# ESTUDIENTE LAW JOURNAL

# Tracing the Legal Consequences of Refusing **Covid-19 Vaccinations**

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#### ARTICLE INFO

# *Keywords*:

Legal impact; Policy; Covid-19 Vaccination.

#### How To Cite:

Suleman., Badu, L. W., (2019).Puluhulawa, Tracing the Legal Consequences of Refusing Covid-19 Vaccinations Estudiente Law Journal. Vol. 1 (3): 741-752

#### DOI:

### ABSTRACT

This study is intended to find out how the legal impact of the rejection of the vaccination policy by the people of Gorontalo. The type of research used is normative-empirical legal research. Namely, research that focuses on the existence of the mandate of legal norms (laws and regulations) with facts or patterns that exist in the field. While the approach used is a statutory approach and a case approach. The data sources used are primary data sources as the main data and secondary data sources as supporting data consisting of documents and scientific works related to the problems being discussed. The results show that the legal impact of refusing the vaccination policy by the public is the existence of administrative sanctions, sanctions, fines, and criminal sanctions for those who refuse the implementation of the Covid-19 vaccination policy, as specified in the legislation.

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### 1. Introduction

The policy on vaccination is a policy that must be taken by the government to mitigate and deal with the Covid-19 outbreak. Referring to the mandate of Law no. 6 of 2018 concerning Health Quarantine (hereinafter abbreviated as Health Quarantine Law), vaccination policy is one of the last stages of the recovery process from a disease outbreak that hit this country. The vaccination itself is the process of giving a vaccine to a person to make him immune from disease.

In recent months, as many as 12,320,386 people have been vaccinated by the government through the ministry of health as the executor of the task. This is certainly an achievement, considering that there are still many people who have not been vaccinated. The government continues to be committed to vaccinating all Indonesian citizens to deal with Covid-19, it will continue to be carried out for the next few months. Therefore, the government asks all levels of society to be ready to receive vaccinations by the government.

To complete the Covid-19 vaccination plan for all citizens, the government also issued Presidential Regulation No. 14 of 2021 concerning the Implementation of Vaccination (hereinafter abbreviated as Perpres Vaccination). In the Presidential Decree on Vaccination, it is stated that people who refuse vaccination will be given sanctions, both administrative sanctions, and criminal sanctions. This is in line with the progressive and responsive nature and character of the law (laws and regulations), and can lead to legal consequences. The Presidential Regulation is a regulation issued to carry out the mandate of the Health Quarantine Law in the final stages of recovery from a disease outbreak.

Health quarantine, as regulated in the Health Quarantine Law, can be interpreted as an effort made by the government in preventing and overcoming an outbreak of an infectious disease that can cause a potential health emergency. In principle, the implementation of health quarantine includes the entire process, whether it is the quarantine of an area, Large-Scale Social Restrictions (PSBB), to the recovery process by vaccinating, which is the goal of implementing health quarantine.

<sup>&</sup>lt;sup>1</sup> Jufryanto Puluhulawa. 2016. Reformulasi Pengaturan Aplikasi I-Doser Sebagai Narkotika Digital, *Jurnal Area Hukum*. Vol. 9 No. 3, 368-385.

<sup>&</sup>lt;sup>2</sup>Lotulung (dalam) Lisnawaty W. Badu & Suwitno Y. Imran. 2020. Pendampingan Penyusunan Peraturan Desa Tentang pencegahan dan Penurunan Stunting di Desa Manawa Kecamatan Patilanggio, *Dassein: jurnal Pengabdian Hukum dan Humaniora*. Vol. 1 No. 1, 13-24.

Recovery in the health quarantine process can be interpreted as an activity that includes giving vaccinations to the community, to restore normal conditions before a pandemic (infectious disease) occurs. However, the vaccination process still raises pros and cons in the community, so that not a few people, especially in Gorontalo City, are trying to refuse the government to give vaccines. In fact, in the Health Quarantine Law, there are criminal sanctions that can be charged to anyone who refuses or hinders efforts to implement health quarantine. According to the provisions stipulated in Article 93 of the Health Quarantine Law.

According to the Gorontalo Provincial Health Office, several residents in Gorontalo City have not or do not want to be vaccinated. The percentage (%) of citizens who refuse vaccination are as follows:

Table 1. Percentage of total vaccination achievements in Gorontalo

No.	Vaccination plan	Amount vaccinated	The number who have not & refused vaccination
1.	First Dose	93.5 %	6.5 %
2.	Second Dose	52.8 %	48.2 %

Source: Gorontalo Provincial Health Office, the year 2021.

The data above shows that there is still a difference in the percentage of vaccinations in the Gorontalo City area, where at the second dose of vaccination the percentage almost reaches half of the total mass vaccination plan in Gorontalo City. Therefore, the Gorontalo City Government as a government subsystem in Indonesia<sup>3</sup>, It is necessary to disseminate vaccinations to deal with Covid-19. In addition, the data above indicates that there is a form of legal disobedience in the case of refusing vaccinations that have been mandated by the legislation.

The purpose of this study is to find out how the legal consequences for perpetrators who reject the Covid-19 vaccination policy by the community.

### 2. Research Methods

The type of research used in this research is normative-empirical. Namely, research that focuses on the existence of the mandate of legal norms (laws and regulations) with facts

<sup>&</sup>lt;sup>3</sup> Novendri M. Nggilu. 2020. Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo, *Jurnal Lambung Mangkurat*, Vol. 5 Issu 2, 109-121.

or patterns that exist in the field.<sup>4</sup> This research has a focus on analyzing positive law (written) on legal events that occur in society.<sup>5</sup> The approach used is 2, namely the statutory approach, where the legislation will be used as one of the considerations in the research being conducted.,<sup>6</sup> dan *kedua*, pendekatan kasus (*cases appaauch*), and second, the case approach, which in this study aims to study and analyze the application of legal norms in the field.<sup>7</sup> The data sources used are primary data sources as main data and secondary data sources as supporting data consisting of documents and scientific works related to the problems being discussed.

### 3. Discussion

The legal impact that can be given by the government or law enforcement, of course, must be based on what has been done by the community. This aims to achieve legal certainty for the government and the public who are considered to have carried out inconsistent actions according to the law. In certain cases, the legal impact also applies to perpetrators/communities who reject the Covid-19 vaccination policy, especially in Gorontalo City. As in Gorontalo City, in other areas such as DKI Jakarta, there will also be legal repercussions that will be accepted by the people of DKI Jakarta when they refuse vaccination. In addition, according to the provisions in the DKI Perda which regulates the implementation of vaccination, it is stated that anyone who hinders the treatment/control efforts of Covid-19, can be subject to a fine of 5 (five) million rupiahs. In full, the criminal provisions in the DKI Regional Regulation regarding the rejection of the Covid-19 vaccination are contained in Article 30, as follows:

"Anyone who intentionally refuses to receive treatment and/or vaccination for Covid-19 shall be punished with a maximum fine of Rp. 5,000,000.00 (five million rupiahs)."

From the provisions of the regional regulation that has been promulgated, it can be seen that anyone who refuses to be vaccinated against Covid-19 will be given a fine. This certainly indicates that the government, as a policymaker, is serious enough to seek an even distribution of the implementation of the Covid-19 vaccination.

<sup>&</sup>lt;sup>4</sup> Abdul Kadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti. p. 52

<sup>&</sup>lt;sup>5</sup> Ihid.

<sup>&</sup>lt;sup>6</sup> Mukti Fajar & Yulianto Ahmad. 2009. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar. p. 185

<sup>&</sup>lt;sup>7</sup> Ibid.

<sup>&</sup>lt;sup>8</sup> Farina Gandryani dan Fikri Hadi. 2021. Pelaksanaan Vaksinasi Covid-19 Di Indonesia: Hak Atau Kewajiban Warga Negara. *Jurnal RechtsVinding*, Vol. 10 No. 1, 23-41.

Disobedience for anyone who tries to reject the formulation of legal norms, of course, there will be consequences that will be given to them as a result of disobedience (legal impact). The impact of this law is quite diverse when viewed from various perspectives of the laws and regulations governing this matter. Therefore, in this study, we will describe the legal impact on people who will reject the vaccination policy in Gorontalo City.

# 4. Legal Impact of Rejection of Vaccination Policy According to Presidential Regulation on Vaccination Implementation

The implementation of vaccination in the era of the Covid-19 pandemic is regulated by Government Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Managing the Covid-19 Pandemic (hereinafter abbreviated as Perpres Vaccination Covid-19). The Presidential Regulation regulates how the pattern of handling starts from planning, procurement, to the implementation of vaccinations for all communities who are the targets of vaccination. In its development, the regulation issued by the president changed with the issuance of Presidential Regulation No. 14 of 2021 concerning Amendments to Presidential Regulation No. 99 of 2020 regarding Covid-19 Vaccination.

Changes to the previous Presidential Regulation were made to adjust to the circumstances and conditions that had passed at the time of promulgation of the regulation in question.<sup>9</sup> In addition, adjustments are indeed needed to streamline the implementation of the Presidential Regulation on Vaccination. If you look at it in detail and detail, some changes have been added to make the Presidential Decree on Covid-19 Vaccination more effective. One of the changes is related to the legal impact for every citizen who is targeted for vaccination.

According to the provisions in the Presidential Regulation on Covid-19 Vaccination, there is a formulation of norms that stipulate that everyone must comply and be obligated to carry out vaccinations because they have been designated as targets for vaccination. Furthermore, in Article 13A paragraph (4), there are administrative sanctions given to anyone who tries to refuse the policy of implementing vaccination, while the provisions for sanctions are as follows:

a) postponement or cessation of the provision of social security or social assistance.

<sup>&</sup>lt;sup>9</sup> Lihat pula ketentuan menimbang pada Perpres No. 14 Tahun 2021

<sup>&</sup>lt;sup>10</sup> Pasal 13A Perpres No. 14 Tahun 2021 tentang Vaksinasi Covid-19

- b) suspension or cessation of government administration services.
- c) fines.

With the provisions mentioned above, it is clear that there will be legal repercussions that will be accepted by the community, especially the people of Gorontalo City who reject the policy of implementing vaccination. Because, the consequences for people in Gorontalo City who try to reject the policy of implementing vaccination will be given administrative sanctions by the government, as mentioned above.

Furthermore, in the Presidential Decree concerning the Implementation of Covid Vaccinations, it is also emphasized that administrative sanctions are given to anyone who refuses to vaccinate, carried out by local governments, ministries, or institutions that have duties by their authority. This certainly indicates that the Gorontalo City Government, which is also a sub-government, has the authority to provide administrative sanctions in the form of terminating social security or terminating administrative services to the people of Gorontalo City who are the perpetrators of rejecting the government's vaccination policy.

During observations and interviews at the beginning of the preparation of the research proposal, the local government represented by the Health Service stated that the local government (including the Gorontalo City Government) would still implement every policy issued by the central government, especially in terms of handling Covid-19. Handling Covid-19 requires some kind of strategy and preparedness by the government and the community. Moreover, the policies issued by the central government also contain administrative and criminal sanctions.

In addition to the sanctions provisions that have been mentioned in Article 13A of the Presidential Regulation on the Implementation of Covid-19 Vaccination, other sanctions provisions can be given. This is in line with what is stated in article 13B that anyone who refuses to be vaccinated and hinders efforts to tackle Covid-19, may be subject to sanctions by the provisions of the regulations on infectious disease outbreaks.

With the addition of sanctions other than administrative sanctions, this can be interpreted that the sanctions in question are criminal. Because, if referring to Law no. 4 of 1984 concerning Infectious Disease Outbreaks (hereinafter abbreviated as WPM Law), there are criminal provisions that can be used as a reference by the Presidential Regulation concerning the Implementation of Covid-19 Vaccination. In addition, in Article 14 of the WPM Law, a criminal provision states that anyone who hinders efforts to control a

disease outbreak will be subject to a criminal sanction of 1 (one) year in prison or a maximum fine of one million rupiahs.

The contents of the criminal provisions in the WPM Law above indicate that the sanctions referred to in Article 13B of the Presidential Regulation on the Implementation of Covid-19 Vaccination are criminal. However, if referring also to the provisions of Article 15 of the Law concerning the Establishment of Legislations, it states that criminal content can only be contained in statutory regulations such as laws and regional regulations. Therefore, the provisions of Article 13B of the Presidential Regulation on the Implementation of Covid-19 Vaccination must be reviewed because it will have a very large impact on government policies regarding the implementation of vaccinations in the era of the Covid-19 pandemic.

The criminal content material in statutory regulations may only be contained in regional laws and regulations, with the provisions stipulated by the drafting norms. In addition, Fitra Arsil, as quoted by Evelyn Martha Julianty, said that including criminal sanctions in-laws and regulations must involve the participation of the community during its formation.<sup>11</sup> Therefore, it is better if the formation of legislation regarding the implementation of vaccination must involve public participation, especially if it contains criminal provisions.

# 5. Legal Impact of Rejecting Vaccination Policy According to the Law on Infectious Disease Outbreaks

From a philosophical point of view, the existence of the WPM Law is to answer and prepare a legal framework that regulates the prevention of infectious disease outbreaks that may occur.<sup>12</sup> In addition, the presence of the legal product is to replace the old regulations that are no longer by the needs and objectives of health development in Indonesia.

In particular, the WPM Law is a statutory regulation that regulates how to handle a disease outbreak, including the Covid-19 pandemic. Because what is meant by the Covid-19 pandemic is a type of disease outbreak that can be transmitted to other people through certain media.

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<sup>&</sup>lt;sup>11</sup> Evlyn Martha Julianty. 2020. Limitasi Materi Muatan Ketentuan Pidana Dalam Perppu. *Jurnal Legislasi Indonesia*. Vol. 17. No. 4, 380-390.

<sup>&</sup>lt;sup>12</sup> See also the weighing provisions on UU WPM

The WPM Law can be entered and placed in the pattern of handling or controlling infectious diseases such as Covid-19. This is because the domain of the WPM Law is not only limited to how to define infectious disease outbreaks but also how to handle patterns of infectious disease outbreaks such as the Covid-19 pandemic. In addition, in the WPM Law, there is also a provision for criminal sanctions that can be given to anyone who is considered non-compliant with the WPM Law.

The existence of provisions in the WPM Law regarding criminal sanctions is a consequence (legal impact) for those who violate the provisions that have been formulated in the WPM Law. If you pay attention to the contents of the WPM Law, the legal impact on the community, including the people of Gorontalo City who tries to refuse the implementation of vaccinations in Gorontalo City can be subject to imprisonment of 1 (one) year<sup>13</sup>, while the next provision is a fine of 500 thousand rupiah for those who by negligence hinder efforts to overcome a disease.<sup>14</sup>

The content of criminal sanctions as explained and mandated by the WPM Law should be interpreted jointly by the community, especially the people of Gorontalo City who are still or have not vaccinated to tackle the spread of Covid-19. In addition, the existence of criminal sanctions in the WPM Law also aims to prevent non-compliance by the community. Because the purpose of the law is to control people's lives so that they are orderly.

# 6. Legal Impact of Rejecting Vaccination Policy According to the Health Law

The legal impact of the rejection of the vaccination policy by the community, especially the people of Gorontalo City, when viewed from the various laws and regulations as discussed above, has almost the same consequences (legal implications). The legal impact of all the laws and regulations that have been mentioned is the existence of criminal sanctions imposed on perpetrators of refusing the vaccination policy. However, if viewed from the perspective of Law no. 36 of 2009 concerning Health (hereinafter abbreviated as the Health Law), it is stated that everyone has the right to determine independently and be responsible for the health services they receive. 15

Because of the above, the implementation of vaccination can also be interpreted as a right to health and not an obligation. This is because the Health Law clearly states that a person's health is a right. However, in Articles 9 to 13 of the Health Law, it is explained

<sup>&</sup>lt;sup>13</sup> Article 14 clause (1) UU WPM

<sup>&</sup>lt;sup>14</sup> Article 14 clause (2) UU WPM

<sup>&</sup>lt;sup>15</sup> Article 5 Clause (3) UU Kesehatan

that everyone is obliged to make efforts to maintain and realize the health system together. Therefore, both the government and the community as the target of the implementation of vaccination obey each other and understand the relationship and what impacts will be received/charged to them if they commit a violation in the implementation of vaccination.

Overall, the legal impact caused by the Health Law is only oriented to the rights and obligations between a person and the health care provider. In the Health Law, it can be traced and interpreted that health care is a right and not an obligation. However, it is appropriate for the community, especially the people in Gorontalo City to remain obedient in the effort to realize the national health system as a shared goal.

# 7. Legal Impact of Rejecting Vaccination Policy According to the Health Quarantine Law

Law No. 6 of 2018 concerning Health Quarantine (hereinafter abbreviated as Health Quarantine Law), is often used as a reference by the regulations below to regulate and determine the polarization of handling the Covid-19 pandemic. This is because the Health Quarantine Law regulates and determines what and how the model for handling a disease outbreak, including the Covid-19 pandemic, is.

The existence of the Health Quarantine Law is also oriented towards how people who do not comply with the health quarantine implementation process will be given sanctions as a result of such non-compliance. According to Article 1 point 1 of the Health Quarantine Law, it is explained that health quarantine is an effort made to prevent and ward off an outbreak of an infectious disease. This indicates that the handling of the Covid-19 pandemic is within the scope of the Health Quarantine Act.

According to the provisions in the norms of article 93 of the Health Quarantine Law, everyone will be given criminal sanctions as a result of failure to carry out health quarantine. Therefore, the community, especially people in Gorontalo City who try to refuse to be vaccinated will be given sanctions as a result of not complying with the provisions of Article 93 of the Health Quarantine Law.

Indeed, the criminal provisions in Article 93 of the Health Quarantine Law will be given to anyone, either a person/individual or a legal entity. This is following the explanation in Article 9 which is also a reference article for punishment in Article 93 of the Quarantine Law. This indicates that the community in Gorontalo City consisting of individuals or in the form of legal entities (groups of people) can also be subject to sanctions as referred to

in the provisions of the formulation of the norm if they refuse to carry out vaccinations stipulated by the government.

The legal impact caused by the existence of the Health Quarantine Law is an effort to prevent any form of deviation and other actions that are not justified by law. In addition, the existence of health insurance by the state makes the government must take part in implementing law enforcement in the health sector. Hoh. Hasrul said that public health needs to be accommodated by the government as a form of responsibility in upholding social justice for all Indonesian people. 17

The problem of giving criminal sanctions as a legal impact on the community, including the people of Gorontalo City, is a necessity. Edward OS Hiariej, emphasized that the imposition of criminal sanctions on perpetrators of refusing the vaccination policy refers to the formulation of norms in Article 93 of the Health Quarantine Law. Therefore, both the government and the public who are designated as the target for the implementation of the Covid-19 vaccination must be able to understand their respective positions and positions to overcome the handling of Covid-19.

According to the results of research conducted by Hari Sutra Disemadi and Tomi Suhendra Pardede, the imposition of criminal sanctions on people who refuse vaccination policies should consider human rights. <sup>19</sup> In addition, in his research, regional regulations that wish to contain criminal sanctions related to refusal of vaccination policies must comply with more above regulations. <sup>20</sup> This is true because several regional regulations contain criminal sanctions and are considered to be contrary to the norms of laws and regulations that are above the law. Therefore, it is necessary to harmonize laws and regulations for the smooth implementation of the Covid-19 vaccination for the community, especially those in Gorontalo City.

The formulation of criminal sanctions related to the refusal of vaccination policies by the public must consider and see whether the formulation of criminal provisions to be given does not conflict with the clauses in other laws and regulations such as the Law on Human Rights and the Law on Health. This is very necessary because the principle of

<sup>20</sup> *Ibid*.

<sup>&</sup>lt;sup>16</sup> Muh. Hasrul. 2020. Aspek Hukum Pemberlakuan Pembatasan Sosial Berskala Besar (Psbb) Dalam Rangka Penanganan Corona Virus Disease 2019 (Covid-19). *Jurnal Legislatif*. Vol. 3 No. 2, 385-398.

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<sup>&</sup>lt;sup>19</sup> Hari Sutra Disemadi and Tomi Suhendra Pardede. 2021. Problematika Pemberian Sanksi Terhadap Penolakan Vaksinasi Covid-19: Suatu Kajian Perspektif HAM. *Jurnal Supremasi*. Vol. 11 No. 2, 107-119.

establishing laws and regulations must not conflict with other rules to maintain relations between the state, state administrators (government), and the community.

The legal impact caused by the rejection of the vaccination policy for the people in Gorontalo City is not immediately without clear causes and consequences. Because to deal with it, if there are people who experience losses, compensation can be given as a form of government responsibility.<sup>21</sup> This can also be understood as a form of harmonization of legal relations by the government and the community, especially the people of Gorontalo City who carry out vaccinations.

The government and the community, especially those living in Gorontalo City, must harmonize the relationship as a cause-and-effect relationship between the community and the local government. Because, apart from the fact that the government has rights, there are also obligations attached to local governments to carry out their duties and obligations to benefit the people of Gorontalo City.

#### 8. Conclusion

The legal consequences for those who refuse to be vaccinated against Covid-19 can be threatened with administrative sanctions and fines up to imprisonment, as regulated in the various laws and regulations discussed above.

## Suggestions

People who are designated as recipients of the Covid-19 vaccine must be obedient given the mandate by the regulations to be vaccinated. In addition, the government must also harmonize relations with the community so that the vaccination plan that is being pursued can be right on target and can be accepted by the community gracefully. In addition, the government must continue to disseminate information regarding the vaccination program to the public.

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