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## **RESPONDING TO COVID-19: INDONESIAN OCCUPATIONAL HEALTH AND SAFETY POLICY FOR CORPORATE COMPLIANCE**

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### **Abstract**

*The corporate compliance towards the legal policy notably on safety and health of workers becoming a major issue which should be highlighted by the government and entrepreneurs during Covid-19 outbreak in Indonesia. The paper aims to explore the legal framework on occupational health and safety protocols for corporate which were regulated by the government. It highlights the major regulations and policies stipulated by President, ministries, as well as local government such as Governor of DKI Jakarta. It also discovers the penalties or sanctions that will be imposed on companies which infringe the policy. The paper provides the recommendation for the development of current policy practice, in particular for corporate issues in occupational health and safety. The research method used is normative legal research. It reviewed laws, policies, and regulations which should be complied by the corporations in connection with occupational health and safety for workers during the pandemic. The paper found that the government and its subordinate bodies have generally defined an important legal and regulatory framework for the implementation of occupational safety and health for workers. In addition, several existing laws also may provide sanctions and penalties for companies that are still persistent in violating the laws and policies during the spread of the outbreak.*

**Keyword:** legal policy; occupational health and safety; corporate, covid-19

### **Introduction**

Over the past two decades, the world has witnessed a number of infectious disease outbreaks, which show a very rapid spread (Balkhair, 2020). At present, concerns are increasing in line with the widespread transmission of Covid-19 and the ability to reduce its transmission rates. Governments, employers, and workers and their organizations face major challenges in their efforts to fight the Covid-19 pandemic and protect workplace safety and health. Beyond this ongoing crisis, there are concerns in returning business activities and sustaining the progress that

has been made. Quarantine, travel restrictions, school closures and other preventive measures have a sudden and drastic impact on workers and companies (ILO, 2020).

Indonesia was declared infected by the virus by President Joko Widodo on March 2, 2020, as well as announcing it as a national disaster (Isafety, 2020). The National Disaster Management Body (BNPB) specifically mentions Covid-19 as a non-natural disaster with a national scale of coverage (Wibowo, 2020). Compared to the events in 2003, when the SARS case occurred, it had an impact on the slowing

down of the Indonesian economy by 0.03 percent. Covid-19 which reproduces more quickly than SARS (Liu et al, 2020) and death tolls are higher than SARS and MERS (Wu and McCoogen, 2020).

DKI Jakarta, which is the capital of the country and the center of business turnover in Indonesia, which also declared as the Covid-19 epicenter in Indonesia, has implemented a policy of social distances, Work From Home (WFH) and large-scale social restrictions (PSBB) for local government officials, companies, the education sector and the reduction in the intensity of public transportation with a few exceptions. There are about 3,290 companies implementing WFH policies in Jakarta (Ramli, 2020).

In the situation of the Covid-19 pandemic, the economy must continue to run by putting forward preventive measures. The Ministry of Health of the Republic of Indonesia has issued Minister of Health Decree No. HK.01.07/MENKES/328/2020 concerning Guidelines for Prevention and Control of Covid-19 in Office and Industrial Workplaces in Supporting Business Sustainability in Pandemic Situations. The Minister of Health said that the business world and workers have a major contribution to breaking the chain of transmission due to a large number of the

worker's population and a large amount of mobility, as well as the interaction of the population generally due to work activities (Akbar, 2020).

Government Regulation No. 21 of 2020 concerning Large Scale Social Restrictions (PSBB) in the Context of Accelerating the Handling of Covid-19 has stated that PSBB is carried out in various ways where one of them is by dismissing the workplace. However, it is not a wise option for business and work activities to always be restricted, the economy must continue to run. For this reason, mitigation efforts need to be made during and after the implementation of PSBB in the midst of the ongoing Covid-19 pandemic as well as ensuring workplace readiness as optimal as possible so that it can adapt to behavioral changes in the Covid-19 or New Normal situation (Habibi, 2020).

The paper aims to explore the legal framework on occupational health and safety protocols for corporate which were regulated by the government. It highlights the major regulations and policies stipulated by President, ministries, as well as local government such as Governor of DKI Jakarta. It also discovers the penalties or sanctions that will be imposed on the companies which infringe the policy. In addition, the paper provides the recommendation for the development of

current policy practice, in particular for corporate issues in occupational health and safety.

### **Theoretical Review**

Rahmatullah (2020), in his article entitled Worker Health Rights Assurance: Workfrom Office During the Large-Scale Restriction of Covid-19 period, stated that one of the impacts of the PSBB was that many businesses had to be closed down, workers had to work from home and even had to be laid off, and the economy had undoubtedly stopped causing the poverty curve to increase.

However, during the time of crisis, the DKI Jakarta government still allowed a number of industrial sectors to continue to operate amidst the threat of Covid-19 transmission as stipulated in Governor Regulation No. 33 of 2020 on Implementation of Large Scale Social Restrictionsin Handling Corona Virus Disease 2019 (Covid-19) in the Special Capital Province of Jakarta. These sectors include, among others, the sector of health, food, beverage, energy, communication, banking finance including capital markets, logistics and distribution of goods, retails such as stalls, grocery stores, and other strategic industries.

Workers who work in these sectors inevitably, like it or not, must be willing to

go to work as usual (Work from Office / WFO) when other sectors must stop operating and employees work from home (Work From Home / WFH). Workers who continue to work in the office during the PSBB period must be legally protected and their health rights should not be violated by the employer as they still work during this difficult time. In addition, the health rights assurances for employees are regulated by various laws and regulations, notably Article 166, paragraphs 1 and 2 of Law No 36 of 2009 on Health and Article 35, paragraph 3 of Law No 13 of 2003 on Manpower.

### **Research Method**

The research method used is normative legal research which involves normative case studies in the form of legal behavior products, for example reviewing laws, regulations, and policies (Benuf and Azhar, 2020). The subject of the study is the law which is conceptualized as a norm or rule that applies in society and serves as a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, principles and doctrines of law, legal discovery in concreto cases, systematic law, synchronization levels, comparative law, and legal history. Based on the explanation above, the author decides to use normative

legal research methods to examine and write the results and discussions of the paper. The use of normative research methods in research and writing of this paper is based on the suitability of the theory with the research methods needed by the author.

## **Result and Discussion**

### **OHS Legal Framework**

Basically, every worker has the right to get protection for Occupational Health and Safety (OHS). This is referred to in Article 86 Paragraph (1) Letter a, of Law No. 13 Year 2003 concerning Manpower. It was further said that in order to protect the safety of workers with the aim of optimizing work productivity, safety at work and health must therefore be ensured. Work safety and health measures are intended to provide safety guarantees (Ony, 2019) and improve the health status of workers by preventing accidents and occupational diseases, controlling workplace hazards, promoting health, medicating, and rehabilitating. Employers in hiring workers are required to provide protection that includes welfare, safety, and health both mentally and physically (Tri, 2020). Every company must implement an OHS management system that is integrated with the company's management system.

Prior to the implementation of the Manpower Act, OHS was first governed by Law No. 1 of 1970 on Work Safety. The law regulates work safety in all workplaces. Pursuant to Article 1 of the Law, the definition of a work place is any room or field, closed or open, movable or permanent, where worker is employed or where worker is frequently entered for business purposes and where there are sources of potential hazards.

In particular, the provisions on OHS can be found in Government Regulation No. 50 of 2012 concerning the Implementation of Occupational Safety and Health Management Systems. Pursuant to Article 5, each company is required to implement an occupational health and safety management system. The obligation applies to companies that employ at least 100 (one hundred) workers or have a high level of potential hazard. The definition of a high level of potential hazards is a company with potential hazards that can lead to accidents that are detrimental to human life, disruption of the production process, and pollution of the workplace environment. Furthermore, based on said regulation, in implementing the OHS management system, each company is required to carry out policy determination, OHS planning, implementation of the plan, monitor and

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evaluate OHS performance, and review and improve the performance of the OHS Management System.

In the event of an accident in a working relationship, then as explained in Article 1 (14) of Law No. 40 of 2004 concerning the National Social Security System, the definition of an occupational accident is an accident that occurs in a working relationship, including accidents that occur on the way from home to place work, or vice versa, and diseases caused by the work environment. Moreover, workers who experience work accidents or illnesses caused by the work environment receive cash compensation and/or health services (Muthoharoh et al, 2020). This compensation is called Work Accident Insurance as referred to in Article 1 (1) of the Minister of Manpower Regulation No. 11 of 2016 concerning Health Services and Amounts of Tariffs in Implementing Work Accident Insurance Programs. The article states that work accident insurance is a benefit in the form of cash and/or health services provided when workers experience work accidents or illnesses caused by the work environment.

In the event that a worker dies, the worker's heirs are entitled to their rights in accordance with the applicable laws and regulations or the rights stipulated in the work agreement, company regulations, or

collective labor agreement (Haqiqie, 2020). This has been regulated in Article 61 paragraph (5) of the Manpower Act. This means that the company's responsibility in the event that a worker dies actually depends on the legislation in force or the rights stipulated in the work agreement, company regulations, or collective labor agreement. In addition to that, the Indonesian government through its Social Insurance Administration Body (BPJS) has provided a full-guarantees for any workers who died due to Covid-19 outbreak.

Specifically for workers who have died in work relationships, this is regulated in Government Regulation No. 44 of 2015 concerning the Implementation of Work Accident and Death Insurance Programs. As for the implementing regulations, it is regulated in Minister of Manpower Regulation No. 26 of 2015 concerning Procedures for the Implementation of the Accident Insurance Program, Death Insurance and Old Age Benefits for Wage Earners.

On December 26, 2019, President Joko Widodo signed Government Regulation No. 88 of 2019 concerning Occupational Health (Setkab, 2020). According to this regulation, the Central Government, Regional Governments, and the community are responsible for the

implementation of Occupational Health in an integrated, comprehensive, and sustainable manner. The regulation was signed in a view to providing protection for workers in order to be healthy, safe, and productive. The implementation of occupational health as referred to in Article 2 paragraph (2) of the regulation, includes measures of disease prevention, health improvement, disease treatment, and health restoration. Referring to Article 3 of the regulation, the implementation of occupational health as intended must be fulfilled by management or manager and employer in all workplaces.

Implementation of Occupational Health pursuant to Government Regulation No. 88 of 2019 shall be supported by human resources, health care facilities, occupational health equipments and data collection and reporting. The human resources referred to in this Regulation shall consist of health workers and non-health workers. Health workers must have competence in the field of occupational medicine or occupational health obtained through education and/or training (Judistiani, 2020). The Health Service Facility referred to in this Regulation may be in the form of a First-Level Health Service Facility or an Advanced Health Service Facility in accordance with statutory provisions which may be applied

in cooperation with other parties. Whereas the Occupational Health Equipment referred to is equipment for assessment, medical examination and other equipment, including personal protective equipment, in connection with potential risks or hazards to occupational safety and health at the workplace.

In addition, Article 15 of Government Regulation No 88 of 2019 also provides that funding for the implementation of Occupational Health may also be drawn from the State Revenue and Expenditure Budget, the Regional Revenue and Expenditure Budget, the public or other legitimate and non-binding sources in accordance with regulatory provisions. The Regulation also states that the Central Government and the Local Governments provide guidance on the implementation of occupational health. The guidance referred to shall be carried out by advocacy and dissemination, technical guidance and community empowerment. In the context of the guidance as provided to in this regulation, the Central Government and the Local Governments may grant awards to individuals, organizations, management or managers of workplaces or employers who have contributed to the achievement of the objectives of Occupational Health in

accordance with statutory provisions in every activity.

In addition, the Central Government and Regional Governments supervise the implementation of Occupational Health in the areas of compliance with Occupational Health standards. Supervision as referred to, if referring to Article 19 paragraph (3), can be carried out by personnel who have a supervisory function in the field of manpower or personnel who have a supervisory function in the health sector in accordance with statutory provisions.

Furthermore, in an effort to protect health workers from the impact of Covid-19, the Minister of Manpower issued Circular Letter No. M/8/HK.04/V/2020 concerning Worker Protection for Work Accident Security Program in Work-related Diseases Due to Corona Virus Disease 2019 (Covid-19). This circular refers to Presidential Regulation No.7 of 2019 concerning Occupational Diseases. Covid-19 can be categorized as an occupational disease in the classification of diseases caused by exposure to factors arising from work activities, namely biological exposure factors.

The circular states that workers have specific risks that can cause occupational diseases because Covid-19 is divided into 3 categories. First, medical

and health personnel who are in charge of caring for and treating patients in hospitals, health facilities, and/or other places designated by the government as places to treat patients infected with Covid-19. Second, health support personnel such as cleaning services, laundry workers, and others who are at risk of being exposed to Covid-19 in their work environment. Third, the volunteer team includes health and non-health workers who are also in charge of the Covid-19 response.

#### **Corporate OHS Policy during PSBB**

Following the implementation of large-scale social restrictions, in particular in the DKI Jakarta area, the company's business activities in the PSBB area were then formally restricted. However, this provision was then excluded to some extents pursuant to Minister of Health Regulation No. 9 of 2020 concerning Large-Scale Social Restriction Guidelines in the Context of Accelerating Handling of Corona Virus Disease 2019, it excluded for companies which engaged in the defense and security sector, public order, food, fuel oil and gas, health services, economic, finance, communications, industry, exports and imports, distribution, logistics, and other basic needs. Therefore, as long as the company is not included in the list of commercial and private companies

exempted as stated in the Annex of regulation, thus, the provisions for dismissal at the workplace shall be applicable to the non-included company. In addition to that, based on Article 13(1), the implementation of the PSBB involves the dismissal of schools and workplaces. What is implied by dismissing the workplace is to restrict the process of working at it and replace it with the process of working at home in order to preserve the productivity and performance of workers.

The issue of Work From Home ("WFH") or working at home in the midst of an outbreak of COVID-19 can be related to the provisions of Article 86 paragraph (1) letter a of Law No. 13 of 2003 concerning Manpower ("Manpower Act"), where each workers/laborers have the right to obtain protection for occupational safety and health. In addition to that, The DKI Jakarta Provincial Manpower, Transmigration and Energy Office has issued a Circular Letter of the DKI Jakarta Provincial Manpower, Transmigration and Energy Office No. 14/SE/2020 on Appeal to Work from Home following the DKI Jakarta Provincial Governor Instruction No. 16 of 2020 concerning Increased Precautions Against the Risk of Corona Virus Disease Transmission. Referring to DKI Jakarta Manpower and Energy Circular Letter No.

14/SE/2020, company leaders are expected to take preventative measures associated with the risk of transmission of COVID-19 infection by working at home.

The implementation of PSBB in the DKI Jakarta area is then further regulated in the Governor Regulation of the Special Capital Province of Jakarta No. 33 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (COVID-19) in the Special Capital Province of Jakarta. Article 9(1) of DKI Jakarta Governor Regulation No 33 of 2020 provides that a temporary suspension of work in the workplace or office shall be enforced during the PSBB. During the temporary suspension of work at the workplace, work at the workplace must be replaced by work at home. Therefore, on the basis of the aforementioned rules, businesses which are not exempt must temporarily stop work at the workplace and replace it with work at home.

### **Corporate OHS Policy during New Normal Period**

Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) has stated that large-scale Social Restrictions (PSBB) is carried out



one of them by dismissing the workplace. However, the world of work and business may not be forever restricted, the economy must continue to run, therefore after the implementation of the PSBB with the ongoing COVID-19 pandemic, it is necessary to carry out efforts to mitigate and prepare workplaces as optimally as possible so that they can adapt through changes in lifestyle in the 19th COVID situation (New Normal).

The government issued a new normal protocol for offices and industry in facing the coronavirus pandemic, which is regulated in a Decree of the Minister of Health. New normal implementation is regulated in Minister of Health Decree No. HK.01.07/MENKES/328/2020 concerning Guidelines for Prevention and Control of Covid-19 in Office and Industrial Workplaces in Supporting Business Sustainability in Pandemic Situations. The issuance of decree is expected to minimize the risk and impact of the COVID-19 pandemic on the workplace, in particular offices and industries, where there is potential for COVID-19 transmission due to the gathering of a number of people in one area.

Persuant to the decree, the government considers necessary measures to prevent and control the potential transmission of COVID-19 in the work

environment carried out by all components in the workplace from workers to the management and executive level as well as empowering all available resources. The determination of this measure is adjusted to the level of risk based on the type of work and the size of the business sector. The identification of the type of work and its relationship to the potential danger of exposure to disease transmission needs to be done in order to make efforts more effective. This risk assessment is carried out based on the potential exposure to the general environment during the trip, coworkers and customer relationships as well as the potential exposure to travel history to and from areas infected with COVID-19.

The decree also obliges each company to form a COVID-19 Task Force in the workplace consisting of executives, HRD (Human Resource Department), HSE (Health, Safety, and Environment) sections, and health workers who are strengthened and confirmed with a decree from the workplace director. The management or the COVID-19 Task Force in the workplace must always pay attention to the latest information and the appeals and instructions of the Central and Local Governments related to COVID-19 in their area, and to update policies and procedures

related to COVID-19 in the workplace in accordance with the latest developments.

Furthermore, referring to the decree, employers must have policies and procedures for employees to report any suspected cases of COVID-19 to health professionals, such as symptoms of fever or cough, runny nose, sore throat, and shortness of breath. Also, the company must always ensure that all work areas are clean and hygienic by periodic cleaning using appropriate cleaners and disinfectants every 4 hours. In addition to that, all workers should have a COVID-19 Risk Self-Assessment one day before entering work to ensure that are not infected with COVID-19. And if the worker must carry out quarantine or self-isolation, then the employer must continue to provide the workers' rights. It is required also for all workers to wear masks while at work, while traveling to and from work and every time they leave the house. Moreover, under certain circumstances, where appropriate, work places with sufficient resources may also facilitate quarantine or independent isolation.

In addition, based on Circular of the Minister of Manpower No. M/7/AS.02.02/V/2020, the company is also required to always implement a physical distancing policy. The company should arrange the number of workers who

come to work to facilitate the application of physical distancing. The company should also set the queue distance so workers do not congregate at the office entrance. This is done by putting a marker on the floor or poster in order to remind the workers. Even if possible, companies should also provide workers with special transportation for commuting to and from work so workers do not use public transportation.

Health workers, HSE officers, and HRD should proactively monitor workers' health. During work, each work unit, section, and division monitors all workers if there are workers who experience symptoms such as fever, cough, or runny nose. On the other hand, it also encourages workers to be able to self-assess and report if they experience these symptoms while working. And for workers who have just returned from official travel to COVID-19 countries or regions, workers are required to carry out independent quarantine at home and self-monitoring for 14 days for symptoms that arise and measure temperature 2 times a day.

### **Potential Sanctions for Infringers**

DKI Jakarta Provincial Government noted that there were as many as 1,222 companies domiciled in the Capital Province violating the rules during

the period of large-scale social restrictions. The distribution of workplaces that do not comply with the PSBB rules is spread in five administrative cities and 1 regency.

Companies must pay attention to the fact that violations of the implementation of the PSBB are subject to sanctions in accordance with statutory provisions, including criminal sanctions. Such criminal sanctions are laid down in Article 93 of Law No. 6 of 2018 on health quarantine. The provision states that every person who does not comply with the implementation of health quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of health quarantine so as to cause public health emergencies shall be punished with imprisonment of up to 1 (one) year and/or a fine a maximum of Rp 100,000,000.00 (one hundred million Rupiahs).

PSBB, as pointed out in Article 15, paragraph 2, letter b of Law No. 6 of 2018, is one form of health quarantine effort. Thus, for those who do not comply with the PSBB, criminal sanctions may be imposed on the basis of the provisions of Law No. 6 of 2018.

Subsequently, Article 14(1) and (2) of Law No. 4 of 1984 on Contagious Disease Outbreaks states that anyone who deliberately obstructs the enforcement of the disease control as provided for in this

Law is threatened with a maximum sentence of 1 (one) year and/or a maximum fine of Rp1,000,000 (one million Rupiahs). So whoever, due to negligence, obstructs the implementation of the epidemics as provided for in this Law, is under penalty of imprisonment for a maximum duration of 6 (six) months and/or a maximum fine of Rp 500,000 (five hundred thousand Rupiahs).

### **Conclusion**

In the basis of the justification set out above, the Government and subordinate bodies have generally defined an important legal and regulatory framework for the implementation of occupational safety and health for workers during the pandemic. In addition, it can be seen that each organ of government at the level of the President, the Minister, the Governor, and even at the level of the regional government bodies jointly supports each other in the preparation of a legal structure for companies to make the most of their efforts to ensure the health and safety of workers during the Covid-19 pandemic. In addition, several existing laws also may provide sanctions and penalties for companies that are still persistent in violating the laws and policies during the spread of the outbreak.

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## **Recommendation**

It is suggested for the Central and Local Government to oversee the implementation of every single policy particularly during the PSBB period as well as formulating and revising the current policy in accordance with the recent facts which took place in the community. The revision may include the advice for the companies to consistently conduct training on occupational health and safety protocols during the pandemic. It is very useful to increase the knowledge and awareness of workers while doing their jobs even from home. Whereas in the new normal period, aside from continuing to conduct training on occupational health and safety protocols during the pandemic, the company should also increase supervision for each of its employees by making a monitoring agenda. The company must establish a task force that has one of its main functions to monitor structurally and thoroughly the workers who work during the pandemic, particularly workers who work in offices. As the risk of spread of Covid-19 is in fact more risky in crowded areas, which offices and workplaces are regarded as one of the places where people gather, so companies have to put extra attention on it.

In addition to that, the government and regulators as well as law enforcers

should be more assertive in supervising and controlling companies that still do not comply with policies implemented during the pandemic. This is very critical to reduce the spread of the Covid-19 virus and protect workers who are very vulnerable to be infected at workplace. If necessary, the amount of penalty which imposed to the infringers should be increased in order to provide deterrence.

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