

JURIDICAL ANALYSIS OF THE MANDATORY VACCINATION PROGRAM IN COMBATING THE COVID-19 VIRUS

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ABSTRACT

Vaccination implementation became mandatory after the issuance of Presidential Regulation no. 14 of 2021 concerning amendments to Presidential Regulation no. 99 of 2020 concerning Procurement of Vaccines and Implementation of Vaccinations in the Context of Combating the 2019 Coroiva Virus Dtsease (Covid-19) Pandemic. 14 of 2021 concerning amendments to Presidential Regulation no. 99 of 2020 concerning Procurement of Vaccines and Implementation of Vaccinations in the Context of Overcoming the Covid-19 Pandemic. this is contrary to Law No. 33 of 2014 concerning Halal Produce in Article 4. The results of the research show that the Implementation of Vaccinations is mandatory. Conflict of regulations regarding Vaccine obligations based on Presidential Regulation. In this case the Regulations President No. 14 of 2021 concerning amendments to Presidential Regulation no. 99 of 2020 concerning Procurement of Vaccines and Implementation of Vaccinations in the Context of Handling the 2019 Coroiva Virus Disease (Covid-19) Pandemic, it is the opposite, however, due to the massive spread of the Covid 19 virus plus the declaration of a health emergency, it is based on the principle of Salus populi suprema est where the safety of the people is more important. What is meant in this case is that under the threat of situations and emergencies, the safety of the people must be the most important goal, including if the rule of law must be set aside.

KEYWORDS Mandatory Vaccine, Control, Covid 19 Virus



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INTRODUCTION

At the beginning of 2020, Indonesia faced a challenging period. On March 2, 2020, two Indonesian citizens tested positive for the COVID-19 virus, believed to have originated from Wuhan, China. According to data from the World Health

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Organization (WHO), by March 1, 2020, the virus had spread to approximately 65 countries worldwide.

Since this infection might be a new type of modern virus, data related to it was limited, and research was ongoing. There was no certainty about how effective treatments could halt the spread of COVID-19. One of the treatments said to be effective in dealing with COVID-19 was vaccination. However, the problem was the lack of a safe and effective vaccine against this virus. This was often the case due to the limited data on the infection's characteristics, which were still in the early stages of study.

From March 2, 2020, to March 31, 2020, there were 1,528 positive COVID-19 cases, with 136 deaths reported in Indonesia. The country experienced a higher mortality rate compared to the People's Republic of China (8.9% vs. 4%). Medical facilities in Indonesia were not prepared to face COVID-19 at that time. Significant adjustments were necessary at the onset of the outbreak in Indonesia. Therefore, it was important to remind everyone that, as early as January 2020, this situation could become a global upheaval. Plans for preparedness were implemented to ensure the availability of personal protective equipment (PPE) and the necessary human resources.

In Indonesia, the rapid spread of the virus led President Joko Widodo to declare a health emergency by issuing Presidential Decree No. 11 of 2020 on the Declaration of a Public Health Emergency of Corona Virus Disease 2019 (COVID-19). The government's declaration of an emergency had at least two reasons: an extraordinary danger and an immediate threat to the nation's survival caused not only by natural disasters but also by human actions, such as terrorism threats or attacks. The implementation of an emergency was due to an urgent and compelling process.

In response to the health emergency, besides issuing Presidential Decree No. 11 of 2020, the government also issued Law No. 2 of 2020 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or in Facing Threats that Endanger the National Economy and/or Financial System Stability.

The issuance of Law No. 2 of 2020 as an urgent consideration was based on the objective conditions in Indonesia, as mentioned in the preamble, aiming to improve the mechanism for creating, stipulating, and revoking Government Regulations in Lieu of Laws (PERPPU).

During the vaccine shortage, the government encouraged the public to practice social distancing, frequently wash hands with soap and water, eat well, and get enough rest to maintain immunity. Social distancing and other measures, such as Large-Scale Social Restrictions (PSBB) and Micro-Based Community Activity Restrictions (PPKM), were implemented to curb the spread of COVID-19. Despite these efforts, they did not fully contain the spread of the infection.

The government's other effort to combat the virus was to provide open immunization vaccines. This vaccination effort was to ensure the health of all citizens amidst the expanding pandemic. The COVID-19 inoculation program had begun in several countries. However, it would take a long time to achieve herd immunity, requiring about 70% of Indonesia's population to be immunized, approximately 181 million people. Accessibility to antibodies was essential, needing around 400

million doses of antibodies, with the vaccination program expected to be completed within 15 months (by 2022).

The government showed seriousness in handling COVID-19 by enhancing control over the vaccination program. The government issued Presidential Regulation No. 14 of 2021, a revision of Presidential Regulation No. 99 of 2020, regarding the procurement of vaccines and the implementation of vaccinations. This regulation demonstrated the commitment to carrying out the COVID-19 immunization program and imposed sanctions and fines on those refusing vaccination.

The imposition of sanctions and fines for refusing vaccination by the government was based on the principle that health is one of the most critical human needs and part of human rights (HAM). As part of human rights, realizing the right to well-being required facilities and a framework, such as adequate health facilities (faskes) or health services. Human Rights (HAM) are vital in human life, and everyone is born with them. Other individuals should not interfere with everyone's human rights, and all should uphold human rights. Society should understand and recognize human rights as a prerequisite for being good citizens.

The implementation of vaccination in Indonesia sparked both support and opposition. Those who supported vaccination believed that antibodies could strengthen the immune system, thus protecting themselves, their families, and others. They believed that if infected with COVID-19, the impact would be less severe. Vaccination was seen as increasing the body's vulnerability to the virus, making it less likely for vaccinated individuals to contract the virus.

The most significant opposition to vaccination came not only from the spread of hoaxes about vaccine side effects but also concerns about the vaccines' halal status. The first vaccine to arrive in Indonesia was Sinovac, with 1.2 million doses, followed by another 1.8 million doses on December 31, 2020, totaling 3 million doses from China.

The next vaccine was AstraZeneca, produced in the UK. Both vaccines received emergency use authorization from BPOM (the Food and Drug Monitoring Agency). However, there were differences in their halal status. The Sinovac vaccine was deemed halal based on the Indonesian Ulema Council (MUI) Fatwa No. 02 of 2021, while the AstraZeneca vaccine was considered haram but allowed under emergency conditions according to MUI Fatwa No. 14 of 2021.

The halal status of these vaccines led to significant opposition to vaccination, especially when the government mandated vaccination based on Presidential Regulation No. 14 of 2021, which amended Presidential Regulation No. 99 of 2020 on Vaccine Procurement and Vaccination Implementation. The regulation stipulated sanctions and fines for those refusing vaccination.

Presidential Regulation No. 14 of 2021 conflicted with Law No. 33 of 2014 on Halal Products, which states in Article 4 that "Products entering, circulating, and traded in Indonesia must be halal certified."

The mandatory vaccination requirement based on Presidential Regulation No. 14 of 2021, where most vaccines were declared haram, seemed to contradict Law No. 33 of 2014, Article 4. This conflict between the two regulations posed challenges in implementing the vaccination program on the ground. This prompted the

author to conduct a study titled "Juridical Analysis of the Mandatory Vaccination Program in Combating the COVID-19 Virus."

RESEARCH METHOD

In terms of research type, this study is a socio-legal research, utilizing a statutory approach, a socio-legal approach, and a conceptual approach. The statutory approach involves an in-depth examination aimed at understanding the implementation and legal basis of mandatory vaccination and analyzing it within the framework of statutory regulations.

RESULT AND DISCUSSION

Implementation of Mandatory Vaccination

The widespread spread of the Covid-19 virus, causing many people to be infected and even die, forced the Government to take various measures to control the epidemic, certainly by preparing healthcare facilities. Before the existence of vaccines, the government urged the public to follow Health Protocols such as wearing masks over the nose, washing hands, and maintaining physical distancing. In addition to that, the Indonesian Government prohibited its citizens from traveling abroad by closing different routes, discussing and restricting transportation to those places, by implementing the PSBB (Large-Scale Social Restrictions) Program for citizens who want to leave or enter the city, it is mandatory to include a health certificate free from exposure to Covid-19 infection.

As a Constitutional State as stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3 that Indonesia is a Constitutional State. The mention of the term "Constitutional State" in general description asserts that the Constitutional state is a motivation that does indeed have an impact on the establishment of the Indonesian state. individuals and their authors who essentially do not equate the meaning of the state with the law of the Indonesian state, because both are found between two philosophical foundations and social rationalities of a very diverse society.

Referring to Indonesia as a Constitutional State and not a Power State certainly has an impact on every step taken by the leader or President must comply with the applicable Law or there must be a Legal basis, so whatever efforts the government makes to prevent the Covid 19 Virus must have a Legal basis, therefore President Joko Widodo established a health emergency situation by issuing Presidential Decree Number 11 of 2020 concerning the determination of a public health emergency situation for Corona Virus Disease 2019 (Covid-19).

The determination of this emergency situation is due to the period from March 2, 2020, to March 31, 2020, there were 1,528 positive cases of Covid-19 and 136 people died related to Indonesia and the disease. this country experienced a much higher level of casualties compared to the People's Republic of China (8.9% vs. 4%). So the determination of a health emergency status is considered appropriate to take steps to stop the spread of the virus.

One of the steps taken by the Government in tackling the Covid Virus outbreak is by promoting the Vaccination program. In July 2021, the government

accelerated the Vaccination Program by holding mass vaccinations aimed at reaching the target of 75% of the Indonesian population vaccinated, so that the community is safe from Covid-19 infection (crowd insusceptibility). to secure themselves and others.

The implementation of Vaccination becomes mandatory vaccination after the issuance of Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Coroiva Virus Disease 2019 (Covid-19), in this regulation not only related to the technical implementation of Vaccination but there are also sanctions or fines for people who do not even refuse Vaccination.

Based on Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Coroiva Virus Disease 2019 (Covid-19), not only contains the procedures for implementing Vaccination but there are also Sanctions for those who have entered the data and are considered eligible to receive the vaccine but do not follow Vaccination, there are 2 Sanctions:

a. Administrative Sanctions

These administrative sanctions are given to Communities who do not follow the Vaccination Program, these administrative sanctions are in the form of:

- 1) Postponement or cessation of social security or social security
- 2) Postponement or cessation of government administrative services
- 3) Fines

The implementation of Administrative Sanctions is carried out by the Ministry, Institution, Regional Government, or agency in accordance with their authority.

b. Criminal Sanctions

The classification of criminal sanctions is different from administrative sanctions, which are directed at individuals who not only do not follow the vaccination program but also interfere with the prevention of the spread of Covid. There are two classifications in imposing Criminal Sanctions, namely

- 1) Criminal penalties of 1 Year and or / fines of Rp. 1,000,000 for the public who intentionally obstruct the handling of the epidemic.
- 2) Criminal penalties of 6 Months and or / fines of Rp. 500,000 for the public who are negligent / Forget causing obstruction to epidemic control.

Legal Analysis of Mandatory Vaccination

The word "Law," in the Indonesian language often used as a substitute for the Dutch word "Recht," comes from the distant dialect "Rectum," which means "straight." trainer or pioneer. In Latin, the word ius is part of the word iustitia which means justice and law. In this way, the Law is related to justice. From the description above, it can be said that etymologically, law can be interpreted as a performance that includes the right to mention, separate, or change conditions or events to obtain justice.

Meanwhile, according to the Utrecht Concept of Law is a set of rules (Recommendations and Prohibitions) that direct the regulation of certain zones. Society must adapt. Therefore, misuse of the Law can result in legitimate actions by the government/authorities. Law is made for society. Law must be based on the improvement of society. They have a fundamental nature of authority, social commitment to follow and comply with regulations/laws.

Indonesia is a Constitutional State as evidenced by Article 1 paragraph 3 of the Republic of Indonesia Law stating that Indonesia is a Constitutional State, the legal system of the Indonesian Constitutional State with a hierarchical legislative system or commonly called the Hierarchy of Legislation, based on Law No. 12 of 2011 concerning the formation of legislation, the sequence of the Indonesian Legislative Hierarchy:

- a. Constitution of the Republic of Indonesia 1945
- b. MPR Decree
- c. Law or Government Regulation in Lieu of Law (Perpu)
- d. Government Regulation
- e. Presidential Regulation
- f. Provincial Regional Regulations
- g. District/City Regional Regulations

As a constitutional state as intended in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (State of the Republic of Indonesia 1945), everything must refer to the law. But does this notification nature direct the state to act beyond the law? From the perspective of a modern constitutional state that separates Private affairs from the State. Because of its limitations, Private cannot be claimed as part of the state.

Referring to the legal basis for the Implementation of Mandatory Vaccination, namely Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) where the regulation follows up on the declaration of a health emergency in Presidential Decree Number 11 of 2020 concerning the determination of a public health emergency situation for Corona Virus Disease 2019 (Covid-19).

The statement of the Vaccination obligation is based on the rules in Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19), there are sanctions or fines for those who refuse, so this phrase is considered the implementation of mandatory Vaccination, of course, there are exceptions if there are situations that are not possible.

The fundamental problem is that the Vaccination obligation imposed by the Government cannot be accompanied by sufficient Halal Vaccines provided by the government in the vaccination program. Of course, this is contrary to Article 4 of Law Number 33 of 2014 concerning Halal Product Assurance.

Referring to the principle of Law *lex specialis derogat legi generali* where Special Law overrides General Law and also *Lex Superior Derogat Legi Inferiori* the lower law cannot contradict its higher law.

Lex Superior Derogat Legi Inferiori

The legal basis for Mandatory vaccination uses Presidential Regulations where, in terms of the Hierarchy of Regulations, Presidential Regulations are still below the Law, in this case Law Number 33 of 2014 concerning Halal Product Assurance.

Lex Specialist Derogat Legi Generali

That Presidential Regulation in this case Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) where it talks not only about sanctions and fines but also about the implementation of Vaccination itself, but Law Number 33 of 2014 concerning Halal Product Assurance talks about products used or marketed in Indonesia must be certified halal, so if referring to Vaccines then Law Number 33 of 2014 is more specific in discussing halal labels.

Looking at the above discussion, it is clear that Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) if collided with Law Number 33 of 2014 then it does not have legal certainty.

However, if we look more closely, the implementation of mandatory vaccination based on Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) is not immediately implemented by the government.

Covid-19 vaccines that have been authorized by BPOM have gone through a long process to ensure their safety and effectiveness by conducting various research and trials. The effectiveness of each Covid-19 vaccine product varies depending on the variant of the Covid-19 virus it faces. Various variants of Covid-19 that enter Indonesia include: Alpha, Beta, and Delta. Therefore, from the explanation above, vaccination efforts in dealing with the Covid-19 virus are very important and can be justified by various effectiveness.

Seeing the increasing number of people affected by the Covid Virus, of course, conflicting legal rules can be set aside because saving more lives becomes a state obligation, moreover, the Right to Health, including Human Rights, according to Pancasila, in Pancasila itself that Human Rights is the basis for other rights and obligations.

Referring to the principle of *Salus populi suprema est* where there is a collision of Law related to the Vaccination obligation between Presidential Regulation No. 14 of 2021 concerning amendments to Presidential Regulation No. 99 of 2020

concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) with Law Number 33 of 2014, it can be set aside.

In addition to collaborating with BPOM, the government also collaborates with the MUI institution as an institution that provides fatwas on prohibition, permissibility, permission, and prohibition in Vaccines, so the government's efforts in this regard can be justified.

CONCLUSION

From the above discussion, the following conclusions can be drawn: Vaccination became mandatory after the issuance of Presidential Regulation No. 14 of 2021 amending Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19). This regulation not only pertains to the technical implementation of vaccination but also includes sanctions for those who refuse or reject vaccination. The sanctions are in the form of administrative and criminal penalties.

In the clash of rules related to the vaccination obligation based on the Presidential Regulation, specifically Presidential Regulation No. 14 of 2021 amending Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19), with Law Number 33 of 2014 concerning Halal Products, then based on the principle of Legal Basis or Hierarchy of Legislation, the Presidential Regulation in this case, Presidential Regulation No. 14 of 2021 amending Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines And the Implementation of Vaccinations in the Context of Handling the Pandemic Corona Virus Disease 2019 (Covid-19) would contradict. However, due to the massive spread of the Covid-19 virus and the declaration of a health emergency, based on the principle of *Salus populi suprema est*, where the welfare of the people is paramount, in this case meaning that under the threat of emergency situations, the safety of the people must be the foremost objective, including if it requires setting aside legal regulations.

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Untuk mendeteksi penyebaran virus maka pemerintah indonesia dibantu oleh tenaga kesehatan menyediakan fasilitas Swab test, tes PCR, test RNA, Rapid test, test Antibodi dan test Darah lihat : <https://health.kompas.com/read/2020/12/03/120000968/mengenal-3-jenis-tes-covid19-mana-yang-paling-akurat-?page=all>.

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