

CHAPTER ONE

INTRODUCTION

A. Background of Research

The first Covid-19 case in the world was detected in China, Wuhan, by the end of 2019.¹ A few weeks after it was first known to spread in Wuhan, the Covid-19 Pandemic quickly spread, and the topic of Covid-19 began to discuss in various media throughout the world. The World Health Organization (WHO) and the governments in each country tried their best to reduce transmission rates. The governments worldwide were also carrying out multiple efforts to prevent the spread of the Covid-19 Pandemic. Until now, the reach of the Covid-19 Pandemic has expanded to more than 200 countries,² including Indonesia.

In Indonesia, the Covid-19 was first detected on March 2, 2020. Between its first case in Wuhan and Indonesia, the Indonesian government has almost three months to prepare facilities for preventing and treating the Covid-19 Pandemic. Thus, it turns into one of the obligations of the government. Article 152 of Law No. 36 of 2009 on Health states that “The government is responsible for efforts to prevent, control and eliminate infectious diseases and their consequences.” It aims to protect communities from contracting diseases, reduce the number of people suffering from illness, disability, and/or death, and reduce the social and economic impact of infectious diseases.

¹ Eunha Shim *et al*, 2020, “Transmission potential and severity of COVID-19 in South Korea”, *International Journal of Infectious Diseases*, Vol. 93, No. 1.

² Indranil Chakraborty and Prasenjit Maaity, 2020, “COVID-19 Outbreak: Migration, Effects on Society, Global Environment and Prevention”, *Science of the Total Environment*, Vol. 728, No. 1.

However, the government seemed very relaxed by saying that Covid-19 cases in Indonesia were still zero because Indonesian people have strong immunity and were immune to viruses.³ Then, when Covid-19 was detected in Indonesia and increased massively day by day, Indonesia was not ready to face it. There was no particular hospital nor place that can be using as a quarantine place,⁴ no hazmat suit for a healthcare professional to protect themselves when helping an infected person,⁵ and so forth.

It is closely related to the health issue, definitely health issue, if talking about Covid-19 Pandemic. The health issue is one of the critical matters for the governments because three important things determine the quality and future of a nation, and one of them is health.⁶ Accordingly, the government is obligated to protect the citizens of Indonesia from Covid-19 Pandemic. Besides, the 1945 Constitution of the Republic of Indonesia's preamble strictly stated that the Republic of Indonesia "shall protect all the people of Indonesia."

Besides, health is the constitutional right of the people, which the 1945 Constitution guarantees. Article 28H paragraph (1) of the Constitution states, "Everyone has the right to enjoy physical and mental prosperity, to own housing, to enjoy a good and healthy environment, and to have the right to

³ Coconuts Jakarta, 2020, *Impenetrable Doa: Health Minister Says Prayer, Not Face Masks, Is Why Indonesia Remains Coronavirus Free*, available at <https://coconuts.co/jakarta/news/impenetrable-doa-health-minister-says-prayer-not-face-masks-is-why-indonesia-remains-coronavirus-free/> accessed on April 23, 2020, at 21.43

⁴ Riyanti Djalante, 2020, "Review and Analysis of Current Responses to COVID-19 in Indonesia: Period of January to March 2020", *Progress in Disaster Science*, Vol. 6, No. 1.

⁵ *Ibid.*

⁶ Subitha Lakshminarayanan, 2011, "Role of Government in Public Health: Current Scenario in India and Future Scope", *Journal of Family & Community Medicine*, Vol. 18, No. 1.

obtain medical care.” Consequently, health is automatically being the government’s constitutional obligation. The 1945 Constitution also guarantees in Article 34 paragraph (3), which states, “The state is obliged to provide adequate medical and public service facilities.”

The 1945 Constitution also clearly stated that Indonesia is a state based on the rule of law.⁷ It means all actions must be finds on the provisions of laws and regulations that existed before the action was carried out, or all actions must be based on the applicable regulations. In responding to the Covid-19 case, the Indonesian government must use the applicable and relevant regulations to protect its citizens. The policies and regulations regarding the issues of Covid-19 in Indonesia have no legal certainty because it constantly changes rapidly.⁸

Covid-19 Pandemic is very influential for the lives of the people. Therefore, the government’s policies and regulations were carried out in the common interest so that the total number of Covid-19 positive cases in Indonesia did not surge. The government has to enact policy and regulation on settling the Covid-19 Pandemic to protect Indonesian citizens.

Based on the statement explained above, there are two important propositions that must be remembered. First, *salus populi est supreme lex*,⁹ which means the welfare and safety of the people considered as supreme law.

⁷ Luthfi Widagdo Eddyono, 2016, “The Unamendable Articles of the 1945 Constitution”, *Constitutional Review*, Vol. 2, No. 2.

⁸ Solechan, 2020, “Rules and Policies Related with Good Governance When Corona Virus 2019 (COVID19) Pandemic”, *Administrative Law & Governance Journal*, Vol. 3, No. 2.

⁹ Sinha and Dheeraj, 2013, *Legal Dictionary*, Malaysia: International Law Book Services, p. 369.

Second, *abnormale recht in abnormale situatie*¹⁰ means that abnormal laws should also be applied in an abnormal situation. So, the research is conducted to assess the Indonesian government's constitutional obligations and responses to protect their citizens due to the Covid-19 Pandemic entitled: **“CONSTITUTIONAL OBLIGATIONS OF INDONESIAN GOVERNMENT IN PROTECTING ITS CITIZENS FROM COVID-19.”**

B. Research Problems

Based on the research background above, the research formulates two questions to be answered, namely:

1. What are the constitutional obligations of the government in protecting citizens from the Covid-19?
2. What has the government done in exercising the constitutional obligations to protect citizens from the Covid-19 in Indonesia?
3. What are the problems of the government in protecting citizens from the Covid-19 Pandemic?

C. Objectives of Research

The objectives of the research are:

1. To understand the concept of the constitutional obligation of the Indonesian government in protecting citizens in a state emergency.

¹⁰ *Ibid*, p. 339.

2. To evaluate the constitutional obligations that the government has exercised in protecting citizens from the Covid-19.
3. To propose some recommendations for a better policy regarding the government's constitutional obligation in protecting citizens in a state emergency.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

The research gives benefits to know deeply about the Indonesian government's constitutional obligations in protecting citizens from Covid-19 and the development of science, particularly in the concept of the constitutional obligation of the state.

2. Practical Aspect

The research provides a better understanding of the Indonesian government's constitutional obligations in protecting citizens from Covid-19 for those who engaged with the issue, such as executive and legislative body as the policymakers.