



**LEGAL PROTECTION OF CITIZENS' HEALTH RIGHTS
COUNTRIES AFFECTED ON MEDICAL WASTE DISPOSAL
COVID-19**

Dwiky Maulana Akbar, Nouratama A. N, Muhammad H. Rafiansyah

dwiky.maulana.akbar-2018@fh.unair.ac.id, muhhammad.hafidz.rafiansyah-2018@fh.unair.ac.id
nouratama.anugerah.nandyani-2018@fh.unair.ac.id

Faculty of Law, Airlangga University

Abstract

Every citizen has the right to health and a good environment. The increasing medical waste during the pandemic becomes the government's responsibility in such waste management. However, in practice, medical waste handling cannot be properly resolved. It is detrimental to residents, especially those who live around medical waste disposal. The government has the authority and responsibility to protect, respect, and provide benefits to its citizens. This study was conducted by analyzing the legal norms in the applicable laws and regulations, which was related to the existence of the legal issues that will be examined in the study. From this study, it can be concluded that the government contributes to medical waste management and the right to a good and healthy environment according to the constitution's mandate.

Keywords: Citizens; Government; Medical Waste; Protection; Management.

Introduction

The Covid-19 pandemic requires everyone to use a mask in their daily activities aimed at protecting themselves from the threat of the corona virus. In addition, various medical equipment were also used, not only masks but also other equipment used to support the handling of this pandemic. The Ministry of Environment and Forestry (KLHK) report noted that since the beginning of the Covid-19 pandemic entering Indonesia in March 2020 until early February 2021, there had been 6,417.95 tons of generation medical waste Covid-19¹. Medical waste in Indonesia is classified as B3 waste whose management is regulated in Government Regulation Number 101 of 2014 concerning Management of Hazardous and Toxic Waste. B3 waste management is carried out with the principle of vigilance and using safe and environmentally

¹ <https://www.republika.co.id/berita/qpa44o380/limbah-medis-covid19-menmpuk-ini-response-kemenkes>, accessed on April 18, 2021



friendly waste management methods. Special treatment and facilities are required from the time the waste is generated (from the cradle) until it is destroyed (to grave).².

Indiscriminate disposal of medical waste often occurs in various regions in Indonesia. One example of the discovery of Covid-19 medical waste in the TPA area had shocked residents in Tual City, Central Java³ and feared that it could threaten the health of residents. Another impact that residents are worried about is the spread of the virus through the medical waste. Then a number of medical waste in the form of syringes and infusions were found in the rice fields. Residents said the medical waste was in the form of used needles, medicine bottles, and infusions. The medical waste was put in a plastic bag.

Based on the facts above, it can be concluded that there are many people who are affected by the careless disposal of medical waste, even though every citizen has the right to a good and healthy environment. Article 28 I paragraph 4 explains that the State, this is the Government in relation to the obligations posed by human rights, which are obliged to respect, protect, and fulfill. Then Article 28 H paragraph (1) of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services.

Health is a prosperous condition of body, soul, and social that enables everyone to be economically productive. This definition is based on Article 1 number (1) of Law Number 23 of 1992 concerning Health. A person who is not healthy will automatically lose his right to life, cannot get and live a decent job, cannot enjoy his rights to association and assembly and express opinions, and cannot get an education for his future. In short, a person cannot fully enjoy life as a human being if the basic rights related to health are taken away or not upheld by conditions and circumstances.

² kemkes.go.id, "Ministry of Health Invites Ministries/Agencies to Synergize in Accelerating Medical Waste Handling" accessed on April 19, 2021.

³ Diana Aji, <https://news.detik.com/berita-jawa-tengah/d-5491952/terlalu-limbah-medis-dibuang-sembarangan-di-area-sawah-kudus>, accessed on March 13, 2021



The importance of health as a human right and as a necessary condition for the fulfillment of other rights has been recognized internationally.⁴

Regulations regarding the right to health are also regulated in international legal instruments, namely in Article 25 of the UDHR which reads "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing and health services, social services, necessary, as well as the right to security when unemployed, sick, disabled, abandoned by a spouse, old age, or other circumstances that result in a decline in the standard of living that occurs outside their control". At the national scope, Article 28 H paragraph (1) of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services. Article 9 of Law Number 39 of 1999 concerning Human Rights states that: Everyone has the right to live, maintain life and improve their standard of living. Guarantees for the right to obtain optimal health are also contained in Article 4 of Law Number 23 of 1992 concerning health.

One of the obligations of the Government is to fully protect the rights of the people. In terms of environmental management, as explained earlier, the government with its authority has the right to take actions aimed at preserving and protecting the environment. This is of course related to the authority possessed by the protection required by the government for the human rights of the people, thus giving rise to government actions. Broadly speaking, related to environmental protection and management, the government takes preventive and repressive measures or efforts.

It can be seen that the government has a full obligation to ensure the fulfillment of a good and healthy environment. In addition to being regulated in Article 28 H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, this provision is also regulated in Article 2 of the Environmental Law where one of the environmental principles is the responsibility of the state. Furthermore, the definition of state

⁴ Institute for Community Studies and Advocacy, Health as a Human Rights, Jakarta, 2014, p. 1.

responsibility in Article 2 Letter a of Law Number 32 Year 2009 is explained as follows:

1. The state guarantees that the use of natural resources will provide the greatest benefit to the welfare and quality of life of the people, both current and future generations.
2. The state guarantees the rights of citizens to a clean and healthy environment
3. The state prevents the use of natural resources that cause pollution and/or damage to the environment.

Therefore we can know that the state is fully responsible for managing the environment. If the state's responsibility is carried out by the state, then the fulfillment of citizens' human rights regarding the right to health and a clean and healthy environment will be guaranteed.

Environmental law is a field or branch of law that has a peculiarity which Drupsteen calls a functional law field (*functioneel rechtsgebied*), namely in it there are elements of administrative law, criminal law and civil law⁵. Meanwhile, according to Philipus M. Hadjon mentioned that environmental law with the theory of the rising sun, considering that there are various legal aspects that are interrelated with environmental law, such as; international law, spatial law, criminal law, civil law, licensing law, tax law to administrative law. Therefore, every legal subject who is the target must comply with the laws and regulations. Enforcement of environmental laws can be carried out if there are citizens who are affected by the disposal of medical waste, one of them is by carrying out a state administrative lawsuit which is a means of administrative law that can be used by citizens and/or class action or environmental organizations (OLH) against agencies or officials who issue state administrative decisions formally and materially where this is contrary to statutory regulations or it can also be related to implementation demands on officials and or public bodies where the implementation and control of medical waste is not in accordance with the general principles of good governance. On the other hand, if it causes a victim, compensation and environmental restoration should be carried out,

⁵ Th. G. Drupsteen (1983)



In relation to efforts to prevent the emergence of environmental problems as part of environmental management, administrative environmental law has a preventive function and a corrective function for activities that do not meet environmental management provisions or requirements.⁶ Therefore, the state represented by the government is the big responsibility for all actions and things that happen to environmental pollution, including its relation to the increasing medical waste during the pandemic. especially in terms of management, the need for supervision by the apparatus and or authorities who understand the dangers of medical waste. considering the ease with which the Covid-19 virus can be transmitted to anyone who is unable to be immune, physically or mentally, it will be affected by medical waste that is disposed of carelessly without management and education from the government itself.

In this study, the author uses a type of legal research (legal research) to find out something and analyze an existing legal issue by using a statutory approach and a conceptual approach.

Arrangements According to National Legal Instruments

The health of citizens is very important because it is a pillar of the development of a nation. Health is one of the basic needs of citizens that should not be contested by others. In fact, because of the importance of health in the end, it is often said that health is everything, so without health everything is meaningless⁷. Therefore, every activity and effort to improve the highest level of public health is carried out based on non-discriminatory, participatory, protective and sustainable principles which are very important for the formation of Indonesian human resources, increasing the nation's resilience and competitiveness, as well as national development.⁸ The second amendment to the 1945 Constitution of the Republic of Indonesia resulted in a result in which the regulation on human rights (HAM) was finally included more fully than before. The provisions include various arrangements

⁶ Takdir Rahmadi, Environmental Law in Indonesia, PT Rajagrafindo Persada, Jakarta, p.208

⁷ Indra Perwira, Health as a Human Rights, in Bagir Manan, et.al., Dimensions of Human Rights Law, PSKN FH UNPAD, Bandung, 2009., p. 138

⁸ Fheriyal Sri Isriawaty, Responsibility of the State in Fulfilling the Right to Public Health Based on the 1945 Constitution of the Republic of Indonesia, Volume 3, 2015, p. 2.



regarding human rights in the civil and political sector (sipol), as well as social economy and culture (EKOSOB) in a limited number and are briefly formulated. At that time, 10 (ten) new articles on human rights were produced, each of which was included in Article 28A to Article 28J. The regulation regarding human rights in this second amendment can be ensured that the articles of the 1945 Constitution that regulate human rights will become more complete and detailed.

The regulation of a good and healthy environment is one of the new types of human rights that are included in the 1945 Constitution of the Republic of Indonesia. Even though these articles are not normatively stated that the right to a good and healthy environment is part of human rights, we can see clearly that Article 28H is in the chapter or articles that regulate human rights, the material is considered as human rights or part of human rights. Etymologically, human rights in English are called human rights, then in Arabic they are called Huquuqul Insan. Right when translated into English means right; Justice; truth. Whereas in Arabic it means the opposite of vanity; truth. In terms, rights are defined as ethical authority or power to do, leave,⁹. Then, the definition of human rights according to experts will be explained where Mariam Budihardjo said that human rights are rights owned by humans that have been obtained and brought along with their birth and presence in people's lives. This right exists in humans without distinction of nation, race, religion, class, gender, because it is basic and universal. The basis of all human rights is that everyone should have the opportunity to develop according to their talents and aspirations (Mariam Budiardjo, 1982, 120).

With regard to human rights on the environment, the state in managing natural resources and the environment must make the people the main interest. The state has an important role as an instrument for managing and implementing policies aimed at protecting and promoting human rights over the environment¹⁰. It should be noted that a good and healthy quality of the environment cannot be maintained without respect for human rights and of course human rights cannot be fulfilled without a good and

⁹ Achmad Charris Zubair, Ethics Lecture, Jakarta: Raja Grafindo Persada, 3rd cet., 1995, p. 59.

¹⁰ Environmental Management Reform, article, In the Discussion on Building the Skepo Environmental Movement, Walhi, 2007, p. 1-3.

safe environment. Respect, protection, enforcement, and fulfillment of human rights are highly dependent on a healthy and livable environment. In a damaged ecosystem, it is impossible or almost impossible to enjoy and obtain the rights to life, health, security, food security, and culture¹¹.

The right to a good and healthy environment is closely related to a number of other human rights¹²:

- a. the right to housing, especially with regard to the fulfillment of the principle of habitability (comfort in living). In the General Comment of the Committee on Economic, Social and Cultural Affairs (CESCR) it is stated that “ineadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates”. To ensure the fulfillment of people's rights, the Government is obliged to coordinate with each other between the ministers and local authorities in formulating policies, relating to economic, agricultural, environmental, energy and so on policies).
- b. the right to food, especially in relation to the government's obligation to formulate environmental policies that can support the fulfillment of the right to food. Poor environmental hygiene directly or indirectly can be a major hazard to food safety.
- c. right to education. CESCR states “Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth”.
- d. the right to a healthy work environment.
- e. the right of every human being to receive guarantees for the prevention, treatment and supervision of disease outbreaks;
- f. right to water. The fulfillment of this right aims to realize a number of other rights, including the right to the environment.

In the amendment to the Job Creation Law, several provisions of the UUPPLH article are changed so that the amendment relates to the regulation of the protection of community rights, both in the scope of health and the environment in particular. Some of the changes regulated in the Job Creation Law are adjusted to the objectives of the

¹¹ Istandards, conception and regulation of the right to a good and healthy environment (Human Rights Perspective Study in Environmental Management) <http://repository.unib.ac.id/7803/1/Jurnal%20Bengkoelen%20Justice.pdf>, year 2011, p. 15.

¹² A Patra, Right to a Healthy Environment: Government Principles and Responsibilities, Article, Jakarta, 2008, p.1.



Job Creation Law article 3 paragraph (4). So the changes to the Job Creation Law are expected to be in accordance with the plans that have been prepared in the National strategic project. In the process of forming the Job Creation Act, there were many pros and cons from both the community and academics in particular. Gadjah Mada University academic, Zainal Arifin Muktar in various meetings stated that in the formation of the Job Creation Law it was too hasty so that many rules were violated in the formation of this law.¹³.

As a derivative and implementer of the Job Creation Law, Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management contains several important points in it. First, environmental approval must be owned by every business and/or activity that has an important or no significant impact on the environment, secondly, it is given to business actors or government agencies, thirdly, environmental approval is a prerequisite for issuing business permits or government approval, fourth, environmental approval is carried out through the preparation of an AMDAL. and AMDAL feasibility test or preparation of UKL-UPL forms and examination of UKL-UPL forms,

In the case of business licensing, the UUPPLH recognizes a license-based approach (license approach) and in the Job Creation Law it is changed to a standard and risk-based application (Article 6 in conjunction with Article 12 of the Job Creation Law) related to the Risk-Based Approach, this means that the issuance of a permit issued by the Central Government based on the calculation of the value of the hazard level and the value of the potential hazard to aspects of health, safety, environment and/or resource utilization¹⁴.

In addition to the amended nomenclature and substance of environmental permits, administrative rights in Article 93 UUPPLH are also removed in the Job

¹³ Mustakim, “The Solution to the Problem of the Job Creation Law”, unas.ac.id (online), 5 May 2021, p. 1. in <https://www.unas.ac.id/berita/jalan-keluar-hasil-uu-cipta-karya/> accessed on May 17, 2021

¹⁴ Fitri Yenni Dewi Siregar, 'Legal Aspects of Simplifying Business Entity Licensing in the Environmental Sector in the Job Creation Act', Scientific Journal of Law Enforcement, Vol. 7, No. 2, December 2020, p. 1 <https://ojs.uma.ac.id/index.php/gakkum/article/view/3968/3020>. accessed on 17 May 2021.

Creation Law. Based on the academic text, it was deleted because everyone has the right to file a TUN lawsuit, so Article 93 of the UUPPLH is considered limiting and the amendment is considered to provide legal certainty.¹⁵ . However, in its implementation, it does not eliminate the administrative right to sue the State Administrative Decree, but it is carried out according to the applicable administrative legal procedures.

In terms of environmental protection and management and based on the authority possessed by the Government, law enforcement efforts can be carried out with preventive and repressive efforts. In terms of preventive efforts in UUPPLH, one of them is known as the granting of permits. The granting of this permit is a form of preventing pollution and/or environmental damage. Permit is the imposition of a prohibition which is juridically an approval given by the Government to persons and/or civil legal entities. The UUPPLH recognizes the Environmental Impact Analysis (AMDAL) and environmental management efforts and environmental monitoring efforts (UKL-UPL) as a condition for the issuance of environmental permits in accordance with Article 36 of the UUPPLH.

In addition to regulating the duties and authorities of the Government, UUPPLH also accommodates claims arising from environmental disputes (see article 1 number 25 UUPPLH). Types of Lawsuits in UUPPLH recognize several scopes including Administrative law, Civil law, and Criminal law as follows:

1. Individual Lawsuit (Article 84 paragraph 1 UUPPLH)
2. Government Lawsuit (Article 90 UUPPLH)
3. Community Lawsuit in the form of Class Action (Article 91 UUPPLH)
4. Environmental Organizations Lawsuit (Article 92 UUPPLH)
5. Administrative Lawsuit (Article 93 UUPPLH)

¹⁵ DPR RI, “Academic Manuscript of the Job Creation Bill” (Table 1b Simplification of Business Licensing – Environmental Permit Number 24), p. 48 <https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.dpr.go.id/dokakd/document/BALEG-RJ-20200605-101034-4986.pdf&ved=2ahUKewjymaTU68TwAhVVWX0KHfGoAwIQFjABegQIBBAC&usgQIBBACAOvVaw3Iv9Q4z5CTH6gvDDZMPG6v>. Accessed May 18, 2021



Act Number 36 of 2009 concerning Health that human rights and one of the elements of welfare must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia which the government also guarantees legal protection for every person. citizens in it. The government should also be responsible for all existing conditions and circumstances, especially regarding medical waste during the pandemic. That is, legally, everything is the responsibility of the state. All levels of government, from regional to central, must work together to address the handling of medical waste¹⁶.

Circular of the Minister of Environment and Forestry (LHK) Number 3 of 2020 concerning Management of Infectious Waste (B3) and Household Waste from Handling Corona Virus Disease (Covid-19) explains the handling of medical waste management generated from health agencies and from homes. ladder. There are differences in the handling of the waste based on its origin, namely health facilities and households. What must be done with infectious waste from health facilities are: store in closed packaging; transport or destroy it by means of an incinerator with a minimum temperature of 800 degrees Celsius or a shredder and; the residue resulting from the combustion or enumeration shall be marked for later submission to the B3 waste manager. Meanwhile, households are required to: collect; self-packaging in closed containers; transport and destroy; and convey information to the public about the management of infectious waste sourced from the community.

Even though it is submitted in the form of a circular, the government has an obligation to supervise and provide protection for the community in handling the medical waste. The central and local governments must coordinate with each other in supervising and handling medical waste management to avoid things that are not desirable. The handling of this waste must also pay attention to aspects of health protection so that no officers or residents are exposed during the handling of COVID-19 medical waste.

Conclusion

¹⁶ Suparto Wijoyo, "Experts Remind Government Responsibility for Mask Waste Management", <https://www.Suarasurabaya.net/kelanakota/2020/pakar-ingatkan-responsibility-government-atas-pengelolaan-limbah-masker/>, accessed on 18 May 2021



Based on the analysis and discussion above, it concludes that the regulation regarding legal protection and health rights of citizens affected by medical waste generated during the COVID-19 pandemic has been regulated in conventions and laws and regulations, so that every citizen has the right to legal protection and health rights. if harmed by the waste. Infectious waste generated from the COVID-19 pandemic requires prior management before being disposed of in a landfill. Under current conditions, the government needs to be present to provide health service facilities and sort waste related waste so that it does not become a single unit for waste disposal, considering that this is a pandemic period that will not end.

The basic principle of fulfilling the right to health based on General Comment No. 14 of 2000 requires the state to pay attention to the availability, accessibility, acceptance and quality of health services to the community, especially since the COVID-19 pandemic which caused waste and medical waste problems to become a major challenge for the community. and the environment. Although there are already technical regulations for the treatment of COVID-19 medical waste, in reality there are mistakes made by several hospital agencies who ignore the rules that have been put in place. This Covid-19 waste reduction is an effort that must be done first because the reduction is a preventive effort to prevent or reduce the occurrence of waste that comes out of a production process. The existence of repressive efforts in enforcing environmental law is closely related to sanctions, one of which is in the form of administrative sanctions which developed in line with the promulgation of Law Number 11 of 2020 concerning Job Creation which in Article 82C states that written warnings, government coercion, administrative fines, suspension of business permits , and the revocation of business licenses can be carried out if it is proven that a violation has occurred. The implementation of administrative sanctions is carried out in accordance with applicable laws and regulations (AUPB). The principle of absolute responsibility is an action, effort, and/or activity carried out by a person for the use of B3, generates and/or manages B3 waste.

Bibliography

- Adisasmito, W. (2007). Health System. Jakarta: PT Raja Grafindo Persada
in <https://puskesmas.bantulkab.go.id/dlingo1/2014/03/10/reduction-limbah-as-Efforts-preventive-pengelolaan-limbah-di-Facility-Pelayan-Kesehatan/> accessed on 28 June 2021.
- Asrun, AM et al. (2020) Impact of Medical Waste Management Linked to Law Number 36 Year 2009 concerning Health and Law No. Law Number 32 of 2009 concerning Protection and Management Environment. *Pakuan Justice Journal Of Law*(Pajoul) Vol. 1 No. 3.
- Djatmiati, TS (2004). Principles of Industrial Business License. Dissertation. Surabaya: Airlangga University Postgraduate Program.
- Hardjasoemantri, K. (2000). Environmental Law. Yogyakarta: Gadjah Mada University Press.
- Likadja, F. (1990). The Development of International Environmental Law (Relation to Indonesian Interests). Scientific Speech in the framework of the XXVIII UKIP Anniversary and III Graduate Graduation.
- LIPI. (2020) Beware of the Environmental Impacts of Covid-19 Garbage and Medical Waste. in <http://lipi.go.id/siaranpress/mewaspadai-impak-lingungan-dari-sampah-dan-limbah-medis-covid-19/21996>, accessed on April 19, 2021.
- Marzuki, PM (2017). Legal Research. cet. XIII. Jakarta: Kencana Prenada Media Group.
- Muhtaj, ME (2005). Human Rights in the Indonesian Constitution. cet. V. Jakarta: Kencana Prenada Media Group.
- Officer, I. Health as a Human Right. in Manan, B. et.al. (2009). Dimensions of Human Rights Law. Bandung: PSKN FH UNPAD.
- Purwanto, NR et al. (2020) Covid-19 Medical Waste Management Arrangements. *Journal of Yustika* Vol. 23 No. 02.
- Rahmadi, T. (2011). Environmental Law in Indonesia. Jakarta: PT Raja Grafindo Persada.
- Ramadhani, R. Impact of the Covid 19 Pandemic on the Environment. in <https://kumparan.com/ramadhaniriza21/dampak-pandemi-covid-19-terhadap-lingkungan-1vMOBjM7Z4q/full> accessed on 28 June 2021.
- Ridwan HR (2007). State Administrative Law. Jakarta: Raja Grafindo Persada.
- Difficultyowati, RL (2020). Covid Medical Waste Piles Up, This is the Ministry of Health's Response. in <https://www.republika.co.id/berita/qp440380/limbah-medis-covid19-menmpuk-ini-response-Kemenkes>, accessed on April 18, 2021.
- Syarief, IS (2020) Expert Reminds Government of Responsibility for Mask Waste Management. in <https://www.Suarasurabaya.net/kelanakota/2020/pakar-ingatkan-responsibility-government-atas-pengelolaan-limbah-masker/> accessed on 18 May 2021.
- Wijoyo, S. (2017). Environmental Protection Law. Surabaya: Airlangga University Press.
- Wijoyo, S. and A'an Efendi. (2017). International Environmental Law. Jakarta: Sinar Graphic.
- Zubair, AC (1995) Ethics Lecture. cet. III. Jakarta: PT Raja Grafindo Persada.