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Legal Protection for Doctors' Work Safety in Handling Covid-19 Cases Reviewed Based on Saddu al-Dzari'ah

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Article Abstract

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Received: Aug 19, 2022; Reviewed: Aug 22, 2022; Accepted: Sep 19, 2022; Published: Sep 30, 2022. Legal protection for doctor's work safety during the Covid 19 pandemic has not received optimal preventive action from the government with the data showing that the death of health workers in Indonesia accounts for the highest in Asia. This study aims to discuss the concept of legal protection for doctors' work safety in handling Covid-19 cases on the basis of Saddu al-Dzari'ah. The main data source for this study's juridical-normative methodology consisted of secondary data from written legal materials quantitatively examined to provide analytical descriptive data. Results showed that legal protection for the safety of doctors in dealing with Covid-19 cases cannot be as required and correctly implemented in the legislation; in reality the rights of doctors are still neglected and not fulfilled. The government's failure to take preventive measures to offer legal protection for doctors means that mafsadat (injury) in managing C-19 cases persists, which is also evidenced by the number of doctors who died from C-19. Our findings suggest the importance of having the concept of legal protection for doctors in handling Covid-19 cases based on Saddu al-Dzari'ah so that doctors get comprehensive protection.



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INTRODUCTION

The preamble to the 1945 Indonesian constitution clearly outlines the ideals of the nation as the goal of Indonesia. The country's goals must be to safeguard the whole Indonesian people and their territory as well as to advance social welfare, improve the country's lifestyle as to contribute to the establishment of a world system departing from freedom and social justice. This is a form of national development. Health development is part of national development that has been proven to be able to raise consciousness, determination, and also the capacity for all people to lead healthy lifestyles to achieve optimum levels of healthcare system, as reported in the human resource progression survey (Santoso et al., 2021).

The tip-off about viral infection with a mysterious cause in Wuhan City first reached The World Health Organization (WHO) on 31 December in 2019. In addition, on 2 January, 2020, the case was identified by China as coronavirus (Isbaniah et al., 2020). Covid-19 is a wide family of viruses that can produce mild to severe symptoms of sickness (RA et al., 2020). The acute respiratory distress symptoms of Covid-19 infection commonly manifest as fever, coughing, and shortness of breath (Al-Fatih et al., 2020). Severe Covid-19 might result in renal failure, acute respiratory syndrome, pneumonia, and possibly death (Isbaniah et al., 2020).

The whole world is facing problems or threats that greatly impact every field of health, the economy, and other fields of human life (Sajou et al., 2020). Based on information released through the Investigation Team, in Indonesia, the Covid-19 epidemic is entering a critical phase requiring immediate mitigation for the Enhancement of Processes T Covid-19 on 22 September, 2021, indicating that in the state there were 4,195,958 affirmative situations of Covid-19 that also led to a total of 140,805 deaths. The outbreak was first detected in Wuhan as SARS-Cov-2 not considered as a new type. A scientific theory asserted that the virus probably mutated to create a new genetic structure (Allam, 2020). In other words, the virus retains its type and only undergoes uniform change. The name SARSCov2 was derived from the tight genetic component that exists in the Corona virus and even the infections can produce SARS and MERS (van Doremalen et al., 2020).

The health sector has been one of the areas most affected by this pandemic; difficulties in the health sector are becoming extremely obvious in the period of the Covid-19 epidemic. Seeing conditions like today is certainly a preoccupation with all aspects of the strategies of Indonesian community to contain and control the Covid-19 The death of medical personnel, especially doctors, is increasing (Armeilia, 2021). The data from Indonesian Doctors Association (*Ikatan Dokter Indonesia*/IDI) mitigation team reported the 598 confirmed deaths among doctors due to Covid19 (Yahsyi, 2021). This figure indicates that medical personnel, especially doctors, require the government's provision of constitutional protection (Susanto et al., 2021).

Doctors are ready and committed to providing public health services, and they have sacrificed everything they have to hamper the proliferation of the Covid 19 virus. The medics are noble professionals and they are being kept busy amidst the Covid-19 pandemic catastrophe. Therefore, doctors as legal entities that also have executed their functions even inside the lawful confines are essentially committed to legal defense against relevant affirmative law provisions (Pesulima & Hetharie, 2020). So, these steps

and efforts are needed to accelerate protocols and guidelines for protecting doctors in medical practice in the Covid-19 era. It is very important to ensure the protection and safety of doctors in the implementation of medical practice and health services for all Indonesian people.

Considering that the medical profession is potentially exposed to the risk of contracting Covid-19, the author will examine the legal protection of work safety for doctors in handling Covid-19 cases based on *Saddu al-Dzariah's* theory. Saadu aldzari'ah represents one of the ways that are used to make judgements in legal issues. *(istinbath al Hukum)* in Islam. In this way, human efforts, in this case doctors, are protected from damage *(mafsadah)*, closing and locking all structures, tools and *wasilah* (intermediaries) that will be used to carry out an action (Muaidi, 2016). From the description of the background above, the issues raised are 1) How is the legal protection assured for the safety of the doctors concerned in dealing with Covid-19 cases? 2) What is the concept of legal protection for doctors' work safety in handling Covid-19 cases based on *Saddu al-Dzari'ah*?

METHOD

This is a juridical-normative study (Irwansyah, 2020) that, according to, doctrinally analyses the fundamental norms and legislation relating to the challenges encountered in the legal protection of doctors' safety in treating Covid-19 instances, as examined by Saddu al-Dzari'ah. This form of research is also known as analytical descriptive research (Al-Fatih & Siboy, 2021) because the results of this study are presented in an analytical descriptive manner; consequently, this type of research was chosen as a presentation method and not as the subject of the investigation.

This study uses two categories of data: primary data and secondary data gathered from written sources such as government documents, manuals, research results presented in the form of reports, and diaries (Soekanto, 2010). This research, like legal research in general, focuses mostly on secondary evidence, mainly written documents about law (Soekanto & Mamudji, 2012): a) Legal primary sources, including relevant laws, rules, and other connected restrictions, such as the doctors' rights in handling Covid-19; b) Legal publications in the form of books, papers, and articles that are considered secondary legal documents; and c) Legal dictionaries, political dictionaries, and encyclopedias are examples of tertiary legal materials that provide definitions of terminology relating to the topic of the inquiry. The aforementioned categories of data were obtained from literature reviews, i.e., the examination of diverse secondary data or papers on primary, secondary, and tertiary legal topics, and they were categorized according to their respective topics.

RESULT AND DISCUSSION

Legal Protection for Doctors' Work Safety in Handling Covid-19 Cases

Humans were born with their innate basic rights, specifically the rights to life, protection, and freedom from other rights (Nasution, 2020). In other words, every citizen will get protection from the state, and the law serves as a means to achieve it so that the theory of legal protection, namely the protection of dignity provided by law enforcement officers, emerges. Therefore, all people have fundamental rights to proper justice, and this is the responsibility of the federal government to carry out, recalling that Indonesia is known as a state of law. Law aims to keep the community safe. Therefore, rights and protections for society should always be accomplished through legal clarity (Aditya & Al-Fatih, 2020).

With legal protection, according to Roscoe Pound, in society there are various interests protected by law which are divided into three categories (Rumokoy, 2014):

1. Public Interest

The most important public interest is the interest of the state's role as the protector of the general populace's best interests in the maintenance of the public structure.

2. Social Interest

The most important public interest is public safety, which includes legal protection for safety, order and welfare, and then there is the public interest in general progress, where society demands or expects human skills and competencies to be developed to a higher and perfect level.

3. Private Interest

This interest includes the protection of integrity, freedom of will and guarantee of personal confidentiality.

Referring to the argument that Pancasila is the basis of the state philosophy that underlies the "legal protection of the people", the concept of legal protection in Indonesia should be interpreted as an appreciation of the awareness of the protection of human dignity based on the principles of the State with Pancasila law. The literature theoretically analyzes the law as "a means of protection" for the people, whose central point is the government's judicial action because it highlights two aspects such as (1) Preventive legal protection, in which legal subjects are given the option to file objections or opinions prior to the formulation of a government judgment. The objective is to avoid difficulties. Because preventative legal protection encourages the government to exercise caution when making judgments based on discretion, this is highly important for government activities to be based on freedom of action. The other aspect is (2) Effective judicial defense, which aims to solve problems. This area of constitutional recourse encompasses the administration of legal protection by the civil matters and government administrative judges in Indonesia. In the literature it is stated that preventive legal protection which aims to prevent the development of disputes is somewhat lagging behind compared to repressive security under the law that also seeks to settle disagreements.

The government provides legal protection by issuing a number of policies, such as Massive Systems of Community Control (PSBB), a government policy that was announced by Government Regulation number 21 of 2020 regarding Large-scale societal restraints in the perspective of accelerated Covid-19 (Wibawa & Putri, 2021). In the health sector, the government continues to encourage people to put a mask on, keep a safe distance, and wash hands with soap (Nugraha et al., 2021). On 20 July, 2020, the Government, under a Presidential Decree No. 82 of 2020 formed a council in charge of managing Covid-19 and also the rehabilitation of the country economic system. Entering August 2020, the implementation of health protocols was not only an appeal. The government increased discipline and enforced health protocol laws under Instruction No. 6 of the 2020 President's Manual Regarding Discipline Reinforcement and the Legal Regulation of Health Protocols for the Purpose of Preventing and Controlling Covid-19. At the beginning of the last quarter of 2020, the government focused on purchasing the Covid-19 vaccine, which was marked by the issuance of Presidential Decree No. 99 of 2020 regarding the purchase of vaccines and the Vaccination application as part of the handling of the Covid-19 pandemic (Gitiyarko, 2020).

With the increasing cases as reported, the health emergency due to Covid-19 in Indonesia was of great concern, indicating that the number of doctors who died was also increasing. As reported by the Indonesian Doctors Association, the latest data shows that as of July 17, 2021, 545 doctors died due to Covid19 because the increasing number of positive cases resulted in a prolonged and continuous workload causing burnout, marked by a condition of fatigue that lowers immunity (Lotulung, 2021). Therefore, in addition to the problem of excessive workload, informed consent was a problem related to the Covid-19 pandemic because some patients dishonestly submitted information (or hide certain information) when receiving medical services from doctors.

Therefore, the therapy provided by the doctors is not optimal and the doctors also have the opportunity to get infected with Covid-19 from the patients taking the medical services. This is worrying because several laws and regulations such as the Minister of Health Regulation No. 290 of 2008 regulatory authorization of doctor's actions have made it safe for patients to honestly convey information when accessing medical services. The balance between the needs of consumers and the interests of doctors is one of factors contributing to the success of health development. That is, legal protection of the interests must be a priority. The relation between doctors and patients is one of the therapeutic relations in hospital wards. Recalling that it is carried out by legal subjects and has legal repercussions, this therapeutic connection is deemed to have a legal relationship (Gunawan et al., 2020).

Legal protection given to doctors is regulated in Article 50 of Law Number 29 of 2004. In addition, Articles 8 and 9 of Law Number 4 of 1984 concerning infectious

disease outbreaks also govern protection given to doctors. Article 8 of Law No. 4 of 1984 specifically in the phrase "can be given compensation" implies that the protection given to the doctor is only facultative (optional), not compulsory for the state to provide compensation. This should be a joint correction because a doctor is a medical worker working on the frontlines to combat Covid-19. Therefore, the state should be present to assist doctors when they suffer from property losses while dealing with Covid-19, so that Pancasila, the state's guiding philosophy, should not be merely a slogan but provide legal protection to doctors. It is obligatory for the state to protect physicians in the face of the Covid-19 epidemic.

Article 50 letter b also implies that doctors in providing medical services must comply with operational procedures and standards. This is what medical personnel, especially doctors, have complained about because they have no appropriate Personal Protective Equipment (henceforth referred to as PPE) when dealing with people infected with Covid-19. For example, a report indicates that a doctor at a state-owned hospital in Tasikmalaya only wore a coat as a makeshift PPE when dealing with people infected with Covid-19 (Alika, 2020). Therefore, the implementation of Article 50 letter b is actually hampered because the state is not responsive in providing PPE for medical personnel, especially doctors. This situation is not congruent with the law requiring a doctor to provide medical services for patients according to operational procedures and standards; the state has been slow in anticipating the soaring cases of Covid-19. It is clear that the slow distribution of PPE cannot keep pace with the rapidly increasing number of Covid-19 cases in Indonesia and that the right to health is protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Indonesia has ratified with Law no. 11 of 2005. The International Covenant on Economic, Social and Cultural Rights requires states parties to exercise the right to health in its entirety, including the prevention, control and the treatment of epidemic, occupational, and other diseases.

To fulfill obligations on health, the state is required to formulate, implement and continuously review national policies aimed at reducing the risk of accidents and diseases in the workplace, as well as establish national occupational health protection policies and services, especially doctors. Support for doctors is required to come in the form of appropriate and high-quality individual protection equipment, data, training, and psychosocial assistance. The obligation to use PPE is also regulated in Article 164 subsection (1) of Law Number 36 of 2009 concerning Health, which is focused more on the importance of the health of medical workers (Al-Fatih & Aulia, 2021).

The guidelines for the protection of doctors as medical personnel must include protection of labor laws, occupational health and safety (K3) laws, and social security laws in the workplace for doctors, including pay, working hours, rest periods, and leave. Protection of occupational health and safety regulations in the context of handling Covid-19 includes prevention and control of work accidents and Covid-19.

For every doctor who is being treated due to Covid-19, the Government is responsible for the costs related to the care and treatment of Covid-19 infections in accordance with the Decision of the Minister of finance number HK.01.07/MENKES/446/2020 concerning technical instructions for claiming reimbursement of services for certain emerging infectious disease patients for hospital providing services for Covid-19.

Then, the rules related to the provision of incentives and death benefits for doctors who treat COVID-19 are set forth in the Minister of Health Regulation Number HK.01.07/MENKES/447/2020, but there is a weak point, meaning for doctors who work in more than one referral hospital or health facilities are not referral hospitals for Covid19. Another weakness in this sector is the non-uniformity in determining the calculation of professional rates according to treatment class gradations. Performance is often evaluated with non-uniform service class type values (Ginanjar et al., 2020). So the legal protection for the safety of doctors in dealing with Covid-19 has not been implemented properly as required by law. In reality, the rights of doctors are still neglected and not respected in the management of the spread of Covid-19 in Indonesia.

Legal Protection and Incentives for Doctors and Health Care Employees in Other Countries

Twenty-five countries have adopted special measures to support the mental health of health and social care workers during the Covid-19 crisis. In many countries, this support is provided through newly established helplines that health and oftentimes social care workers can call to access psychological support from trained professionals and/ or to receive referrals to additional mental health services. These helplines are sometimes organised at the national level (e.g. Bulgaria, Czech Republic, France, Israel, Malta, Romania, San Marino, United Kingdom) at the regional level (e.g. Belgium and Denmark) and/or by professional associations for specific professions (e.g. France, Ireland, Latvia, Poland, Turkey, UK). In Hungary and Croatia, helplines are run by universities and schools of public health. Apps and online services are also available in some countries (e.g. Belgium, Finland, Ireland, Norway, Romania, UK) (Sagan et al., 2020). Health care employees in Poland who were in contact with Covid-19 patients (or persons with a suspected coronavirus infection) were prohibited from working in more than one place. To compensate them for the lost income due to this restriction, the Minister of Health instructed the National Health Fund (NHF) to provide them with monthly cash benefits, which were financed from the Ministry of Health budget.

In Malaysia there was a demonstration because there were no incentives and protection for doctors and medical personnel. Singapore will provide an incentive of S\$4,000 or around Rp. 42 million to health workers for their struggle to fight the Covid-19 pandemic. The award also goes to staff in community care organizations that provide front-line services, such as nursing homes and dialysis centers (Cahyani, 2021).

The Concept of Legal Protection for Doctors' Work Safety in Handling Covid-19 Cases Based on Saddu al-Dzari'ah

In Islam, one of the foundations of Islamic legislation is to achieve benefit and avoid harm (Al-Fatih et al., 2021). Its form preserves and protects human integrity, to guide humanity from damage and devastation and to point the way to success in this world and in the future (Al-Gorany, 2021). In the implementation, benefit is taken as much as possible and at the same time damage is avoided (Uyuni et al., 2021)u. If an act that has not been carried out is suspected to be likely to cause damage (mafsadat), then the things that lead to the act are prohibited. This is called Saddu al-Dzari'ah, aiming to prevent an action from causing damage (Mulyani, 2020).

Etymologically, the word *dzari'ah* means "the way that leads to something". Meanwhile, according to the term ushul fiqh scholars, *dzari'ah* is "everything that can lead and become a way to something that is prohibited by *syara*" (Zuhaily, 2006). Therefore, "the way that can lead to something prohibited by the syara is closed or prevented or avoided" (Imron HS, 2010). The word *saddu al-dzari'ah* (سَدُّ الْذَر الْعِينَ) in some literature is referred to as sadd al-dzaraai" (سَدُّ الْذَر الْعِينَ) coming from phrase/*idhofah*; it is *sadd* and *dzarii'ah*/*dzaraai*" (Munawwaroh, 2018).

Sadd is the form ism Mashdar in Arabic terms, which means language:

It means closing the blemish, covering the damage, while the word dzari'ah literally means:

It means the way that leads to something,

As mentioned by ibnu Assyria, *Saddu Adz-Dzari'ah* is a term used by fiqh experts about the concept of prevention, cancellation and prohibition of charities that *mu'tabar* unexpectedly lead to damage even though the act may not contain an element of damage. Imam Asy-Syatibi has an opinion that *dzari'ah* means

Something that connects something that is beneficial to mafsadat.

Sad Adz-Dzari'ah is a method of determining the law that aims to prevent the occurrence of evil, then this method of determination is used as a guardian of the actions of a mukallaf so that he does not fall into evil when he does it. This is one of the maqashid Islamic laws intended to protect the benefit and stay away from evil. If a deed whose original law is allowed but if it is felt that it has the potential to cause harm, then it is forbidden. Because sadd adz-Dzari'ah is a preventive method, the initial impression that appears is a fence and guard against the potential for evil that arises as a result of a charity that is carried out.

The Islamic scholars of ushul fiqh divide dzari'ah into two distinct categories: one is based on the quality of the mafsadat, and the other is based on the type of mafsadat.

1. Dzari'ah from the quality of mafsadat

Imam al-Syathibi argued that in terms of the quality of *mafsadat*, *dzari'ah* is divided into four types, namely:(Al Syatibi, 1997)

- a. The actions taken must lead to mafsadatan (qat'i). For example, a person digs a well in front of his door and finds out that in the dark night someone will visit his house, but seeing the consequences of his actions will definitely bring mafsadat, then it becomes haram.
- b. The actions taken usually lead to mafsadat or a high probability (dhann al ghalib) to carry the mafsadat. For example, a person sells wine to an alcohol producer. It is possible that the wine was turned into an intoxicating drink (khanr). Such an act is prohibited, because there is a strong suspicion that the act leads to malice. The act that is carried out is rarely or unlikely to lead to mafsadat.
- c. The actions carried out contain benefits, but it does not rule out the possibility that these actions lead to *mafsadat*: for example, someone freely sells knives, sickles, scissors, needles and the like in a traditional night market.
- 2. Dzari'ah of the type of mafsadat caused

According to Ibn Qayyin al Jauziyyah, (Al Syatibi, 1997) dzari'ah can be categorized from the type of mafsadat generated, it is divided into:

- a. The act leads to *mafsadat*, just as the consumption of alcohol can cause drunkenness and drunkenness is *mafsadat*.
- b. The act is basically an act that is controlled and even an ongoing act, but is used as a means to commit wrongdoing, both for intentional and unintentional purposes. By her husband so that the first husband can marry her again. Meanwhile, actions that are carried out without purpose from the start are like cursing someone else's mother and father. As a result, his own parents were reprimanded.

The relation between humans (muamalah) is a manifestation of the relation with the creator (worship). If muamalah is good, then worship will be good because Islamic law is very concerned with human social relations. The fundamental articulation that underlies the determination of law, namely (As-Shiddiqie, 1975):

- 1.Law is formed after society needs law
- 2. Rulers are the ones who create laws, and they are the only ones who have the authority to do so. Rulers also impose certain values on their subjects.
- 3. The level of community needs to determine the law's application.

The law must always be innovative in order to prevent these actions from being continued by the community since it always depends on reasons (illat), which cannot be denied by changes in the law caused by changes in time (space and time). It can be understood that sadd al dzari'ah method is in a direct contact with the value of maslahat avoiding mafsadat. Maintaining the benefit can be performed according to various levels and varieties, including the goals determined by Islamic law. The saddu dzari'ah method is part of Islamic law which has the aim of creating benefit and

avoiding harm. On this basis, this method provides a framework to make it easier for doctors to deal with Covid-19 problems (Bendebka et al., 2022).

In overcoming the Covid-19 problem, doctors are one of the medical personnel working at the forefront. The medical profession is a noble profession, but sometimes this noble profession carries out its duties in close contact with the risk factors of Covid-19 as a very aggressive virus whose spread brings doctors closer to these risk factors. In terms of the concept of legal protection for doctors' work safety in dealing with the Covid-19 pandemic in *Saddu al-Dzari'ah* frame, the government as the ruler must think about preventive measures that must be given to doctors in order to minimize the risk factors faced by doctors.

However, in reality, the government has not provided legal protection to doctors properly. Whereas the government must be able to protect medical personnel, one of which is in the form of informing from the beginning the areas that are the source of disease transmission to the community according to Article 154 of Law Number 36 of 2009 concerning Health (Victoria & Bunprakop, 2020). Even the rights that have been granted to doctors through laws and regulations have not benefited doctors. This can be seen from the Indonesian Doctors Association reporting that, as of July 17, 2021, as many as 545 doctors died due to Covid-19. This can be seen as an example of how doctors have not been able to benefit from the rights that have been granted to them through laws and regulations.

Several factors caused many doctors who died due to fatigue and the increasing number of positive cases causing a continuous and long-term and excessive workload that could lead to burnout syndrome. The problem was the lack of availability of PPE that doctors have to wear when handling Covid-19 cases because PPE is a cloth that must be worn when handling Covid-19 cases as part of professional standards and standard operating procedure.

The government in this case must be responsive in solving the Covid-19 problem, especially for the safety of doctors in dealing with the increasing number of Covid-19 cases. *Sadd Ad-dzari'ah* is a method of determining the law that aims to prevent the number of Covid-19 cases from increasing and prevent exhaustion among doctors; with it, their rights can also be fulfilled properly, which in turn suppresses the number of doctors who were weaken due to exposure to Covid-19. This is for the sake of maintaining the common good and avoiding damage. The medical profession is a very noble profession and the medical profession is always at the forefront in dealing with Covid-19 cases; therefore, the state should look for preventive solutions so that this noble profession does not fail, at least by minimizing the death cases among doctors. This must be done immediately in order to cover the *mafsadat* (damage) that occurred, in particular to cover the bad things that happened to the doctors.

Indeed, there will be an inner war as a doctor who has an obligation to heal people affected by Covid-19 with the lack of protection given to doctors, one of which is the

lack of PPE. Sadd al-Dzariah concept aims to prevent an action from causing significant damage. The government must provide enormous protection to doctors in dealing with Covid-19 cases because doctors also have the risk of being exposed to Covid-19, which can lead further to death. Fulfilling the rights of doctors in dealing with Covid-19 is not only by meeting operational standards, but also by further creating a sense of security. If this sense of security occurs in doctors, psychologically being able to be positive in the midst of a crisis will have the resilience or endurance and the ability to adapt to the pandemic, so that they remain productive in difficult situations. (Suyadi et al., 2020) According to science, those with strong wills, mental assurance, and a calm disposition also have immune systems that are more capable of fighting off germs (Aziz & Yousuf, 2021). So, to prevent damage from happening, the government should also contribute to paying attention to the health of doctors because Covid-19 is a virus that transmits very quickly, especially to the elderly with vulnerable health conditions.

CONCLUSION

The important of the concept of legal protection for doctors' work safety on the basis of saddu al-dzari'ah is to give doctors with a sense of security such as good medical equipment. Fulfilling the rights of doctors in dealing with Covid-19 will need more than just meeting operational standards, but it also requires a sense of security. If this feeling of security occurs in doctors, psychologically being able to be positive in the midst of a crisis will have the capacity for resiliency and adaptation to the pandemic, so that they can stay productive amidst the tough conditions. Research has shown that those who have a strong will, are calm under pressure and have mental confidence and a better immune system. So that preventing damage from happening is that the government also contributes to paying attention to the health of doctors because Covid-19 is classified as a virus that transmits very quickly, especially to the vulnerable elderly. The government must immediately seek various kinds of preventive protection provided by doctors so that in the future there will be no *mafsadat* (damage) that befall doctors as medical professionals at the frontlines in handling Covid-19 cases.

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