Legal Analysis of Covid-19 Vaccination Obligations and Sanctions: Interest Theory Perspective

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Abstract

This paper will answer two questions related to whether there is a need for sanctions for those who refuse to be vaccinated, what sanctions are appropriate from the perspective of interest theory, and what is the legal basis for imposing sanctions for those who refuse to be vaccinated in Indonesia. This study uses a sociolegal approach from the perspective of interest theory, it is found that sanctions can not only be given but must be given to those who refuse to be vaccinated. According to this perspective, the appropriate sanction is not fines or imprisonment, but deprivation of the right to socialize. The legal basis for imposing sanctions for those who refuse to be vaccinated is Article 5 of Law 4/1984 and PerPres12/2021. The sanctions referred to are administrative in nature in the form of termination of social security or social assistance, postponement or termination of government administration services, and fines. These sanctions do not contribute to stopping the spread of the Covid-19 virus, so it is recommended that amendments to these provisions are necessary.

Keywords: Vaccination, Interests, Sanctions.

A. INTRODUCTION

Coronavirus (COVID-19), which was first detected in Wuhan, China, in December 2019, quickly spread to almost all corners of the world. Each government has made various efforts to stop or at least slow down the rate of its spread, such as social restrictions (lockdown) and the application of health protocols (Brammer, Branicki & Linnenluecke, 2020). However, the results were not optimal (Bradfield & Giubilini, 2021). This can be seen from the increasing number of cases. WHO reports that as of January 11, 2021, the death toll has reached 96,056 people, and the number of positive cases has reached 4,832,483.

The same thing happened in Indonesia. Since the first positive case was detected in March 2020, the number of positive cases has continued to increase and is expected to continue to grow (Enistan, Oyakele, Akele & Enintan, 2020). Like other countries, Indonesia also implements various policies such as Large-Scale Social Restrictions.
(PSPB) and the obligation to implement health protocols. But this is also less effective, as can be seen from the increasing number of cases (Cohen, Crespo & White, 2020).

In such circumstances, vaccines are the instrument most awaited by the public (Fedorov, Kravchenko & Tsybokhin, 2020). However, few people reject this vaccination program; or some people are not willing to be vaccinated for various reasons (Filder, 2007). A survey conducted by the Ministry of Health and ITAGI, UNICEF, and WHO in September 2020 of 115,000 respondents from 34 provinces showed that only 65% said they would accept. The survey conducted by Saifulmuhani showed that only 46% of the population were willing to be vaccinated; Kompas reported that 7% of residents were not ready to be vaccinated.

Responding to the potential rejection of some of the community towards the COVID-19 mass vaccination program, there is a discourse to impose sanctions on those who refuse. This is what raises the pros and cons. This article will discuss the pros and cons of this. The questions that will be answered in this article are:

1. Is there a need for sanctions, and what are the appropriate sanctions from the perspective of interest theory?
2. Is there a legal basis for imposing sanctions for those who refuse to be vaccinated in Indonesia?

The approach used in the research is adjusted to the formulation of the problem above. Question 1 will be answered using a sociolegal method; see the law in the context of society. The legal theory used as an analytical knife is the interest theory of Rudolf Von Jhering (Arde, 2014). The data used are data related to facts in the field (Friedman & Stiff, 2013). However, the facts in question are obtained from various sources such as mass media, research journals (secondary data) (Giubilini, 2021). Question number 2 is answered with a doctrinal approach. The primary legal materials used are:

2. Law Number 6 of 2018 concerning Health Quarantine (UU6/2018),
3. Law Number 36 of 2009 concerning Health (UU36/2009)
4. Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases (UU4/1984)
5. And other related organic regulations.

**Legal Rights in Interest Theory Perspective**

Interest theory is the brainchild of a German philosopher named Rudolf Von Jhering. This theory emphasizes the social function of law. Known as one of the leaders of sociolegal Jurisprudence, Jhering sees the law in the context of society, not norms, as a closed system, as stated by Hans Karlsen (Grise & Whitman, 2012).
Jhering's theory combines the theory of utilitarianism from Bentham and Command Theory from John Austin. Bentham’s idea included in Jhering’s view is that the law must provide benefits (Jakovljevic, 2020). Jhering translates Bentham’s utility with importance. That is, the law, in Jhering’s perspective, is about interests. At the same time, Austin’s thinking in Jhering’s theory interprets the nature of law (Kaushal & Sarivastava, 2021). Jhering agrees with Austin that the law is a command equipped with sanctions. The difference is that the law ordered by the sovereign comes from the interests that exist in the Society (Zhu, Wei & Niu, 2020). On that basis, Jhering argues that the law is a struggle; every person, group and government must fight to defend their interests (Lelliot & Ioannou, 2021).

Jhering in explaining the law departs from the understanding that someone doing an action is always motivated by a goal. There is no single action that does not have a purpose (Petterson, 2010). When someone does something, then he does it not because but for. This goal is then referred to as interests, and interests are not in an abstract concept so that the law is interpreted as a tool to achieve that goal (Wijayanti, 2021).

The interests of each individual, group or country are not always the same, and they may even contradict each other (Yong & Choy, 2021). The government’s job is to reconcile or balance these differences through law. When the interests of individuals with groups and the state cannot be reconciled, then the more vital interests (the society) must be prioritized. Individual interests are subordinated to the interests of society. This means that the extent to which a person's interests are protected by law must be seen from the community's perspective.

B. RESULT AND DISCUSSION

1. Is There a Need for Sanctions for Those Who Refuse to be Vaccinated from an Interest Theory Perspective?

In this paper, refusing a vaccine is defined as refusing to be vaccinated. A person who disagrees with vaccination but is willing to be vaccinated does not fall into this category. To answer whether refusing vaccines is in the interests of individuals who are protected by law (legal rights), it must first be explained the role of vaccination in efforts to stop the spread of COVID-19.

Since the emergence of the first positive case in Indonesia in early March 2020, this virus has spread to various regions very quickly. In the same month, March 30, 2020, the number of positive cases has reached 1414 cases spread across all areas or provinces. According to WHO records, by the end of 2021, it has reached 1 million (Graph 1).
Graph 1 Increase in Positive Cases of COVID-19 in Indonesia in March 2020-January 2021
Source: Processed from https://covid19.who.int/table

The rise has also followed the increase in the number of positive cases of COVID-19 in the number of deaths. As of January 2, 2021, the death toll in Indonesia has reached 22,329 people (graph 2). The Mitigation Team for the Indonesian Doctors Association (PB IDI) noted that until January 27, 2021, 647 health and medical personnel had died; 289 of them are doctors.

Source: Processed from https://covid19.who.int/table?tableDay=yesterday

A large number of deaths explains how Covid-19 has become a severe threat to the entire community. Besides the loss of life, economic development, education, culture, infrastructure, and other public facilities will be disrupted, severely impacting national development. For example, in the education sector, the implementation of online schools or lectures will affect the quality of education in general. Although the online system was widely practised before the pandemic, it is a fact that not all students have the resources. Many students also think that online learning is only a formality; online schools cannot replace the actual education process.

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In the economic field, the pandemic has also had a severe impact. A survey conducted by LIPI shows that this pandemic has resulted in a contraction in income and limited space for consumption due to layoffs, salary adjustments, and a decrease in company profits. Likewise in the export sector. For example, Indonesia's coconut oil exports to China experienced a sharp decline to 84,000 tons in 2020 from 371,000 tons in 2019. Likewise for the workforce. According to records from the Ministry of Manpower, as of April 7, 2020, 39,977 companies in the formal sector were forced to lay off workers.

The problems above are facts that the Indonesian people are facing. If this condition continues for a long time, it is almost sure that the impact will be terrible. On that basis, the problem of covid-19 cannot be seen only as a health problem but also as an economic, educational, socio-cultural problem, and others. Thus, all efforts that contribute to stopping the spread of this virus are an effort to save the nation's existence. So, in the perspective of interest jurisprudence, all policies are taken by the government, such as school closures, social restrictions, work from home, and others, save the interests of the community or national interests.

The Center for Disease Control and Prevention (CDC) ranks vaccines as the most significant achievement in public health in the 20th century. History shows that outbreaks of infectious diseases such as smallpox, influenza, poliomyelitis, diphtheria, and tuberculosis in various parts of the world in the early 21st century have killed 300 million people. The first vaccine introduced by the United States in 1801 has saved millions of people around the world.

Vaccines contain an attenuated or inactivated part of a particular organism (antigen) that triggers an immune response in the body. When a person is vaccinated, they are likely to be protected from certain diseases as the purpose of the vaccine is because the vaccine that is injected into their body will fight the incoming virus. The more people vaccinated in a community, the more complex the pathogen will be circulating because more people are already immune (vaccinated). Thus, vaccines protect not only individuals who are vaccinated but also those not vaccinated (herd immunity). Therefore, the effectiveness of vaccination depends on the number of vaccinated community members, at least 80% of the community. In this context, those who qualify for vaccination are obliged to be vaccinated; Vaccines are no longer individual needs but community needs. In other words, a person's right to refuse to be vaccinated can no longer be said to be a right protected by law. As taught by interest theory that a person's interests are seen from the perspective of society.

When a person's interests are no longer a right protected by law, and those interests are harmful to the public interest, those interests must be prevented. This causes a person who refuses to be vaccinated even though he meets the clinical requirements to be vaccinated not only can but must be sanctioned. Rudolf von jeering said, "when
the darkness is the source of life, light is a capital crime.” A person who does something life-threatening should be considered a grave crime.

Sanctions are one of the most critical aspects of the law. Without sanctions, the law, an order from the ruler, will only be a request. However, in setting sanctions, what is no less important is what and how the sanctions are. In the Indonesian legal system, there are many types of sanctions. In criminal law, several known sanctions or punishments are the main punishment consisting of the death penalty, imprisonment, imprisonment, fines, and additional penalties consisting of revoking certain rights and confiscating certain goods. In civil law, several types of sanctions are regulated, namely the obligation to fulfil achievements, loss of a legal situation, and creating a new legal status. Next is administrative sanctions, namely sanctions imposed on administrative violations or provisions of laws that are administrative. Generally, administrative sanctions are in the form of fines, revocation of permits or termination of administrative services.

Back to the question of sanctions for those who refuse to be vaccinated, what are the appropriate sanctions from the perspective of interest theory? As stated by Jhering that the essence of law is purpose. Thus, the appropriate sanctions are sanctions that contribute to achieving these goals in the context of this paper to stop the spread of the Covid-19 virus.

Several alternative sanctions such as fines and corporal punishment (imprisonment) are found in various laws and regulations in Indonesia. But in the context of stopping the spread of the COVID-19 virus, such sanctions are only punishments that are expected to have a deterrent effect. In substance, such sanctions do not control the spread of the virus—for example, fines. A person who refuses to be vaccinated is then given a penalty of a sum of money. After the sentence, the person concerned is then in the midst of the community. Suppose he is exposed later (because he is not immune). Then, he will then become a carrier for other citizens. The opinion that people who are vaccinated can also be infected is not an excuse. The argument is that, medically, mass vaccination will create herd immunity.

Another alternative is corporal punishment or imprisonment. Various information shows that the rate of spread of the Covid-19 virus in prisons is not low. In fact, in the context of preventing and controlling the spread of Covid-19 in prisons, the Indonesian Minister of Law and Human Rights made a policy that removed 38,822 prisoners from prisons. Thus, criminalizing those who do not want to be vaccinated is irrelevant to stopping the spread of this virus.

As stated in the previous discussion, the spread of the COVID-19 virus occurs through contact with those who have been confirmed positive or touch something contaminated with the virus; those who are not willing to be vaccinated must be kept away from possible contact with other people. The reason is that there is no guarantee that they are not being exposed, or if they are not disclosed, they will...
easily be exposed. Thus, the appropriate sanction for this purpose is to keep them away from the community or public area. In other words, the proper sanction is to deprive them of their right to socialize with the public while the pandemic is still ongoing. Such sanctions directly contribute to stopping the spread of the Covid 19 virus. Violations of these sanctions can then be categorized as crimes that must be imprisoned in isolated special prisons. In other words, in the context of stopping the spread of COVID, there is no appropriate sanction except isolation.

2. Legal Basis of Sanctions for those who refuse to be vaccinated in Indonesian law

Indonesia is a legal state that adheres to the principle of legality. Every policy taken by the government must have a juridical basis. In the criminal field, this applies universally. The Universal Declaration of Human Rights (UNDHR) is regulated in Article 11(2). Also in the International Covenant on Civil and Political Rights (ICCPR) is handled in Article 15(1). This is explicitly stated in Article 1 paragraph (1) of the Criminal Code (KUHP) in Indonesian criminal law. It is noted that: "There is no act that can be punished except based on the criminal provisions according to the existing law before the act itself." Even in Indonesian administrative law, this principle can be found in Article Number 8 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. The provision states that "State Administration Agency or Official is an agency or official who carries out government affairs based on the applicable laws and regulations." Of course, this principle also applies to sanctions for those who refuse to be vaccinated.

Those who agree with the sanctions refer to Article 93 of the UUKK as the juridical basis and Article 28 H paragraph 1 of the 1945 Constitution of the Republic of Indonesia (UUD 1945). Meanwhile, those who refuse to refer to Article 5 of the Health Law state that health is a right. As a right, it cannot be enforced, depending on the right holder. Article 28H paragraph 1 is also used as an argument to justify the need for sanctions. Mahfud MD said, "a person feels that health is a human right, so they should not violate the human rights of others."

Using Article 5 as a legal basis for refusing vaccination is inappropriate. The provisions in Article 10 of the same law have negated this provision. According to Article 10 of the Health Law, the right to choose health services does not apply to patients or sufferers of infectious diseases. On the other hand, making Article 93 the juridical basis for giving witnesses is also inappropriate. Article 93 is a provision that requires everyone to comply with the implementation of Health Quarantine. The definition of health quarantine has been explained in Article 1, namely "efforts to prevent and prevent the exit or entry of diseases and/or public health risk factors

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that have the potential to cause public health emergencies." That is, Article 90 Paragraph 3 has nothing to do with vaccination.

The only law that can be used as a legal basis for giving witnesses is Article 5 of Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases (UU4/1984), noting that vaccination is considered one of the prevention and immunity efforts. Arrangements for imposing sanctions can then be found in Presidential Regulation of the Republic of Indonesia Number 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the 2019 Corona Virus Disease Pandemic (PerPres12/2021). The threat of sanctions in PerPres12/2021 is postponement or discontinuation of the provision of social security or social assistance, postponement or termination of government administration services, and fines.

Previously, the DKI Jakarta Government had enacted the Provincial Regulation of the Special Capital Region of Jakarta Number 2 of 2020 concerning the Prevention of Corona Virus Disease 2019 (Perda DKI 2/2020). The imposition of sanctions in this regional regulation is stated in Article 30, namely sanctions in the form of a fine of 5 million rupiahs. Thus, Indonesian law regulates sanctions for those who refuse to vaccinate, namely Article 5 UU4/1984 and Article 13A paragraph 4 PerPres12/2021. Both UU4/1984 and PerPres12/2021, including DKI Regional Regulation 2/2020, specify administrative sanctions.

C. CONCLUSION

Covid-19 is a threat to people’s lives both in terms of economy, social culture and health. Due to the community’s needs that require them to leave their homes for activities and the high potential for Covid transmission, large-scale social restrictions and implementation of health protocols are not enough to stop the spread of this virus. Therefore, vaccination is the most effective instrument, of course, while still implementing health protocols.

Thus, getting vaccines is in the interests of everyone protected by law (legal rights); otherwise, refusing vaccination is not a right protected by law. The consequence is that refusing vaccination can not only be given but must be sanctioned.

Sanctions should contribute to stopping the spread of the virus. So, the sanctions imposed are not appropriate in the form of fines or imprisonment. The embargo that contributes to preventing the spread of the virus is revoking the right to socialize. This means that those who refuse to be vaccinated are not allowed to contact other people in public areas. Violation of this sanction must then be interpreted not as a
violation but as a crime. This follows what was conveyed by Jhering that "when the darkness is the source of life, light is a capital crime.

The existing law now has provisions for sanctions for those who refuse to be vaccinated. However, the regulated sanctions are administrative in the form of fines, termination of social assistance. Such sanctions do not contribute to stopping the spread of the COVID-19 virus. Therefore, the government or the DPR must take the initiative to create such laws to anticipate a pandemic that may occur in the future. The availability of the rule of law will make it easier to handle a pandemic if it happens, and most importantly, the law is following the conditions in the community. As conveyed by P. Vasantha Kumar, Eugen Ehrlich said that social facts are the basis or basis of all laws.

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