

Overcoming of COVID-19 Transmission: The Fulfillment of Right to Health and Education

Donna Okthalia Setiabudhi¹, Irwansyah², Toar Neman Palilingan¹, Ahsan Yunus²

¹Associate Professor, Faculty Law, Sam Ratulangi University, Indonesia,

²Associate Professor, Faculty Law, Universitas Hasanuddin, Indonesia

Abstract

The spread and transmission of the virus is very fast and widespread has become a concern of all people in the world to prevent the transmission and overcoming of COVID-19. This paper aims to analyze the legal aspects in overcoming COVID-19 transmission through the application of learning from home, both for schools and colleges. The research is a normative-legal research with statute, case and conceptual approaches. The results show that the attention of the government is more focused on economic and health issues and does not provide a balanced portion of education. Implementation of schooling or lectures from home is currently only regulated in a Ministerial Circular so that it is only a suggestion. Therefore, in order to be able to realize the protection and fulfillment of the right to education during Covid-19 pandemic, the government should issue legislation that becomes a reference for education providers and for the community so that their right to education is still granted under any circumstances.

Keywords: COVID-19; Constitutional Rights; Right to Health; Right to Education.

Introduction

Protection of the citizen's rights in a rule of law is a must. The fulfillment of this right is an obligation and responsibility of the State to protect and fulfill rights in all situations and conditions.¹ Looking to case law regarding civil commitment, many scholars and some lower courts have concluded that isolation and quarantine are constitutional only when the government can show by clear and compelling evidence that they are the least restrictive means of protecting the public's health.² But one this condition that faced by the world including Indonesia is pandemic Corona Virus Disease 2019 or known as Covid-19. The spread and transmission of the virus is very fast and widespread has become a concern of all people in the world and every country taking rapid steps in order to prevent the transmission and overcoming of Covid-19.

Until now, after 4 months since the first-transmission was announced by the President of the Republic of Indonesia, the curve of increasing the number of positive or reactive viruses continues to grow even in some areas experiencing a very significant increase. Then, prevention of covid-19 transmission was addressed by the government with the issuance of various regulations on all aspects of community life even in some areas that have imposed large-scale social restrictions (hereinafter abbreviated as PSBB – *Pembatasan Sosial Skala Besar*) although the effectiveness of this step cannot yet be said to be effective in the prevention and overcoming of Covid-19.

The aspect of community life that is strongly affected by the spread of Covid-19 is education.² Since March, schools and campuses have closed so that the entire learning process is done online or online-learning. Certainly, this is a new thing for most Indonesian people, especially among people who have not or rarely come into contact with technology and informatics. Various complaints from the public regarding the implementation of education from home (school/online-lectures) were not uncommon, ranging from difficulties in understanding learning method to the difficulties of funding related to this system.

The government policy to implement learning from home is carried out in the presence of a circular from the Ministry of Education and followed up by each local government. Online learning solutions is one of the government efforts to provide protection and fulfillment of the community right to health, but on the other hand, various difficulties

faced by the community related to the complexity and additional costs because online learning is the duty of the State to take solutions and attitudes that can provide a balance between the protection and fulfillment of the right to health and education.³

Beginning in June 2020, when it began to spread the discourse to re-open education and stopping online-learning system, protests from the community also arose because of fears if schools and campuses became new clusters in the transmission of Covid-19. However, on the other hand there were also circles people who have started to not feel at home with online-learning because it causes various complications and difficulties.

The government's policy to implement learning from home is carried out in the presence of a circular from the Ministry of Education and followed up by each local government. Online learning solutions is one of the government efforts to provide protection and fulfillment of the community's right to health, but on the other hand, various difficulties faced by the community related to the complexity and additional costs because online learning is the duty of the state to take solutions and attitudes that can provide a balance between the protection and fulfillment of the right to health with the right to education. This is interesting for the author to do a study related to legal aspects in overcoming Covid-19 transmission through the application of learning from home both for schools and colleges.

Method

The research is a normative-legal research conducted by examining library materials or secondary data consisting of primary, secondary and tertiary legal materials. The materials are arranged systematically, reviewed then drawn a conclusion in relation to the problem under study. It is carried out by examining library materials or secondary data.

- **Guarding Right to Health and Education: The Constitutional and Human Rights Dimensions:** The discourse on the rule of law began to develop as ideas emerged about the theory of natural law, which grew in Europe in the seventeenth to eighteenth centuries. In general, in the theory of the rule of law, there are 2 (two) types of conceptions about the rule of law, which consist of the concept of the rule of law in the sense of *rechtsstaat* and in the sense of the rule of law. The term *rechtsstaat* is known in Continental-European countries, this understanding

was developed among others by Immanuel Kant, Paul Laband, Julius Stahl and Fichte. Whereas, the rule of law was developed in Anglo-Saxon countries, adherents of the common law as pioneered by A.V. Dicey in England. However, basically the two conceptions have one similar purpose, namely the existence of protection of human rights and respect for the dignity of man.⁵

The protection of human rights in a rule of law is carried out among others by establishing a constitution which is a binding basic law based on the highest authority or the principle of sovereignty adopted in a country and in the environment of democratic countries, the people are the holder of sovereignty that determines the enactment of a constitution.⁶ Constitutionalism today is considered a necessary understanding for every modern country. This was stated among others by C.J. Friedrich, in essence, that the general agreement or consensus among the majority of the people regarding the idealized building pertains to the State. The organization of the state is needed by members of the political community so that their shared interests can be protected or promoted through the establishment and use of mechanisms called the State.⁷ The consensus that guarantees the establishment of constitutionalism in modern times is generally understood to rely on 3 (three) consensus, as follows:⁸

1. Consensus on general goals or ideals (the general goals of society or general acceptance of the same philosophy of government).
2. Consensus on the rule of law as the basis of government or State administration (the basis of government).
3. Consensus on the form of institutions and constitutional procedures (the form of institutions and procedures).

In the view of Frans Magnis Suseno, the rule of law is State authority that must be exercised on the basis of good and fair law which is the basis of all State actions and the law itself must be good because it is in accordance with what is expected by society from the law and is fair because of the intent the basis of all law is justice characterized by (1) legal certainty, (2) demands for equal treatment (3) democratic legitimacy and (4) demands for reason.⁹ The ideals of the Indonesian rule of law can be clearly seen from the goals of the Indonesian state contained in the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia, which is to

protect all Indonesians and all over Indonesia, promote public welfare, educate the nation' life and participate in carrying out world order. These four objectives are affirmed without prioritizing their fulfillment so that the duty of the state in realizing protection is equal and equal to the State's duty in realizing prosperity and intellectual life of the nation.

The protection and fulfillment of the right to health and education is one of the tasks of the State which cannot be ignored under any circumstances. The right to health as stipulated in Article 28H paragraph (1) which reads "*every person has the right to live in prosperity physically and mentally, to live and to have a good and healthy living environment and the right to obtain health services.*" Normatively, the 1945 Constitution does not state that the right to health is a human right or part of human rights. However, because Article 28H is in a chapter or articles regulating human rights, the material is considered human rights or part of human rights.¹⁰ The Indonesian Constitution has affirmed that the right to health is a fundamental right for humans. The basic philosophy of guaranteeing the right to health as a human right is *theraison d'etre* of human dignity. Health is a fundamental right of every human being. Therefore, every individual, family and community have the right to obtain protection for their health and the government is responsible for regulating and protecting so that the community is fulfilled the right to live healthy.¹¹

The right to health as a fundamental right that demands state responsibility in its fulfillment is reinforced in the declaration made by WHO and UNICEF known as *Almaata* declaration, namely the important WHO and UNICEF Declaration of Almaata adopted at the International Conference on Primary Health Care in 1978. The conference reaffirms the right to health which is part of human rights, where the fulfillment of the right to health is the responsibility of the State and the goals of the whole world which must also be supported by various sectors.¹³

In the literature, there are several terms used in referring to the right to health, namely: *human right to health, right to health, or the right to attainable standard to health*. In addition, there are also other terms such as *right to health, rights to health care, right to health protection* and in broad terms *health rights*. In other words, the mention of the right to health still varies between one author and another, so the term has not been generally agreed upon.¹²

Right to health does not always mean the right for everyone to be healthy and not sick, or the obligation of the government to provide expensive health care facilities that are beyond the government' capacity. But this right is more demanding that the government and public officials can make policies and work plans that lead to the availability and affordability of health service facilities for all in all possibilities and as much as possible in a relatively short time. Article 12 Paragraph (1) of *the International Covenant on Economic, Social and Cultural Right* (ICESCR), the right to health is explained as "the right of everyone to enjoy the highest standards that can be achieved for physical and mental health" does not cover the area of health services.

The regulation of human rights in the constitution has shown that human rights are constitutional content that has the power to bind all parties, including state and regional government officials, executive, legislative and judiciary in the fulfillment of human rights and this is not only the responsibility of state administrators and government, however, is the responsibility of all people and all citizens even though responsibility for the implementation of human rights rests with the government, including the main responsibility in fulfilling the right to education.¹⁴

- **Reality of Right Protection to Health and Education in COVID-19 Pandemic:** The right to health and education are rights that must be protected and fulfilled by the State under any conditions including during the Covid-19 pandemic. For the fulfillment of the right to health, during the Covid-19 pandemic, the government has issued several regulations, namely:

1. Perppu No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling CoronaVirus Disease 2019 (Covid-19) Pandemic.
2. Presidential Instruction No. 4 of 2020 concerning re-focusing activities, budget reallocation and procurement of goods and services in the context of accelerating the handling of Corona Virus Disease 2019 (Covid-19).
3. Presidential Decree No. 11 of 2020 concerning Stipulation of Community Health Emergency of Covid-19.
4. Presidential Decree No. 12 of 2020 concerning the Stipulation of non-natural disasters the Corona Virus Disease 2019 (Covid-19) as a national disaster.

5. Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Acceleration of Handling Corona Virus Disease (Covid-19) was established in Jakarta on March 31, 2020 by President Joko Widodo.
6. Presidential Decree No. 7 of 2020 concerning the Task Force for the Acceleration of Corona Virus Disease 2019.
7. Presidential Decree No. 9 of 2020 concerning Amendment to Presidential Decree No. 7 of 2020 concerning Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19).

In addition to the rules above, the relevant ministries also issued regulations and adopted policies in the context of overcoming Covid-19 transmission, including:

1. Regulation of the Minister of Trade No. 23 of 2020 concerning Provisional Prohibition of Antiseptic Exports, Mask Raw Materials, Personal Protective Equipment and Masks.
2. Regulation of the Minister of Law and Human Rights No. 11 of 2020 concerning Provisional Prohibition of Foreigners Enter the Unitary Territory of the Republic of Indonesia.
3. Regulation of the Minister of Finance No. 23/PMK.03/2020 concerning Income Taxpayers Affected by Corona Virus Outbreak.
4. Regulation of Financial Service Authority No. 11/POJK.03/2020 concerning the National Economic Stimulus as a Countercyclical Policy on the Impact of Covid-19 Pandemic.
5. Regulation of the Minister of Health No. 9 of 2020 concerning Large-Scale Social Restriction Guidelines in the Accelerating of Handling Corona Virus Diseases 2019 (Covid-19)

The State is a central actor who holds the main responsibility in implementing policies based on international law or international treaties where the right to health is protected.¹⁵ In carrying out these efforts the state must take strategic steps in the fulfillment of the right to health, by involving all stakeholders in the health sector both from the government and from the private sector. In this case the right to health as a human right legally gives birth to a relationship between an individual and the state, where state obligations relating to human rights must refer to three principles namely

respect, protect and fulfill rights for health which is part of human rights.¹⁶ This became the main reason so that in the Covid-19 pandemic, the government issued several regulations, namely:

- (a) PerppuNo. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic
- (b) Presidential Instruction No. 4 of 2020 concerning re-focusing activities, budget reallocation and procurement of goods and services in the context of accelerating the handling of Corona Virus Disease 2019 (Covid-19).
- (c) Presidential Decree No. 11 of 2020 concerning Determination of the Public Health Emergency Covid-19.
- (d) Presidential Decree No. 12 of 2020 concerning the Stipulation of non-natural disasters the Corona Virus Disease 2019 (Covid-19) as a national disaster.
- (e) Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Acceleration of Handling Corona Virus Disease (Covid-19) was established in Jakarta on March 31, 2020 by President Joko Widodo.
- (f) Presidential Decree No. 7 of 2020 concerning the Task Force for the Acceleration of Corona Virus Disease 2019.
- (g) Presidential Decree No. 9 of 2020 concerning Amendment to Presidential Decree No. 7 of 2020 concerning Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19).

As described above it can be seen that a number of regulations related to health have been issued but for the right to education it is only regulated in a circular of the Minister of Education so that it appears that the government's priority is on regulations related to health. UNICEF, WHO and IFRC in COVID-19 Prevention and Control in Schools in March 2020 states that in a situation of faster virus transmission, schools must be closed but the education process must continue to run through online-learning activities using various media. This is based on UNESCO data that 1.5 billion students and 63 million teachers at the elementary to secondary level in 191 countries affected by the Covid-19 pandemic and become extraordinary because it has never happened before.

The education world experienced a very significant change because there was a change in the way of learning from face-to-face learning to online learning and digital transformation which is considered the safest way in deciding the spread of the Covid-19 outbreak.

The government's policies related to online or online learning in general provide new experience for all stakeholders related to education and with this policy the government expects that the right to education remains protected even though it is under the Covid-19 pandemic. However, the realization of these government policies cannot be avoided from various barriers that require an effort to arrange the ideal method and mechanisms in overcoming various problems in learning this online method. The reality of Indonesian society shows that information technology does not touch all levels of society. Online learning cannot be done if the school or parents do not have sufficient capital to access the tools. This learning will not occur when teachers and students alike do not have computers, cellphones, or adequate quotas and internet networks. Many complaints both from educators, students and parents related to the implementation of learning from home. Many educators have complained about the limited availability of technological facilities, operational capabilities and internet network limitations in some areas.

To conduct a good learning process, there are basic elements that must be fulfilled, namely curriculum, human resources, teachers, lecturers and staff of teaching facilities and infrastructure. In the atmosphere of the Covid-19 pandemic, there is a need for regulations that can provide regulation and become guidelines for the world of education in conducting teaching and learning processes so that they do not lose the right to education. This regulation must be able to answer all obstacles faced by the community in obtaining their right to education during the Covid-19 pandemic. This regulation not only regulates the procedures but also regulates funding problems in the implementation of education from home because it cannot be denied that the implementation of online learning method requires large costs so that the rules related to the budget and funding must be set forth in the legislation that guides and guides the implementation of certain tasks.

Conclusion

Education is a right that must be protected and fulfilled by the State including during Covid-19

pandemic. Today, the attention of the government is more focused on economic and health issues and does not provide a balanced portion of education. Implementation of schooling or lectures from home is currently only regulated in a Ministerial Circular so that it is only a suggestion. Therefore, in order to be able to realize the protection and fulfillment of the right to education during Covid-19 pandemic, the government should issue legislation that becomes a reference for education providers and for the community so that their right to education is still granted under any circumstances.

Ethical Clearance: The Research Ethical Committee at scientific research by ethical approval of both environmental and health and higher education and scientific research ministries in Indonesia.

Conflict of Interest: The authors declare that they have no conflict of interest.

Funding: Self-funding

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