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Accountability of mosque administrators against violation of Covid-19 health protocols in the mosque environment

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ABSTRACT

The Covid-19 is a new virus found in Wuhan, China at the end of 2019, to be precise in December. This virus spreads very quickly to various parts of the world, causing access between countries to be closed in anticipation of the transmission of covid-19. Covid-19 can be transmitted from one person to another by touching objects that have been exposed to a person with Covid-19 and can also catch it through coughing or sneezing droplets from that person. The existence of Covid-19 has led to changes in the order of life from normal to having to comply with health protocols implemented by the government in various places to anticipate the spread of covid-19, for example in implementing health protocols in places of worship and in crowded places. In terms of performing worship in a mosque environment, a person is obliged to obey the protocols that have been implemented but in reality many people don't comply with health protocols and don't care about the safety of others. If this is the case, then the mosque administrators or as takmir of the mosque must be responsible for the violations that occur because they are supposed to enforce health protocols in the mosque environment which is their obligation. The research method used by researchers is normative legal research with a statutory and case approach. The takmir of the mosque as the person in charge of all activities carried out in the mosque must fulfill its responsibility in a civil manner towards public disobedience to health protocols that aren't obeyed because the mosque takmir should strictly enforce the health protocol.

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Introduction

Corona virus is a type of virus that can cause disease in animals and humans, where several types of corona viruses are known to cause respiratory infections in humans ranging from coughs, colds to more serious conditions such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome. Adhering to a belief is the right of every human being as the notion of human rights is a universally recognized right inherent in him since he was born. It's said to be universal because this right is owned by everyone regardless of their skin color, age, ethnicity, gender, religion or belief. The current covid-19 outbreak has led to the imposition of restrictions on worship which aims to anticipate the spread of covid-19 in the mosque environment, resulting in the imposition of restrictions on worship that were set at the emergence of the Covid-19 pandemic which led to the implementation of health protocols such as washing hands before enter the mosque, keep a distance during worship and wear a mask.

In December 2019 the corona virus was first discovered in the Wuhan area, China which then on February 11, 2020 WHO assigned a name to this virus, namely Corona Virus Disease or Covid-19. This virus spreads very quickly in various provinces in China and then spreads to Thailand, Japan and South Korea. On March 12, 2020, WHO stated that this virus was a pandemic and in Indonesia around 1,528 cases had been recorded with the number of people who were positive for Covid-19 and also 136 cases of death. In the latest data in Indonesia on November 10, 2020 cases of death the world reached 14,761 people 444,348 people were infected with Covid-19, and 375,741 people were declared cured

In the event that is currently happening, the spread of covid-19 is so rapid that the government must establish policies related to health protocols to prevent transmission rates that occur in crowded places. The government recommends using masks, washing

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hands and measuring body temperature and spraying disinfectant when entering crowded places as taken in this study, namely mosques.

In 2020 the President issued Presidential Decree No.11 of 2020 concerning the Determination of Public Health Emergencies, where this decision was made due to the covid-19 outbreak that spread in Indonesia and caused the death rate related to the transmission of this virus to be very high so that it affected various aspects such as politics, economy, socio-culture, defense and security as well as the welfare of the people in Indonesia. There is also the Fatwa of the Indonesian Ulema Council Number 14 of 2020 concerning the Implementation of Worship in a Situation of the Covid-19 Outbreak, where this fatwa confirms that if the level of the spread of Covid-19 is very high in certain areas, it can replace the prayers that are usually done in mosques can be replaced with prayers at their respective homes. Especially for the implementation of Friday prayers which involve many congregations and if in areas where the spread of Covid-19 is under control, they must continue to hold Friday prayers at the mosque.

According to Law Number 6 of 2018 concerning Health Quarantine, it states that a Public Health Emergency is a public health incident of an extraordinary nature characterized by the spread of infectious diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food contamination poses a health hazard and has the potential to spread across regions or across countries.

On August 4, 2020 the president again issued a new instruction, namely Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019. In this Presidential Instruction, the government no longer wants to leave the house to carry out worship, especially to perform Friday prayers while still prioritizing health protocols that have been implemented to anticipate the transmission of Covid-19 in places of worship.

The government took a policy to establish a public health emergency status by taking the option to adhere to established health protocols. The government is trying to anticipate the spread of covid-19 by implementing policies that are considered effective to tackle the increasing spread of covid-19 in society. The existence of the Covid-19 pandemic has made the government implement a health protocol in the form of changing habits in society to having to keep a minimum distance from other people of 1 meter, not riding a car while driving even the government is also implementing school holidays, cleaning places of worship and still wearing masks when carrying out worship like prayer.

Even though in the application of health protocols in various places, there are still many cases, for example in mosques where only banners or appeals are posted in the mosque environment but in practice they aren't followed properly. There were many violations of health protocols in mosques where the congregation didn't wear masks or the mosque didn't apply the distance between congregations during worship, which was very dangerous for other people and resulted in the very fast transmission of Covid-19.

Cases found related to non-compliance with health protocols were found in Jakarta, where some mosques began to be opened for worship activities after the DKI Jakarta Provincial Government gave permission during the large-scale transition period of social restrictions, it's just that before the implementation of worship activities must comply with health protocols. However, there were still mosques that didn't comply with health protocols when holding Friday prayers, especially mosques in residential areas. One example is the Al-Riyadh Kwitang mosque, Senen District, Central Jakarta. In this mosque environment, there are still many violations, one of which is the absence of physical distancing applied by mosque administrators. According to the Head of the Da'wah Division of the Al-Riyadh Mosque, Kwitang M Rofik, stated that his party had actually implemented health protocols as recommended by the Governor of DKI Jakarta, such as spraying disinfectants, measuring body temperature and hand sanitizers and also eliminating pedestals in mosques. Too many congregations have resulted in mosque administrators becoming overwhelmed in enforcing health protocols

If there is a violation of the health protocol that occurs in the mosque environment, the mosque management must be responsible because whatever happens in the mosque environment is the responsibility of the mosque, because how can there be a violation of the health protocol regulations, is it possible due to negligence or labor carried out by the management mosque.

In this research, the method used is normative legal research to solve and answer the existing problem formulations

Responsibilities of mosque administrators during the Covid-19

A mosque is a special building or place for Muslims to carry out worship, especially for congregational prayers. Based on the general characteristics of mosque, according to Sofyan Syafri Harahap, they can be classified into:

Great Mosque

The mosque is located in a place where the congregation isn't only from the area but those who come from or work around the location of the mosque. This mosque was founded by the government and the surrounding community, this mosque is also controlled by the government, both the mosque management and its funding, for example the Istiqlal Mosque in Jakarta.

Elite Mosque

This mosque is located in an elite area, the administrators and congregations are elite people. The potential fund that this mosque has is quite large, the activities held are quite a lot and the facilities owned are quite good.

This mosque is located in the city with the congregation who generally come from traders or employees. The congregation is not elite but comes from the upper middle class. The funds they have are relatively sufficient, the activities are quite good and the facilities available are quite adequate.

Office Mosque

This office mosque is marked by worshipers who are only there during working hours. The activities held were also not as many as other mosques. The buildings that are not owned aren't that big and the facilities in them are not too many.

Campus Mosque

The campus mosque has a congregation consisting of intellectuals and students who are on campus. Many of the activities held also came from these campus students.

Village Mosque

Village mosques usually have congregations who live around the mosque, usually the quality of mosque management is very low in the field of management and the potential for conflict is quite large.

Organization Mosque

This mosque has a homogeneous congregation and has similar organizations. This mosque is managed by the organization and this mosque is also very autonomous.

In the mosque environment, there are those who are called mosque administrators and those who become the head in managing and being responsible in the mosque environment are the mosque takmir. The notion of mosque takmir itself is a form of development, caring for mosques, as well as managing and also fostering the spirit of Islam, as a form of cooperation between Muslims who have an interest in the mosque environment in order to run to achieve common goals effectively and efficiently. (Bidang Pemberdayaan Daerah & Kerjasama dalam Negeri, 2013)

The duties and responsibilities of mosque administrators

Maintain the Mosque

Mosque administrators must clean the parts that feel dirty and must repair the damage in the mosque environment. Mosque equipment in the mosque must be maintained as well as possible so that it's durable and can be used for a long time. If there is any damage to the mosque's equipment, you must immediately find a replacement.

Organizing Mosque Activities

All types of activities carried out in the mosque are the duties and responsibilities of mosque administrators. Activities that are regulated aren't only congregational worship which is held every day but also activities such as lectures, recitation and other activities. Usually the activities that are held have a plan so that things are carried out smoothly and with direction.

Mosque Work Plan

All work must be carried out based on a careful plan, if it isn't well planned it will be unfocused. In regional mosques, mosque administrators must adjust to the capabilities of the executor or the existing needs of the area. Some things that must have a good plan before the implementation of activities, namely Friday prayers, recitation and lectures, education held at the mosque.

The definition of responsibility according to the Big Indonesian Dictionary is an obligation to bear everything if anything happens, it can be prosecuted, blamed, and sued. According to the legal dictionary, responsibility is a necessity for a person to carry out what he has been obliged to do

Responsibility is something that must be carried out or done by someone because it has become an obligation. According to Black's Law Dictionary, the definition of responsibility is :

- i. Obligations in which someone is bound by law to do something.
- ii. Circumstances to be responsible for the losses or actual incurred.
- iii. Circumstances that give rise to something to do something quickly or in the future.

Meanwhile, according to law being responsible is the result or consequence that arises from the freedom that a person has for an act he/she does related to morals or ethics in carrying out an action (Soekidjo Notoatmojo, 2010). The concept of responsibility put forward by Hans Kelsen is the originator of pure legal theory is responsibility has relationship with obligation but not identic. Obligations will appear with the existence of legal rules that are made and regulate and give obligations to the legal subject. Legal subjects have responsibilities in the form of an obligation to carry out these obligations because this is an order in the law. If this obligation is not carried out, it will result in a sanction in which the sanction is an act that is carried out by force from the existing legal rules so that the obligation is carried out by that person properly. A person who is subject to sanctions from these rules can be

said to be legally responsible for the violations that have been committed (Ritonga, 2011). From the above concept, a concept that is related to the concept of legal obligation is a concept, namely legal responsibility. A person will be legally responsible for the actions that are his/her obligation and become his responsibility, which means that someone will be responsible for the consequences or sanctions received if he commits his actions contrary to applicable rule. Experts sometimes distinguish absolute responsibility and absolute responsibility. In absolute responsibility, it isn't always wrong to be a determining factor to be responsible, but there are possibilities that can free him from responsibility, for example *force majeure*, while absolute responsibility is the principle of no error and no exception. In civil law, it's explained in article 1367 of the Civil Code that every person isn't only responsible for losses caused by an act committed by himself but also can be caused by an act committed by people who are dependent on him or also for goods under his control. Acting against the law itself is something that is done contrary to the legal obligations of that person or it can be said that it violates the subjective rights of others, violates the principles of decency, is against the principle of propriety, and is careful and careful in social life in society

When viewed from the 3 categories of acts against the law, forms of legal responsibility can emerge, namely: (Munir Fuady, 2017).

1. Responsibility with an element of error (intentional and also negligent), which is in article 1365 of the Civil Code.
2. Responsibility with an element of error, especially negligence, which is explained in article 1366 of the Civil Code.
3. Absolute responsibility or the absence of errors described in article 1367 of the Civil Code.

The case that often occurs in the community is that the mosque allows the community to enter the mosque without wearing a mask and many mosques also don't apply distance guarding, even though in the mosque environment there are clearly written regulations regarding health protocols that must be implemented to avoid the spread of Covid-19 in a crowd. Things like that are very dangerous for others because the level of awareness of everyone is low and the mosque underestimates health protocols that should be strictly implemented.

According to Article 1365 of the Civil Code, it is said that acts against the law must fulfill the following elements :

- a. There is an act that is done
- b. There are actions that have been against the law
- c. The fault of the perpetrator
- d. There is a causal relationship between actions and losses

The provisions in article 1365 of the Civil Code explain the responsibility arising from an act that is against the law, whether it is due to an act or not having done it, whereas in Article 1366 the Civil Code is more about demands for responsibility caused by error in the form of negligence. If seen from the above case, the mosque management can be subject to article 1365 of the Civil Code which states that everyone will be responsible for any losses caused by his own actions or actions he did not commit. Mosque administrators are careless about the rules that should be enforced but this is ignored so that the mosque administrators let the people who come to the mosque not use masks and mosque administrators do not apply to guard their distance during worship. This can be categorized as responsibility with an element of error. In implementing health protocols such as providing disinfectant cubic and hand washing equipment or attaching rules related to health protocols before entering the mosque, it's appropriate, but this was accompanied by mosque administrators who let the community come without wearing masks and mosque administrators also did not apply distance or *physical distancing*. Or it could also be subject to article 1367 paragraph 1 of the Civil Code, which explains that a person will be responsible not only for the losses caused by an act he has committed but can also be responsible for losses caused by an act committed by the people he is responsible for and it could also be due to goods under his control. In the regulation of the Minister of Religion's Circular Letter Number 15 of 2020 concerning Guidelines for the Implementation of Religious Activities in Houses of Worship in Realizing a Productive and Safe Covid Society in the Pandemic Period, it's explained that administrators of places of worship or those in charge must make a statement that they are capable of implementing the protocol health strictly according to the applicable rules, if they let someone enter the mosque without wearing a mask, this can be said to be the responsibility of the mosque management even though what the person did was because of his own fault of not obeying but as the person in charge of the mosque they should firmly not allow that person enter the mosque because it will endanger others. By making a statement that they, the mosque administrators, will obey the health protocol, which means that the congregation who comes is people who are under their care. In the history of law, actually we have long known about the laws that govern compensation. This can be traced back to Roman times in the Lex Aquilia in the first part. Article 1365 of the Civil Code explains the obligation for someone who commits an act against the law to pay compensation, but there are no further rules regarding this explanation. In civil law there are two related problems:

- i. Losses are considered as the result of an illegal act committed by one party
- ii. Losses arising from the failure of the agreement on the other party.

So with that losses due to acts against the law in article 1365 of the Civil Code are only called "*schades*" (loss)

Actually, the restrictions on worship imposed by the government do not fully require congregations to worship at home but the mosque environment must still implement health protocols. On the big day of Muslims or the daily worship of religious institutions, namely the Ministry of Religion, also appealed to health protocols. Even though the main thing is independent worship at home so as to reduce the impact of the spread of Covid-19. For example, the commemoration of the microj isrok event which is usually carried out by gathering the congregation so that it forms a crowd of people in the mosque, nowadays it has turned into an online recitation which is attended by congregations which is a form of complying with health protocols. In the application of Large-Scale Social Restrictions which were established at the beginning of the emergence of Covid-19, Friday prayers were replaced with midday prayers, as well as 5 daily prayers and tarawih prayers are also urged to be held at home not only that prayers during Eid al-Fitr are also not carried out in mosques but at home each with only the closest people in attendance. Not only Muslims who are subject to restrictions in worship but also other religions where technical worship is delegated to religious institutions that represent their respective beliefs during the covid-19 outbreak

Rules that explain the responsibility of the mosque in enforcing health protocols

The responsibility that should be carried out by mosque administrators for enforcement of health protocols has actually been clearly regulated in the applicable regulations including:

1.	Regulation of the Governor of DKI Jakarta Number 33 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease (COVID-19) in DKI Jakarta Province	<p>1. Restrictions on worship activities are regulated in Article 5 paragraph 4 letter c. Then in Article 12 it states that the person in charge of places of worship must provide understanding and education to the community to continue to worship at home, take precautions against Covid-19 and close access to unauthorized parties.</p> <p>2. Article 27 also states that people who violate the implementation of large-scale social restrictions will be subject to sanctions. If there is someone who violates the prohibition of religious worship activities in a house or place of worship during large-scale social restrictions, then he may be subject to sanctions, namely administratively in the form of an oral warning.</p> <p>The Civil Service Police Unit, accompanied by the police, imposes sanctions on violators of prohibitions in places of worship, activities outside the home and school during the Large-Scale Social Registration period.</p>
2.	East Java Governor Regulation Number 18 of 2020 Regarding Guidelines for Large-Scale Social Restrictions in Handling Corona Virus Disease (Covid-19) in East Java Province	<p>1. Restrictions on worship activities are regulated in Article 5 paragraph 4 letter d and Article 12. In Article 12 it states that the person in charge of places of worship must provide education and understanding to the community to perform worship at home and prevent the spread of covid-19 and close access for parties who are not concerned.</p> <p>2. In the sanctions stated in Article 29 of this regulation, if there are people who violate the rules of Large-Scale Social Registration, they can be subject to sanctions in the form of verbal and written warnings and also actions taken by the government aimed at stopping violations or restoring and revoking permits according to their authority.</p>
3.	Circular of the Minister of Religion Number: SE 15 of 2020 concerning Guidelines for the Implementation of Religious Activities in Houses of Worship in Realizing a Productive and Safe Society Covid in the Pandemic Period	1. Contains the obligations of administrators of places of worship who must implement health protocols and in its implementation the person in charge or administrators of places of worship must make a statement that they are able to carry out health protocols.
4.	Instruksi Presiden Nomor 6 Tahun 2020 Tentang Peningkatan Disiplin dan Penegakan Hukum Protokol Kesehatan Dalam Pencegahan dan Pengendalian Corona Virus Disease 2019	<p>1. Contains the obligation to comply with health protocols for individuals, business actors, management, organizers, or persons in charge of public places and facilities.</p> <p>2. The sanctions in this presidential instruction are in the form of verbal warning or written warning, social work, administrative fines.</p>

Even though regulations related to restrictions on religious activities that will be held by places of worship are regulated by existing laws and regulations, the community only considers the existing rules as an appeal because there are no sanctions for violators. There is no punishment whatsoever for people who are still stubborn in adhering to the health protocols established during the Covid-19 period. There are no firmly enforced civil and criminal sanctions related to violations of this health protocol so that people dare to ignore them. Although the regulations call for worship at home, it's the custom of the community that obliges them to worship at the mosque so that with the current conditions it's difficult to adapt and don't care about health. With things like this, the existing health protocols are enforced in mosques, but there are still many people who don't comply and continue to violate it, along with the presence of some mosque administrators who don't actually implement health protocols in the mosque environment so that people freely don't wear masks or don't exist keep your distance when doing congregational worship.

Conclusion

The mosque management may be subject to article 1365 of the Civil Code regarding the responsibility of not strictly enforcing health protocols in the mosque environment which can harm others. This action was reckless because it allowed the people who came to the mosque not to use masks and the mosque administrators did not apply distancing when worship took place on purpose. The advice given is that the mosque management is expected to strictly enforce health protocols to avoid harm to the health of others because everything in the mosque environment is the responsibility of the mosque management. Or it could also be subject to Article 1367 paragraph 1 of the Civil Code, which explains that a person will be responsible not only for the losses caused by an act he has committed but can also be responsible for losses caused by an act committed by the people he is responsible for and also because of the goods under his control. Although the regulations call for worship at home, it's the custom of the community that obliges them to worship at the mosque so that with the current conditions it's difficult to adapt and don't care about health. With things like this, the existing health protocols are enforced in mosques, but there are still many people who don't comply and continue to violate it, along with the presence of some mosque administrators who don't actually implement health protocols in the mosque environment so that people freely don't wear masks or don't exist keep your distance when doing congregational worship.

References

- Aditya S., (2020). Coronavirus Disease 2019: Tinjauan Literatur Terkini. *Jurnal Penyakit Dalam Indonesia*, 7, 45.
- Andi H., (2005). *Kamus Hukum*.
- Bidang Pemberdayaan Daerah & Kerjasama dalam Negeri. (2013). *Panduan Pengelolaan Masjid & Islamic Center*.
- Boris T., (2017). *Unsur-Unsur Perbuatan Melawan Hukum*. Konsultan Hukum.
- Covid-19, S. P. (2020). *Data Sebaran*.
- Eva N., (2011). *Analisa Ekonomi*. Universitas Indonesia.
- Faiq Tobroni. (2020). Pembatasan Kegiatan Keagamaan Dalam Penanganan COVID-19. *Fakultas Syariah Dan Hukum*, 6.
- Joko Supriyanto. (2020). *Masih Ada Masjid yang Tidak Menerapkan Protokol Kesehatan saat Gelar Salat Jumat*. Wartakota Tribun News.
- Kelsen, H. (1966). On The Pure Theory of Law. *Israel Law Review*. <https://doi.org/10.1017/s0021223700013595>
- Michael, T. (2019). Korelasi Hukum Document On Human Fraternity For World Peace And Living Together Dengan Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana. *Jurnal Hukum Magnum Opus*. <https://doi.org/10.30996/jhmo.v2i2.2178>
- Munir Fuady. (2017). *Perbuatan Melawan Hukum Pendekatan Kontemporer*. PT Citra Aditya Bakti.
- Ritonga, I. L. K. (2011). Kebijakan Hukum Pidana Terhadap Tindak Pidana Di Bidang Medis. *Universitas Muhammadiyah Malang*.
- Soekidjo Notoatmojo. (2010). *Etika dan Hukum Kesehatan*.
- Velliana Tanaya. (2013). Rekonstruksi Asas Perbuatan Melawan Hukum Dalam Sengketa Konsumen. *Jurnal Ilmu Syariah Dan Hukum Asy-Syir'ah*, 47.
- World Health Organization (2020). *Pertanyaan dan Jawaban Terkait Corona Virus*.

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