



CRIMINAL PENALTY FOR FORCED CAPTURE OF COVID-19 BOARDS IN INDONESIA

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ABSTRACT

Coronavirus is a virus that affects people all over the world and kills a lot of people. One of the social issues that develop is the community's compelled gathering of Covid-19's body without regard for safety and health procedures. This is hazardous since it has the potential to spread COVID-19.. This study examines numerous legal infractions resulting from the coercive collection of Covid-19 bodies, as well as several types of criminal liability in the collection of Covid-19 bodies.

Keywords: Covid-19; criminal; corpse/ body; forced pick-up

1. INTRODUCTION

Background

Coronavirus is a pathogen that attacks the human respiratory system. Coronaviruses (CoV), including Severe Acute Respiratory Syndrome (SARS)-CoV and Middle East Respiratory Syndrome (MERS)-CoV, are clearly characterized as agents that pose a broad public health threat. At the end of December 2019, a group of people was hospitalized with an admission diagnosis of pneumonia of unknown

etiology. Epidemiologically, the person being treated was in close contact with seafood and animals at a wholesale market in Wuhan, Hubei Province, China. (1)

The chronology of corona cases starts from 18 to December 29, 2019, 5 people were hospitalized with complaints of respiratory problems, 1 of them died. (2) On January 2, 2020, 41 people hospitalized had been identified as COVID-19 through laboratory tests. Approximately half of the people being treated

had comorbidities, such as diabetes, hypertension, and heart disease.(3) National Health Commission China reported details of the first 17 deaths as of January 22, 2020. On January 25, 2020, there were 1975 confirmed cases of COVID-19 in mainland China for a total of 56 deaths.(4) On January 30, 2020, 7734 confirmed cases in China, and another 90 cases were reported from some countries, including Taiwan, Thailand, Vietnam, Malaysia, Nepal, Sri Lanka, Cambodia, Japan, Singapore, Republic of Korea, United Arab Emirates, United States, Philippines, India, Australia, Canada, Finland, France, and Germany. The case fatality rate was calculated to be 2.2% (170/7824). (5)

On March 2, 2020, Indonesia announced the first 2 cases of COVID-19.(6) On September 2021, there were 4,158,731 confirmed cases with the addition of 5,376 cases, 118,534 active cases (2,9%), 3,901,766 recovered cases (93.8%), and 138,431 deaths cases (3.3%), with the addition of 315 deaths cases in the first week of september 2021. (7)

For the funeral process for COVID-19 patients who have died, it is required to follow the COVID-19 protocol, but in Indonesia, many face situations where the forced pick-up of the corpses of suspected or confirmed COVID-19 by family or local residents. To deal with a situation like this, the authorities will provide strict sanctions through the legal process that applies to groups and individuals involved in the process

of forcibly picking up the corpses of COVID-19. For this reason, it can be concluded that the purpose of criminal acts, in general, is to eliminate crimes in a repressive manner which is a characteristic of absolute theory, and to prevent criminal acts of crime in a preventive manner which is a characteristic of relative theory. (8) For example, in the case of the forced pick-up of the COVID-19 body at the Dadi Public Hospital of Makassar on June 10, 2020, the joint Indonesian National Armed Forces - Indonesian National Police team secured 3 people for further examination.(9)

Regarding the criminal act of forced collection of the corpses of COVID-19, layered articles can be applied, namely Article 214 jo of the Criminal Code, Article 335 jo of the Criminal Code, Article 336 jo of the Criminal Code, Article 93 of Law Number 6 of 2018. Besides, the Indonesian police officials issued a Telegram of the Chief of Indonesian National Police No.ST/ 1618/VI/OPS.2/2020 on June 5, 2020, to provide a sense of deterrence to the elements who forcibly picked up the corpses of COVID-19.(10) This paper is written to discuss various legal aspects violated in the forced collection of the corpses of COVID-19.

2. RESEARCH METHODS

In conducting this study, the researcher employed normative legal review, which focused

on examining the implementation of values in positive law by analyzing regulations related to the forced collection of COVID-19 corpses in Indonesia using 3 different approaches, namely: statute approach, conceptual approach, and case approaches.(11)

3. RESULTS AND DISCUSSION

A. Covid-19

A person exposed to the COVID-19 will experience symptoms from mild to death on the 6th day to the 41st day, with an average of around the 14th day. The duration depends on various factors; one of them is the age and immunity of the person's immune system.(4) The symptoms that arise can be classified into two categories, namely systemic symptoms and respiratory symptoms. Systemic symptoms are included fever, cough and fatigue, sputum production, headache, hemoptysis, acute cardiac injury, hypoxemia, dyspnea, lymphopenia, and diarrhea. While the respiratory symptoms are included rhinorrhea, sneezing and sore throat, pneumonia, anemia, and acute respiratory distress syndrome. On radiological investigations are included Chest X-ray revealed infiltration in the upper lobes of the lungs associated with increased dyspnea with hypoxemia, chest CT scan revealed bilateral ground-glass opacities. (12)

People infected with COVID-19 show higher leukocyte counts, abnormal respiratory

findings, and elevated plasma levels of pro-inflammatory cytokines. One of the COVID-19 case reports showed that on 5 days, the fever came with cough, a rough voice in the lungs, and a body temperature of 39.0 °C. The person's sputum showed a positive real-time polymerase chain reaction confirming COVID-19 infection. Laboratory studies showed leukopenia with a leukocyte count of 2.91×10^9 cells/L, 70.0% were neutrophils. Additionally, it was also found that the blood value of 16.16 mg/L on C-reactive protein was above the normal range (0–10 mg/L). High erythrocyte sedimentation rate and D-dimer were also observed. (12)

B. The Forms of Criminal Liability in Taking COVID-19 Corpses

As we know, COVID-19 infection can cause death to infected people, although not all infected people will end up dying. Most of Indonesia's population is Muslim; it is proper to be buried immediately when someone dies. The bereaved family will ask the family's corpse to carry out the burial process, but if the corpse is a suspected or confirmed patient of COVID-19, the funeral process for the corpse follows the rules for handling COVID-19.

In its implementation, the forced pick-up of the corpses of suspected or confirmed COVID-19 carried out by certain elements is often found. Thus, this news spread widely and went viral in the mass media. For information,

the spread of the COVID-19 virus does not stop after death, and this is the reason why a guide for handling corpses of COVID-19 is needed.

Indonesia has Law Number 4 of 1984 concerning outbreaks of infectious diseases; as referred to in article 5, it can be concluded that handling corpses due to epidemics are one way to overcome the epidemic. In article 14, it can be concluded that anyone who deliberately hinders the implementation of epidemic control is punished with 1-year imprisonment and a fine of 1 million rupiahs, and a criminal act.

The implementation of criminal law to persons forcibly picking up the corpses of suspected or confirmed COVID-19 cases, related to accountability in the disgraceful nature of this crime, is adjusted to the role or contribution of the individual in making a crime. Law enforcers can ensnare individuals for forcibly picking up corpses of suspected or confirmed COVID-19 with the Criminal Code, Law Number 6 of 2018 concerning Health Quarantine

1. Criminal Code

- Article 214: (1) 7 years imprisonment for a group of people carrying out a coercion and resistance under 211 and 212
- Article 211: 4 years imprisonment for anyone who threatens with/without violence to an official to do or not to do an act according to a legal position

- Article 212: 1 year and 4 months imprisonment or a fine of IDR.4.500,- to anyone who threatens with/without violence to fight against the legitimate duties of an official
- Article 335: (1) point 1 anyone who makes, does not make, or allows something with/without the threat of violence, or arbitrary treatment, either to that person or to another person; point 2 anyone using verbal/written threats of defamation forces action, does not take action, or allows action, will be threatened with imprisonment of 1 year or a fine of IDR.4,500,-. (2) pursuant to item 2, a crime can only be prosecuted on a complaint
- Article 336: (1) anyone who threatens to use violence against people/goods in public with joint force and endangers people/goods with behavior that violates decency, by endangering life, and persecution/arson will be punished with imprisonment of 2 years and 8 months. (2) if the threat is made in writing, it will be punished with 5 years imprisonment.

2. Law no. 6 of 2018 concerning Health Quarantine

- Article 93: Anyone who violates the implementation of health quarantine as referred to in Article 9 (1) and/or complicates the implementation of health quarantine resulting in a public health emergency is threatened with 1-year imprisonment and a fine of IDR.100,000,000.-

Moreover, the Indonesian National Police also issued a telegram letter to the Chief of the Indonesian National Police Number ST/1618/VI/Ops.2/2020 on June 5, 2020. This letter was intended for the head of the task force, the Head of the Sub Task Force, the Head of Centralized Operations at the Regional Police Level, and the Head of the Central Operations Level in 2020 Aman Nusa II police station to communicate with each other with the COVID-19 referral hospital to determine the true cause of the patient's death so that the rules for handling COVID-19 corpses can be implemented.(13)

According to Koeswadji, the purpose of punishment is to; maintain an orderly society, replace community losses, make criminals aware of their mistakes, improve attitudes so that crimes do not happen again, and arrest all criminals.(14) Moreover, Sholehuddin stated that criminal sanctions are given for; creating a deterrent to those who have been convicted and

acting as an antidote so that the community does not imitate similar acts, rehabilitate socially and morally criminals, and these individuals can admit their mistakes and be held accountable for them.(15)

4. CONCLUSIONS AND SUGGESTIONS

COVID-19 is a viral infection originating from China, the cause is still unknown, and the spread is fast, which has caused a worldwide pandemic. COVID-19 infection started from the end of December 2019 until now; people infected with this COVID-19 virus would cause mild symptoms to death ranging from 14 days. The symptoms that arise vary from individual to individual, from systemic symptoms to respiratory symptoms. The findings obtained on additional examinations are; on blood, the examination found leukopenia, increased c-reactive protein, high erythrocyte sedimentation rate, and D-dimer. On radiological examination, X-rays found infiltrates, and on ct-scan found ground-glass opacities. In Indonesia, the number of confirmed cases is 248.852 cases, with 9,677 (3.9%) death cases.

The rise of cases of forced pick-up of corpses suspected or confirmed by COVID-19 has resulted in the Indonesian National Police issuing a telegram letter from the National Police Chief Number ST/1618/VI/Ops.2/2020 on June

5, 2020. The individuals who intentionally, both in groups and individually, are forced to take the body of the suspect or confirmed to be COVID-19 will be snared with layered articles, namely; Article 214 jo of the Criminal Code, Article 335 jo of the Criminal Code, Article 336 jo of the Criminal Code, Article 93 of Law Number 6 of 2018, whose statements have been mentioned in the discussion.

REFERENSI

- Jurnal**
- Bogoch II, Watts A, Thomas-Bachli A, Huber C, Kraemer MUG, Khan K. Pneumonia of unknown aetiology in Wuhan, China: potential for international spread via commercial air travel. *J Travel Med* [Internet]. 2020 Mar 13;27(2). Available from: <https://academic.oup.com/jtm/article/doi/10.1093/jtm/taaa008/5704418>
 - Ren L-L, Wang Y-M, Wu Z-Q, Xiang Z-C, Guo L, Xu T, et al. Identification of a novel coronavirus causing severe pneumonia in human. *Chin Med J (Engl)* [Internet]. 2020 May;133(9):1015–24. Available from: <http://journals.lww.com/10.1097/CM9.0000000000000722>
 - Huang C, Wang Y, Li X, Ren L, Zhao J, Hu Y, et al. Clinical features of patients infected with 2019 novel coronavirus in Wuhan, China. *Lancet* [Internet]. 2020 Feb;395(10223):497–506. Available from: <https://linkinghub.elsevier.com/retrieve/pii/S0140673620301835>
 - Wang W, Tang J, Wei F. Updated understanding of the outbreak of 2019 novel coronavirus (2019-nCoV) in Wuhan, China. *J Med Virol* [Internet]. 2020 Apr 12;92(4):441–7. Available from: <https://onlinelibrary.wiley.com/doi/abs/10.1002/jmv.25689>
 - Bassetti M, Vena A, Giacobbe DR. The novel Chinese coronavirus (2019-nCoV) infections: Challenges for fighting the storm. *Eur J Clin Invest* [Internet]. 2020 Mar 5;50(3). Available from: <https://onlinelibrary.wiley.com/doi/abs/10.1111/eci.13209>
 - Pranita E. Diumumkan Awal Maret, Ahli: Virus Corona Masuk Indonesia dari Januari. *kompas.com* [Internet]. 2020; Available from: <https://www.kompas.com/sains/read/2020/05/11/130600623/diumumkan-awal-maret-ahli--virus-corona-masuk-indonesia-dari-januari>
 - Satgas Penanganan COVID-19. Peta Sebaran [Internet]. Satuan Tugas Penanganan COVID-19. 2020. Available from: <https://covid19.go.id/peta-sebaran>
 - Hattu J. Pertanggungjawaban Pidana Pengambilan Jenasah Covid-19 Secara Paksa Berdasarkan Aturan Tindak Pidana Umum dan Tindak Pidana Khusus. *J Belo* [Internet]. 2020 Aug 22;6(1):11–31. Available from: <https://ojs3.unpatti.ac.id/index.php/belo/article/view/2293>
 - Amindoni A. Pengambilan paksa jenazah PDP Covid-19: ‘Bisa dibayangkan bagaimana sakitnya sanksi sosial yang kami dapatkan.’ *BBC News Indonesia* [Internet]. 2020; Available from: <https://www.bbc.com/indonesia/indonesia-53009450>
 - Yazid F. Penerapan Sanksi Pidana Terhadap Pengambilan Paksa Jenasah Pasien Covid-19 Di Indonesia. *J Belo* [Internet]. 2020 Aug 28;6(1):60–72. Available from: <https://ojs3.unpatti.ac.id/index.php/belo/article/view/2271>

11. Ibrahim J. *Teori & Metodologi Penelitian Hukum Normatif*. Teori Metodologi Penelitian. 2006.
12. Lei J, Li J, Li X, Qi X. CT Imaging of the 2019 Novel Coronavirus (2019-nCoV) Pneumonia. *Radiology* [Internet]. 2020 Apr;295(1):18–18. Available from: <http://pubs.rsna.org/doi/10.1148/radiol.202000236>
13. Rahmat A, Simbolon FP. Kapolri Terbitkan Telegram soal Jenazah PDP Diambil Paksa Keluarga. *VIVA.co.id* [Internet]. 2020; Available from: <https://www.viva.co.id/berita/nasional/1278684-kapolri-terbitkan-telegram-soal-jenazah-pdp-diambil-paksa-keluarga?medium=autonext>
14. Koeswadi HH. *Perkembangan Macam-Macam Pidana Dalam Rangka Pembangunan Hukum Pidana*. Bandung: Citra Aditya Bhakti; 1995.
15. Sholehuddin M. *Sistem Sanksi Dalam Hukum Pidana, Ide Dasar Double Track System dan Implementasinya*. Jakarta: Raja Grafindo; 2003. 49 p.

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