

Analysis on the Regulation on Freedom of Worship in the Case of Covid-19 Pandemic in Indonesia

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Abstract

Restrictions on ritual of worship enforced by the government with the purpose of protecting the health of its citizens from the spread of Covid-19 are still not acceptable to most followers of religion in Indonesia. Those who refuse because of mere theological understanding, especially in this digital age are often blamed for the spread of the disease. To answer the above problem, the authors study it in a research with the main issue of how the Indonesian government's actions in regulating the freedom of worship of its population during the Covid-19 pandemic and what its weaknesses are. The study was done using the post-positivism paradigm and the type of research is a qualitative study with a of the Ethical-Philosophical approach. Research shows that the legal basis used is Law No. 6 of 2018 concerning health quarantine, while in terms of religion, in Islamic religion, the regulation on worship restrictions has been regulated in MUI *Fatwa* No. 14 of 2020 concerning Organizing Worship in Situations of the Covid-19 Outbreak. Related to weaknesses, it can be seen in terms of structure, as in the case of the World Congress of *Ijtima* in Gowa, South Sulawesi, which continues to carry out its activities amid the corona pandemic. This case reflects that the structure, in this case law enforcement in Indonesia, is not ready because in this large event gathering thousands of people, of course, requires licensing and monitoring by the authorities, the passing of this event not only proves that the legal structure in Indonesia is still weak, but also legal culture In Indonesia itself, which does not want to comply with existing laws so that it has the potential to spread Covid-19 more massively.

Keywords: Freedom of Worship, Covid-19, Indonesia.

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1. Introduction

In religion, worship is an obligation as it is the spirit of religion itself. But the holy activity called worship is challenged when at present, the whole world is rocked by panic and worry from the emergence of a fairly deadly virus called Corona Virus Disease 2019 or Covid-19 virus. The emergence of this virus causes deep sorrow for all humanity. The World Health Organization (WHO) has established the Corona virus outbreak as a pandemic (Jamie;2020), because it has spread almost throughout the world and Indonesia is one of them.

Various reactions arose in addressing Covid-19, especially among Muslims who are the majority religion adopted in Indonesia. One of the problems that arises in Indonesia regarding the Covid-19 pandemic is the difficulty experienced in carrying out worship. Most of the religions in the world, including Islam, are often communal in nature such as prayer, for example, which can indeed be carried out at home but in certain conditions can only be carried out in places of worship which in this case are mosques such as the *Jumat Shalat* or Friday prayer, a prayer held on mosque on Friday and other *shalat* such as *Eid Al-Fitr* that are only held once every year to celebrate the end of Ramadhan. The act of gathering together for any purpose is basically very vulnerable to the spread of Covid-19.

Because of this condition, Indonesian people who are predominantly Muslim are divided in terms of worship. This divisive view by the author is divided into fatalism and free will groups. Both of these groups believe in God, but have a different approach in taking a stand about the problems of life. Therefore, fatalism and free will have different views when answering and handling Covid-19. (Mutashim;2020)

Fatalism believes more in fate (destiny) that has been determined by God. In Islamic theology this school is called *Jabariyah*. Because for fatalism surrender to God is the most appropriate and noble action in dealing with every human problem. God becomes the place of support and complaints needed when humans have a number of worldly problems. According to the view of fatalism, in responding to the corona virus outbreak, it is enough to just surrender to God by doing deeds, prayers, *Dzikr*, and religious readings.

Whereas free will has a foundation that humans have free will and determination in determining their destiny. In Islamic theology this school is called *Qadariyah*. This view serves the human mind to solve worldly affairs. They believe more in reality and real nature when facing metaphysical problems.

The emergence of the corona virus must be addressed wisely and professionally through the use of reason and research. This group wants a situation by looking for causes, symptoms, to the impact and handling and alleviation of problems scientifically without completely relying on God. This reaction is a function of resolution, reduction, and preventive action in responding to the Corona pandemic.

The free will group also shows the strength and effort of humans. By composing concrete steps to the

maximum to avoid and tackle this virus. Starting from the closure of international transportation routes, physical distancing, the use of masks, good and clean lifestyle, postponing collective events, postponing direct lectures on campus and schools and change it to online meeting all are in accordance to the implementation of the quarantine system.

This viewpoint of Fatalism As carried out by the *Jamaah Ijtima* which carried out an international mass religious gathering activity of the *Tablighi Jamaah* planned to be held on 19-22 March 2020 in Gowa Regency, South Sulawesi Province.(Tempo.co;2020) This activity was in the spotlight because this event gathered thousands of people while the coronavirus pandemic was happening in Indonesia. In Gowa, South Sulawesi, which continued its activities amid the corona pandemic. On the pretext they are not afraid of corona, only fear of God alone. They believe that life and death are in the hands of God. In various regions in Indonesia there are still residents who continue to carry out Friday prayers (worship in Islam which obliges adherents to carry out in the mosque) by ignoring the risk of contracting co-19.

The spread of Covid-19 to Indonesia created a new problem for this country, namely the issue of religious rituals. The high level of religiosity among the people is not just a number, it is also a figment. Religion has a very high role in their lives. Related to the Government's call for restrictions on social space will greatly affect the adherents of religion.

Restrictions on worship rituals by the government aimed at protecting the health of its citizens are still unacceptable for most religious adherents. Those who refuse cannot be separated because of mere theological understanding, especially in this digital age. We can find various reasons by taking religious propositions carelessly to pass the arguments of groups who refuse.

To answer the above issues, the authors study them further in a research with the following main issues :

- a. How does the Indonesian Government act in regulating freedom of worship for its citizen during the Covid-19 Pandemic ?
- b. What are the Weaknesses of the Indonesian Government's Acts in Regulating Freedom of Worshiping Its citizen During the Covid-19 Pandemic ?

2. Method Of Research

The paradigm that is used in the research this is the paradigm of post-positivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge.(Faisal;2020) Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this paper is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (*approach*) the research is to use the approach of *Ethical-Philosophical* (Ibrahim;2005), which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are :

1. Primary Data, is a data obtained from literature and laws study. Sources of this data is in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.
2. Secondary Data. is data obtained from information and information from respondents directly obtained through interviews and literature studies merely as a supportive evidence to support the primary data.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data.¹ Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

3. Research Result And Discussion

A. How The Indonesian Government Act In Regulating Freedom Of Worship For Its Citizen During The Covid-19 Pandemic

In Relation to the authority of the Indonesian government in regulating freedom of worship of its inhabitants during the Covid pandemic-19 the question that often arises is does the government are allowed to restrict freedom of practicing religion or belief in the name of fighting the spread of corona virus (Covid-19)? Many countries face that question in response to the spread of the virus which the WHO has declared a global pandemic. In view of the severe and alarming rate of its spread, WHO has called on every government to take urgent and aggressive action. Since then, various policies restricting civil rights have been implemented by many countries to control the spread

¹ L. Moleong,(2002), Metode Penelitian Kualitatif, PT Remaja Rosdakarya, Bandung.

of the virus. One of the issues highlighted in relation to Covid-19 is the restriction of the right to freedom to practice a religion or belief.

When viewed from an Islamic perspective, in the letter An-Nisaa: 59 there is a verse that justifies islam worshipper to follow their government as seen below:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

“ O you who believe, obey you to Allah and obey you to your apostles and Ulil Amri.”

The definition of *ulil amri* here is a person or group of people who take care of the interests of the ummah (people, there is no limitation to only islam worshipper) so that from this definition it can be concluded that Muslims are obliged to follow the government which in this case is to follow restrictions in terms of worship to prevent the transmission of Covid-19 as it is for the sole purpose of the good of the ummah.

The Restrictions on religious practice are carried out differently in some countries. The United Arab Emirates, for example, forbids children from attending church activities and limits Friday prayer time at the mosque to a maximum of 15 minutes and *Maghrib* prayer at a maximum of 5 minutes. Saudi Arabia had closed the Grand Mosque in Mecca in early March and then reopened it with some restrictions. Hajj activities for this year may also be canceled. Some countries in Europe such as Denmark, Germany, and Cyprus also impose very strict restrictions by closing all houses of worship. Italy bans religious ceremonies including funerals. The closure of a number of temples was also carried out in India. In the state of Kansas, United States, policies that allow worship activities provided they do not exceed 10 people are even sued to the Supreme Court. Specifically in Indonesia, Regulation of the Minister of Health of the Republic of Indonesia No.9 of 2020 restricts religious activities. In this case the practice of worship is carried out at home and limited family attendance by keeping a distance. All of the above restrictions are basically aimed at preventing the spread of the virus.(matamatapolitik;2020)

This policy of restriction by many countries is not devoid of controversy. A number of parties who oppose the restriction policy put forward the view that worship activities are as important as access to basic needs; that attending worship services is no more risky than visiting shopping places; and that within the limitation there is a violation of the right to religious practice.(Victor;2016)

Restrictions on religious activities in Indonesia are basically in accordance with protocols that have been prepared by the government in the context of preventing the spread of a pandemic such as in Jakarta for example, as stated in the Decree of the Minister of Health Number HK.01.07 / Menkes / 239/2020 Year 2020 concerning the Establishment of Large-Scale Social Restrictions in (PSBB) in the Province of DKI Jakarta in the framework of the Acceleration of Handling Corona Virus Diseases 2019 (Covid-19).

The implementation of PSBB is generally regulated in Law number 6 of 2018 concerning health quarantine which is then continued in Minister of Health Regulation No. 9 of 2020 concerning Large-Scale Social Limitation Guidelines in the Context of Handling Corona Virus Disease 2019 (Covid-19).

The implementation of PSBB in the DKI Jakarta area is then further regulated in the Governor Regulation of the Special Capital Region of Jakarta Number 33 Year 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in the Province of the Special Capital Region of Jakarta ("Pergub DKI Jakarta 33" / 2020 ").

What is rarely known by the public in the application of this PSBB is that it does not only regulate religious activity restrictions which although MUI has regulated that religious restrictions are indeed needed as can be seen in MUI *Fatwa* No. 14 of 2020 concerning Organizing Worship in Situations of the Covid-19 Outbreak. This limitation that are often disputed basically covers the following matters :

- a. To dismiss school and workplace entertainment for a certain time;
- b. Restrictions on religious activities;
- c. Restrictions on activities in public places or facilities;
- d. Restrictions on social and cultural activities;
- e. Restrictions on modes of transportation; and
- f. Restrictions on other activities specifically related to defense and security aspects.

The implementation of PSBB is also accompanied by penal threats for those who do not comply, as stated in Article 93 of Law Number 6 Year 2018 on Health Quarantine ("Law 6/2018") which confirms that:

"Every person who does not comply with the implementation of Health Quarantine as referred to in Article 9 paragraph (1) and / or obstructs the operation of Health Quarantine so as to cause a Public Health Emergency is punished with a maximum imprisonment of 1 (one) year and / or a maximum criminal fine. Rp 100,000,000.00 (one hundred million rupiah) "

The enforcement of these rules is not without basis, because it has been adapted to international human rights instruments that are Universal. One international human rights instrument that contains these provisions is the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by more than 117 countries. Article 18 paragraph (3) states that freedom of practicing religion or belief can only be limited by legal provisions necessary to protect "public safety, order, health, or morality of society, or the fundamental rights and freedoms of others". To narrow it down, the *Siracusa* Principles (A universal human rights principle regarding Provisions

and Restrictions Reduction of Human Rights in the International Covenant about Civil and Political Rights) on the terms of restrictions and derogation at the ICCPR contain the basics of restrictions more thoroughly and can be used as a guide to help interpret and respond to the validity of these restrictions.(Saraswati;2020)

First, the limitation provisions must be based on law (prescribed by law). That is, restrictions on the right to freedom of religion or belief must be regulated in writing and clearly in a product of national law. This requirement also has a qualitative element in the sense that the law must pay attention to the limitations of fundamental legal rules such as the principle of non-retroactivity and its enforcement should not be done arbitrarily.

Second, the limitation is necessary. The key word here is needed or needs. International jurisprudence shows that a restriction is deemed necessary or necessary if: it has a legitimate aim; makes sense, that is, the limitations are neutral; and proportionality, i.e. there is a reasonable proportionality relationship between the method used and the goal to be realized. In the context of Covid-19, restrictions are deemed necessary to protect the legitimate interests of the country, namely to prevent the spread of Covid-19 as an emergency or health crisis. The importance of public health is related to the next element.

Third, restrictions can only be imposed on a legitimate basis, namely to protect public safety, order, health, or public morality, or the fundamental rights and freedoms of others. Regarding public health reasons, the *Siracusa* Principles provide an interpretation that public health is a step or effort associated with a serious threat to public or individual health that is a member of a society. In this case the restriction policy must be specifically aimed at preventing disease or to provide care for those who are sick. Thus, in the face of the global pandemic Covid-19, state restrictions on large public gatherings and freedom of movement, driven by serious public health problems, can actually be justified on the basis of protecting public health, even though those restrictions directly impact a person's rights or a group of people to gather together to practice a religion or belief.

As an additional condition, restrictions should be set both in writing and in their application should not be discriminatory. The ICCPR also prohibits discrimination and provides equal protection from discrimination on the basis of religion. In this regard, several countries are being highlighted because their governments are seen as failing to protect certain vulnerable religious communities. The concern is also based on a number of reports from religious minority groups from various parts of the world facing discrimination due to this pandemic. The Iranian government for example has freed more than 70,000 prisoners to prevent the spread of Covid-19 but still places detainees from religious minority groups in overcrowded wards. The Chinese government forced Uighurs to work in factories throughout the country as compensation for decreasing production during quarantine. In fact, there were reports that some Uighurs in the city of *Ghulja* had limited access to food and local officials asked for payment to bring their supplies. In South Korea, a small religious sect known as the *Shincheonji* Church reports 4,000 cases of injustice against its Congress since the virus emerged, such as termination of employment, oppression at work, domestic abuse, stigma and defamation. The church is currently facing a lawsuit from the local government because it is considered to be the main cause of the spread of Covid-19.(Kyoo-Man;2020)

B. Weaknesses of the Indonesian Government's Acts in Regulating Freedom of Worshiping Its citizen During the Covid-19 Pandemic

Until the time this article was written, the Indonesian government announced that as of June 16, 2020, the number of patients affected by Covid-19 in Indonesia was 39,294.(Kompas;2020) This amount is quite a lot even though it is far from other developed countries like the United States.(Jennings;2020) The main problems that make the spread of Covid-19 in Indonesia occurred according to the authors are quite a lot, but the writer here will focus more on the legal culture in Indonesia.

In terms of legal culture, since it was announced by President Jokowi on March 2, 2020 that there were two Indonesians who were positively infected by the corona virus, the Indonesian government immediately emphasized that its citizens limit their social space to anticipate the widespread distribution of Covid-19. However, a few days later after the appeal there were several Islamic organizations that took an "abnormal" attitude. While others are looking for safety and shelter to be kept away, they are determined to carry out activities that involve large masses, as if they believe that the corona virus will not attack them.

As carried out by the *Jamaah Ijtima* in Gowa, South Sulawesi, which continues to carry out its activities in the midst of a corona pandemic. On the pretext they are not afraid of the disease, and only fear of God alone. They believe that life and death are in the hands of God. In another area there is still many people who still hold Friday prayers even though the local government authorities had determined to replace the Friday prayers with the midday at their respective home prayers to prevent the spread of the Covid-19 plague. However, Jabariyah's understanding of theology is still widely held by followers of religion in Indonesia.

The spread of Covid-19 to Indonesia created a new problem for this country, namely the issue of religious rituals. The high level of religiosity among the people is not just a number, it is also a figment. Religion has a very high role in their lives. Related to the Government's call for restrictions on social space will greatly affect the adherents of religion.

Restrictions on worship rituals by the government aimed at protecting the health of its citizens are still unacceptable for most religious adherents. Those who refuse cannot be separated because of mere theological

understanding, especially in this digital age. We can find various reasons by taking religious propositions carelessly to pass the arguments of groups who refuse.(Parmet;2020)

Although the Indonesian *Ulama* Council (MUI), has issued a *fatwa* to prevent the spread of the Corona virus by encouraging prayer at home and replacing Friday prayers with midday prayers. However, because of the selfish attitudes of some groups, there are still those who reject the suggestion by forcing them to come to the mosque and order the DKM of the mosque to remain open. And not a few people who consider such things are heretical and not in accordance with Islamic teachings.

As a comparison regarding the handling of the Covid-19 pandemic, in Malaysia reported a mass meeting of 16,000 people from 27 February to 1 March 2020 at the Sri Petaling Mosque, Kuala Lumpur. Organized by *Tablighi* Jamaat, old Islamic missionaries, their leaders asked people to return to the time of the Prophet Muhammad, live together, pray together, and share a platform for *Vaju* (personal cleansing before prayer). People live in tents, and pray together in mosques. A large number of foreign travelers have participated in prayers and carried the virus in their homes and areas.(Elengoe;2020)

As for Bangladesh, it is reported that several influential religious leaders, called for community prayer on March 19, 2020 in Raipur, Lakshmipur District which was attended by 1000 people. BBC Bengali Akbar Hossain's correspondent reports that the number of pilgrims reached 30,000 and there was no permission from the authorities. The program is based on reality, people who upload these prayers will be cured of the deadly corona virus.(Islam;2020)

Indonesia reported that the *Tabligh Jamaat* had planned another religious prayer for three days, March 19-22 in Gowa in the province of South Sulawesi. Intervention by the authorities led to the cancellation of the event, but at that time, more than 10,000 people around the world had already gathered in the city.

In India there are reports of mass meetings for Friday prayers on March 20, 2020 in Mumbai, Kolkata, Patna, New Delhi, Sri Nagar, Ahmedabad. Even when the Prime Minister announced a self-initiated curfew and prepared a Sanitation claimed to be hygienic, but to an extent this is considered a matter of personal and social sensitivity. Short clips, videos, photos and messages of various kinds create fear in the general public about orthodox characters from the rigid and imperfect perspective of illogical and unscientific groups of people from certain sections of society. A suitable example that can be cited is the protest in Shaheen Bagh, New Delhi.(Chaurasiya;2020)

Conversely, there are Muslim countries that have banned prayer together in any mosque. Turkey is one of the leading countries. Ali Erbas, Head of Turkish Religious Affairs has strongly stated that Islam does not want to endanger human life. All prayers in the Congress have been suspended. Other countries that have now banned Congressional prayer are Lebanon, Iraq, Egypt and Jordan.

There are partial bans on worshippers and prayers in Saudi mosques (including in Mecca and Medina), Iran, Sudan, Nigeria, Rwanda, Kenya and Kuwait. Various flights have been banned and efforts have been made by some of these countries to prevent the importation of the virus through immigration. However, there are countries like Pakistan, Afghanistan, Bangladesh, and some countries that have not yet begun effective action to curb the trend.

Conversely Indonesia, as a country with the largest Muslim worshipper in the world, means that the government's actions in handling Covid-19 pandemic will be a benchmark for other Muslim countries in dealing with it. In Accordance to this, when viewed in terms of substance that is the written law, Indonesia is very ready because even before the pandemic occurred Indonesia had prepared the quarantine protocol as in Law number 6 of 2018 concerning health quarantine. But when viewed in terms of structure, it can be seen how Indonesia has difficulties in dealing the Covid-19 pandemic. A real case that can be used to show the difficulties is the case of the World Congress of *Ijtima* in Gowa, South Sulawesi, which continues to carry out its activities amid the corona pandemic. This case reflects that the structure, in this case law enforcement in Indonesia, is not ready because in this large event gathering thousands of people, of course, requires licensing and monitoring by the authorities, the passing of this not only proves that the legal structure in Indonesia is still weak, but also legal culture In Indonesia itself, which does not want to comply with existing laws so that it has the potential to spread the Covid-19 even further.

4. Conclusion

- A. The limitation of religious activities in case of a pandemic are contained in Law No. 6 of 2018 concerning health quarantine which is further regulated in Minister of Health Regulation No. 9 of 2020 concerning Large-Scale Social Limitation Guidelines (PSBB) in the Context of Handling Corona Virus Disease 2019 (Covid-19). The implementation of PSBB in the DKI Jakarta area is then further regulated in the Governor Regulation of the Special Capital Region of Jakarta Number 33 Year 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in the Province of the Special Capital Region of Jakarta ("Pergub DKI Jakarta 33" / 2020 "). In terms of religion, in Islamic religion, the regulation on worship restrictions has been regulated in MUI *Fatwa* No. 14 of 2020 concerning

Organizing Worship in Situations of the Covid-19 Outbreak.

- B. When viewed in terms of substance, Indonesia is very ready because even before the pandemic occurred Indonesia had prepared the quarantine protocol as stated in Law number 6 of 2018 concerning health quarantine. But when viewed in terms of structure, it can be seen how Indonesia has difficulties in dealing the Covid-19 pandemic. A real case that can be used to show how the government had difficulties in dealing with it is the case of the World Congress of *Ijtima* in Gowa, South Sulawesi, which continues to carry out its activities amid the corona pandemic. This case reflects that the structure, in this case law enforcement in Indonesia, is not ready because in this large event gathering thousands of people, of course, requires licensing and monitoring by the authorities, the passing of this not only proves that the legal structure in Indonesia is still weak, but also legal culture In Indonesia itself, which does not want to comply with existing laws so that it has the potential to spread Covid-19 even further.

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