

Indonesia, 29 July 2021

The honourable Minister for Health

Mr Budi Gunadi Sadikin

In place

Subject: Open letter to Minister for Health, Republic of Indonesia

In the name of a public health emergency!

We, the undersigned:

- Report Covid-19 (Lapor Covid-19)
- Legal Aid Indonesia (YLBHI, Yayasan Lembaga Bantuan Hukum Indonesia, *Legal Aid*)
- The Constitutional Study Centre, Faculty of Law, Andalas University (Pusat Studi Konstitusi Fakultas Hukum Universitas Andalas)
- The Human Rights Legal Centre, Faculty of Law, Airlangga University (Pusat Studi Hukum HAM Fakultas Hukum Universitas Airlangga)
- Legal Assistance for Equality (FBHUK, Forum Bantuan Hukum Untuk Kesetaraan)

deliver an open letter of demand to the Minister for Health, Republic of Indonesia to immediately remove and/or cancel the provisions in Paragraph 1 Article 5 of the *Minister for Health Regulations Number 19 Year 2021 concerning the Second Change of Minister for Health Regulations Number 10 Year 2021 concerning the Vaccination Roll-out in order to Combat the Coronavirus 2019 (Covid-19) Pandemic*, which regulates paid vaccines.

The reasons for this letter are provided below:

1. That Paragraph 1 Article (5) of *Health Minister Regulation Number 19 Year 2021*, reads: The Mutual Cooperation Vaccination Program is the roll-out of Covid-19 vaccines to **individuals whose costs are charged to the relevant parties**, or the roll-out of Covid-19 vaccines to employees, family or other individuals related to the family whose costs are borne by or charged to a legal entity or business entity.
2. That during the Covid-19 pandemic, the vaccine is one of the interventions to control the pandemic, playing a significant role in protecting human life. However, while the provision of the Covid-19 vaccine is still limited, the Covid-19 vaccine is a public good, and it is not ethical for the government to publish a policy for independent or paid vaccines.
3. That the current provision of vaccines has not reached the government's target of 208,265,720 people (Source: The official Instagram of the Ministry of Health, Republic of Indonesia).

Contrary to the laws and regulations above, there is an obligation to fulfil the right to health of all citizens

- 1) That since the first Covid-19 case was identified in Indonesia at the start of March 2020, the data of the Ministry of Health has indicated, up until 27 July 2021, that the total number of positive patients has reached 3,239,936, the total number that have recovered is 2,596,820, the total number of deaths is 86,835. With active cases reaching 556,281 people (Source: The official Instagram of the Ministry of Health, Republic of Indonesia)
- 2) The Government is targeting 208,265,725 people to be vaccinated in under a year.
- 3) That since the vaccination program started at the beginning of 2021, which started with the vaccination of President Jokowi on 13 January 2021, up until 27 July 2021, 45,278,549 people (21.74%) have received the first dose of the vaccine, and 18,666,343 people have received the second dose of the vaccine (8.96%). (Source: The official Instagram of the Ministry of Health, Republic of Indonesia)
- 4) That the President of the Republic of Indonesia, Mr Joko Widodo has already provided a strong statement that the Covid-19 vaccination is for all citizens who can receive the vaccine for free.
- 5) Contrary to the Constitution of the Republic of Indonesia 1945, that is:
 - Paragraph 28H Article (1): Every person is entitled to live in physical and spiritual prosperity, to have a place to reside, and to acquire a good and healthy living environment and the right to health services.
 - Paragraph 28I Article 4: The protection, advancement, enforcement and fulfillment of human rights shall be **the responsibility of the state, particularly the government.**
- 6) In contradiction to *Law Number 36 Year 2009 concerning Health*:
 - Paragraph 4: Every person has the right to Health
 - Paragraph 5 Article (1): Every person has equal rights to access health resources.
 - Paragraph 5 Article (2): Every person has the right to health services which are safe, quality, and affordable.
- 7) That there are still many vulnerable citizens who are yet to receive access to the vaccine. That there is more than 20% of the health workforce in Papua Province, more than 15% in Maluku Province, and other provinces that are yet to receive the vaccine (Source: Situation Report WHO 21 July 2021)
- 8) That the Ministry of Health should coordinate with the Ministry for Interior Affairs, Ministry of National Development Planning, and other relevant ministries to find a solution to the problem of public administration that is often a barrier to gaining access to vaccines.

Contrary to the laws and regulations above, there is an obligation to protect citizens' right to health

- 1) That in reference to Law Number 36 Year 2009 about Health
 - Paragraph 14 Article (1): Government has a responsibility to plan, regulate, implement, build and oversee the implementation of health efforts which are equitable and affordable for the community

Paragraph 16: Government has a responsibility to provide resources in the health sector which are fair and equitable to all of the community to obtain the highest degree of health possible

Paragraph 19: Government is responsible for the provision of all forms of health efforts which are quality, safe, efficient and affordable.

Paragraph 62 Article (1): Health improvements in all forms are done by government, local government, and/ or the community to optimise health through health education, spreading information, or other activities to support the achievement of a healthy life.

Paragraph 62 Article (2): The prevention of disease in all forms is done by government, local government, and/ or the community to avoid or reduce the risks, problems, and adverse effects of disease.

- 2) That in terms of human rights obligations, after the first group of vaccines for the essential category have been delivered, then citizens categorised as vulnerable (health workforce, those with comorbidities, the elderly, women in villages, prisoners, rural and geographically marginalised communities, the urban poor, people with disabilities) must receive attention and be given affirmative programs to receive the vaccine.

That these provisions also conflict with **the principles of good government**, that is the principle of legal certainty and the principle of proper expectation, where the President of the Republic of Indonesia has already made a public statement that the vaccine will be provided for free to all Indonesians.

Paid vaccines add to the economic burden of the community

1. That the Covid-19 pandemic is causing serious medical problems at the same time as having a significant impact on the economic needs of the community. At a time when it is difficult for people to meet their economic needs, they are burdened with a paid vaccine policy that has the practical effect of draining their finances.
2. That, on the other hand, people who should have access to the current vaccine are faced with a dilemma (or clash) with their work hours. In this situation, people prioritise meeting their basic needs. Meanwhile, a scheme to give compensation to the people that wish to get the vaccine during work hours does not exist at all. These conditions prevent people from getting the vaccine, so that the roll-out of a paid vaccine policy becomes an inhibiting factor for people to get the vaccine.
3. That currently in several places to get the vaccine you have to show proof of employment from your workplace. This policy is hard for workers in the informal sector or freelancers/ contractors who don't have a clear legal employment status. In the context of the current vaccine policy, that is: the mutual cooperation vaccination program, the difficulty facing informal/freelance and day workers creates a delay in uptake of the mutual cooperation vaccination program. This delay carries risk for dealing with or

encouraging uptake of the policy for a paid vaccine program. Paid vaccines pose a serious financial burden where it is not easy to pay for the vaccine at a time when basic needs are becoming more difficult to meet.

4. That the vaccination program that is currently running has been responded with several companies that have initiated the regulations that are required for individuals to apply for jobs. In the midst of the current problems and challenges of accessing the mutual cooperation vaccination program, in the context of of paid vaccines, it is not the right solution for those who are applying for jobs. The objective of applying for a job is to get work, which then provides income. Meanwhile, these conditions make job searching a challenge, as there is little income for paying for vaccines.

During the public health emergency resulting from the Covid-19 pandemic, the government should have greater focus on allocating funds and resources to improve the roll-out of vaccines to the entire Indonesian community, rather than sharing government resources to prepare paid vaccines.

That, in our opinion, with the cancellation of the paid vaccine provision it is not enough to only deliver the message verbally, because as a country of law, the cancellation of legal provisions must be done with the publication of rules of the same level to guarantee legal certainty. Thus, although we welcome the statement by the President regarding the cancellation of paid vaccines, we consider that due to the inconsistencies we have referred to, the Ministerial Regulations must be immediately withdrawn.

Based on the above matters, we request that the Minister for Health immediately releases a Health Minister Regulation to delete the provision Paragraph 1 Article (5) of *Health Minister Regulation Number 19 Year 2021 concerning the Second Change to Health Minister Regulation Number 10 Year 2021 concerning the Vaccine Roll-out in order to Combat the Coronavirus disease 2019 pandemic (Covid-19)* within 7 days (7x24 hours), if within the time mentioned this is not fulfilled, we will take legal and constitutional steps in accordance with the applicable laws and regulations.

Sincerely,

Lapor Covid-19 (Report Covid-19)
YLBHI, Yayasan Lembaga Bantuan Hukum Indonesia (Legal Aid Indonesia)
Pusat Studi Konstitusi Fakultas Hukum Universitas Andalas, (Constitutional Study Centre,
Faculty of Law, Andalas University)
Pusat Studi Hukum HAM Fakultas Hukum Universitas Airlangga (Human Rights Legal
Centre, Faculty of Law, Airlangga University)
FBHUK, Forum Bantuan Hukum Untuk Kesetaraan (Legal Assistance for Equality)