



ISSN 2810-0182 (Online)

ACITYA WISESA: Journal of Multidisciplinary Research

<https://journal.jfpublisher.com/index.php/jmr>

Vol. 1, Issue. 2 (2022)

doi.org/10.56943/jmr.v1i2.116

Sanctions for Those Who Refuse COVID-19 Vaccination Under Presidential Regulation No. 14/2021: A Patient's Therapeutic Rights Perspective

Ilham Perdana Bagaskara^{1*}, Dr. Jonaedi Efendi²

¹ilhamperdanabagaskara@gmail.com, ²jeffendi99@gmail.com

Universitas Bhayangkara Surabaya

*Corresponding Author: Ilham Perdana Bagaskara
Email: ilhamperdanabagaskara@gmail.com

ABSTRACT

This research aims to examine the applicable law against people who refused the Covid-19 vaccines during several problems and side effect that arises. The research method that will be used by the researcher in compiling this thesis is using juridical-normative method, statutory and conceptual approach. The researchers used several norms and regulations based on government and president in conducting this research. The patient's right in basic therapeutic contract is the right to obtain information from medical services, and also the right to consent to medical treatment to be given to the patient and the risks of medical action by the doctor. There is an administrative penalize for whom refused Covid-19 vaccine that had been regulated in Presidential Regulation No. 14/2021, but WHO stated that the obligation to do Covid-19 vaccination will cause an impact that will trigger someone to be indifferent and anticipate the COVID-19 vaccine and it also makes dissension of opinion in society which considers that the government has violated the patient's therapeutic rights based on the relevant laws.

Keywords: Covid-19, Medical Treatment, Patient's Therapeutic Rights, Penalize, Vaccination

INTRODUCTION

Every human being has rights and freedoms without any distinction, one example is in the right to health that become the most important and basic right for everyone. These rights cannot be regulated in specific national regulations, but these will be regulated and guaranteed in international regulations.

In a country, public service is a part of important task for government in which they given the authority and trust by the community, especially in overcoming the faced problems. The purpose of government policies in providing direction to society is for they can live comfortably and peacefully, although not all policies can be accepted by all groups of people. This is a natural thing since humans have a different personality and mindset in responding something. It is a big duty for the government to make an accepted policy by nearly 273.5 million Indonesians (Armada Dian Kinanti, 2015).

The government is a public service institution that must be exist and alert in various situations, such as natural disasters, conflicts, religious affairs and some problems that make Indonesian feel uncomfortable. In this context, there is one global problem that is not only suffered by Indonesian, the coronavirus disease 2019 (COVID-19) which is experienced by almost countries all over the world. This epidemic has a very serious impact on the world, including Indonesia, it is not only threatens human to health but also has a long-term negative impact on various sectors of society such as the economic sector, education and social conditions (Cecep Tritibowo, 2014). There is one question that still be a mystery, how this dangerous virus can spread so quickly around us. In its transmission process, this virus is more prone to spread through saliva droplets when someone had a cough or sneeze.

This virus is quite dangerous since it able to threaten the health and safety of human life. Therefore, scientists and researchers from various regions in the world are working to create the medicine for who infected by COVID-19 not in the form of ingested medicine as in general, but in the vaccine injections, then the patient can recover quickly. In the process of creating the vaccine, it requires several laboratory tests for its effectiveness and safe when it given to human. In addition, the vaccine test process takes a long time to go.

Nowadays, the vaccine has been mass-produced by biotechnology companies engaged in the production, development and active immunotherapy for medical purposes, such as Pfizer and BioNTech. There is also a 'moderna' vaccine created by National Institutes of Health (NIH). The companies claimed that the vaccine has an effectiveness rate of 95%. Because of this statement, there are many countries that have started to schedule the purchase of vaccines for immediate distribution to their citizens (Desrizal Ratman, 2014).

The chief of KPC-PEN, (Committee and Handling Covid-19 and National Economic Recovery) Airlangga Hartarto stated that vaccination for the entire

community is an obligation. The obligation about vaccination has been regulated in Law No. 4 of 1984 concerning disease transmission (H.Zaeni Asyhadie, 2017).

This research aims to examine the applicable law against people who refused the Covid-19 vaccines during several problem and side effect that arises. The obligation to participate in vaccination program causes pros and cons in society since there are several cases from it, including the loss of a person's life due to excessive fear that comes from negative stigmas about vaccines, the polemics arise regarding dismissals and reductions in salary rights for employees in several agencies and companies. Some of these cases are clearly contrary to the constitution regarding the rights of citizens in article 28 paragraph (3) which explains that everyone has the right to get social assurance to develop their selves as a human being, it also contradicts the therapeutic rights of the community based on therapeutic contracts (Salim H.S, 2006).

LITERATURE REVIEW

Nowadays, Indonesia is in a worst condition when observed from a state law perspective since the Covid-19 spreading outbreak causes every one to two minutes of people passed away. There are various other impacts came through by the society due to this epidemic, one of which is job loss and unilateral dismissal. Both of it are two biggest factors that causing instability in economic sector because most of the companies that implement this policy are private companies and micro-enterprises, even some of them were forced to bankrupt and close their businesses due to lack of income in running their business activities.

Vaccination program is one of the government's efforts to protect their citizens from Covid-19 pandemic. Joko Widodo as Indonesian president stated that Covid-19 vaccination program will be implemented free for the community as regulated in Health Minister Regulation No. 10/2021. The President targeted to provide 2 million vaccines per day. However, this target is still not reach from herd immunity standard set by World Health Organization (WHO) that it takes at least 60-70% of the population to have immunity in order to complete in breaking the chain of Covid-19 infection (World Health Organization, 2020).

The obligation to get Covid-19 vaccination must be implemented, and the explicit sanctions are applied for whom do not participate in vaccination program. These sanctions are prohibited from traveling in long or close distances, banned in entering public facilities such as tourist attractions, malls and hangouts placing. There are several reasons why they are reluctant to vaccinate, such as the excessive fear of vaccine composition, the existence of various hoax news about the effects of pra-vaccination and so on.

However, in an interview at a well-known TV station, Widhu Purnomo as an epidemiologist at Airlangga University stated that the government should not force their citizens' desire to vaccinate because there are some people who cannot vaccinate due to certain conditions, such as autoimmune diseases sufferer, heart

disease sufferer, old people and so on. Therefore, the government does not have the authority to force its citizens to vaccinate, but the government must remain to implement its duties in providing the best health service for its citizens and the community still has the right to receive these health services. The government should focus more on persuasive, educative, and socialization efforts regarding the Covid-19 vaccination.

Legal sanctions for people who refuse the covid-19 vaccine are regulated in Presidential Regulation in Article 13A and Article 13B No.14/2021 and there is also a regulation about Administrative sanctions as regulated in Article 4 of Government Regulation Number 48 of 2016 that contains light administrative sanctions, medium administrative sanctions and heavy administrative sanctions (Pattipawae et al., 2022).

The patients have several rights and obligations. The patient's rights are to obtain information, to give their agreement, the right to medical secret, to choose a doctor and health facilities, the right to determine their medical records, to refuse treatment and certain medical action. Meanwhile, the patient's obligation is to obey all the rules and regulations applied in the hospital, to comply with all instructions from doctors and nurses in their treatment, to provide honest and complete information about the illness to the doctor, to pay fees for hospital or doctor services and fulfil the agreements that have been agreed together (J. Guswandi, 2009).

RESEARCH METHODOLOGY

The research method that will be used by the researcher in compiling this thesis is using the juridical-normative method, the statutory and the conceptual approach. The normative legal research has the interpretation of hermeneutic character, which is defined as the process of changing from something that unknown to be known and understand. A normative legal research is usually known as a study of documents, utilizes a qualitative method in analyzing data, and using secondary data as the source, such as regulation, court decisions, books, legal theories, and doctrines (Tan, 2018). The researchers used several norms and regulations based on government and president in conducting this research.

RESULTS AND DISCUSSION

The Definition of Sanctions

Based on KBBI (Indonesia Dictionary), sanctions are actions in the form of punishment to force a person or individual to keep an agreement or obey a rule in law as a punishment to a country. Meanwhile, based on Black's Law Dictionary, sanction is a punishment or forced action caused of a failure to obey the law (Yulia Emma Sigalingging, 2021). According to Hans Kelsen statement, sanction is a society forced reaction to human behavior from social facts that are disturbing

the society. In addition, Hans Kelsen also stated that every system of norms always depends on the sanctions. In certain conditions, a force that functions as a law keeper is used and there is an organization from the community that will implement it.

The Sanctions for People Who Refused Covid-19 Vaccination

Based on a presidential regulation signed on February 9, 2021 which regulates the procurement of vaccines to resolve the corona virus pandemic. There are also regulations that concerning of various sanctions for vaccine refusals which listed in Article 13A of Presidential Regulation. It also states that everyone who is classified as a vaccine recipient depend on the government data substances is obliged to conduct this Covid-19 vaccine (J. Guswandi, 2009).

There is exception to do this obligation for some vaccine recipients who do not qualify the criteria for getting the Covid-19 vaccine. Meanwhile, the people who have been determined to conduct Covid-19 vaccine may punish with administrative sanctions when they refuse to have Covid-19 vaccine, the administrative sanctions as following below:

- a. There is an intermission or even termination of getting social assurance;
- b. The intermission or termination completely on government administrative service; and
- c. The penalty.

The application of sanctions will be implemented by authorized agency which has been regulated in Presidential Regulation, called agencies from ministries, institutions, and regional governments or agencies in accordance with their respective authorities.

However, according to Director of Prevention and Control of Vector and Zoonotic Infectious Diseases from Health Ministry, Siti Nadia Tarmizi emphasized that the administrative sanctions stipulated in Presidential Regulation are become the last steps. The imposition of sanctions is not only for personal interests, but involves the interests of common community (M. Jusuf Hanafiah, 1999).

Vaccination Perception on Patient's Perspective

Public Knowledge of Covid-19 Vaccination

In the past, the spread and distribution of COVID-19 vaccine was accompanied by a lot of hoax news through social media and newspaper in Indonesia. That hoax news was spread by irresponsible people and did not have valid knowledge capacity about Covid-19 vaccine. The development of this hoax news can directly or indirectly have a negative impact and affect the public's mindset on this vaccine. There were various efforts that have been made to prevent the increasing of hoax news development around society, one way is to

provide education about COVID-19 vaccine, especially the socialization that must be given directly by health workers or agencies related to COVID-19 vaccination.

ITAGI, WHO, UNICEF and the Health Ministry of Republic Indonesia conducted a survey in 2020, the results of it indicated that there is lack of knowledge about Covid-19 in community. The survey conducted by an institution called 'Lapor COVID-19' on public understanding and trust in vaccines and drugs for Covid-19 in Indonesia, shows that some people are still hesitant to receive the COVID-19 vaccine and medicine made by Airlangga University Team in collaboration with BIN (State Intelligence Agency) and Indonesian army (Yulia Emma Sigalingging, 2021).

The Perception of Public Acceptance on Covid-19 Vaccination

The Health Ministry of Republic Indonesia conducted an online survey with several organizational institutions such as ITAGO, UNICEF and WHO which was held on 19-30 September 2020 to determine public acceptance of COVID-19 vaccine. The survey received the attention of 115,000 respondents from all provinces in Indonesia (Nugroho & Hidayat, 2021). Based on the survey, 658 respondents have no objections to vaccination if the government provides the Covid-19 vaccine, then the rest of 274 respondents still feel doubtful about government's plan to distribute the COVID-19 vaccine. The survey conducted by Health Ministry and Indonesian Technical Advisory Group on Immunization (ITAGI) has a respondent data that released in October 2020, 7.6% of total respondents refused to be vaccinated and the rest of 26.6% still have not made a decision and are still worried about it. The conclusion from the survey above is that the public still believes in information about COVID-19 if it is notified by expert professionals in health sector. Therefore, the people who related to the COVID-19 vaccination program must participate in spreading positive messages to increase public confidence about COVID-19 vaccine (Muh. Amin dali, 2019).

Factors Affecting on Public Acceptance of COVID-19 Vaccination

According to the survey conducted by Health Ministry of Republic Indonesia with several organizational institutions such as ITAGO, UNICEF and WHO which succeeded in attracting 115,000 respondents to COVID-19 vaccine acceptance survey which was held in September 2020. There are several factors that influence public acceptance of COVID-19 vaccination as following below:

- 1) Socialization or Health Promotion;
- 2) Gender and economic status;
- 3) Religion and belief;
- 4) Insurance holdings;
- 5) The environment;
- 6) Willingness to pay for COVID-19 vaccine;

- 7) Safety, effectiveness, halal status, level of trust and also the side effects that occur due to COVID-19 vaccine; and
- 8) Access in getting the COVID-19 vaccine.

The Sanctions related to Patient's Therapeutic Rights

The Targets of COVID-19 Vaccine

Based on Health Ministry instruction listed in Frequently Asked Question attachment about the targets of COVID-19 vaccine, those are Indonesian people who are over 18 years old, whether they are under 18 years old, they still have a chance to get COVID-19 vaccine when they have a qualifying safety data in which it had approval in emergency using and NIE (Permit Distribution Number) from BPOM (National Agency of Drug and Food Control) (Triana Ohoiwutun, 2008).

The Situations caused the people cannot get Covid-19 Vaccine

Covid-19 vaccine is only for healthy people. Meanwhile, Health Ministry has several criteria for the people who cannot get Covid-19 vaccine (Nurul Hidayah, 2021), they are:

a. Unhealthy People

The person who has an unstable health condition are prohibited to get Covid-19 vaccine. When in good condition, they should get the vaccine.

b. Comorbidities

The people who has comorbidities such as old people, but there is also some of young people who suffering that disease. These diseases are diabetes and hypertension which make the people do vaccine. Because of that, they should be checked their body temperature and other treatment before getting a vaccine. The comorbidities sufferer is required to have doctor approval letter before the vaccination.

c. Uncommon Age

As explained in previous statement that Indonesian people who are over 18 years old, whether they are under 18 years old, they still have a chance to get COVID-19 vaccine when they have a qualifying safety data in which it had approval in emergency using and NIE (Permit Distribution Number) from BPOM (National Agency of Drug and Food Control).

d. Autoimmune Sufferer

e. COVID- 19 sufferer.

f. Pregnancy and breastfeeding women.

Administrative Sanctions related to Patient's Therapeutic Rights

The sanctions in Presidential Regulation in Article 13A No.14/2021 stated that the administrative sanctions can be imposed on a person who meet the criteria for getting vaccinated but they refuses to vaccinate (P. N. H. Simanjuntak, 2016). When it is related to patient's therapeutic rights, a health worker should take the necessary medical actions for patient's recovery and they must obtain the consent of the patient concerned. As explained on agreement therapeutic elements, there are 4 elements that must be filled as the patients such as voluntary agreement, law subjects' agreement, notifying and understanding.

In a recovery effort to protect the patient's interests, an agreement is needed. When a consultation is conducted by a patient to a doctor, the four conditions above are needed since it is a form of agreement between the patient and the doctor. Most patients still gave verbal or abstract consent. Then, when a doctor or health worker requires therapeutic action, the abstract patient consent turns into a concrete agreement. When it is related to Presidential Regulation which discusses about people who are prohibited in getting COVID-19 vaccination, it can be concluded that therapeutic rights can be did for people who really need to consult a doctor, for example someone who has a comorbidity. Meanwhile, for someone who is registered by the government as a target of COVID-19 vaccine, they have to do a vaccination that has been implemented by Indonesian government, which is aimed at tackling the COVID-19 pandemic for the better human life.

Vaccination in Patient's Therapeutic Rights Perspective

This government statement regarding COVID-19 vaccination policy is an obligation and can be subject to sanctions when they refuse to be vaccinated. They will be considered not to comply with the implementation of health quarantine. It refers to article 9 paragraph 1 in conjunction with article 93 of Law No. 6/2018 concerning of health quarantine which contains sanctions for anyone who does not comply with the health quarantine implementation or obstructs the process as to trigger a public health emergency will be sentenced to a maximum of 1 year and a penalize of 100 million rupiah since the vaccination is part of a health quarantine measure. In Jakarta, there are regional regulations for whom refusing to vaccinate can be subject to criminal sanctions and penalize as stated in Article 30 of Regional Regulations in Capital City of Jakarta No. 2/2020 regarding the prevention of COVID-19, the substance states that anyone who deliberately refuses to take treatment or vaccination for COVID-19 will be punished with a maximum fine of 5 million rupiah (Riduan Syahrani, 2006). Although vaccination is not the only way, vaccination is very much needed to protect a person's immune system from this dangerous virus.

WHO (World Health Organization) stated that the obligation to vaccinate will cause an impact that will trigger someone to be indifferent and anticipate the COVID-19 vaccination. According to some people's opinions, the obligation to

vaccinate is a violation of patient's therapeutic rights and also a violation of the integrity right to the human body, because vaccination is a medical act in which there are legal regulations that administered in Article 5 paragraph 3 of Law No. 36/ 2009 concerning health, it states that everyone has the right to be independent and responsible for determining health services for themselves, then in article 8 states that everyone has the right to obtain information about his body's health data including actions that have been or will be received from health workers. Meanwhile, in article 56 paragraph (1) also states that everyone has the right to accept or reject part or all of the assistance given to him after receiving complete information about the health action, but in Article 56 paragraph (1) there is an exception that the right to accept and refuse this vaccine when the person has a disease that spreads quickly into wider community (Subekti, 2005).

CONCLUSION AND SUGGESTION

Conclusion

There is a transaction in therapeutic agreement which there is a therapeutic contract and when a therapeutic contract happen, it should have an agreement between two parties concerned, from doctors and patients who have the same rights and responsibilities. The patient's right in basic therapeutic contract is the right to obtain information from medical services, and also the right to consent to given medical treatment for the patient and the risks of medical action by the doctor. There is an administrative penalize for whom refused Covid-19 vaccine that had been regulated in Presidential Regulation No. 14/2021, but WHO stated that the obligation to have Covid-19 vaccination will trigger someone to be indifferent and anticipate the COVID-19 vaccine dan makes dissension of opinion in society which considers that the government has violated the patient's therapeutic rights based on the relevant laws.

Suggestion

The covid-19 vaccination program is a good program and it can provide an additional immunity to the community when identified from the current situation, but the government cannot force the community mind to vaccinate because this is opposed in the relevant laws, especially regarding health law, practice medicine, civil law and others. The existence of related sanctions, the act of refusing vaccination is a violation of the therapeutic agreement, especially on the patient rights. There are still many ways that can be accepted by the community, such as providing supplements and distributing free masks. Therefore, according to the author's perspective, it is better when the vaccination program is voluntary and there is no coercion element and sanctions that can eliminate rights as citizens.

REFERENCES

Armada Dian Kinanti. (2015). *Urgensi Penerapan Mekanisme Informed Consent Untuk Mencegah Tuntunan Malpraktik Dalam Perjanjian Terapeutik*. 3(2), 109.

Cecep Tritibowo. (2014). *Etika dan Hukum Kesehatan*. Nuha Media.

Desriza Ratman. (2014). *Aspek Hukum Penyelenggaraan Praktek Kedokteran dan Malpraktek Medik*. Keni Media.

H.Zaeni Asyhadie. (2017). *Aspek Aspek Hukum Kesehatan Indonesia*. PT RajaGrafindo Persada.

J. Guswandi. (2009). *Dugaan Malpraktek Medik & Draft RPP: Perjanjian Terapeutik antara Dokter dan Pasien*. Balai Penerbit FKUI.

M. Jusuf Hanafiah, A. A. (1999). *Etika Kedokteran & Hukum Kesehatan*. EGC.

Muh. Amin dali, et al. (2019). *Aspek Hukum Informed Consent dan Perjanjian Terapeutik*. 8(2).

Nugroho, S. A., & Hidayat, I. N. (2021). Efektivitas Dan Keamanan Vaksin Covid-19 : Studi Refrensi. *Jurnal Keperawatan Profesional*, 9(2), 61–107. <https://doi.org/10.33650/jkp.v9i2.2767>

Nurul Hidayah, et al. (2021). Gambaran Pengetahuan Masyarakat Tentang Pencegahan Covid- 19 di Kecamatan Padangsimpuan Batunadua, Kota Padangsimpuan. *Jurnal Kesehatan Ilmiah Indonesia*, 6(1), 108.

P. N. H. Simanjuntak. (2016). *Hukum Perdata Indonesia, Cetakan ke- 2*. Prenada Media Group.

Pattipawae, D. R., Salmon, H., & Lainsamputty, N. (2022). Due To The Legal Non-Compliance of State Administrative Officers With The Implementation of Forced Money (Dwangsom) In The Execution of State Administrative Decisions. *SASI*, 28(2), 182. <https://doi.org/10.47268/sasi.v28i2.730>

Riduan Syahrani. (2006). *Seluk- Beluk dan Asas- Asas Hukum Perdata*. PT. Alumni.

Salim H.S. (2006). *Hukum Kontrak*. Sinar Grafika.

Subekti. (2005). *Hukum Perjanjian*. Intermasa.

Tan, D. (2018). *INTERNATIONAL LAW APPROACHES TO THE CASE OF ILLEGAL FISHING BY FOREIGN SHIPS IN NATUNA SEA*. Universitas Internasional Batam.

Triana Ohoiwutun. (2008). *Bunga Rampai Hukum Kedokteran (Tinjauan dari Berbagai Peraturan Perundangan dan UU Praktik Kedokteran)*, Cetakan ke- 2. Bayu Media.

World Health Organization. (2020). *Herd immunity*.

Yulia Emma Sigalingging, A. P. A. S. (2021). Analisis Yuridis Pengaturan Sanksi Bagi Penolak Vaksinasi Covid- 19. *Jurnal Imu Sosial Dan Pendidikan (JISIP)*, 5(3), 479.