



## Politics of the Law of Covid-19 Handling by The Indonesian Government from Health Human Rights Perspective

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ABSTRACT	ARTICLE INFO
<p>COVID-19 is a disease that was first discovered in China where it spreads very quickly until it was recorded that until January 28, 2021, 1 million Indonesians were exposed to the virus with the highest number of cases in Southeast Asia. Every citizen has the right to be given protection by the government from this case. The right to health is a derivative of human rights that must be protected. In dealing with the COVID-19 pandemic, the government has implemented various legal rules, including government regulations implementing Law Number 1 of 2020, State Finance and Financial System Stability policies during the 2019 Coronavirus Pandemic (COVID-19) and government regulations number 21 of 2020. 2020 is the date of Mass Social Restrictions in the Context of Acceleration (PSBB) for Handling Corona Virus Disease 2019 (Covid-19). The government has also implemented PSBB and Physical Distancing policies, but these policies have not been effective in breaking the chain of transmission of COVID-19. The method used in this study is a descriptive normative juridical research method by providing solutions for handling COVID-19 in Indonesia. This study concludes that the legal politics (PSBB and physical distancing) achieved by the government in handling COVID-19 are not in accordance with Article 28 H paragraphs (1) and 34 of the 1945 Constitution paragraphs (2) and (3).</p> <p>© 2022 Jurnal Civicus</p>	<p><b>Article History:</b> <i>Submitted/Received 23 Feb 2022</i> <i>First Revised 27 Apr 2022</i> <i>Accepted 29 May 2022</i> <i>First Available online 30 Jun 2022</i> <i>Publication Date 30 Jun 2022</i></p> <hr/> <p><b>Keyword:</b> <i>Covid-19,</i> <i>Legal Policy,</i> <i>The Right to Health</i></p>

## 1. INTRODUCTION

At the end of 2019, the emergence of a mysterious pneumonia case that shocked the world was first reported in Wuhan, Hubei Province ([Sumakul, 2020](#)). Initially this case of pneumonia was named 2019 Novel Coronavirus and then the World Health Organization announced on 11 February 2020 it would be given a new name for pneumonia, coronavirus disease (COVID-19). On January 28, 2021, there were 87,640,097,000 positive cases of COVID-19 in 215 countries and 1,890,847,000 deaths. In fact, several countries, including the United States, Brazil, Russia, Britain, Spain and Italy, have more cases than China, the country where COVID-19 first appeared.

The Indonesian government first announced cases of COVID-19 on March 2, 2020, although many experts were pessimistic about this statement. Harvard professor virologist Marc Lipsitch said the COVID-19 virus in Indonesia had entered since the beginning of the year or since January ([Karyono et al., 2020](#)). In his research, several of Indonesia's neighboring countries such as Malaysia, Singapore, Thailand have reported cases of COVID-19 since January, as well as tourists ([Kurniawan, 2021](#)). A migrant returning from China has been diagnosed with COVID-19 after vacationing in the Bali region, Indonesia.

In dealing with COVID-19, the Government of Indonesia has established legal politics by issuing 3 (three) legal instruments as an effort to prevent the spread of the COVID-19 outbreak: (1) Presidential Decree Number 11 of 2020 concerning the establishment of a public health emergency for the 2019 Coronavirus Viral Disease (COVID-19); (2) Government Regulation Number 21 of 2020 concerning Implementation of Large-Scale Social Restrictions in the Context of Accelerating the Handling of COVID-19, and; (3) Government Representative Legislation (Perppu) Number 1 of 2020 concerning National Financial Policy and Financial System Stability in Facing the 2019 Corona Virus Disease (COVID-19) Pandemic and Facing Threats to Economic Stability or the National Financial System ([Pratiwi, 2021](#)).

Referring to the current situation, the spread of the COVID-19 virus has spread to all provinces in Indonesia, the curve of COVID-19 cases continues to increase and has not shown a downward trend, population mobility remains high, and entertainment venues, cafes and tourist destinations are operating as usual. On the other hand, the continued increase in the number of COVID-19 patients threatens the collapse of the health system because hospitals are overwhelmed with large numbers of patients. This situation resulted in the failure to fulfill the human right to health, including access to good health services. Likewise, the lack of protection for medical personnel who are at the forefront against COVID-19 has raised questions about how seriously the government takes policies regarding COVID-19 and their commitment to protect human rights to public health. Regarding the legal politics of handling COVID-19 from the perspective of human rights to health. Therefore, the author believes that further research is needed regarding the legal politics of the Government of Indonesia in handling the Corona Virus (COVID-19) whether it has been maximized to protect and fulfill the Human Right to Public Health.

## 2. METHODS

This research is a normative juridical research by conducting legal research on secondary data. This type of research is normative analysis, which aims to provide recommendations and alternative solutions to overcome problems. The data analysis method used in this study is qualitative analysis, which presents data in a descriptive form.

### 3. RESULTS AND DISCUSSION

#### 3.1. Results

##### 3.1.1 Juridical Review of the Right to Health

In the health literature, two terms are used to describe human rights in the health sector, namely "the right to health" or "the Right to Attainable Standards to Health" ([Affandi, 2019](#)). The right to health is an essential right for human existence. Therefore, basic health is known as the saying "Health is not everything, but without health everything is meaningless". As a human right, the right to health is a right that is inherent in human beings and must be respected and protected by every citizen ([Hidayat, 2016](#)).

Referring to international agreements and international normative documents, provisions on the right to health are identified as part of the fundamental rights that everyone has. This statement is written in the preamble of the World Health Organization (WHO) Constitution which reads "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction or race, religion, political belief, economic or social conditions" ([Grad, 2002](#)). Therefore, the right to health is part of the basic rights that must be protected, respected and fulfilled by the State, regardless of race, religion, political choice, economic or social conditions ([Hamzah, 2016](#)). Based on this interpretation, the right to health has been declared a "human right" by international citizens since the implementation of the World Health Organization (WHO) Constitution in 1946. It is strategically placed on the implementation of other human rights. Therefore, the state must prioritize protecting the health rights of its citizens, especially from the threat of a pandemic (COVID-19).

Based on research from the WHO (World Health Organization) the model for the spread of the SARS-Cov-2 (COVID-19) virus can be through contact and infected droplets such as saliva and respiratory secretions or their respiratory droplets, which are expelled when a person infected with COVID-19 sneezes, cough, droplet (saliva droplets), airborne, fomite (contaminated surface), and other modes of transmission with a lower level of spread ([Kurniawan, 2021](#)). As of January 28 2021 there were 87,640,097 million positive cases of COVID-19, the death toll was 1,890,847 thousand in 215 countries around the world. Even several countries including the US, Brazil, Russia, UK, Spain and Italy have more cases than the total positive cases of COVID-19 in China, the country where the COVID-19 corona virus first appeared. 2021 The total number of positive cases of COVID-19 in Indonesia has exceeded 1 million today ([Tanjung & Sltapu, 2021](#)). This figure places Indonesia among the 20 countries with the most cases of Covid-19 in the world. Therefore, in this case the state has the responsibility to realize and protect the health of its citizens.

In Indonesia, legal guarantees for the right to health have existed since the promulgation of the 1949 Constitution of the Republic of Indonesia (RIS) ([Kurniawan, 2021](#)). Article 40 of the Constitution of the Republic of Indonesia states that "the government always seeks to promote public health and public health". After the promulgation of the 1950 Provisional Constitution (UUDS), the form of the United States returned to being a single state, but the provisions of Article 40 of the RIS Constitution were still adopted as Article 42 of the 1950s UUDS. The classification of health as a human right has been emphasized more in Indonesia after the reform. Chapter XA of the 1945 Constitution concerning human rights, namely Article 28 H, paragraphs 1 and 2, and Article 34 (2) of the 1945 Constitution, both contain provisions concerning the right to health. Law Number 36 of 2009 emphasizes health, meaning that every person, family and every citizen has the right to health protection and the state is responsible for formulating policies aimed at realizing the right to optimal health. Broadly speaking, the types of human rights to health contained in Law Number 36 of 2009 are found in Articles 4

to 8, including easy access to resources in the health sector, guaranteed, affordable health services, and optimal ([Kurniawan, 2021](#)). The right to decide for yourself the type of health service needed, a clean and healthy environment, the right to obtain objective and responsible information and education about health.

### **3.1.2 Indonesian Government Legal Politics in Handling the COVID-19 Pandemic**

In selecting the rules to be stipulated, legal politics conveys legislative authority to state administrators with permanent attention to state objectives as contained in paragraph 4 of the 1945 Constitution ([Riskiyono, 2015](#)). This includes legal politics that the Government is obliged to implement in handling the COVID-19 pandemic, whether it has met the goals of the state or not. In an effort to prevent the spread of COVID-19, the Government of Indonesia has formed a legal policy by issuing various regulatory products, among others.

#### **Law Number 2 of 2020 concerning Stipulation of Perppu 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic and in the Context of Threats that Endanger the National Economy or Financial System Stability.**

Law Number 2 of 2020 is the ratification or stipulation of Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic and in the Context of Threats that Endanger the National Economy or Financial System Stability becomes law ([Rakia, 2021](#)). The establishment of a Perpu is the attribution authority granted by Article 22 of the 1945 Constitution to the President to resolve a matter of pressing urgency. Although there are no clear regulations in the 1945 Constitution or laws regarding the conditions when a Perpu can be issued by the President.

In this case the emergency in question is an outbreak of Corona Virus Disease (COVID-19). COVID-19 has become an extraordinary pandemic because its massive spread has caused a public health emergency. The pandemic also had an impact on the deceleration of national economic growth, a drop in state revenues, and an increase in the burden on state spending ([Adiyanta, 2020](#)). Using these considerations, the Government considers it necessary to issue a Perppu as an effort to protect national economic conditions, with the main emphasis on state financial policies and financial system stability policies.

The birth of the Perpu is a political law taken by the Government for the stability of state finances and preventing the spread of the COVID-19 outbreak ([Arsil & Ayuni, 2020](#)). However, the Perppu contains potentials that can damage constitutional practices in Indonesia. First, this Perppu has the potential to lead to unlimited power (absolute power) in the formation of a regulation by the President. Article 12 paragraph (2) Perppu No. 1/2020 authorizes the President to make changes to the posture or details of the State Revenue and Expenditure Budget (APBN) in the context of implementing state financial policies regulated by or Presidential Regulation.

The positive aspects of changes in budget posture and changes in the APBN deficit, with Presidential Regulations provide legitimacy to the Government to move quickly and responsively to protect the financial system and the national economy from the threat of COVID-19. As for the negative aspects of changes in budget posture and changes in the APBN deficit through Presidential Regulations, it has violated constitutional practice so far, where changes in posture and changes in budget deficits are made with the APBN-P which requires the approval (consent) of the DPR as the people's representative in Parliament as stipulated in Article 27 paragraph (3) Law Number 17 of 2003 Concerning State Finances ([Rizaldi, 2021](#)).

### **Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Management of Corona Virus Disease 2019 (COVID-19).**

Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the framework of Accelerating the Management of Corona Virus Disease (COVID-19) regulates Large-Scale Social Restrictions (PSBB) (Hasrul, 2020). PSBB is a restriction on certain activities of a resident in an area or area suspected of being infected with COVID-19 with the aim of preventing a wider spread determined by the Minister of Health or by the Regional Government based on the approval of the Minister of Health.

With the implementation of the PSBB, activities such as schools and workplaces are closed, religious activities are carried out at each other's homes, and restrictions on activities in public places. In Article 3 the Government Regulation provides criteria for an area that can implement PSBB, namely (1) The number of cases and/or the number of deaths due to disease increases and spreads significantly and quickly to several regions, (2) There is an epidemiological link with similar incidents in other regions .

The promulgation of Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions as part of the implementation of Law Number 6 of 2018 concerning Health Quarantine. As stipulated in Article 11 of Law Number 6 of 2018 concerning Health Quarantine that the implementation of health quarantine is carried out by the Central Government quickly and accurately by taking into account the scale of threats to health, economy, social and state security.

The choice of PSBB over regional quarantine as a policy taken by the government is suspected of being a legal maneuver to avoid the government's responsibility to the people, where if the policy taken is Regional Quarantine, the Central Government is obliged to meet the basic needs of its citizens and livestock in the quarantine area as listed in Article 55 of Law Number 6 of 2018 concerning Health Quarantine. Meanwhile, in the PSBB policy, the government is not obliged to provide fulfillment of basic needs as in the normative provisions of the PP a quo.

This is one of the factors in the ineffective implementation of the PSBB in Indonesia. On the one hand, people are asked to stay at home and not go outside, but on the other hand, their basic needs are not guaranteed by the government, so that people, especially the lower middle class, have no choice, but must continue to work outside to meet their basic needs even though fear of contracting COVID-19.

### **Decree of the President of the Republic of Indonesia Number 11 of 2020 concerning Stipulation of a Public Health Emergency for Corona Virus Disease 2019 (COVID-19).**

There are two important points in the Perpres, the first is to stipulate COVID-19 as a pandemic which causes a public health emergency. Second, the determination of a public health emergency due to COVID-19 must be carried out in accordance with the applicable laws and regulations.

The main problems and problems in the Presidential Decree on Public Health Emergencies are the perceived delay by the central government in issuing legal instruments. This is evidenced by the enactment of the Presidential Decree and other regulations just a few months after the outbreak of the COVID-19 pandemic in Indonesia. As a result of this delay, both the central and regional governments experienced stuttering in taking steps to overcome the COVID-19 pandemic which had an impact on the massive spread of the COVID-19 pandemic which initially only infected 1 province, Jakarta, to spread to all provinces in Indonesia.

## 3.2. Discussion

### 3.2.1. Human Rights Protection in the Acceleration of Handling COVID-19

Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law ([Irawan et al., 2021](#)). This is similar to Article 5 paragraph (1) of Law number 39 of 1999 concerning Human Rights which also states that every person is recognized as a direct human being who has the right to demand and receive treatment and protection that is equal to his/her human dignity before the law.

Article 27 paragraph (1) of Law number 36 of 2009 concerning Health states that health workers are entitled to receive compensation and legal protection for carrying out their duties according to their work ([Amin et al., 2021](#)). This is reinforced by Article 57a of Law Number 36 of 2014 concerning Health Workers, which also states that health workers have the right to legal protection and standard operating procedures while carrying out their duties in accordance with professional standards, professional service standards. The regulation authorizes the government to enforce legal orders that guarantee legal protection for health workers. In accelerating the handling of COVID-19, the government has an obligation to protect and maintain the rights of health workers in providing services, including providing awards and guarantees for safety and health while on duty.

Efforts to fulfill the right to health can be carried out using various methods, namely prevention and cure. Prevention efforts include the creation of decent conditions for health, both ensuring the availability of food and employment, good housing, and a healthy environment. While healing efforts are carried out using the provision of optimal health services.

### 3.2.2. An overview of the perspective of the Human Right to Health on the Government of Indonesia's Policy in Handling the COVID-19 Pandemic.

As explained above, the right to health has been recognized as a human right that must be protected and fulfilled by the state in accordance with the mandate of the Constitution in the 1945 Constitution. If we refer to the latest data, the number of COVID-19 cases in Indonesia has exceeded 1 million. cases with a total death of 30,581 cases. This number places Indonesia in the top 20 countries with the most corona cases in the world.

Policies such as mass social restrictions (PSBB) were initially very effective in suppressing the spread of COVID-19, especially in big cities like Jakarta ([Tobroni, 2020](#)). Since the implementation of the PSBB April 24 to May 22 2020 and May 24 to June 4 2020, the number of COVID-19 cases in Indonesia is only 18,000. On the other hand, the implementation of the PSBB has a negative impact on the economic sector. Indonesia's economic growth rate in the second quarter of 2020 was negative 5.32%. That's why the government did not extend the PSBB, even though it has been very effective in protecting people's right to health from the impact of the COVID-19 pandemic. To save the economic sector, the government adopted a policy of easing the PSBB, allowing activities that were restricted during the PSBB period to be continued.

The government has implemented a new normal lifestyle, namely changing behavior or habits to continue doing activities as usual, but still implementing health protocols during the COVID-19 pandemic. Under the new normal industrial operation policy, business-to-business services are allowed while upholding health protocols. Markets, shops and malls, as well as

restaurants and entertainment venues, have reopened. However, the new normal policy implemented by the government has not been effective in preventing the spread of the virus, on the contrary, the spread of the COVID-19 virus is increasing. Data from Worldmeters information In June 2020, the number of Covid-19 cases in Indonesia was only 18,000, while in January 2021 the number of cases had reached 1 million or an increase of around 5,000% in just 7 months.

Government policies do not seem to support the protection of the right to health as stipulated in Articles 28 H (1) and 34(3) of the 1945 Constitution. On the 19th, the government can imitate the legal policies of other countries which have proven effective in overcoming the epidemic, including:

### **Countries That Have Successfully Implemented a Partial Lockdown**

While many have criticized the Chinese government's initial handling of COVID-19, it appears to have neglected its existence. However, China's failure to stop the spread of the COVID-19 virus to other countries does not include China's success in imposing a partial lockdown in Wuhan, Hubei province, where the pandemic first emerged. With the Wuhan partial lockdown policy, all borders in and out of Wuhan are closed, while other provinces can still carry out activities by enforcing health protocols ([Muis, 2020](#)).

Wuhan residents are prohibited from traveling, and all forms of activities that are crowded with people such as offices, tourist attractions, and school activities are prohibited. If someone is out for an emergency (such as buying medicine), that person must bring evidence. The Chinese government also guarantees all the daily needs of its citizens so they don't worry about starving. Therefore, this policy was effective in suppressing the growth of COVID-19 cases in China. China succeeded in suppressing the development of the COVID-19 case, and the government finally lifted the partial lockdown in Wuhan, where people are now carrying out their activities as usual. The effectiveness of the Chinese government's policies in dealing with COVID-19 cases also had a positive impact on China's economic growth. China's economic conditions gained momentum in November 2020 after the country managed to contain the COVID-19 pandemic.

### **Countries That Have Successfully Implemented a Total Lockdown**

New Zealand's success in defeating the corona virus cannot be separated from the fortitude of its government, which immediately responded to the lockdown when the COVID-19 case entered the country. Direct mass testing or testing in New Zealand followed by isolation of cases, isolation, mass hygiene campaigns and provision of sanitation in public spaces. However, the most important thing is community support and adherence to policies issued by the New Zealand government in handling the COVID-19 Pandemic. New Zealand's success in dealing with COVID-19 can be seen from the number of New Zealand COVID-19 cases as of 28 January 2021, only 2,299 cases.

### **Countries That Have Successfully Implemented Total Lockdowns**

Even without a lockdown, South Korea is one of the countries that has managed to contain the spread of the corona virus. The South Korean government has primarily done three things in response to the novel coronavirus. First, the South Korean government is conducting tests using drive-through clinics that can test around 15,000 of its citizens for the virus a day to minimize transmission, in the form of mild to severe symptoms. Second, the Korean government always provides public information to the public. For example, the public can find out the location of someone who has confirmed positive for COVID-19 through an application

via the global positioning system (GPS) so that other residents who are not infected can stay away from the area. Third, the South Korean government enforces social distancing by limiting large gatherings.

In addition, there are also temperature-checking cameras at every building entrance and officers in full protective clothing in public areas to urge people to wash their hands. Through these various strategies, South Korea has been quite successful in dealing with COVID-19, with the current number of cases still below 100,000 cases.

The author believes that there are several factors that cause the Indonesian government's failure to stop the spread of the new corona virus, including:

- (i) At the beginning of the pandemic that entered Indonesia, the government seemed slow to respond, preparing strategic steps.
- (ii) Lack of good coordination between central and local government. This shows that the central and regional governments often have different policies in dealing with COVID-19.
- (iii) As cases of COVID-19 continue to increase, the government does not consider the lockdown to be driven by economic and security issues because it is not strictly locked.
- (iv) The government is not serious about tracing COVID-19 cases, making it difficult to make decisions regarding the spread of the COVID-19 virus.
- (v) Low public awareness in complying with government policies to implement a healthy lifestyle, people seem to underestimate the COVID-19 virus, lack of discipline in wearing masks and maintaining distance.

Based on these reasons, the author believes that the legal politics of the Government of Indonesia in handling the COVID-19 coronavirus are not optimal in protecting the health rights of the Indonesian people as in the Constitution Article 28 H paragraph (1) and Article 34 paragraph (2) and (3) of the 1945 NKRI Constitution.

Regarding vaccination, the government has ordered 329.5 million vaccines, most of which are Sinovac vaccines. For the success of the vaccination program, it is necessary to carry out massive socialization about vaccination as the safest and most effective way to prevent the COVID-19 pandemic.

Mass vaccination must also be supported by strong resources, clear and non-overlapping regulations, as well as good coordination and communication between the central government and regional governments. To ensure accountability for the implementation of vaccinations, it is necessary to have supervision of mass vaccinations in all regions, including the provision of vaccines, vaccine quality, use of the budget, and supervision and monitoring of health risks arising as a result of vaccine administration.

#### **4. CONCLUSION**

From the description above, it can be concluded as follows. First, the right to health is an attachment to human rights. As a human right, the right to health is a right that is inherent in humans as creatures created by Allah SWT, and this right is a gift that must be respected and protected by every nation.

Second, the political rules chosen by the Indonesian government in the form of PSBB and physical distancing when facing COVID-19 do not maximize the protection of the right to health for the Indonesian people as stated in Article 28 H (1) and 34 of Law no. Articles (2) and (3) of the 1945 Constitution of the Republic of Indonesia. This can be seen from the number of COVID-19 cases in Indonesia, which has now reached 1 million. Compared to other



Southeast Asian countries, Indonesia is the only Southeast Asian country with the number of COVID-19 cases reaching 1 million.

Third, the authors hope that the vaccination process will be successful and we hope that life can return to normal before the COVID-19 outbreak occurs. Likewise if there are other outbreaks in the future. The government must be more prepared to use policies that are more oriented towards human rights to health, which means that basic rights that must be protected and fulfilled are in sync with the constitutional mandate of the 1945 Constitution.

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