

## State Responsibility During Covid-19 Pandemic in the Perspective of The Indonesian Constitutional Law

Riris Ardhanariswari<sup>✉</sup>

Faculty of Law, Universitas Jenderal Soedirman, Purwokerto - Indonesia

---

### Abstract

Coronavirus first emerged and spread to humans from Wuhan city, China at the end of December 2019 and spread to Indonesia and became a serious concern in Indonesia since March 2020 as it was stated as a national outbreak. The Indonesian Constitution asserts that the purpose of formation of the State of Indonesia is to protect the whole people of Indonesia and the entire homeland of Indonesia, to promote general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. The Covid-19 pandemic is not only occurring in Indonesia, but also in other countries, and each country certainly issues different policies. The state with its authority should respond to the condition in the community, which this research is based on. This research employed a normative legal method and used secondary data as its main data. Various policies are issued by the Indonesia Government from Government Regulation in Lieu of Law No. 1 of 2020 which has become Law No. 2 of 2020, Government Regulation No. 21 of 2020 on the Large Scale Social Restriction in Coronavirus Disease 2019 (COVID-19) Response Acceleration to technical regulations issued by ministers to solve Covid-19 related issues. The policies are certainly the implementation of the state's responsibility to the people.

**Keywords:** state responsibility; constitutional law; Covid-19

### Abstrak

Virus Corona pertama kali muncul dan menyebar ke manusia dari kota Wuhan, China pada akhir Desember 2019 dan menyebar ke Indonesia dan menjadi perhatian serius di Indonesia sejak Maret 2020 karena dinyatakan sebagai wabah nasional. Konstitusi Indonesia menegaskan bahwa tujuan pembentukan Negara Indonesia adalah untuk melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia, untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut serta dalam penyelenggaraan suatu dunia. ketertiban berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial. Pandemi Covid-19 tidak hanya terjadi di Indonesia, tetapi juga di negara lain, dan setiap negara tentunya mengeluarkan kebijakan yang berbeda-beda. Negara dengan kewenangannya harus merespon kondisi masyarakat yang menjadi dasar penelitian ini. Penelitian ini menggunakan metode hukum normatif dan menggunakan data sekunder sebagai data utamanya. Berbagai kebijakan dikeluarkan oleh Pemerintah Indonesia mulai dari Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 yang menjadi Undang-Undang Nomor 2 Tahun 2020, Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar Pada Penyakit Coronavirus 2019 (COVID) 19 Percepatan Respon terhadap regulasi teknis yang dikeluarkan oleh menteri untuk mengatasi masalah terkait Covid-19. Kebijakan tersebut tentunya merupakan implementasi dari tanggung jawab negara kepada rakyat.

**Kata kunci:** tanggungjawab negara; hukum konstitusi; Covid-19.

Copyright©2021 Jurnal Dinamika Hukum. All rights reserved.

---

## Introduction

Respect, protection, promotion, upholding and full realization of human rights are primarily the obligations and responsibilities of the Government, including regional go-

---

<sup>1</sup> ✉Corresponding Author: ririsardhana@gmail.com

vernment. Every person is born free with the same and equal honor and dignity, and has the right to indiscriminate human rights protection. Besides human rights, there are basic human obligations. It is each person's basic obligation to respect other's human rights in the order of life of the society, the people and the nation.

The Indonesian Constitution Article 28 paragraph (1) asserts that Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care. This shows that the Indonesian Constitution (UUD 1945) guarantees its citizens' life, including in current pandemic. Indonesia is not free from the pandemic which is occurring throughout the world. Further, the Indonesian Constitution Article 34 paragraph (3) also asserts that the State has the responsibility to provide proper medical and public service facilities. Based on the provisions above, it is clear that the state is responsible for providing proper medical and public service facilities. The representation of state asserted in the Constitution is the current Government.

The explanation of state responsibility in relation to the right of reply to the provision of proper medical and public service facilities is set forth in Law No. 39 of 1999 on Human Rights. That fulfillment of human rights is state responsibility has been asserted in Article 8 Law No. 39 of 1999 on Human Rights. Article 8 states that "Protection, promotion, upholding, and full realization of human rights are primarily the Government's responsibility." In the article, the keywords of human rights are protection, promotion, upholding, and full realization. The explanatory note to Article 8 explains that "What is meant by "protection" includes defending human rights." However, the other keywords are not explained further in the law (Affandi, 2017).

Coronavirus first emerged and spread to humans from Wuhan city, China at the end of December 2019, and spread to Indonesia and became a serious concern in Indonesia since March 2020 as it was stated as a national outbreak. The Indonesian Constitution asserts that the purpose of formation of the State of Indonesia is to protect the whole people of Indonesia and the entire homeland of Indonesia, to promote general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. The Covid-19 pandemic is not only occurring in Indonesia, but also in other countries, and each country certainly issues different policies. The state with its authority should respond to the condition in the community. This is what this research is based on.

## Research problems

Based on the explanation above, the problems to be studied are (1) What is the state's responsibility during the covid-19 pandemic in the Indonesian constitutional law's perspective? (2) What policies have been issued to cope with the covid-19 pandemic in Indonesia?

## **Research Method**

This is a normative or literary research, which is research conducted with a normative legal approach (Abubakar, 2013). This qualitative research employed a descriptive analysis (Azhari, 2012). The descriptive qualitative analysis in this paper considered that it did not only aim at revealing or representing the collected data as is, but as primary legal material, secondary legal material, and documentary or literary study materials for check and re-check (triangulation) to find the mid-point and accurate opinion of various perspective and generate a conclusion (Nugroho, 2017). This research employed descriptive analytical approach, that this research attempted to represent entirely, in-depth a condition or symptom studied.

This is normative legal research, since it attempted to discuss or study legal norms, in this case regulatory norms, to find vertical and horizontal synchronization. The norm synchronization in this research is synchronization between the Indonesian 1945 Constitution and other laws and regulations related to the government's role in fulfilling citizens' right to health care. In this research, the author employed primary legal materials consisting of laws and regulations related to citizens' right to health with legal approach and comparative approach. The author then employed a descriptive-qualitative analysis technique by describing or explaining the legal provisions or legal materials with legal issues.

## **Discussion**

Indonesia is a constitutional state, as asserted in Article 1 paragraph (3) 1945 Constitution that the State of Indonesia is a state based on the rules of law. The assertion is pursuant to the fourth paragraph of the Preamble of the 1945 Constitution "...Indonesia's National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as the State of the Republic of Indonesia with sovereignty of the people...". The consequence of constitutional law acknowledgement is that any actions of the state administrators and of citizens must be based on prevailing laws/regulations. Further, Article 1 Paragraph (2) of the 1945 Constitution asserts that sovereignty is vested in the people and implemented pursuant to the Constitution. This also shows that the people sovereignty principle is asserted in the Indonesian Constitution, thus the laws applied and enforced must reflect the people's desire and the people must be involved in the state's decision making. Therefore, the concept of democratic constitutional state bears the meaning that democracy is regulated and restricted by rules of law, while the substance of law itself is determined democratically based on the Constitution.

The state has the power to regulate the life of the nation. The power it holds is naturally derived from the constitution. State is a civil organization established to regulate collective life. To achieve the purpose of such collective life, a governance order is arranged as a means of implementing state duties, as well as division of duties and power limits. Government or state administrator is an abstraction which is personified and appointed

by the law as a legal reality. As an abstraction, the government cannot conduct its actions without its organs (Hakim 2011).

Authority is the capability granted by laws and regulations to cause legal consequences (Lotulung, 1994). H.D.Stoud defines authority as “*bevoegheid wet kan worden omscreven als het geheel van bestuurechtelijke bevoegheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer*” that authority may be explained as the whole rules related to the acquisition and use of government authority by public legal subject in public law (Fahrudin, 2004).

The explanation of state responsibility is as asserted in the Preamble of the 1945 Constitution, such as in Article 28 I paragraph (4), that protecting, promoting, upholding, and the full realization of human rights are the responsibilities of the state, foremost of the government. Therefore, the state, primarily the government, is responsible for the protection, promotion, and full realization of human rights. The government here is defined as both the central government and regional government. The central government in this case is President. President as the highest governance administrator in Indonesia has the basic authority to administer governance based on the authorities as asserted in Article 4 paragraph (1) of the 1945 Constitution. In implementation of this administration, President is assisted by vice president and ministers. In implementing the concept of democratic constitutional law, law is the instrument to achieve the state’s objective. The state has the obligation to fulfill the needs of every citizen through a governmental system which supports realization of public service in fulfilling each citizen’s basic needs and rights. The concept of human rights (HAM) covers three main elements for human existence, both as individual being and social being, namely human integrity, freedom and equality (Asbjorn, Krause and Rosas, 1995).

Universally, the state assumes the main responsibility to promote and protect human rights. Such a responsibility cannot be mitigated with any political, economic or cultural reason. Meanwhile, in fact, many violations of human rights are committed by the state through its organs or apparatuses, both civil and military, with abuse of power (Bahagijo and Nababan, 1999). The conception of state responsibility in fulfilling the right to health is a positive legal right, thus the government must, as state personification, fulfill citizen’s right to health. A waiver of the people’s right to health is a denial of protection and provision of the people’s proper health care, which is a violation of the constitution (Isriawaty, 2015).

Article 28 H paragraph (1) of the 1945 Constitution asserts that each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care. Further, Article 28 H paragraph (3) asserts that each person is entitled to social security enabling him to develop his entire self-unimpaired as a dignified human being. We should not forget that Indonesia has ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ECOSOC) as Law Number 11 of 2005 and Law Number 12 of 2005. One of the provisions of Article 12 of the Covenant on

Economic, Social and Cultural Rights also states that the state is the party that must perform anything necessary in attempt of: Prevention, treatment, and control of any communicable, endemic diseases and other work-related diseases. This shows that the state assumes the responsibility for health care and also for social security. The Covenant on Economic, Social and Cultural Rights shows that the state is responsible for protection, treatment and control of any communicable, endemic diseases, including the current condition with the covid-19 pandemic. Realization of state responsibility in the condition of covid-19 pandemic is explained in some existing laws and regulations, including:

1. Law No. 2 of 2020 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 on State's Financial Policy and Financial System Stability in Response to Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Facing Threats which Endanger National Economy and/or Financial System Stability to Be Law
2. Government Regulation No. 21 of 2020 on the Large-Scale Social Restriction in Coronavirus Disease 2019 (COVID-19) Response Acceleration
3. Presidential Regulation of the Republic of Indonesia No. 54 of 2020 on the Change in the Posture and Detail of State Budget of Budget Year 2020
4. Presidential Decree No. 9 of 2020 on the Amendment to Presidential Decree No. 7 of 2020 on the Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force
5. Presidential Decree No. 11 of 2020 on the Stipulation of Corona Virus Disease 2019 (Covid-19) Community Health Emergency
6. Presidential Decree No. 12 of 2020 on the Stipulation of Non-natural Disaster of Coronavirus Disease 2019 (Covid-19) Spread as a National Disaster
7. Presidential Instruction of the Republic of Indonesia Number 4 of 2020 on Refocusing of Activities, Reallocation of Budget, and Procurement of Goods and Services in Coronavirus Disease 2019 (COVID-19) Response Acceleration

In addition to the policies issued during the Covid-19 pandemic, there are actually existing related laws and regulations, namely Law Number 4 of 1984 on Communicable Disease Outbreak, Law No. 24 of 2007 on Disaster Relief and Law No. 6 of 2018 on Health Quarantine. This means that the State of Indonesia has anticipated such possibilities that the state may face.

Further, some ministries as the extension of the state have also issued policies related to covid-19 response, including:

1. Regulation of Minister of Health of the Republic of Indonesia Number 7 of 2020 on the Amendment to Regulation of Minister of Health Number 51 of 2014 on Entry of Medical Instrument through Special Access Scheme
2. Decision of Regulation of Minister of Health of the Republic of Indonesia No. 9 of 2020 on the Guidelines on Large Scale Social Restriction in Coronavirus Disease 2019 (COVID-19) Response Acceleration
3. Decree of Minister of Health of the Republic of Indonesia No. HK.01.07/MENKES/239/2020 on the Large-Scale Social Restriction on DKI Jakarta area in Coronavirus Disease 2019 (COVID-19) Response Acceleration.

4. Decree of Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/413/2020 on the Guidelines on Prevention and Control of Coronavirus Disease 2019 (Covid-19)
5. Decree of Minister of Education and Culture of the Republic of Indonesia Number 719/P/2020 on the Guidelines on Curriculum Implementation in Educational Unit in Special Condition of Minister of Education and Culture of the Republic of Indonesia
6. Regulation of Minister of Health of the Republic of Indonesia Number 9 of 2020 on the Guidelines on Large Scale Social Restriction in Coronavirus Disease 2019 (COVID-19) Response Acceleration dated April 3, 2020.
7. Circular of Minister of Empowerment of State Apparatus and Bureaucracy Reform of the Republic of Indonesia number 41 of 2020 on the Amendment to Circular of Minister of Empowerment of State Apparatus and Bureaucracy Reform number 36 of 2020 on the Restriction on Traveling Outside the Region Activities and/or Going to Hometown Activities for State Civil Apparatus in Effort to Prevent COVID-19 Spread dated April 6, 2020.
8. Decree of Minister of Health of the Republic of Indonesia number HK.01.07/MENKES/218/2020 on medical instrument, in vitro diagnostic health instrument, and household health supply exempted from import commercial licensing in prevention of coronavirus disease 2019 (COVID-19).
9. Circular of Minister of Empowerment of State Apparatus and Bureaucracy Reform of the Republic of Indonesia number 41 of 2020 on the Amendment to Circular of Minister of Empowerment of State Apparatus and Bureaucracy Reform number 36 of 2020 on the Restriction on Traveling Outside the Region Activities and/or Going to Hometown Activities for State Civil Apparatus in Effort to Prevent COVID-19 Spread dated April 6,2020.
10. Regulation of Minister of Transportation of the Republic of Indonesia Number 18 of 2020 on the Transportation Control in Prevention of Coronavirus Disease 2019 (COVID-19) Spread dated April 9, 2020.

The central government's policies are then followed-up with regional policies at provincial and regency/municipal levels to cope with the covid-19 pandemic. The government has stipulated the Covid-19 pandemic as a non-natural disaster of which preventive attempts need to be made in preventing increasing cases. Presidential Decree Number 12 of 2020 on the Stipulation of Non-natural Disaster of Coronavirus Disease 2019 (Covid-19) Spread as a National Disaster asserts that the non-natural disaster caused by the Coronavirus Disease 2019 (COVID-19) outbreak is a national disaster. Prevention of national disaster caused by the Coronavirus Disease 2019 (COVID-19) outbreak is implemented by the Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force pursuant to Presidential Decree Number 7 of 2020 on the Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force as amended by Presidential Decree Number 9 of 2020 on the Amendment to Presidential Decree Number 7 of 2020 on the

Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force through synergy between ministries/agencies and regional governments. Governor, regent and mayor as the Chairman of Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force at regional level must, in establishing policies in respective region, consider the Central Government's policies.

The prevention attempt is made through health quarantine as set forth in Law Number 6 of 2018 on Health Quarantine. Law Number 4 of 1984 states that outbreak is the occurrence of infection of a communicable disease in the community in which the number of patients significantly increases exceeding that in common condition in certain time and area and may cause disaster. Appeal Letter of Secretary General of Ministry of Health Number: PK.02.01/B.VI/839/2020 states that Covid-19 is a disease which attacks respiratory tract, caused by virus spreading through droplet/sputum splash that no medication or vaccine has been currently found. Article 10 Law Number 4 of 1984 on Communicable Disease Outbreak states that the Government is responsible for the attempt of outbreak relief implementation.

Further, Article 6 Law Number 6 of 2007 on Disaster Relief asserts that the Government's responsibilities in implementing disaster relief include:

1. reducing disaster risk and guide reduction of disaster risk with development program;
2. protecting the society from disaster impact;
3. ensuring fulfillment of the rights of the society and refugees affected by disaster fairly and in accordance with minimum service standard;
4. relieving condition from disaster impact;
5. allocating adequate disaster relief budget in the State Budget;
6. allocating disaster relief budget in the form of ready to be used fund; and
7. maintaining authentic and credible archives/documents from disaster threat and impact

Article 7 paragraph (1) Law Number 6 of 2007 on Disaster Relief asserts that the Government's authority in disaster relief implementation includes: a. stipulate policies of disaster relief in line with national development policies; b. arrange development plan which includes disaster relief policy elements; c. stipulate status and level of national and regional disasters; d. determine policy in disaster relief cooperation with other country, bodies or other international parties; e. formulate policies of the use of technology which may be potential threat or disaster; f. formulate policy in prevention of control or exploitation of natural resources exceeding the nature's capability to recover; and g. control, collect or distribute money or goods on a national scale.

The provisions show that the state performs its responsibility in case of disaster in Indonesia, and the government as the representation of the state must implement the laws and regulations related to the matter. The state has shown its responsibility to the people during the covid-19 pandemic in Indonesia. The state must be capable of applying various policies issued to prevent and respond to Covid-19 transmission. This state

responsibility is to protect human rights by ensuring the availability of the people's basic needs such as food, water, medical facilities and drugs as well as resources in the form of health staffs and workers, as well as facilities and infrastructure in support of public health.

## Conclusion

State responsibility during the Covid-19 pandemic in the Indonesian constitutional law's perspective is shown with the state's power to regulate the life of the nation by issuing various laws and regulations aiming at coping with the Covid-19 pandemic in Indonesia and to prevent and respond to the Covid-19 transmission. This state responsibility is to protect human rights by ensuring the availability of the people's basic needs such as food, water, medical facilities and drugs as well as the availability of health facilities and security which may support the robustness of resources in the form of health staffs and workers, as well as facilities in support of public health.

The policies issued to cope with the Covid-19 pandemic in Indonesia include those issued by the central government, namely: a) Law Number 2 of 2020 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 on State's Financial Policy and Financial System Stability in Response to Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Facing Threats which Endanger National Economy and/or Financial System Stability to Be Law; b) Government Regulation Number 21 of 2020 on the Large Scale Social Restriction in Coronavirus Disease 2019 (COVID-19) Response Acceleration; c) Presidential Regulation of the Republic of Indonesia Number 54 of 2020 on the Change in the Posture and Detail of State Budget of Budget Year 2020; d) Presidential Decree No 9 of 2020 on the Amendment to Presidential Decree Number 7 of 2020 on the Coronavirus Disease 2019 (COVID-19) Response Acceleration Task Force; e) Presidential Decree Number 11 of 2020 on the Stipulation of Corona Virus Disease 2019 (Covid-19) Community Health Emergency; f) Presidential Decree Number 12 of 2020 on the Stipulation of Non-natural Disaster of Coronavirus Disease 2019 (Covid-19) Spread as a National Disaster; g) Presidential Instruction of the Republic of Indonesia Number 4 of 2020 on Refocusing of Activities, Reallocation of Budget, and Procurement of Goods and Services in Coronavirus Disease 2019 (COVID-19) Response Acceleration. In addition to the policies issued during the Covid-19 outbreak, there are existing related laws and regulations, namely Law Number 4 of 1984 on Communicable Disease Outbreak, Law Number 24 of 2007 on Disaster Relief and Law Number 6 of 2018 on Health Quarantine. This means that the State of Indonesia has anticipated such possibilities that the state may face. The central government's policies are then followed-up with regional policies at provincial and regency/municipal levels to cope with the covid-19 pandemic.



## References

- Abubakar, Lastuti. (2013), Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia. *Jurnal Dinamika Hukum*. 13 (2). 319-331. DOI: <http://dx.doi.org/10.20884/1.jdh.2013.13.2.213>
- Affandi, Hernadi. (2017). Tanggung Jawab Negara dalam Pemenuhan Hak Atas Pendidikan menurut Undang-Undang Dasar Tahun 1945. *Jurnal Hukum Positum*. 1 (2). 218-243. DOI: <https://doi.org/10.35706/positum.v1i2.848>
- Asbjorn, Eide. Krause, Catarina. and Rosas, Allan. (1995). *Economic, Social and Cultural Rights, A Textbook*. Martinus Nijhoff. Dordrecht.
- Azhari, Aidul Fitriadi. (2012). Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi. *Jurnal Ius Quia Iustum*. 19 (4). 489-505. DOI: <https://doi.org/10.20885/iustum.vol19.iss4.art1>
- Bahagijo, Sugeng. and Nababan, Asmara. (1999). Hak Asasi Manusi: Tanggung Jawab Negara Peran Institusi Nasional dan Masyarakat. Jakarta: KOMNAS HAM.
- Fachruddin, Irfan. (2004). *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*. Bandung: Alumni.
- Hakim, Lukman. (2011). Kewenangan Organ Negara dalam Penyelenggaraan Pemerintahan. *Jurnal Konstitusi*. IV(1). 103-130.
- Isriawaty, Fheriyal Sri. (2015). Tanggung Jawab Negara dalam Pemenuhan Hak Atas Kesehatan Masyarakat berdasarkan Undang Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Ilmu Hukum*. 3(2). 1-9.
- Lotulung, Paulus Efendie. (1994). *Himpunan Makalah Asas-Asas Umum Pemerintahan yang baik*. Bandung: Citra Aditya Bakti.
- Nugroho, Okky Chahyo. (2017). Peran Balai Pemasyarakatan pada Sistem Peradilan Pidana Anak di Tinjau dalam Perspektif Hak Asasi Manusia. *Jurnal HAM*. 8(2). 161-174. DOI: <http://dx.doi.org/10.30641/ham.2017.8.161-174>.