

Original Article

## ***Legal Protection for Medical Volunteers in the Implementation of Emergency Medical Measures***

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### **ABSTRACT**

*The presence of medical volunteers during a medical emergency is very much needed and expected. Their presence is temporary according to the duration of the crisis. However, the current regulations do not explicitly discuss legal protection for medical volunteers during a health emergency. This type of research is normative juridical research that focuses on examining the application of rules or norms in positive law, especially concerning legal synchronization. Due to the type of normative juridical research, the approach used is the statute approach, which is taken by examining various laws that have to do with the legal issues being handled. The results of the study explain that the form of legal protection for medical volunteers in an emergency period can be understood and developed in the context of health, disaster, and employment regulations, namely Law Number 36 the Year 2009 concerning Health, Law Number 29 the Year 2004 concerning Medical Practice, Law No. 36 of 2014 concerning Health Workers and Law Number 38 of 2014 concerning Nursing, Regulation of the Minister of Health of the Republic of Indonesia Number 75 of 2019 concerning Health Crisis Management, Law Number 11 of 2020 concerning Job Creation. For its implementation, several Decrees of the Minister of Health and Circular Letters of the Ministry of Manpower were issued which regulate and guarantee legal protection for health workers, including medical volunteers, during a health emergency which includes protection of work norms, protection of Occupational Health and Safety norms and protection labor social security norms.*

**Keywords :** Medical Volunteer, Legal Protection, Public Health Crisis

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## **INTRODUCTION**

The presence of medical volunteers is very important and meaningful when there is an emergency for public health due to natural or non-natural disasters. The mobilization of medical volunteers to become health workers and vaccine clinical trial volunteers during the Covid-19 pandemic from late 2019 to 2022 shows the vitality and urgency of the presence of medical volunteers during this emergency. At the start of the Covid-19 pandemic in Indonesia, around 5,500 medical volunteers were recruited specifically for Jakarta; yet another province. Even so, until now, the presence and role of medical volunteers in

carrying out various medical actions during an emergency period still generates debate and in-depth discussion from the perspective of medical ethics and health law <sup>1</sup>.

The ethical dilemma that often arises when there are limited health resources during an emergency is the demand that the allocation of medical resources must remain in accordance with the principles of medical ethics <sup>2</sup>. In the era of the COVID19 pandemic, White and Lo (2020) recommended ethical guidelines for allocating resources which emphasized that considerations of race, religion, gender, wealth, citizenship, insurance ownership, property, intellectual disability, status and social relations should not be used <sup>3</sup>. Meanwhile, Emanuel et al.

recommend ethical guidelines based on the principles of optimizing benefits, providing fair treatment, giving priority to health workers or patients who have instrumental value in a pandemic, and prioritizing those who are more vulnerable<sup>4</sup>.

These medical ethical considerations seem to provide rational support for the presence of medical volunteers as part of efforts to prioritize public safety during emergencies including the Covid-19 pandemic. Even so, every action in a medical context is very vulnerable to dealing with legal problems because it is related to interventions against authorities and even the safety of other human lives, especially patients<sup>5</sup>. Because of this, legal problems are clearly visible when the question arises, how is the legal protection of these medical volunteers both in terms of work safety, welfare and if in a series of medical activities during an emergency period it causes dissatisfaction from the subjects served.

In general, the definition of medical volunteers (medical volunteers) can refer to the limitations formulated by Volunteer FDIP that, *"Medical volunteers are the medical professionals, students, nurses and doctors participating in different medical and healthcare support programs to make some positive impact in the community by contributing their medical skills and knowledge."* Thus, in practice, medical volunteers are volunteers with a health education background who are recruited at certain times to strengthen existing health workers in handling public health emergencies<sup>6</sup>.

In the realm of law, the subject of *"medical volunteer"* is not explicitly stated in the laws and regulations in Indonesia. Even so, based on the definition of medical volunteers, they can be equated with the concept of *'health workers'* in Law Number 36 of 2014 concerning Health Workers. In the law, in article 1 paragraph 1 it is written that, *"Health Workers are everyone who devotes himself in the health sector and has knowledge and/or skills through education in the health sector which for certain types require authority to carry out health efforts."*

Even though medical volunteers can definitively be categorized as health workers so that they can carry out medical actions according to their respective capacities, the legal and administrative status of medical

volunteers, especially those recruited in public health emergency situations, is different from health workers who have permanent and official work ties at home. certain hospitals or health facilities. This of course has implications for a number of treatments for medical volunteers from various aspects including from a legal aspect. From a legal perspective, the problem that arises is the logic and form of adequate and certain legal protection for medical volunteers when carrying out medical actions during public health emergencies such as natural disasters and especially the Covid-19 pandemic.

In addition, looking at article (1) general provisions of the Regulation of the Minister of Health of the Republic of Indonesia Number 75 of 2019 concerning Health Crisis Management, health workers in this context can also include the Emergency Medical Team, the Public Health Rapid Response Team ). The Emergency Medical Team (Emergency Medical Team) and hereinafter referred to as EMT are groups of professionals in the health sector who provide medical services directly to people affected by disasters or emergencies as health workers in support of the local health service system. Meanwhile, the Public Health Rapid Response Team, hereinafter referred to as PHRRT, is a group of public health workers whose job is to respond quickly to public health conditions.

Even though it appears that medical volunteers are part of the health workforce, research related to legal protection in the context of emergency medical measures in Indonesia still focuses more on legal protection for health workers with permanent work ties rather than those with temporary status. The research that has been presented is still about legal protection for health workers, especially doctors who are permanent employees of a health institution. Meanwhile, medical volunteers for medical emergency measures are usually temporary or during emergency conditions<sup>7</sup>.

For this reason, this legal research aims to analyze regulations and forms of legal protection for medical volunteers who take medical roles and actions during emergencies in order to have legal certainty. The Covid-19 pandemic is the main context that represents this health emergency.

## **METHOD**

Legal research aims to find solutions to legal issues that arise in order to obtain prescriptions for what should be done on the issues discussed. This study emphasizes normative juridical research which focuses on examining the application of rules or norms in positive law, especially with regard to legal synchronization. Due to the type of normative juridical research, the approach used is the statute approach, namely an approach carried out by examining various laws that are related to the legal issues being handled, namely by looking at the consistency and suitability between one law and another. or with the Constitution. Apart from that, in order to clarify the analysis, another approach is also used, namely the conceptual approach which focuses on views, doctrines in the science of law.

## **RESULTS**

The results of the study explain that the form of legal protection for medical volunteers in an emergency period can be understood and developed in the context of health, disaster, and employment regulations, namely Law Number 36 the Year 2009 concerning Health, Law Number 29 the Year 2004 concerning Medical Practice, Law No. 36 of 2014 concerning Health Workers and Law Number 38 of 2014 concerning Nursing, Regulation of the Minister of Health of the Republic of Indonesia Number 75 of 2019 concerning Health Crisis Management, Law Number 11 of 2020 concerning Job Creation. For its implementation, several Decrees of the Minister of Health and Circular Letters of the Ministry of Manpower were issued which regulate and guarantee legal protection for health workers, including medical volunteers, during a health emergency which includes protection of work norms, protection of Occupational Health and Safety norms and protection labor social security norms.

## **DISCUSSION**

### **1. Regulation on Legal Protection of Medical Volunteers**

Authors should discuss the results and how In the Unitary State of the Republic of Indonesia (NKRI), the concept of legal protection cannot be separated from the

protection of human rights. In short, legal protection is an effort to organize various interests in society so that there are no collisions between interests and can enjoy all the rights granted by law. Organizing is done by limiting certain interests and giving power to others in a measurable manner.

The law aims to integrate and coordinate various interests in society, by limiting these various interests, because in a traffic of interests, the protection of certain interests can only be done by limiting the interests of other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected.

In other words, legal protection is providing protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. In Hadjon's opinion, legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the judiciary <sup>8</sup>.

Legal protection is needed in the health sector because the world of health is work that is directly related to human rights, especially the right to life. Therefore, state policy in forming laws in the health sector is a juridical basis that can serve as a guideline for the public in general and for health workers in particular. Legal protection and certainty law and legal justice for the community and health workers are very important, because with regulations in the health sector, the rights and obligations of health workers and the community are protected and there is legal certainty <sup>9</sup>. Legal protection and legal certainty for health workers providing health services is an opportunity and at the same time an encouragement to provide the best health services for people in every region of the Republic of Indonesia <sup>7</sup>.

The constitutional basis of legal protection for health workers in Indonesia is Article 28D paragraph (1) of the 1945 Constitution: "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law." Another basis is Article 28H paragraph

(1) of the 1945 Constitution which reads, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to receive health services". Implementing the mandate of the Constitution, the Indonesian government passed and issued at least 4 laws and regulations related to health which discussed legal protection for health workers, namely Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practice, Law No. 36 of 2014 concerning Health Workers and Law Number 38 of 2014 concerning Nursing.

For health workers including medical volunteers, the mandate to the state to provide legal protection is clearly stated in Article 27 paragraph (1) of Law Number 36 of 2009 Concerning Health (Health Law) which confirms that health workers are entitled to compensation and legal protection in implementing duties according to their profession. This provision is clearly supported by Law No. 36 of 2014 concerning Health Workers in particular article 57 point (a) which states that Health Workers in practicing have the right to obtain legal protection as long as carrying out their duties in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures.

Some of these laws and regulations clearly show the state policy of providing legal protection to health workers which includes the rights and obligations of health workers. Even so, in the context of medical volunteers during emergency medical procedures, the mandate of the four laws does not yet clearly define the rights and obligations of medical volunteers, especially during emergencies, whose status is usually in particular legal protection as professional workers who have temporary work contracts. that is, during a health crisis. According to the general provisions of Article 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 75 of 2019 concerning Health Crisis Management, a Health Crisis is an event or series of events that results in fatalities, injuries/illness, displacement, and/or potential hazards that impact on public health. requires a rapid response beyond the normal course of action and inadequate health capacity.

This condition of abnormal response does not only apply to the vulnerable public but also to the safety of health workers including

medical volunteers. Therefore, the legal protection given to medical volunteers must also cover various aspects of life, including health, work safety and socio-economic welfare. Thus, it is inevitable to make Law Number 11 of 2020 concerning Job Creation ("Job Creation Law") and Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment ("PP 35/2021") as implementing regulation to become part of the regulatory system for legal protection for medical volunteers who are bound by temporary contracts with the government.

According to the original article 1 number 10 of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment ("PP 35/2021"), contract workers are a term that is commonly used for workers with specific time work agreement ("PKWT"). PKWT itself is a work agreement between workers and employers to enter into a working relationship for a certain time or for a certain job. In order to clarify the position of part-time workers, including medical volunteers during an emergency, article 57 of the Job Creation Law emphasizes that PKWT is made in writing and must use Indonesian and Latin letters and be made specifically for one type of work. This written agreement legally strengthens the position of medical volunteers.

Apart from that, being a medical volunteer also puts your life at risk because you have the potential to be exposed to the same disease. Therefore, laws and regulations related to social security, health and safety are also regulated in Law Number 24 of 2011 concerning the Social Security Administration Agency ("UU BPJS") and Law Number 40 of 2004 concerning the National Social Security System ("UU BPJS") SJSN). According to the mandate of the BPJS Law, basically, everyone, including foreigners who work for a minimum of 6 (six) months in Indonesia, is required to become a participant in the Social Security program.

Employers, in this case the central and regional governments, are obliged to gradually register themselves and their workers or medical volunteers as participants with the

BPJS, in accordance with the social security program they are participating in and workers have the right to register themselves as participants in the social security program at the employer's expense if the employer has obviously not registering their workers with BPJS.

Meanwhile, what is meant by an employee is any person who works by receiving a salary, wages or other forms of remuneration. This means there is no difference between permanent workers (with an Unspecified Time Work Agreement) and contract workers (with a Specific Time Work Agreement). With this kind of regulatory system, how practical are the types and forms of legal protection for medical volunteers during emergency medical procedures? Several regulations and decisions of the Minister of Health to answer the rights and obligations of health workers during the Covid-19 pandemic can be used as a reference.

### **1. Forms of Legal Protection for Medical Volunteers in Emergency Periods**

The characteristics of health emergency conditions which are high risk for all parties make the type and form of legal protection for medical volunteers as part of the health workforce must cover various aspects of the life of medical volunteers. Article 57 of Law No. 36 of 2014 concerning Health Workers describes that Health Workers in practicing have the right to:

- a. Obtain legal protection as long as carrying out tasks in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures;
- b. Obtain complete and correct information from Health Service Recipients or their families;
- c. Receive compensation for services;
- d. Obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency, and religious values;
- e. Get the opportunity to develop their profession;
- f. Refuse the wishes of Recipients of Health Services or other parties that conflict with Professional Standards, code of ethics, service standards, Standards

- g. Operational Procedures, or provisions of Laws and Regulations; and obtain other rights in accordance with the provisions of the Laws and Regulations.

Encouraged by the mandate of the Law on Health Workers and the fact of the ferocity of the Covid-19 pandemic, the Ministry of Health issued a Decree of the Minister of Health HK.01.07/MENKES/327/2020 Concerning the Determination of Corona Virus Disease 2019 (Covid-19) Due to Work as a Specific Occupational Disease in Certain Jobs. Considerations for the Decree of the Minister of Health include:

- a. That health workers and non-health workers in carrying out their work to handle Corona Virus Disease 2019 (COVID-19) are at high risk of contracting Corona Virus Disease 2019 (COVID-19) so that they can cause work-related illnesses;
- b. That in order to guarantee the fulfillment of the rights of every worker against risks in dealing with Corona Virus Disease 2019 (COVID-19), it is necessary to determine Corona Virus Disease 2019 (COVID-19) due to work as a specific work-related disease based on certain criteria;
- c. That based on the considerations referred to in letters a and b, it is necessary to stipulate a Decree of the Minister of Health regarding the Designation of the Corona Virus Disease 2019 (COVID-19) as a Specific Occupational Disease in Certain Jobs;

In addition, to clarify the issue of reimbursement for Covid-19 patient care costs, the Minister of Health also issued a Decree of the Minister of Health number HK.01.07/MENKES/446/2020 Concerning Technical Guidelines for Claiming Reimbursement of Service Fees for Patients with Certain Emerging Infectious Diseases for Hospitals Organizing Services Covid-19. Furthermore, processing these provisions, the PB IDI Team (Indonesian Doctors Association) issued a Standard Guide for Doctor Protection in the Era of Covid-19 in August 2020<sup>10</sup>.

The following two points are types and forms of legal protection for doctors and medical volunteers during health emergencies,

especially the Covid-19 pandemic, based on several Minister of Health Decrees.

### 1. Legal Protection

As a pandemic that has such an enormous impact, the government has established Corona Virus Disease 2019 COVID-19 as an Occupational Disease (PAK) that is specific to certain jobs through Decree of the Minister of Health Number HK.01.07/MENKES/327/2020. Based on Presidential Regulation Number 7 of 2019 concerning Occupational Diseases, work-related COVID-19 is included in the category of types of occupational diseases caused by other biological factors in the workplace where there is a direct relationship between exposure to biological factors that arise due to work activities and the disease experienced by workers that can be scientifically proven using appropriate methods.

Furthermore, in these provisions, the government clearly states that certain jobs as referred to in the FIRST Dictum are work performed by health workers and non-health workers in handling Corona Virus Disease 2019 (COVID-19). In this context, medical volunteers during the Covid-19 pandemic are included. Thus, legal protection for medical volunteers during an emergency is placed in the context of insurance against work accidents or as part of a worker protection program in cases of work-related illnesses.

The government regulates legal protection through the Occupational Accident Insurance Program (JKK) for PAK cases due to COVID-19 through the Minister of Manpower Circular No.M/8/HK.04/V/2020 concerning Worker/Labor Protection in the Occupational Accident Insurance Program in Disease Cases Due to Work Due to Corona Virus Disease 2019 (Covid-19). The norms of protection for doctors and health workers who become medical volunteers during an emergency should include protection of work norms, protection of Occupational Health and Safety (K3) norms and protection of workers' social security norms.

Legal protection related to work norms for medical volunteers includes wages, working time, rest time and leave. In an emergency context, protection of K3 norms in the context of handling COVID-19 includes prevention and control of work accidents and work-related COVID-19.

Meanwhile, the protection of workers' social security norms for doctors by ensuring membership in the national health insurance (JKN) is carried out through the JKN-BPJS Health program as well as work accident insurance and death benefits which are held through the Employment BPJS program.

During the emergency period, especially the Corona pandemic, every health worker/doctor including medical volunteers who are being treated for COVID-19, the government bears the costs related to the care and treatment of COVID-19 infection. This provision is contained in the Decree of the Minister of Health Number HK.01.07/MENKES/446/2020 concerning Technical Guidelines for Claiming Reimbursement for Patient Services for Certain Emerging Infectious Diseases for Hospitals Providing COVID-19 Services. Furthermore, with regard to Occupational Diseases suffered, COVID-19 also refers to these rules, but the final condition after treatment/care, namely recovery, disability or death, can be borne by BPJS Employment or in accordance with insurance that has been followed, such as ASN Doctors borne by PT. Taspen and TNI/Polri doctors are paid for by PT. ASABRI.

In addition, the items paid include compensation in the form of money (temporary inability to work compensation, disability compensation, rehabilitation costs, children's scholarships, funeral money, death benefits) and disability benefits. In addition, financing medical examinations related to COVID-19 that are not guaranteed or insufficient claims in the COVID-19 guarantee are the responsibility of the relevant health service facility.

#### 1. Sosial Intensive and Social Protection

Other forms of legal protection for health workers including medical volunteers during public health emergencies, especially the Corona pandemic, are related to economic and social welfare. Doctors and health workers as well as medical volunteers during the emergency period as workers receiving wages/salary as well as service/medical services need to know their rights and obligations related to service during the COVID-19 Pandemic.

Every doctor works according to competence and a maximum of three practice places are often in an insecure position against disease exposure. In the context of the Corona

pandemic, this reality has resulted in the lack of uniformity regarding service tariff references during the COVID-19 pandemic. This reference is the basis for calculating in reaching an agreement on the amount of medical services to be received and or provided between doctors and hospital directors.

In particular, in the context of an emergency the reference for medical service rates including medical volunteers during the COVID-19 Pandemic, especially for doctors, needs to be adjusted and aligned with the performance or effort required to establish a diagnosis until the required medical action/procedure including rehabilitation and an applicable nominal value. which is part of the service tariff component refers to the doctor's medical service reference (tariff) that has been issued by IDI and associations under its auspices.

The government provides welfare protection with regulations regarding the provision of incentives and death benefits for doctors and health workers who handle COVID-19 contained in the Decree of the Minister of Health number HK.01.07/MENKES/447/2020 concerning which was the result of a revision of the previous Decree of the Minister of Health, namely number HK.01.07/MENKES/392/2020. Even so, in IDI's records, there are weaknesses, namely for doctors who work in more than one referral hospital or their health facilities are not a referral hospital for COVID-19. Weaknesses in other fields are the non-uniformity in the determination of professional fee calculations according to the gradation of treatment classes. Often services are assessed by the value of the type of service class which is often not uniform<sup>10</sup>.

More clearly, based on the Decree of the Minister of Health number HK.01.07/MENKES/447/2020, during a public health crisis such as a pandemic, the types of health workers include specialist doctors, doctors, dentists, midwives, nurses, and other medical personnel, including medical staff. health workers such as doctors who take part in special resident assignments, doctors who take part in the Indonesian Doctor Internship Program, doctors who take part in the Utilization of Specialist Doctors, health workers who take part in the Special Assignment of Health Workers in Supporting

the Healthy Nusantara Program, and volunteers appointed by the Ministry of Health who are involved in handling COVID -19 proposed by the head of the health service facility where the assignment is. The said workforce also still gets incentives after providing COVID-19 treatment and carrying out quarantine.

In particular, for medical volunteers who work as doctors during the emergency period, incentives and death benefits for health workers who handle Corona Virus Disease 2019 (COVID-19) are given from March 2020 to December 2020, and can be extended according to the provisions legislation. The amount of health worker incentives is as follows:

- a. Incentives for health workers who provide COVID-19 services in hospitals are as high as: 1) Specialist Doctor IDR 15,000,000/OB; 2) General Practitioner IDR 10,000,000/OB
- b. The amount of incentives given to doctors who take part in special resident assignments and doctors who take part in the Indonesian Doctor Internship Program at hospitals involved in handling COVID-19 is the highest in the amount of IDR 10,000,000 (ten million rupiah) while doctors who take part in the Indonesian Doctor Internship Program at The Puskesmas involved in handling COVID-19 is a maximum of IDR 5,000,000 (five million rupiah).
- c. The maximum amount of incentives given to doctors participating in the Utilization of Specialist Doctors involved in handling COVID-19 is IDR 15,000,000 (fifteen million rupiah).
- d. The amount of incentives for clinical pathology specialists and clinical microbiology specialists who examine SARS-CoV-2 specimens directly in the laboratory is the same as the amount of incentives for specialist doctors.

Other legal protection can be seen in the Decree of the Minister of Health number HK.01.07/MENKES/447/2020, the amount of death benefit is Rp. 300,000,000 (three hundred million rupiah) given to health workers who died from exposure to COVID-19 who provided services at health care facilities or health institutions, including doctors who took resident special assignments, doctors who took part in the Indonesian Physician Internship Program, doctors who took part in Utilization of

Specialist Doctors, and health workers who take part in the Special Assignment of Health Workers in Supporting the Nusantara Sehat Program, and volunteers appointed by the Ministry of Health.

In general, according to this government regulation, sources of incentive funding for health workers who are handling Corona Virus Disease 2019 (COVID-19) are borne by the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget through additional Health Operational Assistance (BOK). Meanwhile, funding for death benefits comes from the state budget.

## CONCLUSION

Forms of legal protection for medical volunteers in emergencies can be understood and developed in the context of health, disaster and employment regulations, namely Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2014 concerning Health Workers and Law Number 38 of 2014 concerning Nursing, Regulation of the Minister of Health of the Republic of Indonesia Number 75 of 2019 concerning Health Crisis Management, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 concerning Work Agreements for a Specific Time, Transfer Power, Working Time and Rest Time, and Termination of Employment. Implementing these laws and regulations, several Decrees of the Minister of Health and Circular Letters of the Ministry of Manpower were issued which regulate and guarantee legal protection for health workers including medical volunteers during a health emergency which includes protection of work norms, protection of Occupational Health and Safety (K3) norms and protection labor social security norms.

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