

Juridical Analysis of Law Enforcement against Criminal Acts Harding Management of An Outbreak of Communicable Diseases Reviewing from A Criminological Perspective

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Abstract.

The rejection of Covid-19 bodies is a phenomenon that only occurs in Indonesia. Even though the bodies that died due to Covid-19 had been carried out with proper handling procedures. The slanted stigma related to Covid-19 corpses has also triggered various rejections of funerals in an area. On that basis, this thesis aims to: (1) analyze the regulation of criminal acts preventing the prevention of infectious disease outbreaks from a criminological perspective, (2) analyze the judges' considerations in Decision No. 76/Pid.Sus/2020/PN.Unr, and (3) analyze the obstacles faced in law enforcement efforts against criminal acts hindering the prevention of infectious disease outbreaks. The method used is qualitative with a sociological legal and juridical approach. The results of the study indicate that (1) The refusal of burial of the corpse of a confirmed Covid-19 case can be qualified as an action that can be held accountable because it has fulfilled the elements of error, (2) In its legal considerations, the judge considered that the actions committed by the defendants were included in the classification elements of the offense in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article 55 paragraph (1) of the 1st Criminal Code. The judge also considered that the actions of the defendants met the elements of active action in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article 55 paragraph (1) 1 of the Criminal Code because it has resulted in the failure of funeral activities for confirmed cases of Covid-19, and (3) Factors that become obstacles in overcoming outbreaks and infectious diseases include:

Keywords: Covid-19; Criminology; Decision; Judge; Plague.

1. Introduction

One form of health emergency that is currently being faced is the emergence of the Covid-19 pandemic since the beginning of 2020. Many phenomena have hampered the handling of Covid-19. The high number of cases of death due to Covid-19 has caused turmoil in the community, for example the rampant forced retrieval of the bodies of Covid-19 patients that occurred in several regions in Indonesia. In addition to forcible retrieval of bodies, Indonesia is the only country where some people refuse the bodies of Covid-19¹ patients in their environment. A study shows that there are some who still refuse burial positive for Covid-19

¹ Dwi Agus Istiyono, *Illegal Logging Criminal Investigation Process*, Law Development Journal, Volume 2 Issue 3, September 2020, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11992/4966>

because of the pretext of excessive fear of the virus. Whereas in Islam the corpse must be accepted with pleasure, and treated well.²

The slanted stigma related to Covid-19 corpses has also triggered various rejections of funerals in an area. Goffman explains that stigma is a situation in which an individual experiences complete disqualification from the social environment.³ Furthermore, Tyler and Slater said that there are 4 claims from Goffman's statement, including: (1) stigma is a view that arises from the views of the local community, (2) individuals in society have a tendency to avoid the risk of stigma through several ways, including by being ignorant or even avoiding, (3) stigma is formed and understood from generation to generation in a society, and (4) stigma has a function as social control in a society. According to the CDC, there are several causes of stigma in society, including: this disease is a new disease so there is a lot of unknown information, the lack of knowledge related to Covid-19 causes feelings of anxiety and fear.⁴

On the other hand, there have been written regulations issued by the Government regarding the handling of epidemics and infectious diseases that must be obeyed by the public. The establishment of all laws and regulations regarding the handling of infectious disease outbreaks is politically an attempt by the state to create a more comfortable, peaceful and prosperous community life, both internally and externally. This is in accordance with what was stated by LJ Van Apeldoorn which states that the purpose of law is to regulate peaceful relationships. A legal study explained that during the Covid-19 pandemic, law enforcement was very dynamic, its implementation was mostly carried out based on a family perspective.

Thus, the existence of a law when viewed from Apeldoorn's view is the existence of public order and peace (*orde en rust*). This means that everything that is not in accordance with the applicable rules is a form of crime and can be studied from a criminological perspective. Criminology (criminology) or the science of crime as a social science discipline or non-normative discipline that studies crime from a social perspective, is referred to as the sociology of criminals. If you look at the various studies conducted on violations in the handling of Covid-19, including the rejection of funerals, no analysis has been carried out from a criminological perspective.

Based on the description of the background above, this study aims to (1) analyze and describe the regulation of criminal acts hindering the prevention of infectious disease outbreaks from a criminological perspective, (2) analyze and describe the judges' considerations in imposing sanctions on perpetrators of criminal acts hindering the prevention of disease outbreaks. infectious disease in Decision No. 76/Pid.Sus/2020/PN.Unr, and (3) Analyzing and describing the

²Maula Sari and Abd. Wahid. (2020) The Phenomenon of Rejection of Covid-19 Bodies from a Hadith Perspective in Indonesia. *Journal of the Study of the Qur'an and Hadith*. 1(2): 61-76

³Goffman, E. (2009). *Stigma: Notes on the Management of Spoiled Identity*. Simon and Schuster Inc.

⁴Center of Disease Control and Prevention. (2020). Coronavirus Disease 2019 Reducing Stigma Communicators and public health officials can help counter stigma during the COVID-19 response. Retrieved April 19, 2020 from <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/reducing-stigma.html>.

obstacles faced in law enforcement efforts against criminal acts hindering the prevention of infectious disease outbreaks and how to solve them.

2. Research Methods

This research is classified as a qualitative research with a statute approach, which examines all regulations and laws related to related research and a sociological juridical approach, which means that the juridical analysis is based on the social development of the community. The data sources used in this study include primary data sources and secondary data sources. The data analysis used in this research is qualitative prescriptive. Prescriptive analysis is intended to provide arguments for the results of research that has been carried out. The arguments here are carried out by researchers to provide prescriptions or judgments about right or wrong or what should be according to law on facts or legal events from the results of research.⁵

3. Results and Discussion

3.1. Regulation on Crimes to Prevent Outbreaks of Infectious Diseases in Criminology Perspective

On January 30, 2020 WHO has declared Covid-19 as a Public Health Emergency of concern to the world. As of August 9, 2020, 19,847,798 confirmed cases have been reported globally with 730,371 deaths in 72 countries. Indonesia itself is ranked 23rd for the highest number of confirmed cases. The high number of Covid-19 sufferers has resulted in the emergence of rejection of residents with Covid-19, both healthy and dead.

This action will have a social impact and stretch the relationship between humans. Rejecting the corpse is also contrary to Islamic teachings which require respecting the corpse by taking care of it. Indirectly, the act of rejecting the corpse becomes intimidation for the Covid-19 positive corpse. In this case, the rejection of the burial of the Covid-19 corpse is not in accordance with the hadith of the Prophet Muhammad because all the hadiths have nothing to do with the fact that the bodies of Covid-19 and *Tha'un* are sinful, because the bodies have been ordained by Allah and it is determined that their deaths are caused by the plague and not caused by the epidemic may intimidate the corpse or the bereaved family with bad things.⁶

It has been emphasized that anything that is contrary to the laws and regulations and causes unrest or harm in the environment can be considered a crime. In the Criminal Code, law enforcement officers can use Article 178 of the Criminal Code. However, the legality of this article is an ordinary offense, not a complaint offense. Law enforcement officers can immediately take action without anyone complaining.

⁵Mukti Fajar ND and Yulianto Achmad, (2013), *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta: Pustaka Pelajar, p. 184.

⁶Maula Sari and Abd. Wahid. (2020). Op.cit.

If the incident meets the elements contained in Article 178 of the Criminal Code, then the perpetrator can be charged. Even so, it must look at the intentions and actions as a condition to impose a criminal on someone. Article 178 of the Criminal Code states: "Whoever deliberately obstructs or hinders the entrance or transportation of corpses to permitted graves shall be punished by a maximum imprisonment of one month and two weeks or a maximum fine of one thousand eight hundred rupiahs.

The refusal to bury the bodies of confirmed cases of Covid-19 has implications for criminal acts regulated within the scope of the Infectious Disease Outbreak Law, which includes 1 (one) offense, namely Article 14 of the Infectious Disease Outbreak Law: *(1) Whoever deliberately obstructs the implementation of the epidemic control as regulated in this Law, is threatened with imprisonment for a maximum of (1) one year and/or a maximum fine of IDR 1,000,000 (one million rupiah).*

The refusal to bury the bodies of confirmed cases of Covid-19 also has implications as a criminal act which is regulated and is subject to criminal sanctions in Article 93 of the Health Quarantine Law which reads: *"Everyone who does not comply with the implementation of the Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of the Health Quarantine so as to cause a Public Health Emergency shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)".*

The bodies of Covid-19 victims can be buried in public cemeteries. For residents who refuse burial in their territory means that it is not true. Cannot refuse funerals. You can't just block it. This act can be subject to legal sanctions. Law enforcement officials can immediately take action without anyone complaining first. Article 178 of the Criminal Code is an ordinary offense, not a complaint offense. Obstructing, hindering, troublesome, disrupting the burial process for the bodies of victims of Covid-19 or complicating the funeral process can be punished.

3.2. Analysis of Judge's Consideration in Imposing Sanctions Against Criminal Acting Perpetrators of Obstructing Overcoming Outbreaks of Infectious Diseases in Decision No. 76/Pid.Sus/2020/PN.Unr

Judicial power is independent without any intervention from any party, including from other law enforcement officers such as the police or legal advisors/lawyers. Therefore, the judge's decision in a criminal court is interesting to analyze, whether the decision is in accordance with the concept of judicial power and is made in order to realize justice for all parties, both victims and perpetrators of criminal acts.

Ungaran District Court Decision No. 76/Pid.Sus/2020/Pn.Unr is formally and materially in accordance with the provisions of Article 197 of the Criminal Procedure Code, so that the decision is valid and has permanent legal force. The indictment in this decision is in the form of a combination or a combination of subsidiarity with alternatives, namely violating the primary indictment Article 214 of the subsidiary Criminal Code Article 212 Juncto Article 55 Paragraph (1) of the

1st Criminal Code or both Article 14 paragraph (1) of the Juncto Infectious Disease Outbreak Law Article 55 paragraph (1) 1 of the Criminal Code.

Article 212 Juncto Article 55 Paragraph (1) 1st of the Criminal Code regulates crimes directed at state employees or officials who are carrying out their duties, having elements of criminal acts: subjective and objective. Referring to R. Soesilo, the definition is "using force or physical strength illegally", in this case "doing violence" can be equated with making people faint or helpless. "Powerless" as stipulated in Article 89 of the Criminal Code: making people faint or helpless is the same as using violence, according to R. Soesilo the helpless has no power because it is hindered. To resist means to oppose or disobey the employee's orders which are based on statutory orders. To a civil servant, in accordance with article 215 of the Criminal Code stipulates: what is equated with civil servants regarding articles 211-214 of the Criminal Code are people who according to the law are always or temporarily required to carry out a job, and civil servants are also regulated in article 92 of the Criminal Code: held based on general rules; who carry out their legal work, the civil servant is given the task by the government in this case the Covid 19 Task Force, BPBD, the chairman of the DPRD as well as the deputy regent who carries out duties based on the Legislative Law, including those who assist civil servants because of their obligations under the law. by law or or only temporarily appointed to carry out public works or at the request of the civil servant.

In the case of the rejection of the funeral of the confirmed case of Covid-19 in the decision of the Ungaran District Court No. 76/Pid.Sus/2020/Pn.Unr, the defendants were found guilty of all charges. In his legal considerations, the judge considered that the acts committed by the defendants were included in the classification of elements of offense in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article 55 paragraph (1) 1 of the Criminal Code as the second subsidiary indictment reads the article: "intentionally participating in preventing the implementation of disease outbreak control in terms of handling corpses due to disease outbreaks".

It is known that the legal facts in the trial, the defendants jointly took active actions in the form of uttering a statement rejecting the funeral of the corpse of a confirmed Covid-19 confirmation case so that the situation was delayed, made it difficult or interfered with the implementation of the handling of the corpse, in this case the funeral process. Based on this, the judge considered that the actions of the defendants fulfilled the elements of active action in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article 55 paragraph (1) 1 of the Criminal Code because it has resulted in the failure of funeral activities for confirmed cases of Covid-19 at a predetermined place.

Based on the considerations above, the author concludes that the role of the Defendants in making objections to the funeral of Nuria Kurniasih's body, in which officers from the Covid 19 Cluster Team of Dr Karyadi Hospital and from Semarang have conveyed their information, remain objecting, so that the funeral should be carried out at Siwarak Suwakul cannot be implemented. As the Defendants in their pleas stated that they did not personally object, but the Defendants acted in such a

manner to convey the aspirations of the residents near the Siwarak Suwakul grave who objected to the burial process.

The author agrees with the Panel of Judges, who considers that the submission of aspirations must be carried out in a proportional manner. In addition, the aspirations that have been submitted must first be seen whether the aspirations are based on law or contrary to the law. Regarding the submission of the aspiration, the Panel of Judges quoted the opinion of the criminal expert, Dr. Supriyanta, SH, M.Hum, namely the submission of aspirations has accountability, if the aspirations are wrong then it is a refinement of Article 55 of the Criminal Code because it is a real act and each role can be taken and must be clear so that it can be accounted for.

3.3. Obstacles in Overcoming Infectious Disease Outbreaks and Their Solutions

Bonger in his criminological theory provides the view that the causes of crime can be based on several factors which are divided into internal factors and external factors. Internal factors are factors that come from within the individual itself. Usually criminals are very selfish and love to abuse and exaggerate their self-esteem. Thus, internal factors that interact with external factors are factors that influence the defendant to commit a criminal act of preventing an infectious disease outbreak by preventing funeral officials.

Based on the analysis of the factors above, it can be seen several factors that cause obstacles to the burial of Covid-19 bodies, thus leading to the emergence of obstacles in overcoming outbreaks and infectious diseases:

- There is a growing stigma towards people with Covid-19 or even those who are on the front lines of treating coronavirus patients. The reason is, they are worried about being a source of the spread of the corona virus.
- Rejection due to lack of socialization and irrational public trust. According to the UI Sociologist, one of the root causes of this problem stems from socialization that does not reach down to the lower levels of society.
- The rejection of corpses is more to collective behavior, there are people who become provocateurs, rejection of corpses is more to collective behavior, of course there will be people who become provocateurs to move and influence people to be irrational. The attitude of the Indonesian people like this reflects that the critical power of the community is still low. In Indonesian society with a reactive culture, there is a growing assumption that if you don't experience it yourself, you won't believe it or you're not sure.
- Hoaxes about the Covid-19 Virus that are rampant on social media, Indonesian people are easily stimulated by inaccurate information, thus causing panic among local residents which has an impact on hindering the burial of Covid-19 bodies. During this time of the corona virus pandemic alone, the Ministry of Communication and Information has recorded more than 1,096 hoaxes related to the corona virus. This figure proves that hoaxes about COVID-19 are still selling well. "Until now, there have been a total of 1,096 hoax issues related to COVID-19 spread across Facebook, Instagram, Twitter, and YouTube platforms.

Based on these constraints, a local culture-based approach is needed to overcome culture shock, a condition of disorientation due to differences in cultural

values including the loss of old habits and lifestyles which are replaced by new ones, due to changes that need to be made in the context of controlling the COVID-19 pandemic. If not managed properly, this culture shock will trigger public panic that leads to intolerance, diminished empathy, and the emergence of suspicion and stigmatization in COVID-19 patients, and in general lowers the socio-cultural resilience of the community. The inability of the community to adapt to changes in lifestyle rules in daily activities, including the norms of manners in social interactions and economic activities, has actually increased the transmission of COVID-19.⁷

Literacy culture also needs to be improved to strengthen health literacy in order to support the handling of the COVID-19 pandemic. In the short term, the use of literacy service centers that are close to the community (including local and national reading parks and libraries) and literacy activists as a source of information about the COVID-19 pandemic needs to be increased, to help reduce information confusion. In the long term, the role of the literacy service center also needs to be increased to help accelerate economic recovery by developing its role as a center for learning various life skills needed after the pandemic.⁸

Based on this description, it is necessary to have good risk communication related to the handling of Covid-19 corpses. The handling process must be carried out according to health protocols to reduce the risk of transmission. In order to prevent similar incidents in the future, it is necessary to involve religious leaders (Ustad, Kyai, Pastor, Pastor) through the pulpit and the media on the basis of emergency handling of corpses, especially regarding the rule "Do not endanger yourself and others". In addition, it is necessary to disclose information to the public, especially the victims' families through documentation of the handling of Covid-19 bodies.

4. Closing

Based on the description of the discussion above, it can be concluded that: (1) The refusal of burial of the corpse of a confirmed Covid-19 case can be qualified as an action that can be held accountable because it has fulfilled the elements of error, (2) In its legal considerations, the judge considers that the act committed the defendants are included in the classification of elements of offense in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article 55 paragraph (1) 1 of the Criminal Code as the second subsidiary indictment. The judge also considered that the actions of the defendants met the elements of active action in Article 14 paragraph (1) Jo. Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases Jo. Article

⁷Eddy Santoso, Sri Endah Wahyuningsih, Umar Ma'ruf, *Peran Kepolisian Dalam Sistem Peradilan Pidana Terpadu Terhadap Penanggulangan Tindak Pidana Perjudian*, Jurnal Daulat Hukum, Voume 1 Nomor 1, Maret 2018.

⁸Etna Yesinia Mardianti and Maryanto, *The Legal Substance Ownership of Motor Vehicle Owner's Book*, Law Development Journal, Volume 2 Issue 4, December 2020, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/13639>, see to Keris Aji Wibisono, 2021, *Penegakan Hukum Terhadap Tindak Pidana Illegal Mining Di Wilayah Hukum Polda Kalimantan Tengah*, Tesis, Unissula Semarang.

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