

Problem Identification of Islamic Law Implementation in COVID-19 Mortuary Practice in Indonesia from the Perspective of Forensic Pathologists

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ABSTRACT

Indonesia consists of many different ethnic groups and religions. Islam is the major religion in Indonesia, thus also rendering Islamic tradition as being significant in Indonesia. This is also the case with Islamic law. In March 11, 2020, COVID-19 was declared as pandemic by WHO. Since then, there were reported cases of forceful seizure of deceased bodies by the deceased's family in Indonesia. The aim of this research is to understand the problems related with Islamic law implementation in COVID-19 mortuary practice in Indonesia from the perspective of forensic pathologists. This study also aims to analyze whether the solutions given are in accordance with Islamic law.

The sampling method used was convenience sampling. The respondents were forensic pathologists from different areas in Indonesia. 19 out of 20 respondents reported problems and solutions. The solutions were in accordance to Islamic law.

Problem that is present in mortuary practice in the context of muslim COVID-19 patients are related to the bathing and shrouding process. There is distrust on whether proper care had been carried out. The situation happened due to the community's lack of comprehensive understanding of proper Islamic mortuary practice in COVID-19 pandemic context.

Keywords: COVID-19, forensic pathologists, Islamic law, mortuary practice

BACKGROUND

Indonesia consists of many different ethnic groups and religions. There are 1,331 different ethnic groups, in which 79.45% still uses their

own local language as primary language. There are 6 official religions in Indonesia, not including indigenous beliefs that is grouped within the umbrella term of "*penghayat*

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kepercayaan” (adherents of local religions). Per June 2021, according to the data from Population and Civil Registration Agency (*Dukcapil*) of Ministry of Home Affairs Indonesia, there are 272.23 million people within the population of Indonesia, 86.88% (236.53 million people) of those are Muslims.¹ Islam as the major religion in Indonesia thus results in Islamic tradition as generally being regarded significant on all sectors in Indonesian lives.

Islamic law tradition is a normative tradition that came with the spread of Islam to Indonesia. Islamic law² is sourced from Islamic teaching that is regarded as sacred as it is directly commanded by God, it is complied by muslims as it is regarded as the core of Islamic teaching.³ In Al-Baqarah verse 208, God commanded each men that believes in Islam to apply Islamic teaching fully, not only believing and only practising partly.⁴ This emphasize is sufficient as basis to apply Islamic law in all aspects of human life, including in the field of medicine and especially in the handling of deceased bodies.

As stated in the constitution, Indonesia commits to ensure the right to belief each person their respective religions and to practice freely in accordance to their religion and belief.⁵ This includes in the case of mortuary practice. Proper funeral care is the right of the deceased and is the obligation of the heirs. The obligation is as obliged in Islamic inheritance law, that is the heirs should finish burial before dealing with the inheritance. This includes from bathing the body until the burial.⁶

In March 11, 2020, COVID-19 was first declared as pandemic by WHO.⁷ In Indonesia, first reported COVID-19 case was confirmed in March 2, 2020.⁸ Ever since, there have been numerous problems that arise in the context of COVID-19 deceased bodies in Indonesia. Clashes between the community and healthcare personnels, especially in the case of forceful seizure of deceased body, happened in several areas in Indonesia, namely in Bondowoso⁹, Buol¹⁰, Jember¹¹, Kolaka¹², and Situbondo¹³.

The accident in Situbondo even went viral on social media. Mostly, the reasoning behind the seizure was because the body needs to be bathed at home, or rather the family wants to directly bathe the body. This is problematic in the medical sense as bathing at home without precautions could lead to COVID-19 infection.

These sparks of controversy led relevant institutions to address the problem. Institutions in Indonesia had released several regulations on how to handle the deceased body in accordance to Islam while also insuring safety of the morticians. Director General for Guidance of the Islamic Community of Ministry of Religion Indonesia released Circular Letter Number P-003/DJ.III/Hk.00.7/04/2020 to revise prior Circular Letter Number P-002/DJ.III/Hk.00.7/03/2020 about COVID-19 handling in public areas, meanwhile Kementerian Kesehatan (health ministry of Indonesia) released Guideline on COVID-19 Deceased Body Handling and Burial. Both legislations were used as basis of Majelis Ulama Indonesia’s fatwa *Nomor 18 Tahun 2020 tentang Pedoman pengurusan Jenazah (Tajhiz al Janaiz) Muslim yang Terinfeksi Covid* as one of the main guidelines for handling of the COVID-19 infected deceased body.¹⁴

There are several matters on Islamic law that should be enforced:

1. Male deceased body should be bathed by male handler and female deceased body should be bathed by female handler, except in the case of spouse. The fatwa from MUI also enforces the same even in the context of COVID-19. If there are no available same gender mortician, the deceased body could also be bathed without undressing the body or just by *tayamum*. *Tayamum* is done by wiping the face and both arms with dust, all the while the mortician wearing appropriate PPE to protect themselves from COVID-19 infection.¹⁵
2. The moritican should bathe the deceased body while wearing gloves to protect from *najis* from the body.¹⁶

3. The body should be shrouded by 3 layers of clothes for male and 5 layers of clothes for female. The body can then be put into water tight container.¹⁷
4. The body in the coffin is then arranged to be facing the qibla.¹⁷

Identification of problems on Islamic law implementation in the matter of mortuary practice in COVID-19 pandemic in Indonesia is important as it is shown that there are many reported problems in Indonesia. The example of forceful seizure of deceased body is only one of the many problems that arise within the community. This research is qualitative research that includes forensic pathologists from all around Indonesia that is directly involved with Islamic law implementation in COVID-19 mortuary practice. The aim of this research is to understand the problems related with Islamic law implementation in COVID-19 mortuary practice in Indonesia from the perspective of forensic pathologists. This also includes the solutions that were given by the forensic pathologists. The aim is then also to analyze whether Islamic law had been implemented accordingly in COVID-19 specific mortuary practice in Indonesia.

MATERIAL AND METHODS

The sample of this study was chosen using convenience sampling method. Forensic pathologists that were involved in this study were 20 respondents from different islands in Indonesia. 11 of the respondents were male (55%) and the 9 others were female (45%). Religion wise, 16 of the respondents were muslims (80%) and 4 others were non-muslims (20%). The forensic pathologists studied forensic from different universities in Indonesia, namely UI, UGM, UNAIR, UNPAD, UNDIP, and USU. The forensic pathologists were placed in hospitals all around Indonesia, with at least 6 years of experience. Thus, the 20 respondents that were involved in this study were amongst the best forensic pathologists in Indonesia.

The respondents filled a questionnaire that contains questions related to the problems

surrounding the topic of mortuary practice in Indonesia on the context of COVID-19. The questions included all problems that arose around the topic. Afterwards, the solution that the forensic pathologists did to overcome the problem were also asked. Each respondents received phone credit as appreciation from the researcher after the result is confirmed and clear. The study is done after acquiring ethical clearance from MHREC FKKMK UGM no. KE/FK/0931/EC/2021.

FINDING AND DISCUSSION

Funeral care is one of the obligations in the muslim community that belongs to the category of *wajib kifayah*, that is when part of the community fulfilled the obligation, the other part of the community is no longer obliged to do so¹⁹. Funeral care in Islamic law starts from bathing the deceased body, shrouding the body, funeral prayer, and lastly burial. In almost all of the process, the immediate family will mostly be involved in the process if the family knows the procedure or else the family would watch. It is not uncommon for a son to bathe his father's deceased body, shroud the body, do the funeral prayer, carry the coffin to the cemetery, and finally bury his own father. Daughters are also commonly bathe their own mothers' deceased bodies. This common habit, due to COVID-19, needs readjustment especially when the patient died of COVID-19 infection.

19 out of 20 forensic pathologist respondents reported problems and the solution they provided surrounding the handling of muslim COVID-19 deceased body. The other 1 respondent that didn't report were from Papua. The problems that were reported were related to the family distrust on whether Islamic law has been implemented properly and the others were related to facility and infrastructure relevant to the funeral care. Problems that were related to distrust were:

- a. The family did not believe that the deceased body were already properly shrouded and funeral prayer were already

- conducted when the deceased body is ready to be buried;
- b. The family demanded the body to directly in contact with the ground (in cases of COVID-19, the body is buried inside a coffin thus it is worried that the body is not in contact with the ground);
 - c. The family feels that the body has not been bathed properly and demanded the body to be bathed by the family;
 - d. The family demanded the shroud to be untied;
 - e. The family refused the body to be shrouded in plastic;
 - f. The family wanted to open the coffin to see the deceased's face, to pray and to pay respect;
 - g. The family demanded the body to be immediately buried;

Related to the problems above, the respondents overcame the situation by explaining to the family about the fatwa from MUI about funeral care guidelines of muslim COVID-19 deceased body.¹⁹ The majority of the respondents explained that according to the fatwa, funeral care should be held according to health protocol and by authorized personnels. In the case of the family demanded the body to not be covered in plastic and for the shroud to be untied, it was also explained that the process had been held in accordance to the fatwa. One of the respondent improvised by asking the family to prepare 3 *gulu-gulu* (one *gulu-gulu* equals to about a fist) of dirt to be included inside the coffin, so that the body while buried inside a coffin still in contact directly with the ground. The dirt prepared were used to support the body to lean the body towards qibla. Other respondents recorded the funeral prayer in video to then be send to the family (in the case of the family not able to join the funeral prayer), to prove that proper funeral prayer had been done. On other cases in which the family is available, the family was asked to join the funeral prayer.

It seems that there are many in the muslim community that is still not unclear on how

funeral care should be done in the context of COVID-19, this leads to refusal and distrust on whether proper care had been done. On the other hand, forensic pathologists should understand how proper funeral care in the context of COVID-19 should be held in accordance to Islamic law. This needs to be so because forensic pathologists are the ones to lead the process. By understanding the relevant law, problems and misunderstanding in practice can be minimized. In Indonesia, there are several fatwas released by MUI that can be referred to, such as:

- a. *Fatwa MUI Nomor 34 Tahun 2004 tentang Pengurusan Jenazah (Tajhiz al-Jana'iz) Dalam Keadaan Darurat* about the implementation of funeral care in emergency situation.
- b. *Fatwa MUI Nomor 14 Tahun 2020 tentang Penyelenggaraan Ibadah dalam Hal Terjadi Wabah COVID 19* about proper prayer service in the context of COVID-19 pandemic; and
- c. *Fatwa MUI Nomor 18 Tahun 2020 tentang Pedoman Pengurusan Jenazah (Tajhiz al-Janaiz) Muslim yang Terinfeksi COVID 19* about the implementation of funeral care for muslim COVID-19 deceased body.

The guideline on proper Islamic mortuary practice in the context of COVID-19 is as below:

1. Funeral care (*tahjiz al-janaiz*) for infected COVID-19 patient, especially on bathing and shrouding should be done in accordance with health protocol and by authorized personnels while also in accordance with Islamic law. Funeral prayer and burial should be done as usual while still maintaining proper conduct to minimize COVID-19 infection.
2. The guideline on bathing COVID-19 deceased body is as below:
 - a. The body is bathed without undressing the body;
 - b. The mortician should be the same gender as the body;

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- c. If the present mortician is from the opposite gender, the bathing can also still be done without undressing the body. The other alternative is to substitute bathing with *tayamum*;
 - d. The mortician should clean *najis*²⁰ before bathing the body;
 - e. The mortician bathes the body by pouring the water to all part of the body;
 - f. If an expert considers bathing not an option, bathing can be substituted with *tayamum* that is by: 1) wiping the face and both hands of the body (up to the wrists or beyond) with dust. 2) To protect the mortician, PPE should be worn while conducting *tayamum*.
 - g. If exxpert consider bathing and *tayamum* not an option, according to *darurat syar'iyah*²¹, the funeral care can be continued without bathing or *tayamum*.
3. The guideline on shrouding COVID-19 deceased body is as below:
- a. After the body is bathed, done *tayamum*, or maybe due to *darurat syar'iyah* the body is not bathed or done *tayamum*, the body then is shrouded using shroud covering the whole body. Then, the body is put inside waterproof body bag to prevent viral transmission and to protect the personnels handling the body.
 - b. After shrouding, the body is then put into a water tight coffin leaning right so that when buried the body faces the qibla.
 - c. If after shrouding there still is *najis* on the body, the *najis* can be ignored.
4. The guideline on funeral prayer is as below:
- d. The funeral prayer is recommended to be done as soon as the shrouding process is finished.
 - e. Funeral prayer must be held in safe area to prevent COVID-19 infection.
 - f. It should be done directly (in the same area) by at least one person. If it is not possible, the funeral prayer can be conducted in the cemetery before or after burial. If it is still not possible, the funeral prayer can be conducted from afar.
 - g. People doing the funeral prayer must protect themselves from COVID-19 infection.
5. The guideline on COVID-19 deceased body burial is as below:
- a. It must be done in accordance to Islamic law and health protocol.
 - b. It is done by sending the body with the coffin into the grave without reopening the coffin, plastic wrapping, or the shroud.
- The guideline above on proper mortuary practice, should the community understand, can prevent distrust and refusal from the family. Proper Islamic mortuary practice is commonly understood within the community, though there seems to be misunderstanding when it is related to COVID-19 pandemic, that proper measures should also be done to prevent COVID-19 infection from the deceased body. These measures, that is changes of rules within the context of emergency, is accommodated in Islamic law. In emergency situations, rules can be overruled²².
- Morally, forensic pathologists in mortuary practice represents the family's obligation to fulfil the deceased body rights to be properly taken care of until burial. This is why it is important for forensic pathologists to understand the Islamic law surrounding the topic of mortuary practice. This should be done in order to maintain proper Islamic law implementation and health protocol on the practice. In Islam, the principle of *maqasid shariah* dictates that the goal of Islamic law is to achieve *maslahah*, Islamic term for utilitarian benefit²³. It is also the case for proper mortuary practice, that is to achieve the *maslahah* of the deceased body. Before achieving the *maslahah* of the deceased body, though, *maqasid shariah* dictates that the essential interests are amongst

the first to be protected, that is faith, life, lineage, intellect, and property, in this case arguably the safety of the community from COVID-19 infection. The fatwa from MUI can serve as introduction to the family in order to achieve better understanding about the matter. While, for example, recruiting more female mortician to help handle the process so that female deceased bodies can be bathed accordingly is a good step to take, it is not obliged by the fatwa as there is an alternative to bathe the body without undressing.

Other than distrust and refusal due to the misunderstanding of the family on proper mortuary practice on the context of COVID-19, respondents also reported problems due to lack of facilities and infrastructure. For example, the lack of ambulances and near cemeteries resulted in the delay of burial. Another example is the tight small rooms and uncomfortable PPE resulted in slow process of funeral care.

These issues related to the facilities and infrastructure does not relate directly with the implementation of Islamic law. Though, it is still relevant as in Islam burial is to be conducted as soon as possible, as stated in the hadith, "Be fast in handling a deceased body. For if the body lived a virtuous life, you are helping them to be closer to virtue. And if the body lived a sinful life, you're letting them go from your shoulder." (HR. Bukhari). Late burial due to specific conditions such as a pandemic is allowed²⁵, it is better to do the burial faster.

CONCLUSIONS

Problem that is present in mortuary practice in the context of muslim COVID-19 patients are related to the bathing and shrouding process. The family demanded the process to be done in accordance with Islamic law as known commonly. There is distrust from the family on whether the forensic pathologists had done it properly in accordance with Islamic law. The situation happened due to the community's lack of comprehensive understanding of proper Islamic mortuary

practice in COVID-19 pandemic context. While the proper care, within the bounds of COVID-19 pandemic, had been carried out, the family still demanded proper care due to lack of understanding. This lack of understanding is due to failure of relating the commonly known procedure with the COVID-19 situation specific procedure. The forensic pathologists, as the ones that deals with the deceased bodies directly, had done accordingly to Islamic law and provided appropriate solutions to the problems.

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