

PROTECTION OF HEALTHCARE WORKERS' RIGHTS TO REFUSE THE COVID-19 VACCINATION IN KEBUMEN DISTRICT

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Abstract

The government's policy in implementing the nationwide mandatory COVID-19 vaccination program aims to reduce the risk of transmission of the COVID-19 disease. However, some healthcare workers do not believe that the vaccination is effective. Every citizen has the right to refuse vaccination against COVID-19, including the healthcare workers. The research questions are (1) how the protection of the healthcare workers' right to refuse the COVID-19 vaccination in Kebumen District? (2) How does the legal theory address the problem of the right to refuse the COVID-19 vaccine? This research uses sociological or empirical non-doctrinal methods with a qualitative descriptive approach, the research was conducted in Kebumen District with bureaucrat, healthcare workers and head of the healthcare professional organization as the respondents. Theories used in this research are ethics and human rights, work of law in society hegemony and domination. The results show that the rights of healthcare workers too refuse the COVID-19 vaccination is not guaranteed and protected by the government. Healthcare workers who refuse vaccination sanctioned. The government and the healthcare workers have the same interests; hence a consensus is needed in the form of a hegemony and domination which is mutually beneficial and not detrimental to both parties.

Key Words: *Healthcare workers, refusal, rights, vaccine.*

A. Introduction

The COVID-19 pandemic that has hit Indonesia since March 2020 had a very significant impact on all aspect of people's lives: economics, health, social relationships, and culture. Efforts, strategies, and policies have been made by the government to prevent

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and reduce the transmission of COVID-19, including large and micro-scale social restrictions; socialization of the health protocols from ‘3M’ (washing hands, wearing masks and maintaining distance) to ‘5M’ (decreasing mobility and avoiding crowds were added); impose social sanctions on people who violate the health protocols such as cleaning the streets, singing and others. In some regions, social sanctions have been added to fines. In addition, there are government policies such as the “new normal” or the adoption of new habits by implementing health protocols in all public facilities and establishing a COVID-19 Task Force at the central and regional levels consisting of all elements of society. However, the government’s strategies and policies have not affected the morbidity and mortality rates for people suffering from COVID-19. Many hospitals and community health centers in the regions cannot accommodate patients suffering from COVID-19 and have built COVID-19 emergency hospitals.

From March 17, 2020, to April 2, 2021, the worldwide distribution of COVID-19 were 128,540,982 people confirmed and 2,808,308 people died in 223 countries² Meanwhile, the numbers in Indonesia were 1,523,179 cases confirmed, 1,361,017 people cured and 41,151 dead, an of 5,142 cases, decrease of 1,302 active cases (8.7%), increase of 7,248 recovered cases (88.5%), increase of 196 died cases (2.7%).³

Central Java Province is ranked third out of 34 Provinces in Indonesia with 164,071 cases (11.3%).⁴ The alternative strategy taken by the taken by the government is to implement mass COVID-19 vaccination with a target of 1.3 million healthcare workers and 17.4 million essential public employees such as soldiers of the Indonesian National Army (TNI), members of the Indonesian National Police, Civil Service Police Unit, public transportation officers, religious and community leaders.⁵ The government’s policy by implementing the COVID-19 vaccination program nationally aims to reduce the risk of transmission of the COVID-19 in addition to health protocols. However, some people, especially healthcare workers, do not believe that the vaccination can effectively provide immunity due to the inadequate information provided by the government regarding the

² COVID-19 Handling and National Economic Recovery Committee, ‘Data on the Distribution and Situation of the COVID-19 Virus in Indonesia’ (*covid19.go.id*) <<https://covid19.go.id>> accessed 2 April 2021.

³ *ibid.*

⁴ *ibid.*

⁵ Decree of the Minister of Health of the Republic of Indonesia No. 12757 of 2020 on Setting Targets for Corona Virus Disease 2019 (COVID-19) Vaccination [hereinafter, ‘Decree of Health Ministry 2020’].

ingredients, side effects and production process.⁶ Of the 20% of healthcare workers who have refused the COVID-19 vaccination, 30% did not trust the safety of the vaccine, 22% are pessimistic about the effectiveness of vaccine, 12% are worried about the side effects, 13% do not believe in the vaccine and the remaining 8% believe that the vaccine is *haram*.⁷ 27% of the Indonesian population began to have doubts about the COVID-19 vaccine. From 112 thousand respondents, 64.8% of the public are willing to be vaccinated, 7.6% refuse to be vaccinated and 27.6% do not know about COVID-19 vaccination.⁸ 1,149,939 (78.29%) healthcare workers in Indonesia have been vaccinated from the target of 1,468,764 healthcare workers. The remaining have not been vaccinated because of paranoia or other reasons.⁹

There are seven types of COVID-19 vaccines that will be used in Indonesia:¹⁰ Sinovac, Moderna, Biofarma, Sinopharm, Pfizer, Novavax and Astrazeneca. The six vaccines take only a short time from the importing process of their original producing country to Indonesia for inspection at the Food and Drug Supervisory Agency (BPOM) that the BPOM issues Emergency Use Authorization (EUA) as a requirement for vaccines to be given directly to the public. In addition, Sinovac in phase III of clinical trial had an efficacy of only 65.3%. Healthcare workers as the first group to receive the COVID-19 vaccine do not have much time to consider the type of vaccine to be given because they have the right to determine the type of vaccine to be obtained in accordance with article 5 paragraph (3) Law Number 36 of 2009 on Health which reads: “Everyone have the right to independently and responsibly determine the health services that are needed for oneself.”

The government’s target is to vaccinate healthcare workers until February 2021. The COVID-19 vaccination program for healthcare workers in Kebumen District only takes one month, including the first and second doses. This aims to accelerate the target of

⁶ Siti Nadia Tarmizi ‘People who Still Do Not Believe Covid-19 is Blocking the Vaccination Program’ (*Detik*, 24 March 2021) <www.health.detik.com/beritadetikhealth/detailartikel> accessed 17 April 2021; Fahrur Rozi, ‘Public Distrust of COVID-19 is 42.4%’ (*Liputan 6*, 22 February 2021) <www.m.liputan6.com/news/nasional> accessed 17 April 2021.

⁷ Anwar Siswadi and Zacharias Wuragil, ‘Survei 20 Pasien Tenaga Medis di 4 Kota ini Tolak Vaksinasi Covid-19’ (*Tempo*, 8 June 2021) <tekno.tempo.co/amp/1421711/survei-20-pasien-tenaga-medis-di-4-kota-ini-tolak-vaksinasi-covid-19> accessed 14 June 2021.

⁸ Rizqy Amelia Zein, ‘27% Penduduk Indonesia Masih Ragu terhadap Vaksin Covid-19, Mengapa Penting Meyakinkan Mereka?’ (*The Conversation*, 15 January 2017) <<https://theconversation.com/27-penduduk-indonesia-masih-ragu-terhadap-vaksin-covid-19-mengapa-penting-meyakinkan-mereka-150172>> accessed 14 June 2021.

⁹ Martha Herlinawati, and Endang Sukarelawati, ‘Tenaga Kesehatan telah Mendapatkan Vaksin Covid-19’ (*Antara News*, 14 March 2021) <<https://m.antaranews.com/berita/2005073/1149939-tenaga-kesehatan-telah-mendapatkan-vaksin-covid-19>> accessed 14 juni 2021.

¹⁰ Decree of Health Ministry 2020.

COVID-19 vaccination for all groups. In this short time, there is no reason for healthcare workers to refuse the COVID-19 vaccine. The refusal of healthcare workers to be vaccinated raises legal problems because they are deemed to violate Article 9 of Law Number 6 of 2018 on Health Quarantine that everyone who disrupts the implementation of health quarantine will be sentenced to imprisonment for a maximum of one year and/or a maximum fine of Rp. 100,000,000.- (one hundred million rupiahs).

The healthcare workers in both public and private sectors have growing concerns that their right to refuse the COVID-19 vaccination program is in danger of being abused. The rights of healthcare workers as well as the citizens in general require protection and respect by all parties, especially the government. Citizens can choose not to exercise their rights under certain circumstances. In accordance with the principle of inalienable human rights, under no circumstances will a person stop being human, they still have their rights, including in the COVID-19 Pandemic which is a non-natural disaster. Refusing to receive a COVID-19 vaccine is different from not being vaccinated for comorbidity reasons or other contraindications because a health examination has been carried out previously and the person did not declare their refusal to receive the vaccine. The rights to refuse \ the COVID-19 vaccine is the same as the right to obtain proper healthcare services as stated in article 5 paragraph (3) of Law Number 36 of 2009 on Health that states,¹¹

Healthcare services by the government to the community as a form of state responsibility using state facilities and budgets such as healthcare workers with the status of government employees as implementers of giving vaccines supported by healthcare service facilities as locations for vaccination and vaccines with personal protective equipment purchased from the state budget.

The COVID-19 vaccination program is included in the category of healthcare services that are the right of citizens including healthcare workers in fulfilling their rights to healthcare services, which can be determined or chosen by citizens according to their needs. In addition, article 28 (A) of the 1945 Constitution of the Republic of Indonesia reads: “Everyone has the right to live and has the right to defend his life and livelihood.”

People have the right to freely decide for themselves how to defend their lives and livelihoods either by using the right to receive or reject the COVID-19 vaccination. In this case, the right to live by refusing to be vaccinated against COVID-19 through consideration and the results of thinking from healthcare workers about side effects, level

¹¹ Law No. 36 of 2009 on Health, article 5 paragraph (3) which reads: “Everyone have the right to independently and responsibly determine the health services that are needed for one’s self.”

of safety and effectiveness are included in non-derogable rights. Non-derogable human rights are absolute rights that cannot be infringed upon by the state even in an emergency, which includes the right to life, freedom from acts of torture, freedom from acts that are inhuman and degrading, freedom from slavery, freedom from the law applies retroactively and freedom of thought, conscience, and religion. These human rights are the core of the basic human rights guaranteed to all humans.¹²

6,973 healthcare workers who were targeted for COVID-19 vaccination in Kebumen District were, with 6,962 people received the first dose of vaccination and 6,124 people received the second dose.¹³ This difference in number is due to the healthcare workers who are known to have a medical history of comorbidity that prohibits them to receive the COVID-19 vaccine, while the rest did not show up at the designated vaccine facilities. Most healthcare workers are familiar with the procedures and production stages of vaccine from the rather abrupt clinical trial phase to the side effect caused by the vaccine. Furthermore, difficulties in accessing information from the government have caused some healthcare workers to have little faith in the COVID-19 vaccine. Healthcare workers who refuse to receive COVID-19 vaccination in Kebumen District felt uneasy and worried about the sanctions that will be given by the government such as revocation of medical practice licenses and operating permits for the practice which will threaten the source of income for healthcare workers and hinder the healthcare services to the community.

The right to refuse the COVID-19 vaccine is the result of thinking and belief based on science and technology in the health sector, which is owned by several healthcare workers, similar to the freedom to choose one's religion and to practice worship is the result of their thoughts and beliefs.

Under any circumstances, including the COVID-19 pandemic, the government is responsible for providing standardized and appropriate healthcare services to its people as it is a non-derogable rights. In the COVID-19 pandemic, healthcare services in the form of providing vaccines for the community must comply with the standards and satisfy the requirement of effectiveness, efficacy, and safety in all stages of the vaccine

¹² Suparman Marzuki, 'The Perspectives of The Constitutional Court on Human Rights: An Analysis of Three Decisions of the Constitutional Court: Number 065/ PUU-II/ 2004; Number 102/PUU-VII/ 2009 and Number 140/ PUU-VII/ 2009' [2013] Jurnal Komisi Yudisial.

¹³ Kebumen Regional Government, 'Kebumen Tanggap COVID-19' (*Kebumenkab*), <www.corona.kebumenkab.go.id> accessed 2 April 2021.

manufacturing while maintaining transparent information on the vaccines that the citizens can obtain their rights without being deducted.

B. Problem Formulation

Based on the discussions above, the following problems are formulated: *first*, how to protect healthcare workers' right to refuse the COVID-19 Vaccination Program in Kebumen District? *Second*, what legal theory addresses the right to refuse the COVID-19 vaccine?

C. Methodology

This is empirical research with a qualitative-descriptive analysis to identify the process of protecting the healthcare workers' rights to refuse to the National COVID-19 Vaccination Program, which should reveal the underlying problems behind it. The data obtained were both primary and secondary sources, with respondents from the bureaucracy (Head of Health Office at Kebumen District); Chairman of the National Nurses Association of Kebumen District; healthcare workers, both of whom have been vaccinated and refused the vaccination. The research was conducted in Kebumen District where the author lives.

D. Discussion and Results

1. Protection of the Healthcare Workers' Right to Refuse the COVID-19 Vaccination Program in Kebumen District

A total of 6,973 healthcare workers were vaccinated from January to February 2021.¹⁴ There is a difference between the number of targets and the actual number of the healthcare workers getting vaccinated due to several factors, such as the presence of comorbidity in the targets, also the refusal of targets by not being present at the vaccination facilities which reaches up to 838 people.

Based on the results of interviews with the Head of Health Office Kebumen District, COVID-19 vaccinations of the healthcare worker group is mandatory and refusal is not allowed because it is a national government program supported by all parties. If there are healthcare workers who refuse the vaccine, they will be educated on the purpose of the vaccination program by visiting their places of residence or professional practice places. A vaccine refusal form will be given to be signed.

¹⁴ *ibid.*

Criminal sanctions such as fines and imprisonment based on Law Number 6 of 2018 on Health Quarantine is not the authority of the Health Office of Kebumen District. The Health Office of Kebumen District has a data system for healthcare personnel in Kebumen District to identify healthcare workers have and have not been vaccinated. All members of the health profession, especially PPNI in Kebumen District are required to make this vaccination program a success not to refuse to get the COVID-19 vaccine.¹⁵ Meanwhile, healthcare workers who refuse to be vaccinated deliberately did not participate or register themselves because they had not received correct information about the ingredients of the vaccine, the production process and the side effect caused by the vaccine. The central and local governments have not provided complete information about the vaccination. The healthcare workers were only given online invitations to attend the vaccination. Healthcare workers who refuse the vaccines know the consequences of doing so. According to the healthcare workers who have been vaccinated, the right to refuse vaccination can be enforced by signing the refusal form given at the third table during the vaccination program. Healthcare workers who refuse the vaccination or were not present at the vaccination site will be visited at their home or in their practice office to be given education and asked for information on the reasons for their refusal.

2. The Legal Theory supporting the Right to Refuse the COVID-19 Vaccine

The right to refuse a healthcare service from the government is included in the right to freedom. Human rights related to the refusal of healthcare workers against COVID-19 vaccination can be found Article 28A, Article 28G paragraph (1), Article 28H paragraph (1) and Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 5 paragraph (3) of Law Number 36 of 2009 on Health reads: “Every person has the right to independently and responsibly determine the health service that are needed for one’s self.”

In this case, everyone has the right to choose healthcare service for themselves and their family, including the right to refuse certain healthcare services. Under all circumstances, including the COVID-19 pandemic, the government is responsible for providing standardized and appropriate healthcare services to its people as it is a non-

¹⁵ Interview with the Chairperson of the Indonesia National Nurses Association (PPNI) in Kebumen District.

derogable right.¹⁶ In the COVID-19 pandemic, healthcare services in the form of providing vaccines for the community must comply with standards with security guarantees and satisfy the requirement of effectiveness, efficacy, and safety in all stages of the vaccine manufacturing, while maintaining open information on the vaccines that the citizens can exercise their rights without being infringed upon. Even in an emergency, disaster or pandemic condition, the quality of healthcare services should not be reduced or limited. By having the access to the information on healthcare services, citizens have the right to determine for themselves the healthcare services they need. In addition, article 56 paragraph (1) of the same Law reads: “Every person has the right to accept or reject part or all of the relief measure that will be given to their after receiving and understanding the complete information regarding the action.”

Based on Law Number 36 of 2009 on Health, the refusal of the COVID-19 vaccine has been constitutionally guaranteed so that the rights of healthcare workers who refuse the COVID-19 vaccine must be protected by the government. The right to refuse is the same human right which must be respected and protected by the government under any conditions including the COVID-19 Pandemic. All parties, especially the government, are not allowed to use the force of threats, pressure, intervention, or intimidation against healthcare workers who refuse the COVID-19 vaccine. Moreover, healthcare workers who work for government institutions are threatened with dishonorable dismissal because they are deemed as not having integrity and loyalty to the state. Imposing sanctions on healthcare workers at government institutions for refusing the vaccine is contrary to article 27 paragraph (2) of the 1945 Constitution of The Republic of Indonesia which reads: “Every citizen has the right to work and a living that is decent for humanity.”

Human rights are legal and normative concepts in which humans have rights that are inalienable. Human rights apply at any time, in every place and to all people hence they are universal, cannot be divided, interconnected and interdependent.¹⁷ Human rights cannot be revoked, which means under any circumstances a person will not stop being human who still possess these rights. The state or government is obliged to

¹⁶ Eric Richardson and Colleen Devine, ‘Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the Covid-19 Pandemic Under the International Covenant on Civil and Political Rights’ (2020) 42 Michigan Journal of International Law 105.

¹⁷ Joshua Grissom, ‘An Analysis of the Temporary and Lasting Effects of the Covid-19 Pandemic on International Human Rights’ (2021) 24 Gonzaga Journal of International Law 178.

respect, protect and fulfill the human rights. Conceptually, human rights are based on the belief that these rights are bestowed naturally by God Almighty.

Human rights depart from the concept of moral universalism and the belief in the existence of universal moral codes that are inherent in mankind. Moral universalism finds the existence of moral truths that are cross cultural and historical which are identified rationally. With universalism, the individual is a social unit that has undeniable rights and is directed at the fulfillment of personal interests. In the model of cultural relativism, a community is a social unit. Concepts such as individualism, freedom of choice and equality are unknown. What is acknowledged is that interests of the community are a top priority. All cultures have the same right to live and dignity which must be respected.¹⁸ Several principles have inspired international human rights that are found in almost all international treaties and applied to broader rights. These principles include the principle of equality, prohibition of discrimination and positive obligations imposed on every country to be used to protect certain rights. The right to refuse the COVID-19 vaccination is included in the right to personal freedom, thought and conscience as regulated in Article 4 Paragraph (2) of Law Number 39 of 1999 on Human Rights which reads: “The Right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law and the right not to be prosecuted on the basis of retroactive law are human rights human beings who cannot be reduced under any circumstances and by anyone.” Therefore, the right to refuse the COVID-19 vaccine is included in non-derogable rights or rights that cannot be infringed upon because the refusal is the result of freedom to think scientifically in the health sector and based on conscience. The procedure for producing a COVID-19 vaccine that is different from the procedure for producing other vaccines in pre-pandemic conditions affects the scientific freedom of thought of healthcare workers.

In addition, the right to refuse the COVID-19 vaccine is also regulated in the sixth part (right to feel safe) of Article 30 of Law Number 39 of 1999 on Human Rights

¹⁸ Mario C Cerilles and Harry Gwynn Omar M Fernan, ‘Analysing the Interplay between the Right to Health and Pharmaceutical Patent Rights in the Introduction of a COVID-19 Vaccine into the Philippines’ (2020) 14 *International Journal of Human Rights in Healthcare* 240. Dodik Setiawan Nur Heriyanto dan Huang Gui, ‘Death Penalty Legislation in China and Indonesia Under International Human Rights Law Perspective’ (2016) 23 *Jurnal Hukum Ius Quia Iustum* 576.

which reads: “Everyone have the right to a sense of security and security and protection against the threat of fear to do or not do something.” The right to refuse vaccination by healthcare workers is accompanied by the right to feel safe and the right to be protected by all parties from threats, pressure, intimidation or sanction due to the act of freedom to choose to refuse vaccination. Everyone's hope is to get a sense of security, peace, and protection from the threat of fear after receiving a COVID-19 vaccine if it is produced in accordance with the procedures prior to the COVID-19 pandemic. During the COVID-19 pandemic, several stages of vaccine production have been simplified due to emergency reasons which have caused insecurity and concerns for some healthcare workers.

Healthcare workers' right to refuse COVID-19 vaccine are included in the second generation of human rights, which are the right to decent work and the right to health. The rights of healthcare workers to refuse the COVID-19 vaccine with the consequent administrative sanctions in the form of revocation of healthcare practice permits and operational permits have an impact on the loss of healthcare workers' jobs, which means that the right to decent work of healthcare workers has been violated by the government. Likewise, the right of health of healthcare workers to refuse the COVID-19 vaccine is the same as the other citizens' right to health.

Healthcare workers who refuse to be vaccinated against COVID-19 must bear the consequences if one day they become ill due to contact with COVID-19 itself. The government is not responsible to provide healthcare services to healthcare workers who refuse the COVID-19 vaccine. However, they should still be provided with healthcare services like other citizens and not be discriminated against because the government's responsibility is to fulfill the right to healthcare services for its citizens. This second generation of human rights is basically a demand for social equality or what are called positive rights. The fulfillment of these rights requires an active role of the state.¹⁹ To fulfill the right to health, such as the COVID-19 vaccination, the state must make healthcare policies that can protect all people, especially healthcare workers who either accept or refuse the COVID-19 vaccine.

The COVID-19 pandemic calls for a joint effort to prevent the transmission and spread of the disease in the community and healthcare workers have the right to work

¹⁹ Philips Alston and Franz Magnis Suseno, *Hukum Hak Asasi Manusia* (Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia 2008) 15.

together to provide healthcare services to the community.²⁰ Healthcare workers who refuse the COVID-19 vaccine also have the same right to work together with other healthcare workers to provide healthcare services without being sanctioned in the form of revocation of the health profession's practice license or prohibition of working to serve public health. This solidarity in human rights is very appropriate for healthcare workers who refuse vaccination because healthcare workers who have solidarity ties with other groups of healthcare workers have the same rights in providing healthcare services in preventing the transmission of COVID-19. The character of COVID-19, which is easily transmitted, especially to healthcare workers who refuse to get vaccine can be done by providing protection by using personal protective equipment and applying the 3M protocols.

There are three philosophical principles of human rights, namely rights, morality, and ethics. The ethics of life is related to human activity in its concreteness. Human rights and morality are abstract concepts. This is a truth that must be respected when it is actualized in the social environment, including in ethical life. The ethical life of modern society can be rational by regulating freedom and morality which are influenced by the environment. Rationality requires autonomy that supports human actions that can be accounted for to others and themselves. Individual autonomy requires rational institutions that make up individual communities. There are three moral principles, namely: 1) universal reason (ethical principles that apply to every human being); 2) Resonance with the senses; and 3) Integrity that informs all actions. The reduction of life ethics on positivity (rules) causes morality to turn into obedience. Regulations give moral decline. The essence of morality is based on freedom not on the desire for autonomy or regulation. The initial learning of the ethics of life is to build character and not insist on being a rule.²¹ The act of refusing to receive the COVID-19 vaccine is a moral and ethical act based on freedom that is influenced by autonomous rationality. While the act of receiving the COVID-19 vaccine as a form of compliance with a rule and reducing moral and ethical values because it does not have the value of rationality and does not provide the value of freedom autonomously.

²⁰ Mark Ryan, 'In Defence of Digital Contact-Tracing: Human Rights, South Korea and Covid-19' (2020) 16 *International Journal of Pervasive Computing and Communications* 383.

²¹ Allen W. Wood, *Hegel's Ethical Thought* (1st edn, Cambridge University Press 1990) 23-26.

Individuals are citizens.²² Individuals are also part of the state including all members of their families. Essentially, the state does not separate individuals in civil society which is the determinant of their fundamental relationship with each other. Membership in the state is fundamentally different from membership in the family. The family as an ethical goal has unwittingly become part of the state with the spirit of truth, namely the universal goal of the state and object awareness. In the family, overall social relationships are not the goal but the commitment of the individual to a group that is shared with others. Citizens serve the state as an institution with an explicit political constitution. Citizen participation is not from direct feeling but from rational thinking. The state has the goal of unifying the contents and goals of the state. The goal of a country is the happiness of its citizens.²³

The individual is the result of a social construct that determines order. This structure reaches its highest point in the political state because the structure of social life is known and consciously desired for its rationality. The state is based on the existence of an organized society, including the life of civil society and its families. In a narrow sense, the state as a set of political institutions. The political circumstances that shape social life is the object of human rational choice. The state knows it will seek universality as a thought. The state as the only social institution can declare true independence. Modern family life is economically dependent on civil society life. Civil society and its families depend on the state and its institutions. A sovereign state does not depend on anything. The state has the highest institutional reality of human power on earth. The existence of major and fundamental social changes is always followed by adjustments in terms of legal life.²⁴

According to Robert B. Seidman and William J. Chambliss in their theory of the work of law in society, the process of the operation of law is determined by four main components, namely law-making institutions or laws, law enforcement bureaucracy, role holders and the influence of personal and social forces. The first three components, namely law-making institutions, law enforcement bureaucracy and those playing roles play a role in the corridor of the law, while personal and social forces are non-legal components. The first component, every rule of law prescribes how each member of

²² *ibid.*

²³ Michael Baur, *G.W.F Hegel Key Concept* (1st edn, Routledge Taylor and Franch Groups 2015) 65.

²⁴ Martin Heidegger, Parvis Emad and Kenneth Maly, *Hegel's Phenomenology Spirit* (1st edn, Indiana University Press 1980) 195.

society has a role to play. The second, how a member of society will act in response to norm of law is function of the rules laid down, their sanctions, the activity of enforcement institutions and the inhere complex of social, political and other forces affecting him. The third, how the enforcement institution will act in response to norm of law is a function of the rule laid down their sanctions, the inherent complex of social, political and other process affecting them and the feedback from members of society. The fourth, how the law maker will act is a function of the rules laid down for their behavior their sanctions, the inhere complex of social, political, ideological, and other forces affecting them and the feedback from rule occupant and bureaucracy. The four propositions describe the operation of rules and laws in society.²⁵ This theory of the role of law is used to analyze the protection of the rights of healthcare workers in the COVID-19 vaccination program, especially the rights of healthcare workers to refuse the COVID-19 vaccination. The protection of the rights of healthcare workers is analyzed from institutions or laws making laws, law enforcement bureaucracies, role holders and the influence of personal and social forces.

The regulations issued produce the desired results, but their effects depend on the surrounding social forces. People do not see legal product as merely an act of issuing regulations formally but rather than that. The role expected by society is determined and limited by these social forces, especially the cultural system.²⁶ What is meant by role holders are all citizens, both the community and law enforcers. In this case, regulations, legislation, strategies, and policies as legal product of the government are influenced by other social factors and forces.²⁷ The legal bases referred to in this case are article 27 paragraph (2), 28A, 28 G, 28H and article 28I of the 1945 Constitution of the Republic of Indonesia; article 5 paragraph (3) and article 56, paragraph (1), article 4 of Law Number 36 of 2009 on Health; Law Number 39 of 1999 on Human Rights; and Regulation of the Minister of Health of the Republic of Indonesia Number 10 of 2021 on Implementation of Vaccinations in Context of the COVID-19 Pandemic. The factors that influence the legal product are the understanding of the community related to social, cultural and product are the understanding of the community related to social,

²⁵Roberts B. Pippin and Otfried Hoffe (eds), *Hegel on Ethics and Politic* (Cambridge University Press 2004), 11.

²⁶ Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis* (2nd edn, Badan Penerbit Universitas Diponegoro 2011) 11.

²⁷ Siti Nurhayati, 'Social Inclusion For Persons With Disabilities Through Access To Employment In Indonesia' (2020) 2 Prophetic Law Review 1.

cultural, and religious aspects as well as access to information provided by the government and technical instructions for derivatives of these legal products.

The regulation released contain expectation that should be implemented by legal subject as role holder. The working of these expectations is determined by several factors. The factors that determine the response given by stakeholders include the law itself, the sanctions contained therein, activities of law enforcement agencies and all social, political and other forces. These changes were caused by reactions generated by stakeholders against legislators and the bureaucracy. On the other hand, the bureaucratic component also provides feedback to legislators and the stakeholders. In the practice of law enforcement, sometimes there is a conflict between legal certainty and justice. This is because the concept of justice is abstract whereas legal certainty is a normative procedure. In essence, a law enforcement policy includes law enforcement and peace maintenance because law enforcement is a process of harmonizing the norm values and real behavior pattern that aim to achieve peace. Legal certainty and justice in the COVID-19 National Vaccination Program aims to provide protection to all Indonesian citizens as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia that the state's goal is to protect all Indonesia's blood. In justice, this requires consideration of the freedom of citizens, namely using the rights of citizens to decide for themselves to refuse gifts from the government or the state, namely refusing to receive the COVID-19 vaccine.

Law has several elements, namely statutory law, treaty law, juridical law, customary law and doctrinal law.²⁸ Ideally, these legal elements should not conflict with each other, either vertically or horizontally between one statutory and another. There is synchronization between other laws and the constitution above it. In relation to the rights of healthcare workers to refuse COVID-19 vaccination, it has been regulated in the article 27 paragraph (2), 28A, 28 G, 28H and article 28I of the 1945 Constitution of the Republic of Indonesia; article 5, paragraph (3) and article 56, paragraph (1) of Law Number 36 of 2009 on Health; and article 4 and at the right to feel save article 30 of Law Number 39 of 1999 on Human Rights. The right to refuse the COVID-19 vaccine has constitutional protection from the state but is contrary to article 93 of Law Number 6 of 2018 of Health Quarantine and article 13A paragraph 4 and 5 of Presidential Regulation Number 14 of 2021 on Amendments to Presidential Regulation

²⁸ Ishaq, *Dasar-Dasar Ilmu Hukum* (2nd edn, Sinar Grafika 2009) 245.

Number 99 on 2020 of the Procurement of Vaccines and Implementation of Vaccinations in the Context of Overcoming the COVID-19 Pandemic. These legal elements are not ideal because there is still conflict between one Law to the others. The language used in the law must be clear, simple, precise and not containing multiple interpretations it is a message to the people.

Meanwhile, the implementation of COVID-19 vaccination uses Regulation of the Minister of Health Number 10 of 2021 on Implementation of Vaccination in the Context of Combating COVID-19 Pandemic. Based on the interviews with the Head of Health Office Kebumen District, Kebumen District Health Office carries out tasks in accordance with regulations and laws by providing sanctions and warnings to healthcare workers who refuse the COVID-19 vaccine. Healthcare professional organizations will always support government programs and no healthcare workers refuse to be vaccinated. Based on information from healthcare workers who refuse the COVID-19 vaccine, they know the consequences that must be faced.²⁹ Based on the interview, the enforcers have not fully carried out the mandate of the laws.

In the role occupant factor, the parties who form and implement the law in COVID-19 vaccination are local government officials and healthcare workers in healthcare service facilities assisted by Indonesian National Army (TNI), Indonesian National Police and COVID-19 Task Force at the central and regional levels. Healthcare workers who refuse the COVID-19 vaccine are given education by fellow healthcare workers, sign the refusal form and report it to their superiors. The authority to impose sanctions and punishments is the law enforcement apparatus, the health office of Kebumen District only gives warnings and education.³⁰

The duties and functions of each law enforcing apparatus in supervising and providing sanctions for healthcare workers who refuse to administer vaccinations are inadequate due to the unclear laws and regulations being used. Based interview with the Head of Health Office Kebumen District and the Chairperson of the Indonesia National Nurses Association (PPNI) Kebumen District, the head of healthcare service facility or the direct supervisor of the healthcare worker is not authorized to impose criminal

²⁹ Interview with the Head of Health Office Kebumen Regency, the Chairperson of the Indonesia National Nurses Association (PPNI) Kebumen District and healthcare workers who refuse the COVID-19 vaccine.

³⁰ *ibid.*

sanctions or fines but exert pressure by imposing administrative sanctions only.³¹ Even those administrative sanctions are contrary to human rights, the 1945 Constitution and Law Number 36 of 2009 on Health.

In the supporting facility factor, it includes software (healthcare) and hardware (physical facilities such as vaccine, medical device, healthcare service facilities that support effort to work the law).³² While the supporting facilities include a system for recording and reporting targets for COVID-19 vaccination and a healthcare human resource information system. Regulation of The Minister of Health Number 10 of 2021 on Implementation of Vaccination in the Context of COVID-19 Pandemic is a software. Based interview with the Head of Health Office Kebumen Regency, the implementation of the COVID-19 vaccination was carried out in 35 public healthcare centers and two government-owned hospitals. Kebumen District government has provided Sinovac for a number of targeted healthcare workers in Kebumen District with logistics distribution to the vaccination site escorted by elements of the National Police and the National Army.³³

In the societal factor, law enforcement comes from society which aims to achieve peace. Public must have legal awareness. The community problem regarding law is the degree of legal compliance: high, moderate or insufficient legal compliance. This indicates the functioning of the law. The attitude of the public, especially those of healthcare workers who obtained no information from the government and are not given access to information about the COVID-19 vaccine is one of the factors inhibiting the law. The healthcare workers who refuse the COVID-19 vaccine should receive protection and be given the freedom to choose according to their own decisions.

Culture also has a large function for regulating humans in acting and determining their attitudes when dealing with other people.³⁴ Culture establishes rules regarding what should be done and what is prohibited. Cultural factors in society are also an obstacle to the operation of this law. Javanese culture in Kebumen District is very dominant, which it teaches people who refuse the COVID-19 vaccine not to attend

³¹ Presidential Regulation of the Republic of Indonesia Number 14 of 2021 on Amendments to Presidential Regulation Number 99 of 2020 on the Procurement of Vaccines and Implementation of Vaccinations in the Context of Overcoming the Pandemic Corona Virus Disease 2019 (COVID-19), article 13A paragraph 4 and 5 [hereinafter, 'Presidential Regulation'].

³² Soekijo Notoatmojo, *Etika dan Hukum Kesehatan* (Rineka Cipta 2010) 95.

³³ Interview with the Head of Health Office Kebumen District.

³⁴ Satjipto Rahardjo, *Hukum dan Masyarakat* (Angkasa 1986) 88.

vaccination facilities but there are still healthcare workers who were vaccinated because they are afraid and feel insecure.³⁵ Based on the interviews, the right of healthcare workers to refuse the COVID-19 vaccine in Kebumen District is not guaranteed and the protection is ineffective.

The state with its power and citizens with their rights are two sides with different interest. In handling and preventing the transmission of COVID-19, the government implements the National COVID-19 Vaccination Program. Some citizens, especially healthcare workers, have the right to freedom of choice, namely, to refuse the COVID-19 vaccine. The middle way to reach an agreement is to communicate based on the concept of Hegemony and Domination Theory by Antonio Gramscie.³⁶ Hegemony is the ideal belief of community that encourages government to take force and consensus strategy steps. The ideal belief of the community is that healthcare workers have human rights like other citizens to refuse the COVID-19 vaccine to be protected and respected and given a sense of security, free from pressure. Meanwhile, hegemony of the government is to protect citizens from the transmission of COVID-19 with providing COVID-19 vaccination through legal, social, and cultural aspects. In this hegemony phase, the government seeks to activate hardware and software tools. The hardware tool has the ability to force law enforcement by issuing several laws and regulations to regulate the community in preventing the transmission of COVID-19.

Meanwhile, software works by persuading the public to comply with health regulations and protocols through religion, education, socio-cultural and family life. The hegemony of the group means that the group has succeeded in persuading other social groups to accept the cultural, social, and moral values of that group. Hegemony is a type of intellectual and moral leadership. Consensus that includes several types of intellectual or emotional acceptance of the existing norms.³⁷ Hegemony as a direction towards the struggle to arrive at a consciousness that is not only based on economic needs but is coherent in legal, social, and cultural conceptions. In the conditions of the COVID-19 pandemic, especially in the COVID-19 vaccination program, the hegemony stage has entered a period of decadent hegemony, a legal system that has reached the target, but the mass mentality is not in line with dominant thinking because there are

³⁵ *ibid.*

³⁶ Walter L. Adamson, *Hegemony and Revolution, a study of Antonio Gramsci's Political and Cultural Theory* (3rd edn, University of California Press 1980) 175.

³⁷ Sulistyoto Santoso, *Epistemologi Kiri* (Ar-Ruzz 2003) 89.

still rejective groups of people. The government is a complex combination of domination and hegemony or the whole complex of practical and theoretical activities with the ruling class not only justifying and maintaining its dominance but also trying to win approval from the people under control. The state is the coercive apparatus of the government and private institutions consisting of bureaucratic society and civil society or hegemonic domination. The government or the state represented by the ranking class as a minority component in controlling society, requires a power block by maintaining alliances with other groups. They made compromises according to what their alliance wanted. Society as proletariat has a dual awareness: ideas influenced by the government and their life experiences. In this condition, there are always hegemonic groups to elevate hegemony over themselves, so it is necessary to counter hegemony pioneered by organic intellectuals. The consensus between the government and community groups in administering the COVID-19 vaccine requires the role of intellectuals. Yet, all men are intellectual, one could therefore say, but not all men in society have the function of an intellectual.³⁸ Gramsci suggested, "democracy between the ruling group and the ruled group exists as far as economic development, therefore the law which states its development opens channels for the governed to enter the ruling group". Hence a central mediation is needed, the intellectuals are not defined in terms of personal specificity but functionally and in concrete institutional arrangements that connect them with the entire hegemonic apparatus of the state. Communication in the public sphere is very much needed between the two parties so that solutions will be obtained in protecting and guaranteeing the human rights of healthcare workers

E. Conclusion

Every individual has human rights that can be enforced at any time with freedom to take or not to take these rights. The individual freedom to take or not to take their rights should be protected by the government as is included in fundamental human rights, namely the right freedom of self-decision making, including the right to refuse to the COVID-19 vaccine. Healthcare workers who have a proper understanding and knowledge in the field of healthcare and medicine are familiar with vaccination, from the production process, distribution, licensing, clinical trials to the side effect. Healthcare worker's understanding of the science and knowledge of the COVID-19 vaccine and the lack of

³⁸ *ibid*, 176.

access to information by the government resulted in a group of healthcare workers rejecting the COVID-19 vaccine. The right of the healthcare workers to refuse the COVID-19 vaccine has been guaranteed by the 1945 Constitution and the relevant Laws, but by the government. The regional government, in this case the Kebumen District Government, does not have the authority to impose sanctions, coerce, threaten or intimidate these healthcare workers for refusing the COVID-19 vaccine. Regulation of the Minister of Health of the Republic of Indonesia Number 10 of 2021 on Implementation of Vaccination in the Context of the COVID-19 Pandemic becomes ineffective in the operation of the law due to the legal factors, law enforcement, infrastructure, sanctions, society and culture that hinder the application of law in society. The rights of healthcare workers to refuse the COVID-19 vaccine are also one of the factors that hinder the implementation of this Regulation.

In Hegel's Theory, the form of protection for the right to refuse healthcare workers to refuse the COVID-19 vaccine is a rational and actual action and *vice versa*, if the state does not guarantee the freedom of the right to refuse the COVID-19 vaccine, it becomes a policy that is irrational. In the conflicts between the government and healthcare workers who refuse vaccination, compromises and consensus are needed by using the Hegemonic Domination Theory initiated by Antonio Gramsci. Vaccination against COVID-19 is a government effort that aims to reduce transmission of COVID-19 and protect the Indonesian bloodline as stated in the country's objectives in the Preamble to the 1945 Constitution of the Republic of Indonesia, while the refusal of healthcare workers to receive the COVID-19 vaccine as a form Human Rights to freedom of choice which must be protected and respected by all parties, especially the government. The author hopes that there will be a continuation of the next research related to the COVID-19 vaccination because there are still other vaccination target groups such as the elderly and others.

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