



Legal and Health Protection for Creative Economy Actors during The Covid-19 Pandemic

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Abstract

This research examined Covid-19 from the perspective of legal and health protection by regional governments. Generally, regional governments are at the front line in protecting communities in this autonomy era due to their constitutional obligations. Data also shows that the creative economy actors in the micro, small, and medium business sector constitute over 90% of the workforce, necessitating their protection. This research used empirical-juridical research with an interdisciplinary approach examined the legislation and the community's reality. A Focus Group Discussion (FGD) was conducted with relevant stakeholders and creative economy business actors in Surakarta, Bandung, and Madiun cities. Furthermore, concepts of legal, health, and economic theories were reviewed to formulate a regional government policy draft regarding these business actors during the Covid-19 emergency. The results showed an existing form of legal protection regulation related to health and the economy at the national level. However, three big cities (Bandung, Madiun, and Surakarta) representing three provinces as research objects are yet to provide regional regulations concerning protection for creative economy actors, though the local government has encouraged an increase in their activities.

I. Introduction

This interdisciplinary research examined Covid-19 from legal, economic, and health perspectives. A legal study was needed because the rule of law is the basis for actions expected to achieve social order. The economic aspect was necessary because this research

discusses the resilience of creative business actors during the pandemic. In addition, a health study was required to enable discussions regarding the community's right to health, especially creative economy actors who experience the Covid-19 emergency impact.

The first research urgency concerned legal and health protection for creative economic actors in micro, small, and medium enterprises that have experienced a significant economic impact due to Covid-19. According to a report by the Organization for Economic Cooperation and Development, this pandemic implies threats of a major economic crisis marked by the cessation of production activities in many countries, low consumption, and falling stock markets. Meanwhile, one of the sectors affected by Covid-19 is trade ([Pakpahan A. K., 2020](#)). Data from the Ministry of Cooperatives and Small and Medium Enterprises showed that 99% of the total business units are MSMEs and employ 97% of the economic workforce. Hence, the pandemic has seriously impacted creative economy actors (MSMEs), considering the large proportion of business units and workers involved. There have been at least 949 reports from creative economy actors affected by the outbreak ([Kompas, 2020](#)).

In addition, most creative economy actors in Bandung admitted that Covid-19 had an impact on most of them, except seven who claimed to be unaffected. Nearly 49.25% of workers were laid off, while some in the clothing industry were forced to manufacture masks and personal protective equipment (PPE), whose demand increased sharply at the beginning of the pandemic (Susanti, 2020).

The impact of Covid-19 was also felt by MSME actors, especially those in the creative economy sector in the Surakarta ex-Residency known as Subosuka Wonosraten, comprising Surakarta, Boyolali, Sukoharjo, Karanganyar, Wonogiri, Sragen, and Klaten. These workers are concerned about the disrupted distribution and consumption chains, as well as production delays ([Radarsolo, n.d.](#)). Such disturbances are very likely due to the transportation restriction between regions to prevent the transmission of the virus. Therefore, policies that can help creative economy actors recover are needed urgently.

Meanwhile, the second research urgency is related to the health of creative economy actors, their families, and the general community. Covid-19 is a disease caused by a virus that can be through droplets from coughing or sneezing droplets. The clinical manifestations are highly variable, may worsen, and are especially fatal in elderly persons with comorbidities, such as diabetes mellitus or heart diseases ([Fathiyah Isbaniah, 2020](#)).

Several policies with implications for creative economy actors include the regional Large-Scale Social Restriction (PSBB) regulations, the appeal to stay at home, and a quarantine scheme. These policies directly or indirectly caused these workers to experience a decline in sales, difficulty obtaining raw materials, and capitalizing, alongside reduced distribution and production. Therefore, this research focused on the legal and health protection provided by regional government policies to ensure the survival of creative economy actors during this Covid-19 emergency.

Based on the description above, this research intends to identify existing health and economic regulations and the ideal form of the legal protection of these creative workers during the pandemic.

II. Research Methods

This research was empirical-juridical with an interdisciplinary approach that examined the community's legislation and reality. Empirical-juridical research generally concerns the enforcement or implementation of normative legal provisions in every legal event or action in the community ([Abdulkadir, 2004](#)). Meanwhile, the research locations were Madiun, Surakarta, and Bandung cities, representing East, Central, and West Java, respectively.

III. Results and Discussion

A. The Regulation of Legal Protection of Health and Economy for Economic Actors

1. Mapping of Regional Regulations and Policies

This research obtained information related to the creative economic life in Madiun, Bandung, and Surakarta during the pandemic. Madiun is preparing for the concept of a creative gastronomic city, which denotes the relationship between culture and food. Gastronomy studies various cultural components with food as the center. Although the city excels in the culinary field, especially sambel pecel, madumongso, and krupuk puli, creative economy actors experienced several obstacles during the pandemic. These include the increasing scarcity of local raw materials, lack of capital and access to financing, and the unavailability of a representative culinary industry showroom. Madiun still lacks a regional regulation on the creative economy, as the agenda is yet to be ratified due to the wait for a government regulation that was originally set for approval in 2021.

Meanwhile, the Bandung creative industry is growing rapidly as a result of promising tourism. However, this city does not have a regional regulation on the creative economy. There are related regulations in West Java, namely the West Java Regional Regulation Number 15 of 2017 on the Development of Creative Economy. This sector is advancing rapidly because the province is a center for the textile industry, which generally comprises medium-sized businesses. Bandung is a creative pilot city in West Java due to its people, particularly the youth communities engaged in creative fields such as music, design, and film. The developing facilities also support young people in performing these activities. Although the Bandung creative economy industry developed and has continued to increase over the last 10 years, there has been a decline in associated activities during the pandemic. These include decreased film production due to rules for social distancing, wearing masks, and PSBB, which affect the shooting process.

In addition, the creative economy industry in Surakarta is increasing rapidly and is the second largest after the small ones. Previously, Surakarta was the center of the Surakarta Hadiningrat kingdom with the potential for economic culture, trade, and tourism, which has continued to develop.

Several batik villages have also become the city's leading potential, such as Klewer market, Laweyan, Kauman, Solo wholesale center, and Beteng plaza. Furthermore, the region organizes annual tourism events such as sekaten, wayang, and furniture, rattan, glass carving, leather, kris, and batik carnivals. This potential made Surakarta, better known as Solo, a creative city with a design category and an average increase of 7% yearly. However, similar to Bandung, this city lacks a legal instrument for the creative industry or economy. The process of formulating regulations at the regional level still employs academic texts and Regional Regulation drafts. Hence, creative economy actors in Solo were quite affected due to declining orders during the pandemic.

2. Legal Protection for the Health Sector

Indonesia recognizes and guarantees respect for human dignity in all aspects of national, state, and community life based on the 1945 Indonesian Constitution, which promotes the understanding that Human Rights are fundamental and inherent in every citizen without discrimination.

Health is one of the human rights possessed by all individuals. As mandated in Article 28H Paragraph (1) of the constitution, every human has the right to live in physical and spiritual prosperity, have a home, obtain a good and healthy living environment, and receive health services. The state should be present in fulfilling the right to health for every citizen, which is also part of the national development goal of Indonesia. National development should be based on health insights by focusing on public health ([Agustina, 2015: 83](#)). A condition that causes health problems for the community will result in huge economic losses for the state. Therefore, all parties, including the government and the community, are responsible for public health.

The fulfillment of the right to health for Indonesian citizens is regulated in Article 28H paragraph (1) and Article 34 paragraphs (2) and (3) of the 1945 Constitution. Article 28H paragraph (1) states that "Everyone has the right to live in physical and spiritual prosperity, have a home, obtain a good and healthy living environment, and receive health services." Article 34 paragraph (2) asserts that "The state develops a social security system for all Indonesian people and empowers the weak and incapable in accordance with human dignity." Furthermore, Article 34 paragraph (3) affirms that "The state is responsible for providing proper health and public service facilities." Health efforts are made through activities with promotive, preventive, curative, and rehabilitative approaches in an integrated, comprehensive manner ([Agustina, 2015: 83](#)). The provisions in Article 41 paragraph (1) of Number 36 of 2009 of the Indonesian Law on Health stipulates that health efforts are implemented through the following activities:

- a. Health services;
- b. Traditional health services;

- c. Health promotion and disease prevention;
- d. Healing of disease and restoration of health;
- e. Reproduction health;
- f. Family planning;
- g. School health;
- h. Sports health;
- i. Health services in disasters;
- j. Blood service;
- k. Dental and oral health;
- l. Prevention of visual and hearing impairments;
- m. Dimensional health;
- n. Security and the use of pharmaceutical preparations and medical devices;
- o. Food and beverage security;
- p. Safety of addictive substances; and/or
- q. Post-mortem services

Law Number 36 of 2009 on Health stipulates that every individual, family, and community has the right to health protection. Since the state is fully responsible for regulating this matter, the right to a healthy life is fulfilled without exception. The government is also tasked with providing equitable, fair, and affordable health services for all community levels to realize these rights. Therefore, it needs to make efforts to ensure equal access for all residents in obtaining health services.

The existence of provisions regarding social welfare in the 1945 Constitution embodies the *welvaartstaat* concept in which the state actively participates in the people's welfare. It may also *verzorgingsstaat* or *sociale rechtsstaat* (social law state), where the state is required to realize prosperity and social justice for all its people ([Pakpahan & N.A.M.Sihombing, 2012: 168](#)).

In addition, the high commitment to realizing social welfare for all people is evident in Law Number 40 of 2004 on the National Social Security System ([Isriawaty, 2015: 4](#)). This law is a form of social protection, which essentially aims to ensure that all people can acquire the basic needs of a decent life. It mandates that every Indonesian citizen has the right to social security to fulfill their basic needs for a decent life and enhance their dignity towards the realization of a just and prosperous Indonesian community (Rokom, 2013). The various types of social security programs include health, work accident, old age, pension, and death insurance.

Also, the ratification of Law Number 24 of 2011 on the Social Security Administration Body (BPJS) demonstrates the government's seriousness about realizing national development, particularly in terms of fulfilling the

community's right to health. BPJS is an agency that protects the health rights of participating citizens, including legal protection for the implementation of preventive and rehabilitative actions. The health rights granted by this agency to prevent participants from being exposed to dangerous diseases are based on Article 20 Paragraph 1 of Law Number 24 of 2011. They comprise promotive, preventive, curative, and rehabilitative services, including drugs and medical consumables, according to the necessary medical needs.

Health and Employment are two divisions of the Social Security Administration Body. BPJS Health is a legal entity that organizes health insurance programs. Meanwhile, the Employment division is a form of legal protection provided to workers as a result of experienced events or circumstances ([Afifah & Paruntu, 2015: 161](#)). Based on previous legal regulations, namely Law Number 36 of 2009 on Health, these 2 legal entities provide health insurance for the entire community without exception.

The guarantee for the protection of health rights for Indonesian citizens through BPJS is still unable to fully cover all citizens due to the requirement of participation and payment of health insurance fees. This fee can be paid by an individual, employer, or charged to the central or regional government through certain mechanisms. However, some citizens do not enjoy the benefits of the BPJS Health membership though it is mandatory.

Meanwhile, the government decided to increase this health insurance fee during the pandemic through Presidential Regulation no. 64 of 2020 on the Second Amendment to Presidential Regulation No. 82 of 2018 on Health Insurance. This increase was made to improve the quality and quantity of health services available to the members. However, some participants, especially workers in the informal sector, stated that the fee hike was too heavy for them. [x] The community generally showed negative opinions about the increase in BPJS fees through social media ([Fahmi Candra Permana, 2021](#)).

3. Legal Protection for the Economic Sector

The fourth paragraph of the Preamble to the 1945 Constitution states that Indonesia aims to protect all the people. This constitution affirms that the independence and land acquired are to improve public welfare, educate the people, and participate to establish a world order based on freedom, perpetual peace, and social justice ([Suhardin, 2012: 303](#)). Therefore, the community's economy must be absolutely empowered and advanced to realize their welfare. One of the instruments that can be used by the government to advance the community's economy is the empowerment of small and medium enterprises.

The creative economy is one of the sectors that has been badly affected by the pandemic, hence it requires strengthening. Policies for this purpose comprise the protection, appreciation, and formation of associations that

can stand as legal protection for creative economy actors. These include content creators or YouTubers without associations, though Indonesian film agencies have legal entities. Furthermore, human resources of the creative economy need to be strengthened through education to transfer knowledge, professionalism, competence, and competitiveness. Therefore, participation between the Ministry of Tourism and Creative Economy as well as the Ministry of Education and Culture is required. Another problem is the lack of financing for creative economy actors that cannot access capital through banking. Moreover, marketing issues are very crucial because many of these workers do not have broad market access. In 2020, the government began drafting national regulations as a follow-up to Law Number 24 of 2019 on the creative economy. This regulation, which is planned for ratification by the end of 2021, contains material on financing schemes and marketing systems.

According to the 2019 OPUS data, the creative economy sector contributed IDR 1,105 trillion to the National GDP. This was an increase from IDR 1,009 trillion and 922 trillion in 2017 and 2016, respectively. In 2020, an estimate of IDR 1,300 trillion was recorded, alongside an increase in the employment rate by 17 people per year. The government decided to implement PSBB during the pandemic era to affect the production and income of the creative economy. Even business owners in the photography industry mentioned a 99% increase in the current net income from the original. Therefore, the president has directed the tourism and creative economy ministries to implement social protection for tourism actors and reallocate a budget of IDR 500 billion.

Although the creative economy is related to Micro, Small, and Medium Enterprises (MSMEs), not all these businesses are involved. The reason is that this economy is also similar to IPR, which some of these enterprises lack but hope to acquire in the future. MSMEs are an important part of the state or region's economy, including Indonesia. In this nation's economic development, the priority is Micro, Small, and Medium Enterprises, which are the backbone of the community's economic system. They function to alleviate poverty, and their development can expand the economic base and significantly improve regional and national economic resilience.

MSMEs are productive business opportunities owned by individuals or groups and fulfill all kinds of micro-enterprise criteria regulated by law. In Indonesia, small and medium enterprises are the main contributors to economic growth. Also, micro-enterprises are businesses that can expand employment opportunities and provide economic services to the community. They play roles in the equity process, increase income, stimulate economic growth, and contribute to realizing national stability.

Hence, MSMEs became saviors during the economic crises in 1997 and 1998 due to their growth amid the collapse of large industries.

However, these enterprises have shortcomings that can hinder their growth, such as limited business facilities and infrastructure, coupled with the implications of free trade, which increasingly restrict them in the market. Their products also lose quality due to short shelf lives. Therefore, developing the MSME sector is necessary to ensure their survival and ability to compete with the modern business sector.

Subsequently, the central government formulated a law, which yielded other regulations, to promote MSME development. This was Law Number 20 of 2008 concerning MSMEs, alongside various implementing regulations such as Government Regulation Number 17 of 2013.

Several meanings concerning all MSME matters are signified by Law No. 20 of 2008. First, businesses established for economic activities and not non-profit. Second, productive or profit-generating businesses or their profits. Third, an independent or stand-alone business that is not a part, branch, or affiliate of another. Fourth, businesses owned by individuals or entities. According to Article 18 of this law, development in the marketing sector is performed in the following ways:

- a. Conducting marketing research and assessment;
- b. Disseminating market information;
- c. Improving management skills and marketing techniques;
- d. Providing marketing facilities, including institutions and trading houses, conducting trials, and promoting Micro and Small Enterprises;
- e. Providing support of product promotion, marketing network, and distribution; and
- f. Providing professional consultants in the marketing field.

The creative economy sector, including MSMEs, was greatly affected during the pandemic, resulting in decreased turnover and impaired bank credit fluency in the industrial sector. Another problem was the increased number of layoffs (PHK), also termed “to be homed.” These conditions impacted the community’s survival, as numerous people lost their livelihoods. Therefore, the government should be present to prevent this industrial sector from experiencing suspended animation. Meanwhile, although the pandemic has undeniably made the economy chaotic, new creators and *businessmen* or *businesswomen* that work online by utilizing social media platforms, such as Facebook, Instagram, WhatsApp, TikTok, and others, from home have surfaced.

B. The Ideal Form of Legal Protection Regulation for Creative Economy Actors during the Pandemic

Indonesia and other countries are currently experiencing a similar problem, the pandemic, which began in 2020 and has resulted in difficulties in every state. Since the pandemic is still unresolved, the state’s condition has become worsened by its impact on the social, cultural, economic, and other sectors.

Consequently, the President issued various laws and policies to tackle this issue. These include Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19, Government Regulation Number 21 of 2020 concerning PSBB, and Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency Status. Also, the Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability, as well as Presidential Regulation Number 54 of 2020 concerning Changes in State Posture and Budget Revenue and Expenditure for the Fiscal Year 2020 were issued. Finally, Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Covid-19 as a National Disaster was formulated.

These laws and policies issued by the government can immediately resolve the consequences caused by the pandemic. Meanwhile, MSMEs and the economic sector seemed to be most affected due to the PSBB policy issued by the central and regional governments. The PSBB implementation caused a decrease in the usual economic activities previously performed by the community in normal conditions. Hence, efforts have been implemented by the government to resurrect MSMEs and promote their survival during this pandemic crisis.

Government Regulation in Lieu of Law Number 1 of 2020 concerns the determination of the IDR 405.1 trillion Covid-19 handling budget. The details include IDR 75 trillion for the health sector, 110 trillion for safety nets, 70.1 trillion for tax incentives and Community Business Credit (KUR) stimulus, and 150 trillion for financing the national economic recovery program. Subsequently, the health sector budget will be prioritized to protect health workers by purchasing PPE, medical equipment, such as *test kits, reagents, ventilators*, etc. The funds will also be used for upgrading referral hospitals, including Wisma Atlet, alongside incentives for doctors, nurses, and other hospital staff, compensations for the death of medical personnel, and handling other health problems. In addition, an economic stimulus was provided for MSMEs and business actors, with priority to the exemption of PPh 21 for the manufacturing workers producing a maximum of IDR 200 million, import VAT for taxpayers, and importations for export purposes. The exemptions were particularly for small and medium industries in 19 sectors and were used to reduce the income tax rate by 25% for taxpayers, alongside imports used for export.

The central government policies issued were implemented in parallel and distributed to related parties through regional governments. These legal health and economic protection regulations provided during the current pandemic are also needed to secure creative economy actors and MSMEs and ensure their quick recovery. Existing principles in fulfilling health rights and realizing community welfare that can be applied to implement these regulations are:

1. Principles in fulfilling the right to health

One of the international law principles contained in various conventions and the WHO Constitution concerning the right to health states, "*The enjoyment of the highest attainable standard of health as a fundamental right of*

every human being." This principle provides the basis for states to formulate a policy that can realize the fundamental right to health for every individual. Also, the government is required to respect, fulfill, and protect this right. The respect aspect is a policy that requires the state to avoid actions that prevent individuals or groups from achieving or fulfilling their rights. It warrants that the state should take legislative, administrative, budgetary, judicial, or other steps to ensure that these rights are fulfilled or realized. Meanwhile, protection refers to the policies employed by the state to prevent and overcome intentional violations or omissions.

State parties are required by the International Covenant on Economic, Social, and Cultural Rights to make commitments and efforts to fulfill the right to health, such as allocating adequate budgets.

2. Legal protection for economic actors oriented towards the general welfare

National development, particularly in law and economy fields, should be oriented towards the general welfare. This is appropriate with the Preamble of the 1945 Indonesian Constitution and encompasses the legal and economic development fields. The government also emphasizes this protection in Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025. It argues that the success of national development in realizing the Indonesian vision of an independent, advanced, just, and prosperous country should be supported by a commitment from strong and democratic leadership. Also, this vision must be backed by consistent government policies, support to the people, and active participation from the community and the business world.

Consequently, central and regional governments should apply the two principles above to implement legal protection regulations, particularly in the health and economic fields, to enable creative economy actors and MSMEs to endure the pandemic.

IV. Conclusion

Based on the results and discussion, the following conclusions were made:

- A. Several laws and regulations validated by the government contain legal health and economic protection policies to meet the needs of the community in general and MSME economic actors in particular. These include [Law Number 40 of 2004 concerning the Social Security System National](#), [Law Number 20 of 2008 concerning MSMEs](#), and Law Number 36 of 2009 concerning Health. Others are Law Number 24 of 2011 concerning Social Security Administering Bodies, Law Number 24 of 2019 concerning the Creative Economy, and Government Regulation Number 17 of 2013 concerning implementing the Regulations of [Law Number 20 of 2008](#). Various regions such as Surakarta, Madiun, and Bandung cities still lack regulations to protect and empower creative economic actors. However, many activities have been channeled and implemented to support the creative economy.

- B. The ideal legal protection regulation for economic actors during the pandemic can be prepared based on the principles of respecting, protecting, and fulfilling the right to health by the state, as contained in the WHO Convention. In the economic field, the state is oriented towards realizing community welfare through several processes. These include the commitment of a strong and democratic national leadership, the consistency of government policies, siding with the community, and active participation of the people and the business world, according to Law Number 17 of 2007 concerning Long Term Development National Plans 2005-2025.

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