

Judges' Consideration In Deciding The Case Of The Rejection Of A Deceased Covid-19 Victim's Funeral In Semarang

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Abstract.

The handling of the dead bodies caused by the epidemic is one of the methods used to control disease outbreaks. The handling of the dead bodies itself has always been regulated in Article 16 of Government Regulation Number 40 of 1991 about Disease Outbreak Management, way before the COVID-19 pandemic happened. The purpose of this paper is to contribute to the advancement of legal science by expanding knowledge and providing references, particularly in the case of the rejection of COVID-19 victims' bodies, which is the subject of Ungaran District Court Ruling number 76/Pid.Sus/2020/PN Unr. This research is focused on these two problems: the legal review of the funeral law and the rejection of a deceased COVID-19 victim's funeral; and the judges' consideration in deciding the case of the rejection of a deceased COVID-19 victim's funeral. Objectively, this research aims to describe the legal review of funerals and the rejection of a deceased COVID-19 victim's funeral, as well as the judges' considerations in deciding the case of the rejection of a deceased COVID-19 victim's funeral. The research was conducted using a normative juridical method with a statutory and conceptual approach. Primary and secondary legal materials are discussed and researched using an interpretation method with the aim of providing clarity on the existing legal materials related to the problems encountered. As such, the research results were as follows: Firstly, there are adequate laws and regulations for funeral management, including protocols for the burial of bodies due to infectious disease outbreaks. Refusing to bury a deceased COVID-19 victim is a penal act, both according to Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases and the Criminal Code, and is an unlawful act according to Article 1365 of the Civil Code. Second, it was found that the judges decided the case by considering the law, the action, the mental attitude or guilt, and the penalty. It is expected that there will be effective public education about the human rights inherent in a person even after death, as well as education about the dangers of stigmatizing COVID-19 patients and victims in efforts to combat the pandemic.

Keywords: *Judges' consideration, case decision, rejection of bodies, COVID-19*

1. INTRODUCTION

Coronavirus disease 2019 (covid-19) is an infectious disease that causes acute respiratory syndrome caused by a virus measuring about 0.15 micrometers.[1] The disease was first identified in December 2019 in Wuhan, Hubei, China. This disease spreads quickly; even to date, more than 1.62 million people have been reported to have tested positive for Corona from more than 200 countries and regions[2]. This

virus is genetically similar to the SARS and MERS viruses. In addition, the DNA of this virus has a close relationship with the DNA of bats[3]. This virus first appeared in a wet market in Wuhan, Hubei, China, where many kinds of animals that live in Asia are sold in that market; even to maintain the freshness of the meat, some are cut directly from the need to be bought fresh. Then this market became a place for the emergence of the virus due to the proximity of animals and humans, which made this virus easy to breed.[4]

Corona Virus Disease 2019 (COVID-19) is an infectious disease caused by a virus measuring about 0.15 micrometers that causes acute respiratory syndrome[5]. The disease was first discovered in Wuhan, Hubei Province, China, in December 2019. This disease spreads quickly; to date, more than 1.62 million people from more than 200 countries and regions have tested positive for COVID-19 [6].

As of November 2020, 463,007 people had been exposed to the COVID-19 virus, with 15,148 dead, accounting for 3.3 percent of all cases. Many of the COVID-19 victims died as a result of the virus as well as the age susceptibility factor, which caused their immune systems to rapidly deteriorate [7].

One of the methods used to control disease outbreaks is the handling of the dead bodies caused by the disease [8]. The handling of the dead bodies caused by infectious disease have always been regulated in Article 16 of Government Regulation Number 40 of 1991 about Disease Outbreak Management, way before COVID-19 outbreak started. In its essence, the government regulation oversees the special handling of dead bodies from examination to treatment, which must be handled by health officials [9].

This shows that the burial of deceased COVID-19 victims does not follow standard funeral procedures, but rather follows a special protocol with specific provisions that health workers should always adhere to [10]. However, due to the general public's lack of understanding of COVID-19[11], many hoaxes have circulated claiming that the virus can be transmitted through the bodies of deceased COVID-19 victims. As a result of this incitement by provocateurs that did not understand funeral procedures and spread harmful fake news, some communities are reluctant to accept deceased COVID-19 victims to be buried near their homes [12].

In Sewakul Ungaran Barat, Semarang Regency, a group of residents rejected the burial of a deceased COVID-19 victim who had previously worked as a nurse at Kariadi Hospital Semarang. Efforts had been made to persuade the residents by ensuring them that the funeral would be conducted in accordance with health protocol and with the assistance of a medical team. However, the residents continued to raise objections, prompting the deceased's family to move the burial site to Bergota, Semarang City.

This is where the importance of doing research comes in. What are the legal rules when the actions of a number of people have provoked the community to jointly reject the funeral of a resident who died due to COVID-19 in local public cemeteries? What is the law when a person or group of people stigmatizes a COVID-19 victim even after they have died? Likewise, it is necessary to investigate the judges'

considerations in deciding the penalty against acts that, apart from being penal acts, also violate human rights.

II. METHODS

This research was conducted using a normative juridical method with a statutory approach and a conceptual approach. Primary and secondary legal materials are discussed and researched with the interpretation method with the aim of providing clarity on the existing legal materials related to the problems encountered.

III. RESULT AND DISCUSSION

A. The Legal Review of the Rejection of the Deceased COVID-19 Victim's Funeral in Semarang

1. The Funeral Law Requirements

Article 5 of Government Regulation No.9 of 1987 concerning Provision and Use of Land for the Purpose of Cemeteries states: "The management of public cemeteries located in cities is carried out by the relevant Regional Government based on a level II Government Regulation. Meanwhile, the management of non-public burial places is carried out by an institution, or social or religious legal institution with permission from the relevant Level II Regional Government.

Article 2 paragraph 3 of Government Regulation No. 9 of 1987 concerning Provision and Use of Land for the Purpose of Cemeteries states that: "In the construction of the cemetery, the manager is prohibited from using excessive land in the sense that burials are made in such a way that leads to excessive waste, which causes damage to natural resources and disrupts the balance of life."

Cemeteries in Indonesia are divided into several types, including: Public Cemeteries; Non-public Cemeteries; Special Cemeteries and Crematoriums and Mortuaries (for indigenous peoples who do not bury their bodies).

According to Article 4 paragraph 1 of Government Regulation Number 9 of 1987 concerning Provision and Use of Land for the Purpose of Cemeteries, everyone must receive the same treatment for burial in public cemeteries, as well as give importance to groupings based on each religion to create order and regularity in both public and non-public cemeteries.

2. Protocol for Diseased COVID-19 Victims' Funeral

The Ministry of Religion, through the Director General of Islamic and Christian Community Guidance, issued a circular regarding the handling of the bodies of deceased COVID-19 victims.

a. Circular of the Director General of Islamic Community Guidance

Appeals for the implementation of the protocol for the handling of the deceased COVID-19 victims include:

- 1) Body Management
 - a) The management of the bodies of deceased COVID-19 victims is carried out by health workers from the hospital who have been appointed by the Ministry of Health;
 - b) The bodies of deceased COVID-19 victims must be covered with a shroud/ plastic material (impermeable to water). The bodies can also be covered with wood or other materials that are not easily polluted;
 - c) A covered body may not be opened again, except in urgent circumstances such as an autopsy and can only be performed by health officers; and
 - d) The body must be buried in 4 hours maximum.
 - 2) Funeral Prayer
 - a) Funeral prayers are held at referral hospitals. Otherwise, they can be carried out in mosques that have undergone a thorough sanitation inspection process. Disinfection must be performed after the prayers are done.
 - b) Funeral prayers must be carried out as soon as possible, taking account of the predetermined time, which is no more than 4 hours; and
 - c) Funeral prayers can be carried out by 1 (one) person.
 - 3) The Burial
 - a) The burial site must be at least 50 meters from groundwater sources used for drinking and at least 500 meters from the nearest residential area;
 - b) The body must be buried at a depth of 1.5 meters and covered with one meter of soil; and
 - c) After all procedures have been carried out properly, the family can participate in the burial process.
- b. Circular of the Director General of Islamic Community Guidance
- People who died as a result of COVID-19 must be handled according to the Health Task Force's SOP for burial of the dead, as well as the PGI's Guidelines for Services and Mourning Services for COVID-19 Positive Church Residents. For the ones who died because of non-COVID-19 related causes, the funerals can be done based on the worship procedures of their respective churches while still adhering to the announcement of the Indonesian National Police Chief and maintaining distance during the service.
- WHO has provided several suggestions for handling the bodies of deceased COVID-19 victims in general, including the procedure and distance of burials so

as not to disturb residential areas. The referrals given by WHO regarding funeral procedures are¹:

- 1) The burial site is at least 20 meters from a water source that is commonly used for drinking;
- 2) The bottom of the grave must reach approximately 5 meters above the ground water level with an unsaturated zone of 0.7 meters; and
- 3) The water from burial sites' surfaces is not allowed to enter residential areas. Health officers are required to follow universal warnings when handling blood and body fluids because of the risk of contracting tuberculosis (tuberculosis) which is spread through blood such as Hepatitis B, C, and HIV.

3. The Legal Review of the Rejection of the Deceased COVID-19 Victim's Funeral

Based on facts and data, a high frequency of COVID-19 victims was discovered in Indonesia in early November 2020. The COVID-19 virus infected 463,007 people, with 15,148 patients dead, or 3.3 percent of the total cases. Due to the long holiday at the end of October, there was a spike in bookings from November 9 to 15, 2020. There were 2,853 additional cases starting from November 9, which increased to 3,770 daily cases on November 10, 3,770 cases on November 11, 4,173 cases on November 12, and 5,444 COVID-19 cases on November 13

A lockdown was supposed to be implemented in Indonesia to prevent COVID-19 from spreading further. However, as it was feared that the lockdown would cause an economic crisis, the government decided to tackle the outbreak by

1. Epidemiological Investigations;
2. Examination, Treatment, Isolation of Patients, Including Quarantine;
3. Prevention and Immunization;
4. Extermination of the Causes of Disease;
5. Handling of Dead Bodies Caused by the Disease;
6. Educating the Community; and
7. Other countermeasures.

Thus, the handling of dead bodies caused by infectious diseases, specifically by health workers, is one of the strategic epidemic prevention efforts. In other words, hindering the handling of the dead bodies caused by infectious diseases is the same as hindering the prevention of the spread of the disease itself.

a. Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases

Article 14 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases states: “anyone who deliberately obstructs the implementation of infectious disease control as regulated in this Law is threatened with imprisonment for a maximum of 1 (one) year and/or a fine of up to Rp1,000,000 (one million rupiah)”. In accordance with that, Article 5 paragraph (1) letter e states that epidemic control includes the treatment of the dead bodies caused by infectious diseases.

The Explanation of Article 14 mentions the element of “obstructing”, which means any act to complicate or disrupt a procedure in dealing with a deceased body whose death was caused by a disease or could become a source of disease that could cause outbreaks, which must be carried out specifically according to the type of disease. It is an act of complicating the handling of dead bodies caused by infectious diseases so that the procedure is difficult to complete or cannot be completed at all. Complicating the transportation of the body is also included in this context, wherein a body that has been handled specifically and is already on its way cannot be buried because of a disruption.

b. Criminal Code

Article 178 of the Criminal Code states: “anyone who intentionally obstructs the entrance or transportation of a dead body to a permitted burial site faces a maximum penalty of one month and two weeks in prison or a maximum fine of one thousand eight hundred rupiah”.

In light of this, it is obvious that obstructing the burial process in a permitted burial site is a penal act.

c. Civil Code

Denying a funeral is an unlawful act (*onrechtmatige daad*), according to Article 1365 of the Civil Code, which states: "Every unlawful conduct that causes harm to another person obligates the person who, due to negligence, caused the loss to compensate for the loss."

The researcher is of the opinion that provoking the residents of Sewakul so that the deceased COVID-19 victim cannot be buried in their settlement is classified as an unlawful act because the following 4 conditions are met:

1. It is in direct conflict with the legal obligations of the perpetrator. Residents in the area where the deceased used to live are required to bury the deceased in accordance with local regulations. In response to the rejection of a deceased nurse's burial in Semarang, Article 2 of Semarang City Regulation No. 10 of 2009 concerning Organizing and Retribution of Funeral Services in the City of Semarang was enacted. The regulation states: “Every heir and/ or party responsible for burying the deceased is obliged to bury them in the burial place in accordance

with the procedures according to the religion & belief adopted by the deceased in question”.

2. It is against the subjective rights of others. Article 23 of the Criminal Code states: "What is considered the mourning house of a deceased person is the house where they last lived". Article 5 of Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases states: “Epidemic control includes the handling of the dead bodies caused by the epidemic”, and Article 14 paragraph (1) states: "Anyone who deliberately obstructs the implementation of epidemic control as regulated in this Law is threatened with imprisonment for a maximum of 1 (one) year and/or a fine of up to Rp1.000.000,- (one million rupiah)".
3. It is against morality.
4. In a sense, it is against propriety that burying someone who has passed away is the proper thing to do. In Islam, if someone passes away, it is the obligation of a Muslim to bathe, shroud, pray for, and bury the deceased.

B. Judges’ Consideration in Deciding the Case of the Rejection of Burial in Ungaran District Court Ruling Number 76/Pid.Sus/2020/PN Unr

Broadly speaking, a judges' consideration in deciding a penal case consists of considerations regarding the law, considerations regarding the actions, considerations regarding errors, and considerations regarding the penalty.

1. Considerations Regarding the Law

In accordance with the legal facts presented, the Panel of Judges and the Public Prosecutor agreed that the Defendants would be more accurately charged with a second alternative charge as regulated in Article 14 Paragraph (1) in conjunction with Article 5 Paragraph (1) Letter e of the Law of the Republic of Indonesia Number 4 of 1984 about Outbreaks of Infectious Diseases and Article 55 paragraph (1) of the 1st Criminal Code, whose elements are as follows:

Anyone; Deliberation; Hindering the implementation of epidemic control, in this case, the handling of the dead bodies caused by the epidemic; the actor; the person who ordered the action; and the participant.

In this case, there is a conscious collaboration between 3 people (actors) to achieve the same goal, namely to prevent the burial of a deceased COVID-19 victim in Sewakul, Ungaran.

2. Considerations Regarding the Actions

The Panel of Judges defines the element of "obstructing" as an act of hindering or an act of preventing an activity from being carried out, either by delaying an activity or making it so that the activity can only be carried out with difficulty.

To "obstruct" is to manipulate the situation so that an activity does not take place. Article 14 paragraph (1) of Law No. 4 of 1984 states: "*Whoever deliberately obstructs the implementation of epidemic control... etc.*" In this case, the element of "obstructing" has been fulfilled by intentionally using psychological or physical pressure in the form of attitudes, words, etc., so as to result in the emergence of a force that prevents an action that can physically take the form of blocking the road, and so on.

3. Considerations Regarding Mental Attitudes or Errors

The judges consider the element of intentionally hindering the implementation of epidemic control, in this case, the handling of the dead bodies caused by the epidemic. According to Memorie van Toelichting (M.v.T), *dolus/opzet* (deliberation) is defined as *willen en wetten* or wanting and knowing. Van Hatum explained that "wanting" is defined as wanting the action and the consequences of the act (*opzet als oogmerk*), while "knowing" is defined as knowing the action and the consequences of the act (*opzet als wetenschap*).[13]

In legal theory, there are three forms of *dolus / opzet* (deliberation). The first is deliberation as an intention (*opzet als oogmerk*), where the actions taken and the consequences that occur are the perpetrator's goals. The second is deliberation as certainty or necessity (*opzet bij zekerheids-bewustzijn*), where the consequence that occurs is not the goal. To achieve a result that is really intended, another action has to be taken, so that in this case, the action produces 2 (two) consequences, namely as a result that is desired by the perpetrator and as a result that is not desired by the perpetrator but must occur so that the first result (desired effect) actually occurs. The third is deliberation as an awareness of a possibility or deliberation as a conditional awareness (*dolus eventualis / voorwadelijk opzet / opzet bij mogelijkheden bewustzijn*), where as carrying out an action, the perpetrator is aware of the possibility of undesirable consequences, but that awareness does not make the perpetrator cancel his intention, which pushes the unintended result to actually occur.

Mensrea is an inner intention or evil intention, which is a subjective element known as deliberation. The *actus reus* nature of a subjective element and the subjective element itself must completely fulfill all elements of the law, both its formal and material ones. Considering this, the judges agreed that the first form of deliberation, which is deliberation as an intention, had been proven.

According to the plea of the Defendant's legal counsel, the burial was meant to be carried out in accordance with the health protocol rules issued by the Ministry of Health, abiding by the WHO rules, and the burial process was deemed safe.

Based on all the considerations mentioned above, the Panel is of the opinion that the elements of "*deliberately obstructing the implementation of epidemic*

control in terms of handling dead bodies caused by infectious diseases" have been fulfilled and proven.

4. Considerations Regarding the Penalty

Regarding the elements of "the actor", "the person who ordered the act", and "the participant", the Panel of Judges agrees with the legal theory presented by the Public Prosecutor, namely about "doing" (*Pleger*), "ordering to do" (*Doen Pleger*), and "participating in doing" (*Medepleger*). Based on the considerations mentioned above, the Judges are of the opinion that the aspirations of Sewakul residents conveyed by the Defendants regarding the funeral procession are unfounded because they are based on the wrong reasons. Their objection regarding the origin of the dead body is contrary to the funeral regulations, and their concern about the spread of COVID-19 is unnecessary since the deceased had already been handled in accordance with the existing health protocol and deemed safe.

The actions of the defendants as described above have actually perfected the act of rejecting the handling of a deceased COVID-19 victim, and freedom of speech is not an excuse for forgiveness or justification of said acts.

Since all elements of Article 14 Paragraph (1) in conjunction with Article 5 Paragraph (1) letter e of the Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Infectious Diseases in conjunction with Article 55 paragraph (1) of the 1st Criminal Code as the second indictment of the Public Prosecutor has been fulfilled, the Panel of Judges is of the opinion that the charges against the Defendants must be declared legally and convincingly proven.

Because the Defendants are capable of being responsible, they must be found guilty. Based on Article 193 paragraph (1) of the Criminal Procedure Code, the Defendants must be sentenced to a crime. The defendants were charged with violating Article 14 paragraph (1) and Letter e of Article 5 paragraph (1) of the Law of the Republic of Indonesia No. 4 of 1984. Those articles mention a criminal threat with imprisonment and a fine, but in the inclusion of a criminal fine, they use the word "and/or".

Because the Law of the Republic of Indonesia Number 4 of 1984 does not specifically stipulate the criminal penalty in lieu of a fine if it is not paid, the Panel of Judges will refer to the provisions in Article 30 of the Criminal Code in which a substitute punishment will be determined in the form of imprisonment not exceeding 6 months.

The sentences imposed on the defendants are imprisonment for 4 (four) months each, cut from a period of detention and a fine of Rp100,000 (one hundred thousand rupiah). Because the defendants stated that they were ready to pay the fine, it was not necessary to determine the imprisonment in lieu of a fine.

From normative research, it is revealed that the case of the rejection of a deceased COVID-19 victim's funeral in Semarang Regency has not been linked to human rights violations. The citizens' act of rejecting a deceased COVID-19 victim's funeral is actually a violation of human rights, as stated in the ICCPR (International Covenant on Civil and Political Rights), especially those classified as non-derogable rights, which are the rights attached to a person that cannot be limited or reduced by the state.

Included as non-derogable human rights are the right to life, the right to human dignity, and the right to be treated equally by other human beings, even after death. Thus, these non-derogable rights are attached to a person from when they are a fetus until they die, where their body still has the right to be buried properly like other citizens, even if they were a victim of the COVID-19 outbreak. As the name implies, these non-derogable human rights continue to be attached to a person even after they die. They cannot be reduced or abolished by the state or government, let alone by individuals or groups of people. Thus, the actions of the three provocateurs who succeeded in influencing the public to refuse the burial of the deceased COVID-19 victim at the Sewakul Ungaran cemetery, apart from being a penal act, are also a violation of human rights.

From the judge's decision, the researcher found that the judge did not consider the human rights aspect and did not consider the consequences of the defendants' actions for the wider community, especially in the COVID-19 pandemic situation. First, aspects of human rights, in this case non-derogable rights as set out in the ICCPR (International Covenant on Civil and Political Rights), should be socialized to the general public. It can be done, among other things, through judges' decisions, which are symbols of the final result of a process of finding justice. It is time for the general public to become more aware of the existence of these non-derogable rights, namely human rights that cannot be eliminated or reduced by the state or government, let alone a community. In this case, it is a right that is attached to a person even until their body is buried. All these rights are attached to a person, even though they have died. Thus, everyone has the right to be buried in the cemetery they chose during their life, or the one chosen by their family, as long as this does not conflict with the regulations regarding burial sites. The convicts who influenced the local community to deny a funeral for a deceased COVID-19 victim committed a violation of human rights.

Second, the defendant's actions that provoked local residents to refuse a deceased COVID-19 victim's funeral have caused a stigma for members of the public who are infected with COVID-19. Stigmatization of people who are infected with COVID-19, of course, causes serious losses and impacts, both for the interests of the individuals in question, their family, the general public, and the government. Efforts to overcome the COVID-19 outbreak can be hampered because of this stigmatization.

In the opinion of the researcher, these two things should be considered by the judges in deciding the penalty against the defendants.

IV. CONCLUSION

1. The legal review of the refusal of burial of the bodies of COVID-19 victims is as follows.

a. The Funeral Law Requirements

Government Regulation No. 9 of 1987 concerning Provision and Use of Land for the Purpose of Burial Places stipulates that the management of public cemeteries is carried out by the Level II Regional Government, while the management of non-public cemeteries is not carried out by related institutions or legal entities, and the use of the burial area should not be excessive and wasteful of land.

b. Protocol for Diseased COVID-19 Victims' Funeral

The Ministry of Religion through the Director General of Islamic and Christian Community Guidance issues a circular regarding the handling of the bodies of deceased COVID-19 victims, regarding the handling of the bodies, the burials, and the funeral processions according to religious rules.

c. The Legal Review of the Rejection of Funerals

The laws and regulations related to the refusal of burial of the bodies of victims of COVID-19 are: Law no. 4 of 1984 concerning Communicable Disease Outbreaks, namely hindering efforts to control infectious disease outbreaks; Article 178 of the Criminal Code, namely preventing corpses from being buried in permitted cemeteries; and Article 1365 of the Civil Code concerning acts against the law.

2. Judges' Considerations in Deciding cases of the Rejection of a Deceased COVID-19 Victim's Funeral in Decision number: 76/Pid.Sus/2020/PN Unr

a. Considerations regarding the law

The judges applied Article 14 Paragraph (1) in conjunction with Article 5 Paragraph (1) letter e of the Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Infectious Diseases in conjunction with Article 55 paragraph (1) of the 1st Criminal Code with the consideration that these articles and laws are suitable according to the *lex specialis derogate lex generalis* principle.

b. Considerations regarding the actions

The elements of action in Article 14 paragraph (1) and Article 5 paragraph (1) letter e, namely "obstructing" the efforts to control an epidemic have been proven legally and convincingly. Likewise, the actions of the defendants who consciously cooperate to reach the goal of the obstructive act have been proven.

c. Considerations regarding mental attitudes or errors

The judge was of the opinion that the actions of the defendants were carried out deliberately, either in the first grade of deliberation which is deliberation as an intention, or in the second grade, which is deliberation with certainty.

d. Considerations regarding the penalty

The judges considered imposing a cumulative sentence because it is possible by Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases, namely imprisonment for 4 (four) months and a fine of Rp. 100,000, - (one hundred thousand rupiah).

The judges had not considered the defendant's actions from the human rights aspect, especially the non-derogable rights as stated in the ICCPR (International Covenant on Civil and Political Rights), namely the rights attached to a person, even after they have died. Likewise, the judges did not consider the consequences of the defendant's actions in the form of attaching a stigma to victims of COVID-19, even though stigmatization of COVID-19 victims complicates efforts to overcome the Covid-19 outbreak.

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