervention in PHE places significant emphasis on the health professional's role, especially at the community level. The government must fulfill all rights under Indonesian law to ensure that health workers have safe working conditions.⁸ Its role is clarified in Ministry of Health Decree Number 75 of 2019 concerning the health crisis.^{9,11,12}

In addition, the provisions of Article 83 (2) of Law Number 36 of 2009 concerning Health, hereinafter referred to as the Health Law, regulate litigation by the Indonesian government in the legal protection of health workers.¹¹

In accordance with its capacity, "there is a guarantee by the government for legal protection for implementing health services in a disaster." In a public health emergency response, legal protection for the safety of health workers is very important because it provides first aid. While carrying out their work professionally according to standards and procedures, health workers are protected by law.¹³

Based on the provisions in the Health Law regarding the fulfillment of the government's obligation to guarantee legal protection for health workers involved in PHE, the formulation stated is quite clear, which can be interpreted as meaning that the regulations are limited to their capabilities in order to provide protection for health workers in a disaster situation.

The formulation contained is quite clear and can be interpreted to mean that the regulation is limited to the capabilities possessed in order to provide protection to health workers in a disaster situation. This is based on the provisions in the Health Law regarding the fulfillment of the government's obligation to guarantee legal protection for health workers who are in charge of public health emergencies.

Referring to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which mandates that every citizen "has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law," in addition to the provisions mentioned in

Article 28H paragraph (2), stated that "Every person has the right to receive convenience and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice." So legal facilities, as the embodiment of legal protection guarantees, are the rights of citizens as mandated in the provisions of the law.¹⁴

When a health professional dealing with a public health emergency encounters a legal issue, there are mechanisms as part of the process to seek clarity and justice. This is intended to imply that the formulation of the Health Law regarding standard legal facilities that are ready to be accessed easily by health workers is still lacking. The Health Law is not specific and has not explicitly regulated it.

Considering that there are insufficient provisions in the Health Law that regulate the availability of government legal facilities that can be accessed by health workers when facing legal situations in public health emergency services, legal issues related to the vacuum of norms arising from the description above arise. The certainty of legal protection for health workers in the future will be affected by the absence of regulation in the Health Law.

From previous studies related to legal protection in PHE conducted by Fitriani, it was limited regarding the protection of the rights of health workers in handling the COVID-19 pandemic, issue 2021, while not highlighting the vacancy of legal facility regulations, the discussion focused on legal protection.^{14,15} According to previous studies, this research does not indicate that it has similarities; considering that the analysis was carried out to examine novelty values that complement legal means, it is evident that there are substantive differences between the first and second studies above. In terms of further analysis, it includes the guarantee of legal protection for health workers who handle public health emergencies and the urgency of regulating the provision of legal facilities for health workers in PHE in the future, with a study focus on ensuring legal protection for health workers who handle public health emergencies and the urgency of providing legal facilities in fulfillment of our rights as citizens.

METHODS

To identify the rule of law, a set of guiding principles, or a set of legal doctrines encountered, this form of research is known as "doctrinal law research." This research aims to produce arguments, hypotheses, or new ideas that can be used as solutions to problems.¹⁶

The absence of a rule of law in regulating a matter is known as the "void of norms." Legislation is the main source of law used in this research. Books, law magazines, and the internet are used as secondary legal sources for this research's discussion of the absence of legal standards for health workers in PHE, method of collecting primary legal sources with a literature review. using a conceptual approach and a statutory approach (the conceptual approach).¹⁷

RESULT AND DISCUSSION

Guarantee of Legal Protection for Health Workers in Public Health Emergency

The government's responsibility is to protect vulnerable people during a public health emergency (PHE), and the law also pays attention to the legal protection of health professionals.¹⁸

Experience during the COVID-19 pandemic demonstrates the uncertainty and potential risks of liability for healthcare workers, including allegations of negligence, breaches of standards of care, constitutional prosecutions, criminal liability, breaches of privacy, and breaches of confidentiality, all of which pose risks to every health care worker.¹⁹

According to Satjipto Raharjo, legal protection is given to the public so that they can use all rights regulated by law and defend human rights that are violated by others.²⁰

Legal protection for citizens generally functions to ensure that compensation or corrective action is available to those whose rights have been violated, to provide access for citizens to stop violating the law, to pursue compensation or other forms of redress, and to provide access for citizens to stop the infringement.²¹

The right to legal protection, including the rights of health workers, is one of the rights of citizens. In accordance

with Article 27, Number 1, of the 1945 Constitution, every citizen is equal before the law, and the government is obliged to uphold it without discrimination. For health workers in PHE, the government is required by law to guarantee legal protection for the health workers involved.¹⁴

Article 28D, paragraph 1, of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, fair legal certainty, and equality before the law. Everyone has their rights recognized as human beings, according to Law Number 39 of 1999 concerning Human Rights, and has the right to demand and receive equal treatment and protection in accordance with human dignity and worth before the law.²²

Whereas Article 27 paragraph (1) of the Health Law:

“Health workers have the right to receive wages and legal protection in carrying out their duties according to their profession.”

Law Number 36 of 2014 concerning health workers, which is strengthened by Article 57, regulates:

“legal protection if it has fulfilled its responsibilities and complies with professional standards, service standards, and standard operating procedures.”

Whereas Article 27 paragraph (1) of the Health Law says, “Health workers have the right to receive wages and legal protection in carrying out their duties according to their profession.” Law Number 36 of 2014 concerning health workers, which is strengthened by Article 57, regulates: “legal protection if it has fulfilled its responsibilities and is in compliance with professional standards, service standards, and standard operating procedures.”²³

The Urgency of Setting the Provision of Legal Facilities for Health Workers in PHE in the Future

The direct and incidental impacts of providing frontline services during a health crisis must be accommodated under legal protection and regulated by laws and regulations because health workers are an important component of health services in emergency crisis situations (PHE) and must receive adequate legal protection.²⁴

One of the foundations for realizing justice and guaranteeing the fulfillment of citizens' constitutional rights is the existence of legal protection for doctors, nurses, midwives, and other health workers, although the arrangements are still not ideal in the current legal system. The COVID-19 pandemic has made all parties aware of the importance of support from all sectors, not only facilities and infrastructure, but also the importance of supporting adequate legal facilities for health workers in PHE.²⁵

One proven effective strategy is a legal preparedness mechanism to create a health system and an emergency response system. However, it seems that there is still a lot of neglect in the area of integrating law into emergency management and that it has not been recognized, whereas according to Jacobson et al., knowing public health legislation can enhance best practices in emergencies.^{26,27-34}

Having well-designed, understood, and implemented laws, policies, and plans for public health emergencies is considered legally prepared. Importantly, legal readiness is an ongoing process that requires regular review and revision of laws and ensuring that they are adequately implemented.²⁷

To ensure that no one is left behind, the legal framework has the capacity to create an environment that supports rapid and efficient public health emergency preparedness, response, and recovery.²⁷

The government must strengthen legal readiness at all levels, including at the regional level. To achieve this by reviewing and changing policies, procedures, and strategies to address gaps.²⁸

The 2005 International Health Regulations (IHR), which entered into force on June 15, 2007, are the most significant international regulations related to PHE. It is a piece of international law meant to help protect all countries from transnational diseases. 194 countries worldwide, including Indonesia, are subject to the legislative requirements of the IHR (all WHO Member States). Rights and obligations related to public health threats and public health emergencies affecting international health and stability are outlined in this document, which serves as a brief introduction to the

adoption of legislative measures. The 2005 International Health Regulations (IHR), which entered into force on June 15, 2007, are the most significant international regulations related to PHE. It is a piece of international law meant to help protect all countries from transnational diseases. 194 countries around the world, including Indonesia, are subject to the legislative requirements of the IHR (all WHO Member States). Rights and obligations related to public health threats and public health emergencies affecting international health and stability are outlined in this document, which serves as a brief introduction to the adoption of legislative measures.²⁷⁻³⁰

An important substance of the International Health Regulations (IHR) is for countries to be prepared to respond to PHE. The IHR mandates that states build, enhance, and maintain their capacity to identify, evaluate, and report public health incidents, to address public health threats and emergencies quickly and effectively, and to analyze domestic legal and institutional frameworks.^{27,32}

With a vacuum of norms, there is no regulation regarding the provision of legal facilities in the Health Law, whereas based on the provisions of the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1) states that every citizen “has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law,” and further in accordance with the provisions of Article 28 H paragraph (2), which states that “everyone has the right to receive special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice” government for the fulfillment of constitutional rights as part of the law.

Compared to the International Federation of Red Cross and Red Crescent Societies (IFRC), the IFRC has provided legal tools to protect those involved in global humanitarian assistance. The provision of legal facilities has been continuous since it began in 2001, and the IFRC's Disaster Law makes it a priority to ensure that those involved in specific disaster management have access to these legal facilities. The IFRC enforces the Model of providing legal facilities to international humanitarian actors,

including health workers in PHE, which refers to specific legal rights granted to certain organizations (or categories of organizations) that enable them to carry out their activities efficiently and effectively. Legal facilities in the form of positive rights (i.e., to do certain things), access to rapid regulatory processes, or the existence of special exceptions to the law or legal requirements.²⁸

To assist countries in reviewing, updating, and strengthening their legal and policy frameworks, the IFRC produced a Guide on Legal and Public Health Emergency Preparedness and Response.^{29,30}

CONCLUSION

National and local governments can review and update legal frameworks to ensure compliance with global standards and best practices for public health emergencies.

During a public health emergency, the government's role in providing legal resources to medical personnel may include the following suggestion: (1) to further enhance domestic legal preparedness in PHE by establishing and putting in place legal frameworks that support disaster risk reduction, preparedness, response, and recovery, (2) Governments can establish and implement legal frameworks that promote disaster risk reduction, preparedness, response, and recovery in collaboration with international humanitarian groups. This can include laws and regulations that promote disaster risk reduction and resilience and disaster laws that offer legal support to humanitarian actors.

As it is the government's responsibility to provide legal support to humanitarian actors in emergencies, public health is of paramount importance to ensuring an efficient disaster response and disaster response preparedness.

In formulating future policies to assist health workers in resolving legal issues at PHE, the government must be able to make provisions by adapting the IFRC guidelines for legal framework readiness in public health emergencies and preparing designated legal institutions to accommodate the government's responsibility to ensure legal protection for health workers.

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CONFLICT OF INTEREST

No potential conflict of interest relevant to this article was reported.

AUTHOR CONTRIBUTION

The authors participate in the contemplating comparably, beginning with the examination notions, content acquisitions, content investigation, factual investigations, modifying the paper, and lastly, describing the consideration through publication.

ETHICAL CONSIDERATION

Not mandatory.

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