



# Legal Politics for the Establishment of DKI Jakarta Province Regional Regulation No. 2 Year 2020 about Covid-19

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## ABSTRACT

Health is a fundamental and invaluable human right for the implementation of other human rights. Therefore, the right to health should be respected and implemented by the state as one of the fundamental rights. The state's obligation to provide protection for the right to health owned by all citizens is in line with what is stated by WHO, namely the state in this case the government has a responsibility for the health of its citizens. Establishment of Regional Regulation No. 2 of 2020 concerning Covid-19 from the point of view of legal politics is that Law Number 2 of 2020 is the ratification or stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy 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 into Law.

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## ABSTRAK

Kesehatan merupakan hak asasi manusia yang fundamental dan tidak ternilai demi terlaksananya hak asasi manusia yang lainnya. Maka sudah selayaknya hak atas kesehatan dihormati dan dilaksanakan oleh negara sebagai salah satu hak yang mendasar. Kewajiban negara dalam memberikan perlindungan terhadap hak atas kesehatan yang dimiliki oleh seluruh warga negara sejalan dengan apa yang dinyatakan oleh WHO yaitu negara dalam hal ini pemerintah mempunyai tanggung jawab terhadap kesehatan dari warga negaranya. Pembentukan PERDA No. 2 Tahun 2020 tentang Covid-19 dari sudut politik hukum adalah bahwa UU Nomor 2 Tahun 2020 merupakan pengesahan atau penetapan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi COVID-19 dan dalam Rangka Ancaman yang Membahayakan Perekonomian Nasional atau Stabilitas Sistem Keuangan menjadi Undang-undang.

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## I. INTRODUCTION

In December 2019, a type of pneumonia disease of unknown etiology was detected in Wuhan City, Hubei Province of China (Nursofwa, Sukur & Kurniadi, 2020). The first 27 cases reported were all linked to the Huanan Seafood Wholesale Market, which sells seafood, live poultry and wild animals. The Chinese Centers for Disease Control and Prevention (CDC) and Chinese health authorities later identified and announced that the new coronavirus (2019-nCoV) was the cause of this pneumonia outbreak in Wuhan (Rahmasari, Putranti & Alfian, 2022) After that, the disease was named Coronavirus Disease 2019 (COVID-19) by the World Health Organization (WHO), and the virus that

caused it was designated as SARS-CoV-2 by the International Committee on Virus Taxonomy (Deng, & Peng, 2020).

The situation in public education in the world has changed in the odd semester of 2020, when the first cases of COVID-19 coronavirus infection were detected increasing and more than 1.5 million cases of infection worldwide on April 8, 2020 (Witantra & Sagita, 2021). A pandemic is a disease outbreak that spreads simultaneously everywhere, covering a wide geographical area (Prakarsa, Herli & Yulia, 2021). A pandemic is an epidemic that spreads to almost all countries or continents and usually affects many people (Salamah, 2020) An increase in the number of diseases above normal which usually occurs, this disease also occurs suddenly in the population of a certain geographic area (Purwanto, 2020).

In several international conventions and international legal documents, provisions regarding the right to health are set out as one of the basic rights (fundamental rights) that are owned by every individual (Mardiansyah, 2018). Provisions on the right to health, which is a fundamental right owned by every individual, are stated in the preamble to the World Health Organization (WHO) (Ginting, Lubis & Affan, 2021). The state's obligation to provide protection for the right to health owned by all citizens is in line with what is stated by WHO, namely the state in this case the government has a responsibility for the health of its citizens (Isnaini, & Adnan, 2018). According to WHO, "government has responsibility for the health of their people which can be fulfilled only by the provision of adequate health and social measures" (Kurnia, 2007). Thus the right to health as a fundamental right has the same position as freedom of religion and other basic rights, although the right to health has not been widely recognized as a human right (Arifin, Rasdi, & Alkadri, 2018).

Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the context of Accelerating the Handling of Corona Virus Disease 2019 (COVID19) (State Gazette of the Republic of Indonesia of 2020 Number 326). The Provincial Level Covid-19 Handling Task Force is the DKI Jakarta Province Covid-19 Handling Task Force. Corona Virus Disease 2019 hereinafter abbreviated as Covid-19 is a respiratory tract infection caused by the severe acute respiratory syndrome corona virus 2 (SARS-CoV-2) which has become a global pandemic based on the determination of the World Health Organization (WHO) (Wahjudi, 2020). and is designated as national non-natural disasters based on Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as National Disasters.

However, the legal politics raised criticism everywhere, the regulations were considered late to be issued, as a result of the delay both the Central Government and Regional Governments experienced stuttering in taking steps to overcome the COVID-19 pandemic outbreak. Likewise with National Regulation No. 1 of 2020 related to the policy of financial system stability. At first glance, this policy is deemed "positive" and is seen as a way to save state finances, as well as allow changes in the APBN budget allocation for the costs of dealing with the COVID-19 outbreak". However, in terms of its own substance, National Regulation No. 1 of 2020 contains legal problems, which have the potential to create moral hazard, fraud and corruption where every action or decision taken by officials cannot be prosecuted in a civil, criminal, or state administrative manner. (Adelia et al, 2020)

Of course, it would be very unfortunate if the government actually took steps to maneuver legal politics that were counterproductive to efforts to protect the people's right to health from the COVID-19 pandemic. When referring to the current conditions the spread of the COVID-19 virus has spread to all provinces in Indonesia, the curve of COVID-19 cases continues to increase and does not indicate a decline, the mobility of people's movements is still high, as well as entertainment venues, cafes, tourist destinations are still open such as normal. On the other hand, the continued increase in the number of COVID-19 patients has the potential to collapse the health system because hospitals are overwhelmed in handling the large number of patients (Fitriani, 2020).

This condition causes the human rights to health, including to obtain good health services, to not be fulfilled. Likewise, the lack of protection for medical personnel as the frontline in the fight against COVID-19 adds to the question of the extent to which the Government is serious in making policies in solving this COVID-19 problem, and the Government's commitment to the protection of human rights to public health as mandated in Article 28H paragraph (1), Article 34 paragraphs (2) and (3) of the 1945 Constitution, Article 25 of the Universal Declaration of Human Rights and article 12 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). Therefore, this journal will analyze the Legal Politics of Formation of Regional Regulations (Study of DKI Jakarta Provincial Regulation No. 2 of 2020 concerning Covid-19).

## II. RESEARCH METHOD

This research method is a qualitative descriptive research method where the researcher uses secondary sources to complete the data needed in the study. This study uses an empirical approach, namely research that uses references from various data related to the topic of discussion that has been selected and also from various previous studies.

## III. RESULTS AND DISCUSSIONS

### **Regulations for the Handling of Corona Virus Disease 2019**

The formation of a legal aspirational local regulation, is that every product must be based on the basic values contained in the five precepts of Pancasila, and the entire Preamble of the 1945 Constitution (Anggono, 2019). There are at least four basic values that must be emanated in every law-making and legal ideals of Indonesia:

- 1) Protect the entire nation and the entire homeland of Indonesia. This requirement is in accordance with the main idea in the Preamble to the 1945 Constitution.
- 2) Laws are made in an effort to realize social justice for all Indonesian people.
- 3) Laws made must contain values and go through a democratic process. This must be pursued in order to obtain a law that is responsive and populist.
- 4) The law must be based on the values of integrity and humanity that are just and civilized (Astomo, 2014).

With the fourth basis, the formation of laws and regulations or regional regulations will be oriented to values based on the interests of the community. Therefore, it is necessary to have an understanding of the legal principles that will determine the quality of the draft law in the final policy. Highlights some of the basic principles of policy making, as follows:

- 1) Regional regulations should be in line with higher regulations. Regional and national regulations that are made do not conflict with other similar regulations or with laws and regulations of a higher level. A regional regulation that has been formed can be considered contrary to higher laws and regulations if the regional regulation has its authority, from a technical aspect or the material content of the regional regulation, is inconsistent with higher regulations, or the regional regulation refers to regulations that are no longer valid.
- 2) National regulations need to be reviewed and improved to enable regions to formulate policies based on the diverse needs and aspirations of local communities. Often local governments implement policies that do not reflect the reality in the regions simply because the regions see themselves as having to serve the interests of the central government (Jakarta).

Thus, the legal drafting process in Jakarta must also involve the relevant regions to ensure implementation, equality and conformity with the needs of local stakeholders. It will also assign responsibility to the regions for implementation. Regional regulations should not conflict with the general principles of good governance, namely:

- 1) Formal principles in the decision-making process, including: the principle of formal accuracy (clarity on the subject, content, and understanding), the principle of uniformity of treatment (fair play), and the principle of prohibition of technical deviation (détournement de procédure);
- 2) The principles of decision formulation, including: the principle of consideration, justice and the principle of formal legal certainty
- 3) Material principles of decisions, including: the principle of trust or hope that has been generated, the principle of equality, the principle of material accuracy, the principle of balance, the principle of abuse of power (détournement de pouvoir), and the principle of arbitrary prohibition (willekeur).

Regional regulations should not have negative impacts in terms of ecology, environment or economy either for the region or neighboring areas (Hijriati & Mardiana, 2014). Based on Article 236 of Law no. 23 of 2014, that in order to carry out Regional Autonomy and Co-Administration, the Region shall establish a Regional Regulation and it shall be formed by the DPRD with the joint approval of the regional head. The local regulation contains the following material:

- 1) Implementation of Regional Autonomy and Assistance Tasks; and
- 2) Further elaboration of higher statutory provisions.

In addition to the content of these two matters, a regional regulation may contain local content in accordance with the provisions of laws and regulations, based on article 237, the principle of formation and the material of the regional regulation is guided by the provisions of laws and regulations and legal principles that grow and develop in the community as long as they do not conflict with the principles of the Unitary State of the Republic of Indonesia. The formation of a regional regulation includes the stages of planning, drafting, discussing, stipulating, and enacting legislation that is guided by the provisions of the legislation.

According to Article 2 of the Regional Regulation No. 2 of 2020, the prevention of Covid-19 is based on:

- 1) humanity;
- 2) protection;
- 3) benefit;
- 4) public interest;
- 5) transparent;
- 6) partnership and collaboration;
- 7) legal awareness; and
- 8) effectiveness

Furthermore, Regional Regulation No. 2 of 2020 explains that the Corona Virus Disease 2019 pandemic which causes emergency conditions has an impact on aspects of public health, socio-economics and public services in the Province of the Special Capital Region of Jakarta; that the Provincial Government of the Special Capital City Region of Jakarta has the responsibility to provide health protection for the community from the spread of Corona Virus Disease 2019, but on the other hand the administration of government affairs must continue to run in order to immediately carry out social protection and regional economic recovery as a result of the Corona Virus Disease 2019 pandemic which has disrupted various aspects of the life of the people of Jakarta; that the provisions of laws and regulations regarding the handling of Corona Virus Disease 2019 in the Province of the Special Capital Region of Jakarta cannot yet be used as a strong and comprehensive legal basis to strengthen efforts and increase the effectiveness of public health protection, social protection, economic recovery and law enforcement to overcome the Corona Virus Disease pandemic 2019.

### **The Right to Health for All People**

It must be realized that human life and freedom will be meaningless if their health is not taken care of. Therefore, health as an issue of human rights, in this case the right to optimal health, with the consequence that every human being has the right to an optimal health degree and the state is obliged

to fulfill this right (Basuki, 2020). Health is a crucial issue that must be faced by every country because it is directly correlated with the development of the personal integrity of each individual so that they can live with dignity (health, together with the level of education and purchasing power of the people, is a component of assessing the achievement of the Human Development Index of countries in the world). Philosophically, health as the right of every human being, and the obligation of the state to fulfill that right, especially in the situation that not everyone has the same opportunity to enjoy this right, is an issue of justice. Due to the close relationship between issues of health, justice and human rights, the function of the law becomes very pivotal (Kurnia, 2007).

The right to optimal health status as a type of human right has been recognized in Indonesian national law and international law, including:

- 1) Article 28H paragraphs (1) and (3) jo. Article 34 paragraph (3) of the 1945 Constitution
- 2) Article 4 of Law Number 36 of 2009 concerning Health
- 3) Articles 40,41,42,49 and 62 of Law Number 39 of 1999 concerning Human Rights
- 4) Article 25 paragraph (1) of the Universal Declaration of Human Rights
- 5) Article 12 of the International Covenant on Economic, Social and Cultural Rights

The concept of health will have a normative content as a legal concept if the concept of health bears a certain juridical predicate, in this case rights, namely as human rights. (Kurnia, 2007). Thus, the state has the obligation to take steps, individually or through international assistance and cooperation in order to realize the realization of the fulfillment of the right to health is international legal principles on human rights (Hartono, 2015)

### **The State's Obligation to Realize the Right to Health for Its Citizens**

The task of the state according to modern understanding today (in a Welfare State or Social Service State), is to carry out the public interest to provide the greatest prosperity and welfare based on justice in a rule of law. In this case, the state's goals (staatswill) indicate what the state is trying to achieve, while the function of the state is the implementation of that ideal goal in concrete reality. In this case, the state is required to respect, fulfill and protect the right to health (Ardinata, 2020). The respect aspect referred to is a policy that requires the state not to take steps that will result in individuals or groups failing to achieve or fulfill their rights. While the fulfillment is that the state must take legislative, administrative, budgetary, judicial or other steps to ensure the realization of the fulfillment of rights. Meanwhile, protection is how the state implements policies to prevent and overcome intentional violations or omissions.

As regulated 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. (Indonesia, Law on Health Quarantine, Law No. 6 of 2018, LN No. 128 of 2018, TLN No. 6236, Article 11). This is one of the factors for the ineffectiveness of implementing PSBB in Indonesia. On the one hand, the 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 the people, especially the lower middle class, have no choice, but must continue to work outside to meet their basic needs even though Concerns about contracting COVID-19. In the implementation of Regional Regulation No. 2 of 2020 there are sanctions imposed on managers, organizers, or persons in charge of education units who do not carry out the obligation to protect public health as referred to in paragraph (1) are subject to administrative sanctions in the form of.

- 1) written warning;
- 2) administrative fines;

The imposition of administrative sanctions in the form of a written warning as referred to in paragraph (2) is carried out by the Education Office and can be accompanied by the relevant Regional Apparatus (Karimah & Hamid, 2021). According to article 14 Regional Regulation No. 2 of 2020 that the

manager, organizer, or person in charge of a place of worship who does not carry out the obligation to protect public health as referred to in paragraph (1) is subject to administrative sanctions in the form of a written warning. The imposition of administrative sanctions in the form of a written warning as referred to in paragraph (2) shall be implemented by the Mayor/Regent of Administration and may be accompanied by the relevant Regional Apparatus. (4) Further provisions regarding the protection of public health in places of worship, and the imposition of administrative sanctions as referred to in paragraphs (1) and (2) shall be regulated in a Governor Regulation (Fathoni, 2020)

The imposition of administrative sanctions as referred to in paragraphs (4) and (5) is carried out by the Department of Transportation. Further provisions regarding the protection of public health in each mode of transportation, management of traffic needs, and the imposition of administrative sanctions as referred to in paragraph (1), paragraph (4), and paragraph (5) are regulated in a Governor Regulation (Christianto, 2020). In Indonesia, juridical guarantees for the right to health have existed since the promulgation of the Constitution of the Republic of the United States of Indonesia (RIS) in 1949. Article 40 of the RIS Constitution explains that "The authorities always strive to promote public hygiene and people's health". After the form of the union state was returned to a unitary state and the implementation of the 1950 Provisional Constitution (UUDS), the provisions of Article 40 of the RIS Constitution were still adopted into Article 42 of the 1950 Constitution. The consensus on the right to health was categorized as a human right in Indonesia, which was further emphasized after the reform period. . Provisions regarding the right to health are included in Chapter XA of the 1945 Constitution concerning human rights, namely in Article 28 H paragraphs 1 and 2, as well as in Article 34 paragraph (2) of the 1945 Constitution (Rifatul, 2017) respects equal access to health services and does not prevent individuals or communities from getting access to available health care. The state's responsibility to protect the right to health. The obligation to make legal and political policies in the field of legislation that protect the right to health of citizens Obligation to create an integrated health insurance system and provide complete, adequate, and affordable health facilities for all levels of society.

#### IV. CONCLUSION

From the description above, it can be concluded as follows. First, the right to health is one of the derivations of human rights. As a human right, the right to health is an inherent right in humans as creatures created by Allah S.W.T God Almighty, where this right is a gift that must be respected and protected by every country. Second, the legal politics chosen by the Indonesian government in the form of PSBB and physical distancing in handling COVID-19 have not been maximized in protecting the health rights of the Indonesian people as stipulated in the constitution Article 28H paragraph (1) and Article 34 paragraph (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 currently has reached 1 million cases. Indonesia is the only Southeast Asian country where the number of COVID-19 cases has reached 1 million cases compared to other Southeast Asian countries. Establishment of Regional Regulation No. 2 of 2020 concerning Covid-19 from the point of view of legal politics is that Law Number 2 of 2020 is the ratification or stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy 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 into Law.

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