Legislative Review

Law No. 6 of 2018 on Health Quarantine

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I. INTRODUCTION

The Indonesian Government enacted Law No. 6 of 2018 on Health Quarantine (HQ Law) on 7 August 2018, which repealed Law No. 1 of 1962 on Maritime Quarantine and Law No. 2 of 1962 on Air Quarantine. For more than five decades, health quarantine was imposed under these two outdated instruments. Therefore, the adoption of the HQ Law has significant meaning as it marked a new era in the regulation of health quarantine in Indonesia. The HQ Law considers the development of technology, the movement of goods and persons, and international free trade, which, their positive impacts aside, may accelerate the spread of infectious diseases throughout the world, particularly in Indonesia.

The adoption of the HQ Law has also been instrumental in implementing the International Health Regulations, which were adopted by the World Health Organization (WHO) in 2005 (IHR (2005)) and entered into force on 15 June 2007. This article aims to review the Indonesian HQ Law and to examine whether through this law, Indonesia, as a member State of the WHO, has adequately addressed key provisions under the IHR (2005). Within this context, the history and key provisions of the IHR (2005) will be discussed initially. Then, some provisions of the Indonesian HQ Law will be explored, including central and local government responsibilities, public health emergencies, health quarantine at entry points, regional health quarantine, and health quarantine documents. Following this, the current implementation of the Indonesian HQ Law vis-à-vis the IHR (2005) will be examined, particularly considering the current Covid-19 pandemic. Finally, conclusions will be presented.

II. THE HISTORY AND DEVELOPMENT OF THE INTERNATIONAL HEALTH REGULATIONS

The history of the IHR can be traced back to a series of Sanitary Conferences that started in 1851 as an attempt by the international community to curb the spread of infectious diseases,[1] especially the cholera epidemics which ravaged Europe between 1830 and 1847.[2] The Sanitary Conferences led to the International Sanitary Convention (ISC) adopted in 1892, which focused on quarantine for cholera.[3] Since then, the scope of the ISC had been broadened to cover cholera, yellow fever, and plague.[4]

The establishment of the WHO through the adoption of the Constitution of the World Health Organization in 1946 made history in the field of international public health. The WHO has been considered the most important international actor in coordinating the fight against contagious diseases.[5] In 1948, the WHO Constitution entered into force, and the World Health Assembly was established with authority to adopt conventions or agreements with respect to any matter within the competence of the WHO (Article 19). In addition, the WHO Constitution establishes the authority of the Health Assembly to adopt regulations on several matters, including sanitary and quarantine requirements designed to prevent the international spread of disease (Article 21).

Under the authority bestowed by the WHO Constitution, the Health Assembly replaced the ISC with the International Sanitary Regulations (ISR) in 1951, covering six diseases. In 1969, the Health Assembly revised the ISR and renamed them the International Health Regulations (IHR).[6] The 1969 IHR introduced the obligation of member States to notify the WHO of certain disease outbreaks and to maintain public health capabilities at international points of entry and exit.[7] Although the 1969 IHR took measures to curb the spread of international diseases, the resurgence of several epidemics broke out in some corners of the world in the 1990s, and there was an urgent need to revise the 1969 IHR.[8] In particular, revisions were required to expand the limited application of the 1969 IHR, which only covered three diseases

1 Lawrence O. Gostin and Rebecca Katz, "The International Health Regulations: The Governing Framework for Global Health Security," *Milbank Quarterly* 94, no. 2 (2016): 264–313, https://doi.org/10.1111/1468-0009.12186.particularly as parallel initiatives are developed. The World Health Organization (WHO

2 Eric Mack, "The World Health Organization's New International Health Regulations: Incursion on State Sovereignty and Ill-Fated Response to Global Health Issues," *Chicago Journal of International Law* 7, no. 1 (2006): 365–77.

3 Gostin and Katz, "The International Health Regulations: The Governing Framework for Global Health Security."particularly as parallel initiatives are developed. The World Health Organization (WHO

4 *Ibid.*

5 Morten Broberg, "A Critical Appraisal of the World Health Organization's International Health Regulations (2005) in Times of Pandemic: It Is Time for Revision," *European Journal of Risk Regulation* 11, no. 2 (2020): 202–9.

6 Mack, "The World Health Organization's New International Health Regulations: Incursion on State Sovereignty and Ill-Fated Response to Global Health Issues."

7 *Ibid.*

8 *Ibid.*

(cholera, plague, and yellow fever), address the failure of Member States to notify the WHO, and examine the excessive travel and trade restrictions applied by member States in times of the disease outbreaks.

Nevertheless, the revision of the 1969 IHR did not take place for almost a decade. The international outbreak of severe acute respiratory syndrome (SARS) in 2003 finally provided the impetus to the international community to speed up the revision process.[9] In this context, the Health Assembly passed resolutions to combat the international spread of SARS and marked the beginning of the adoption of the IHR (2005), which was considered "an important stage in the history of international health law."[10]

The purpose and scope of the IHR (2005) are "to prevent, protect against, control, and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade" (Article 2). It could therefore be argued that this instrument aims to strike a delicate balance between the protection of public health on the one hand and the economic interests on the other. To some extent, this approach reflects the fact that the issue of global health does not exist in a vacuum, but rather interacts with other fields of international law, including trade law, human rights law, and environmental law.[11]

The IHR (2005) provides rights and obligations for member States, particularly concerning the following matters: national and international surveillance; assessment and public health response; and public health screening at international ports, airports, and ground crossings.[12] There are essential features of the IHR (2005) that distinguish the instrument from the earlier version of IHR. First, the instrument covers far more than a list of specific infectious diseases. The IHR (2005) includes a wide range of public health risks of potential international concern, whether biological, chemical or radio nuclear in origin or source, and whether potentially transmitted by persons (e.g., SARS, influenza, polio, Ebola); goods, food, animals (including zoonotic disease risks), vectors (e.g., plague, yellow fever, West Nile fever), or the environment (e.g., radio nuclear releases, chemical spills, or other contamination.[13]

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9 Gostin and Katz, "The International Health Regulations: The Governing Framework for Global Health Security."particularly as parallel initiatives are developed. The World Health Organization (WHO

10 Chang-fa Lo, "The Missing Operational Components of the IHR (2005) from the Experience of Handling the Outbreak of COVID-19: Precaution, Independence, Transparency and Universality," *Asian Journal of WTO and International Health Law and Policy* 15, no. 1 (2020).

11 David Fidler, "The Future of the World Health Organization: What Role for International Law?," *Vanderbilt Journal of Transnational Law* 31, no. 5 (1998): 1079–1126.

12 World Health Organization, *International Health Regulations (2005): A Brief Introduction to Implementation in National Legislation* (World Health Organization, 2009).

13 *Ibid.*

Secondly, the IHR (2005) requires State Parties to assess events occurring within its territory and notify WHO within 24 hours of assessment of all events which may constitute a public health emergency of international concern (PHEIC) (Article 6 Paragraph 1). In this regard, the responsibility of determining whether an event is within the PHEIC category lies with the WHO Director General and requires the convening of the IHR Emergency Committee.[14] Under this framework, the WHO has declared PHEIC six times: H1N1 (2009); Polio (2014); Ebola (2014); Zika (2016); Ebola (2018); and SARS-CoV-2 or Covid-19 (2020).[15]

In 2009, the WHO indicated six priority subject areas for the implementation of the IHR (2005), namely:

1. Designation and operation of national IHR Focal Points;
2. Detection, reporting, verification, and control of events, as well as related communications, domestically and internationally;
3. Communication and collaboration with WHO;
4. Implementation of the IHR (2005) documents, including Ship Sanitation Certificates, International Certificates of Vaccination and Prophylaxis, Maritime Declarations of Health, and Health Sections of Aircraft General Declarations;
5. Designation of Points of Entry (ports, airports, and ground crossings) for development of core public health capacities; and
6. Identification of ports authorized to issue Ship Sanitation Certificates and provide related services.[16]

These are the most crucial areas that should be implemented by States regarding the protection of public health.

III. THE 2018 INDONESIAN HEALTH QUARANTINE LAW

The HQ Law contains 14 chapters and 98 articles. There are four objectives of the HQ Law, namely: (1) to protect the community from diseases and/or public health risk factors that may lead to a public health emergency; (2) to prevent and to tackle diseases and/or public health risk factors that may lead to public health emergency; (3) to promote national security in the public health sector; and (4) to provide legal protection and certainty for the community and health officials (Article 3). The main provisions include central and local government responsibilities (Chapter II), public health emergencies (Chapter IV), health quarantines at entry points (Chapter

[14] Annelies Wilder-Smith and Sarah Osman, "Public Health Emergencies of International Concern: A Historic Overview," *Journal of Travel Medicine* 27, no. 8 (2020): 1–13, https://doi.org/10.1093/JTM/TAAA227.

[15] *Ibid.*

[16] World Health Organization, *International Health Regulations (2005): A Brief Introduction to Implementation in National Legislation*.

VI), regional health quarantines (Chapter VII), and health quarantine documents (Chapter VIII).

1. Central and local government responsibilities

The 1945 Constitution of the Republic of Indonesia states that the Indonesian territory is divided into provinces, which are further divided into municipalities and cities, each with its own local government (Article 18 paragraph 1). This local government system is further regulated by t Law No. 23 of 2014 which provides, among other things, the classification of government affairs, namely absolute government affairs, concurrent government affairs, and general government affairs (Article 9 paragraph 1). The absolute government affairs include, for instance, foreign policy, security, and judiciary, and the authority to conduct such affairs belongs to the central government (Article 9 paragraph 2 and Article 10 paragraph 1). The concurrent government affairs comprise government affairs that are shared between local and central governments, including education, health, and public works (Article 9 paragraph 3 and Article 12 paragraph 1). The general government affairs cover government agencies under the authority of the President as the head of government (Article 9 paragraph 5).

Several HQ Law provisions include health quarantine as a part of concurrent government affairs as they suggest coordination between the central and local governments. For instance, the Law provides that the central government is mainly responsible to undertake health quarantine at entry points regionally but may involve the local government in this regard (Article 5). Furthermore, the Law provides that both the central and the local governments are responsible for protecting the community from diseases and/or public health risks through health quarantine, and for making resources available to that end (Articles 4 and 6). Nonetheless, as discussed below, the central government has more authority than the local governments when it comes to the situation of a public health emergency.

2. Public health emergencies

According to the HQ Law, the authority to undertake measures to address a public health emergency lies with the central government. In general, the central government has authority to declare and lift the status of an outbreak as a public health emergency (Article 10 paragraph 1). Prior to the declaration of a public health emergency, the central government decides which types of diseases and risk factors may lead to a public health emergency (Article 10 paragraph 3). In conducting a health quarantine during a public health emergency, the central government needs to assess the severity of the threat, efficacy, resources support, and technical operations by taking into account state sovereignty, security, economy, social, and cultural factors (Article 11 paragraph 1). In this regard, the health quarantine may be

conducted through coordination and cooperation with the international community (Article 11 paragraph 2). It is unclear, however, what is meant by "international community" under this article, specifically whether it covers States, or international organizations, or both.

3. Health quarantine at entry points

The health quarantine at entry points under Chapter VI is perhaps the most significant part of the HQ Law as it consists of six parts and 29 articles. Each part regulates specific measures, including health quarantine at ports (Part 1), health quarantine at airports (Part 2), health quarantine at ground crossings (Part 3), monitoring of crew, personnel, and passengers (Part 4), monitoring goods (Part 5), and administrative sanctions (Part 6).

Under Part 1, regarding health quarantine at ports, the quarantine status applies to every ship that arrives from foreign countries, every ship that arrives from internal ports where diseases are spreading, and every ship that hauls passengers or goods from such ships (Article 19 paragraph 1). In this regard, the captain is required to provide the Maritime Declaration of Health to the quarantine officers at the time of arrival (Article 19 paragraph 2). The ship then needs to obtain health quarantine approval, which is given fully or partially, depending on the findings of diseases or risk factors that may lead to a public health emergency (Article 19 paragraph 5).

A vessel that fails to comply with the health quarantine regulations is not entitled to obtain health quarantine approval, must leave the port accordingly, and will not be permitted to enter other Indonesian ports (Article 23 paragraph 2). Before sailing, the captain is required to complete health quarantine documents and obtain a Port Health Quarantine Clearance if the health quarantine officers find no indications of public health risk factors (Article 25 paragraphs 1 and 2).

Similar arrangements apply to aircraft, which are regulated under Part 2. Every aircraft that arrives from a foreign country is subject to health quarantine surveillance (Article 27). Furthermore, every aircraft that comes from departure points where diseases are spreading, or carries presumably infected passengers or goods, would be placed under quarantine status (Article 28 paragraph 1). The captain is required to provide to the quarantine officers the Health Section of the Aircraft General Declaration (Article 29). The process for the aircraft health quarantine clearance is similar to the process that applies to ships. Similar processes also apply to health quarantine at ground crossings, requiring ground vehicles to provide a Ground Crossing Declaration of Health to the quarantine officers (Article 36).

Part 6 of Chapter VI of the HQ Law provides administrative sanctions for ship captains, aircraft captains, and ground transportation operators in cases of non-compliance on the health quarantine process, ranging from a warning notice to withdrawal of licensure. Criminal sanctions may also apply to ship captains, aircraft

captains, or ground transportation operators who fail to comply with the health quarantine approval and contributes to the spread of diseases and/or public health risk factors that lead to a public health emergency (Articles 90, 91, and 92).

4. Regional health quarantines

The HQ Law regulates the conduct of regional health quarantines in addition to the health quarantines at entry points. Regional health quarantines may include home quarantine, territorial quarantines, hospital quarantines, or large-scale social restrictions, which in the Indonesian language is more widely known as "*Pembatasan Sosial Berskala Besar*" or PSBB (Article 49 paragraph 1). The assessment of the regional health quarantines must be based on epidemiological considerations severity of threats, efficacy, resource capacity technical operations, as well as economic, social, cultural, and security considerations (Article 49 paragraph 2). Further arrangements regarding the criteria and the imposing regional health quarantines are regulated by Government Regulation (Article 60).

5. Health quarantine documents

The HQ Law specifies required health quarantine documents for every form of transportation, person, and goods that come inside or leave the Indonesian territory. For every form of transportation, the required documents are stipulated under Article 62, which consist of:

a. Health declaration, including the Maritime Declaration of Health; the Health Part of the Aircraft General Declaration; and the Ground Crossing Declaration of Health (Article 63 paragraph 1);
b. Certificate of health quarantine approval;
c. Certificate of sanitation, including the Ship Sanitation Control Exemption Certificate and the Ship Sanitation Control Certificate for ships; and the Disinfection Exemption Certificate, the Disinfection Certificate, and the Disinfection Certificate for aircrafts or ground transportation (Article 64);
d. Certificate of medicine and health equipment;
e. Health book for ships; and
f. Port Health Quarantine Clearance for ships.

The health quarantine documents required for persons are an International Certificate of Vaccination or Prophylaxis and letter of notification for the transport of sick persons (Article 65). As to goods, the required health quarantine documents consist of a Human Remains Transport Certificate, a health certificate for dangerous goods, and, if necessary, health quarantine documents for medicine, food, cosmetics, health equipment, and addictive substances (Article 66).

IV. THE CURRENT IMPLEMENTATION OF THE 2018 INDONESIAN HEALTH QUARANTINE LAW

In general, the HQ Law embodies essential provisions with respect to health quarantine measures under the IHR (2005). It identifies and elaborates six key measures in the implementation of the IHR (2005) as explained in the previous section. Nevertheless, there are some issues that need particular attention.

There are several key provisions under the HQ Law worthy of further elaboration and examination. These provisions mandate the enactment of Government Regulations, which should further regulate the following matters:

1. Declaration and lifting of a public health emergency declaration (Article 10, paragraph 4);
2. Handling of public health emergencies, including the coordination and co-operation with the international community (Article 11, paragraph 3);
3. Procedures for regional health quarantines at entry points (Article 14, paragraph 2);
4. Enforcement of administrative sanctions for non-compliance with health quarantine documentation (Article 48, paragraph 6); and
5. Criteria for and establishment of home quarantine, regional quarantine, hospital quarantine, and large-scale social restrictions (Article 60).

The adoption of these Government Regulations, however, did not take place immediately after the HQ Law was enacted in 2018. It was only after the Covid-19 pandemic started spreading widely throughout the country in early 2020 that the Indonesian government finally adopted the subsequent laws and regulations related to health quarantine.

The Covid-19 pandemic was declared as a public health emergency in Indonesia on 31 March 2020 through the adoption of the Presidential Decree No. 11 of 2020. On the same day, two other instruments were adopted, namely the Government Regulation in lieu of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/ or for Encountering Threats Endangering National Economy and/ or Financial System Stability, and Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions to Accelerate the Handling of Corona Virus Disease 2019 (Covid-19) (2020 Government Regulation on PSBB.[17]

The 2020 Government Regulation on PSBB specifies the details on large-scale social restrictions as part of health quarantine measures prescribed by the 2018 HQ Law. However, this Regulation only focuses on large-scale social restrictions in the

[17] Gunawan Widjaja, "COVID-19 Pandemic and Law No. 6 Year 2018 Regarding Health Quarantine," *Journal of Indonesian Health Policy and Administration* 5, no. 2 (2020), https://doi.org/10.7454/ihpa.v5i2.3867.

context of the Covid-19 pandemic rather than in the context of general public health emergencies. Thus, the 2020 Government Regulation on PSBB was unconventional as it concerned a very particular subject matter which would commonly be regulated by a Presidential Decree, and not by a Government Regulation.[18] This raises further questions as to whether this Regulation was genuinely intended to supplement the HQ Law or merely represents a hasty response of the Indonesian government in dealing with the Covid-19 pandemic.[19]

Through the adoption of the three instruments on 31 March 2020, the Indonesian government has enacted further policies, laws, and regulations dedicated to the handling of the Covid-19 pandemic. Such policies, laws, and regulations are categorized into four major groups, general policies, policies for Covid-19 patients, stay-at-home policies, and travel restrictions.[20] Various ministries and institutions have been involved in the formulation and implementation of these policies, laws, and regulations, including the Ministry of Health, the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Home Affairs, and the Ministry of Law and Human Rights.

V. CONCLUSION

The 2018 HQ Law signified a fundamental change in the management of health quarantine in Indonesia, replacing the arcane laws that had been in force since 1962. It could be concluded that, through the adoption of the 2018 HQ Law, Indonesia, as a member State of the WHO, has adequately addressed several key provisions of the IHR (2005), especially with regard to national and international surveillance, assessment and public health response, as well as public health at international ports, airports, and ground crossings.

Nevertheless, some challenges remain. The essential measures required by the 2018 HQ Law, particularly on the adoption of criteria and establishment of home quarantines, regional quarantines, hospital quarantines, and large-scale social restrictions, have only been implement recently in the context of Covid-19 pandemic. Consequently, current laws and regulations, especially the 2020 Government Regulation on PSBB and other regulations adopted at ministerial levels, may only be relevant for the handling of the Covid-19 pandemic and may not be applicable to other public health emergencies. In addition, the Indonesian government should

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18 Linda Yanti Sulistiawati, "Indonesia's Legal Framework in Combating COVID-19 Senior Research Fellow APCEL, Faculty of Law, National University of Singapore Associate Professor Universitias Gadjah Mada [Uploaded July 2020]," *NUS Asia-Pacific Centre for Environment Law Working Paper 20/06*, no. July (2020).

19 Fitriani Ahlan Sjarif, "PP Inikah Yang Kita Harapkan Untuk Menangani Covid-19 Di Indonesia?," hukumonline.com, 2020.

20 Sulistiawati, "Indonesia's Legal Framework in Combating COVID-19 Senior Research Fellow APCEL, Faculty of Law, National University of Singapore Associate Professor Universitias Gadjah Mada [Uploaded July 2020]."

consider a more comprehensive health quarantine policy to ensure the effective implementation of the 2018 HQ Law as the issue of health quarantine should also be considered in light of related fields that are essential to human health, well-being, and existence.

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