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Health Service Maladministration's in the Covid-19 Pandemic Era

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Abstract

This study examines the actions of maladministration frauds in health services particularly in the condition of Covid-19. This study aims to formulate which health services are categorized as maladministration, notably during Covid-19 pandemic. The method used in this study is a normative research method followed by three approaches. Those approaches are statutory approach, conceptual approach, and historical approach. The outcomes of this study indicate that the condition of Covid-19 pandemic has opened some opportunity of maladministration frauds in the field of health services. Given the importance of public health services, notably during the Covid-19 pandemic, it is highly important to anticipate the maladministration frauds to not massively occur. When the acts of maladministration frauds still occur although attempts to prevent it have been carried out, hence the law must be present to provide justice. This paper also elucidates about actions need to be taken so that law enforcement related to maladministration frauds in the field of health services can be solved

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INTRODUCTION

The Preamble of the 1945 Constitution of the Republic of Indonesia, contains the national goals for the nation's establishment. One of the goals is to create prosperity for all Indonesian blood (Soemarsono, 2017). So that the state welfare can be actualized, health services are part of the human rights of citizens that must be maintained, and the needs must have complied.

Regarding health services, the World Health Organization (WHO) proclaimed the global pandemic status for the 2019 Coronavirus or the so-called Corona Virus Disease 2019 on Wednesday, 11 March 2020, which hereafter referred to as Covid-19. At the time when Covid-19 first announced, WHO recorded the number of 118,000 confirmed cases spread in 110 countries around the world (Widyaningrum, 2020).

The expansion of Covid-19 can be analogous to a big wave demolishing the universe. Based on the data published by the Ministry of Health of the Republic of Indonesia on Friday, 11 June 2020, globally confirmed that Covid-19 had infected approximately 7,145,539 people with confirmed cases, with 408,025 were declared died from the virus. This means there has been an increase in the number of confirmed cases for the past three months by 7,027,539 people ever since this pandemic first announced as a global outbreak by WHO (Yurianto, 2020). The number of confirmed cases has been alarming, considering that there is no indication any medication or vaccine has found to cure the virus and stop the pandemic until the disease spreads throughout the world with more people are infected.

The occurrence of the Covid-19 pandemic has alarmed the nation's resilience and/force to take various security and rescue attempts. Even under normal conditions, Law Number 36 of 2009 concerning Health has given the government a mandate to provide services, protection, and rescue to all citizens. Covid-19 pandemic has put multiple pressures on medical workers. With an extreme increase spreading throughout Indonesia, recuperation protocols that are not simple, as well as the state budget needed to handle this pandemic that is not minor, have created a panic attack for the government (Nicomedes & Avila, 2020) due to the complexity of this pandemic that is not easy to resolve (Heymann & Shindo, 2020).

The panic in overcoming the Covid-19 pandemic impacts has urged the government to take more substantial actions. One of the initial acts in responding the Covid-19 pandemic was the enactment of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability in Handling Corona Virus Disease 2019 (Covid-19) and/or in the Context of Facing Threats Harming National Economy and/or Financial System Stability which later in this paper referred as regulation to Replace Law (*Peraturan Pengganti Undang-Undang/Perpu*) Number 1 of 2020. The decision in enacting Perpu Number 1 of 2020 can be defined that the government stipulates the Covid-19 pandemic condition as an emergency. Referring to Article 22 of the 1945 Constitution, Government Regulation in Lieu of Law is issued due to several conditions. One of them is due to an emergency alert without the ability of the existing laws in answering the needs needed.

The existence of Perpu Number 1 of 2020, which later agreed to be stipulated as a law in the plenary session of the Indonesian House of Representatives on Tuesday, 12 May 2020, had indeed become a polemic. The polemic in regarding the existence of Perpu Number 1 of 2020 was not only due to severe economic impact resulting in the state budget deficit dilatation in which the government had to look for an alternate budget deficit of IDR 852 trillion to cover the shortage of the 2020 state budget (Amir, 2020), but the legal basis for the determination and scope in the regulation of the Perpu also becomes a legal polemic.

Jimly Ashiddiqi criticized that Perpu No. 1 of 2020 stipulated in the context of the Covid-19 emergency was unfortunate because it did not slightly refer to Article 12 of the 1945 Constitution. The issuance of Perpu No. 1 of 2020 is due to the same cause of other similar laws, namely due to the urgency consideration based on Article 22 of the 1945 Constitution. Looking at the fundamental considerations and contents, Perpu No. 1 of 2020 does not correlate nor refer to Article 12 of the 1945 Constitution. Since it does not refer to Article 12 of the 1945 Constitution, the law cannot be used in the context of handling the threats of such a bizarre and serious danger associated with threats to the safety of the people, nation, and even the existence of the state (Asshiddiqie, 2020).

A critical view in enacting Perpu No. 1 in 2020 also conveyed by Ahmad Taufan Damanik, Chair of the National Human Rights Commission (Komisi Nasional Hak Asasi Manusia/KOMNAS HAM). Taufan Damanik said that the handling of Covid-19 needs a more solid legal basis, since it was related to restrictions on the right to move and gather that guaranteed by law. The existence of Perpu No. 1 of 2020, in the KOMNAS HAM study, was considered insufficient because it only regulates financial and monetary matters. The Covid-19 pandemic impact regulation policy must also regulate other matters, including imposing restrictions on citizens' rights (Setiawan Wicaksono, 2016). "Based on the Siracusa Principle, regarding restrictions on civil and political rights, restrictions can be made with strict conditions, one of which is a strong legal basis and conditions that threaten public health" (Damanik, 2020).

Despite the existence of Perpu No. 1 of 2020 polemic, its issuance in the context of the Covid-19 pandemic illustrates that the government has considered Covid-19 pandemic as an emergency to the public. Since the government stated this as an urgency by issuing Perpu No. 1 of 2020, various supporting regulations are needed to regulate the conditions so that the Covid-19 pandemic can be resolved.

The enactment of Perpu No. 1 of 2020 has a very broad impact. Although this law only regulates the matter of state financial policy and financial system stability to reckon with the Covid-19 pandemic, but in the implementation of regulating and

providing broad impacts in the process of running the government both at the national governance level and local governance level. One highly powerful impact in the adoption of Perpu No. 1 of 2020 is related to the regulation of health services.

The arrangement of work programs in the health sector during the Covid-19 pandemic period is a priority since the medical sector is the main key development that must be regulated to control and solve the aftermaths of the Covid-19 pandemic. The government also issued Presidential Instruction No. 4 of 2020 concerning Refocusing Activities, Budget Reallocation and Procurement of Goods and Services in the framework of the Acceleration of Corona Virus Disease 2019 (Covid-19). Through the presidential decree, president Joko Widodo ordered all ministers, governors, and mayors to cut spending plans that are not priority expenditures in the National Budget (*Anggaran Pendapatan & Belanja Negara/ APBN*) and the Regional Budget (*Anggaran Pendapatan & Belanja Daerah/ APBD*). The refocusing of the APBN and APBD budgets is used as the attempt in handling Covid-19 pandemic. The health sectors receives the most budget allocation and attentions from the government (Krisiandi, 2020).

The massive allocation given to the health sector for handling the Covid-19 pandemic provides for citizens hoping that the pandemic will soon pass also leaves a concern. The concern regarding of maladministration in the allocation of the Covid-19 budget. The emerging situation in handling this pandemic is doubled with the massive budget allocation and policy programs which have opened a very wide gap space in the occurrence of potential maladministration frauds in the policy making and government program implementation. This harmful potential is detrimental to the State, as well as to Indonesian citizens in general.

The study in this paper focuses on measuring whether the extraordinary policies issued due to the alarming situation of the Covid-19 pandemic can lead to the practice of maladministration fraud in the healthcare sector or not. This paper will also discuss what actions need to be carried out to minimize the practice of maladministration in the most effective way, and contribute for legal reform in Indonesia.

If anticipatory actions have carried out, as well as the supervision to anticipate the occurrence of maladministration frauds to happen, then what legal acts the government needs to carry out to actualize the principle of justice within the community?

METHOD

The study of maladministration frauds in the health sector during the Covid-19 pandemic is carried out by applying a normative juridical research (Marzuki, 2005) Normative juridical research does not only refer to legal theory approaches, legal

norms in statutory regulations, court decisions, and legal norms that grow and develop in society, but also looks at synchronizing one rule with other rules in a hierarchical manner, to know the legal provisions and practice of its implementation. Three stages of approach used to achieve the right concept. The three stages are the statutory approach (*statute approach*), the conceptual approach, and the legal case approach. These approaches are combined to get maximum results by using a variety of existing legal materials.

The legal research materials used for this study consist of primary and secondary legal materials. Primary legal materials include the product of legislation such as the 1945 Constitution, laws, decisions of the Constitutional Court, presidential instructions, and court decisions related to maladministration frauds discussed in this paper. While secondary legal materials include books, legal journals, legal articles, and various papers that the author collected that are related to regulations, research reports, and articles relating to the writing of this research (Marzuki, 2005)

RESULTS AND DISCUSSION

Maladministration Frauds in Healthcare Sector during Covid-19 Pandemic

The concept of maladministration was introduced in 1967 when the British government formed the Parliamentary Commission for Administration (The Ombudsman). The Commission stated: "*Bad decisions are bad administration and bad administration is maladministration ... bad decision goes the bad rule, fallacy statutory regulation,*" (Wade & Forsyth, 2009). A more detailed explanation of maladministration stated by Tatiek Sri Djatmiati stating that maladministration is not just one of the parameters of whether there is a personal or occupational error, but it also determines whether maladministration in government actions becomes a personal responsibility or becomes job responsibilities. "Maladministration is a negative formulation of behavior that deviates or ignores decent behavior norms within the government officials," (Hadjon & Djatmiati, 2010).

Positive law in Indonesia provides an explanation of maladministration contained in Article 1 point 1 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (furthermore known as the Ombudsman Law). Referring to the Ombudsman Law, maladministration is defined as a misdemeanor behavior or acts against the law, exceeding the authority, using the authorized power for other purposes than those intended, including negligence or neglect of legal obligations in the administration of public services carried out by State Administrators and governments (Weible, 2020).

Several exposures concerning maladministration provide an explanation referring maladministration in the health sector as misdemeanor behavior or act in

the illegal process of improving⁴ and serving healthcare service, authority transcend, the use of authorized power for other purposes than those intended including negligence or neglect⁴ of legal obligations in the implementation of public services in the field of health carried out by the State and government administrators (Miller, 2020).

In the construction of health services during the Covid-19 pandemic, we can explore the potential for the occurrence of maladministration of health services, starting from the stages of policymaking, planning program activities, implementing health service activities to entering the evaluation phase and the follow-up of a series of health service programs conducted. Of all the stages that explain the scope of the possibility of maladministration occurs from the upstream level in central government policymakers to the executors in the superior task force of health services (FDA, 2020)

To ascertain whether a policy and program categorized as maladministration or not, Budhi Masthuri elucidated that the parameter of maladministration fraud by public officials is when they commit deviations, violations, or ignore the legal obligations and propriety of the community (Prante, 2020). So that the actions taken are not in accordance with the general principles of good governance. Thus, indicators that can be used as a measure of irregularities are the rule of law and the propriety of society and the general principles of good governance (Masturi, 2013).

Maladministration fraud is an act or neglect of legal obligations by state agencies either or both officials that violate the general principles of good governance either or both to cause harm either or both injustice (Masturi, 2005). In the context of health services during the Covid-19 pandemic, maladministration activities are more likely to happen. The high number of maladministration tends to happen due to potential activities or policies that fall into the category of deeds or legal obligation neglectation by state agencies either or both officials that violate the general principles of good governance either or both to cause harm either or both injustice in health services during the Covid-19 pandemic (Selin, 2014).

¹ Maladministration frauds in health services during the Covid-19 pandemic can even be discovered from the policymaking process. Policymaking of the issuance of Government Regulation in Lieu of Law, Presidential Instruction, Ministerial Instruction, Governor Instruction, Instruction of Regents and Mayors, up to village level policies can be used as study objects to examine, whether the policies taken violate the norms of legislation, violate the principles of community propriety, as well as violating the principles of a good governance. Any violation committed towards mentioned policy set of norms is not included as a maladministration fraud (R.Hopkins, 2020).

Some health service policies in the Covid-19 pandemic period that had sparked into legal debate include the fundamental issue of establishing Government Regulation in Lieu of Law, a matter of setting large-scale social restrictions (*Pembatasan Sosial Berskala Besar/ PSBB*) in an area, the setting of a PSBB area to be of new-normal status, a matter of determining the community affected by the recipient social assistance, about the policy of distribution of personal protective equipment for health workers, about the regulation of the type of social assistance distribution to affected communities to the social assistance distribution policy at the county level. All these policies need to be carried out to heed the rules and norms of the enactment of a regulation. When the regulation implied violates the norms and is not applicable under the juridical policies, then the decision taken can already be expected to fall into the realm of maladministration.

In the construction of supervision of health service implementations in the context of handling the Covid-19 pandemic, we can also observe all policies that occur provided by both the central government and the county government. All kinds of health services at all levels can also be part of the monitoring of maladministration. Regarding the provisions of the control of infectious diseases, all program activities in the phase of prevention, detection, and responses need to be concluded as an effort to deal with the Covid-19 pandemic following Law No. 6 of 2018 concerning Health Quality and Law No. 4 of 1984 concerning Infectious Diseases.

Some public riots in health services provided by the government related to the Covid-19 pandemic countermeasures and settlement program divided into three categories: first, health services within the community; and the second one is health services at treatment centers. And third, post-treatment health services.

Health services within the community related to the Covid-19 pandemic that drew polemic include the matter of selective logging prevention measures. Problems regarding patient confidentiality also occur during this pandemic. The data and identity privacy of patients are expected to be maintained as their personal medical confidential matter, yet it then becomes public consumption announced by the government. Therefore, the family of a suspected patient is affected by this publication then eventually isolated, exiled, even outcasted by their local community within their surroundings.

Many problems are also accrued followed health services related to the Covid-19 pandemic at health service centers. The issue of limited facilities, so that there had been a struggle over service facilities and there were those who could not receive treatment in existing health facilities. Many patients also need to be adrift in the waiting list for a very long time to get the certainty whether they will receive the

medication treatment needed or not. There are also constraints of drug limitations so that not all patients get the proper medication in the Covid-19 treatment process.

There also found many problems within the community in the field of post-health care services at health care centers. There is a conflict over the deceased burial mechanism due to family's acknowledgement that the deceased was infected by coronavirus, but the Covid-19 deceased burial protocols need to be applied after knowing the result of the medical examination. Many infected patients are constrained to pay Covid-19 treatment costs, whereas according to the Decree of the Indonesian Minister of Health No. HK.01.07/MENKES/104/2020 concerning Determination of Coronavirus Infection as Disease that Cause an Outbreak and Its Mitigation issued by the Minister of Health on 4 February 2020, everything the form of financing in the context of efforts to overcome the Covid-19 pandemic will be charged to the budget allowance of the Ministry of Health, regional governments, also either or both other legitimate sources of funds following statutory provisions.

Other than the three development schemes in public health services during the Covid-19 pandemic, another public riot was also found. For example, complaints about the cost of medical treatment for patients with Covid-19 in Indonesia compared with the handling of Covid-19 in several countries. The grievance conveyed by the Minister of State-Owned Enterprise (SOEs) by comparing the services of Covid-19 patients in Indonesia compared to the service of Covid-19 patients in several other countries. The outcomes of a study conducted by the Ministry of SOEs shows that Covid-19 patient health services in Indonesia costs the most expensive payment that the issue raised capitalization of health services during Covid-19 pandemic.

From the series of public riots following the health service issues during the Covid-19 pandemic revealed through the media, it could be an early indication of the problem. To ascertain whether the various problem in the framework of health services included in the realm of maladministration, proofs are still needed. Referring to the theory of the iceberg, a series of problems that arise in the media are only minor evidence that appears on the surface. But in reality, the real conflicts that occur in society are more numerous (Maphunye, Tshishonga, & Mafema, 2014).

In the current Covid-19 pandemic, the chance for maladministration is even more substantial. Some many laws and regulations provide flexibility for institutions and personal health care providers to determine programs and policies in the context of the Covid-19 pandemic. The gap within this policy intended that the process of handling the Covid-19 pandemic can be solved immediately. However, if in the momentum of the concession violates maladministration stipulated in the Ombudsman guidelines, they will be charged with maladministration law violations.

And of course, all violations must be accounted for according to established legal mechanisms.

Settlement of Healthcare Maladministration Frauds Under Indonesian Law

One of the universally adopted principles of law and justice reads, “*Nullus/nemo commodum capere potest de injuria sua propria*”. The principle of the law means that no one may benefit from irregularities and violations committed by themselves and nobody else shall be harmed by the violations committed by others (Widjayanto, 2009). Concerning these legal principles, anyone, including incumbent candidates in the elections, may not commit irregularities or violations with the aim of benefiting themselves or harming others (Al-Fatih, 2018).

The authority possessed by a regional head in running the wheels of government is highly broad. Moreover, the authority of regional heads during the Covid-19 pandemic received facilities under Perpu No. 1 of 2020 along with a series of laws and regulations that follow. The extent of authority to the regions that became incumbent in the regional elections during the Covid-19 pandemic also opened up the possibility to create or conduct maladministration frauds in the policymaking that benefits the oneself committing this fraud related to further candidacy in regional heads election. That will also harm other candidates automatically. The caution in the practice of this broad authority power as conveyed by Lord Action has alarmed that whoever holds the authorized power given to them will more likely to abuse the power given. As the adagium saying, “Power tends to corrupt, but absolute power corrupted absolutely”. This mean the more powerful given to someone will create greater tendency to the abuse of power towards the authority given to them as well (Budiarjo, 1993).

CONCLUSION

Health services are considered as human rights guaranteed by the Constitution and protected by law. Health services must still refer to the applicable legal norms during the Covid-19 pandemic. Amid the Covid-19 pandemic, health services are prioritized by the government by the facilitation of various governmental programs and extremely large state budget allocations. These priority conditions must not be used by any party to carry out maladministration frauds in providing health services to the citizens. For maladministration to occur, all parties must stick to the established legal norms and rules of community service. Moreover, if all attempts to control maladministration fraud not to occur, yet still happens in the practice of healthcare services, the determination of law enforcement is urged as an embodiment of justice guaranteed to all citizens.

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