

# THE DILEMMA OF THE FUNCTIONALIZATION OF ADMINISTRATIVE CRIMINAL SANCTIONS IN THE COVID-19 PANDEMIC

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## ABSTRACT

*Administrative criminal sanctions in the Covid-19 response policy are expected to make the public obey and provide a deterrent effect for violators. However, this sanction was criticized and deemed inappropriate. The reason is that the essence of criminal sanctions is the last resort. Therefore, the policy of criminal sanctions in dealing with Covid-19 needs to be reviewed. The results of the study indicate that there has not been a specific discussion regarding the basics of administrative criminal sanctions policies in dealing with Covid-19. In addition, a dilemma arises in the functionalization of administrative criminal sanctions during the Covid-19 pandemic. The dilemma that occurs is that law enforcement is selective about probes violations during the Covid-19 pandemic. There are still many who ignore health protocols, but there is no action from the government. Especially the violation of health protocols by the policymakers and implementers themselves, being made a suspect, not even is made a defendant and a convict.*

**Keywords:** Covid-19, Dilemma, Administrative Crime.

## INTRODUCTION

The government has issued various measures to overcome the transmission of the Covid-19 outbreak in Indonesia. Law Number 6 of 2018 concerning Health Quarantine, in particular article 93, has already regulated the rules for violators of large-scale social restrictions (PSBB), in addition to Article 218 of the Criminal Code. This was then followed up by the government by issuing Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). Therefore, when a Government Regulation has been officially issued, the police, as mandated by the President, strictly take action to enforce the law for violators. This means that the prevention of the Covid-19 pandemic must be carried out by providing criminal sanctions for citizens who commit violations (Yunus, 2020).

The application of criminal sanctions for violators of the Covid-19 response policy is faced with a dilemma. On the one hand, the provision of criminal sanctions in the administrative policy of dealing with Covid-19 is expected to make the public obey and provide a deterrent effect for violators. However, this sanction article was criticized and deemed inappropriate. The

reason is that the current condition of prisons is overcapacity; criminal sanctions threaten freedom of expression, and are prone to abuse. In addition, the essence of criminal sanctions is the last resort (Zahra & Sularto, 2017).

The dilemmatic condition of punishing violators of the Covid-19 response administration policy is a natural part of the state government's panicked condition. However, further studies are needed so that the use of administrative criminal sanctions is more based on legal policies that aim to benefit the community and save the community from the Covid-19 pandemic outbreak.

## RESEARCH METHODS

This research is doctrinal legal research, which is research conducted or aimed at written regulations. The approach used is the legal approach that applies in Indonesia (positive law). The analysis was carried out using the deductive method as the main guide, and the inductive method as a supporting work procedure.

## DISCUSSION

### Basic Administrative Criminal Sanctions Policy during the Covid-19 Pandemic

The seriousness of the Indonesian government in preventing and controlling Covid-19 is no joke, it is proven that if the community does not follow the health protocol rules, the government will provide strict law enforcement with criminal sanctions, this is contained in Articles 92, 93, 95 of Law Number 6 of 2018 concerning Health Quarantine that:

*“Everyone who does not comply with the implementation of health quarantine causing a public health emergency shall be sentenced to 1-year imprisonment and/or a maximum fine of one hundred million rupiahs.”*

Then the criminal threat for those who gather is subject to Article 14 Paragraph 1 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases that:

*“Obstructing the implementation of epidemic control, punishable by imprisonment of 1 year.”*

As is also the case in Article 212 of the Criminal Code, if the public refuses or opposes the apparatus while carrying out the task of preventing Covid-19, they will be dealt with according to the general criminal provisions contained in Article 212, Article 216, and Article 218 of the Criminal Code (Putri, 2021). The policy basis regarding the application of criminal sanctions for violations of health protocols, especially related to the use of masks, maintaining distance, and preventing crowds, has not found sufficient arguments. However, based on the academic text of the Bill on Amendments to Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, there are at least some philosophical, sociological, and juridical foundations.

The philosophical basis for administrative criminal sanctions in dealing with Covid-19 is the essential and noble values that live in a society which are summarized in Pancasila as the basis for regulating the outbreak. The Preamble to the 1945 Constitution of the Republic of Indonesia mandates that the Government of the Republic of Indonesia has duties, among others,

to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, and educate the nation's life. One of the elements of the general welfare of this national goal is the achievement of the highest degree of health. For this reason, the government seeks to implement the health of the Indonesian people to achieve the ability to live a healthy life for every population through health development.

Health development is an integral part of national development. National development can be carried out by the ideals of the nation if it is carried out by intelligent and healthy human resources and supports health planning and integrated financing with strong and logical justifications. Health-oriented national development must have a positive contribution to the formation of a healthy environment and behavior. If the health status of the Indonesian nation increases, the degree of intelligence of our nation will also increase. Therefore, the state needs to ensure that its citizens get certainty, justice, and benefits in efforts to prevent, control, and eradicate/handle an outbreak, one of which is by setting administrative criminal sanctions as a threat to violators of provisions in the field of prevention and control of the Covid-19 (Sutrisna, 2013).

The sociological basis for the use of criminal law in various laws and regulations in Indonesia as a means to exercise social control and social engineering (law as social control and social engineering) does not seem to be an important issue. This can be seen from the practice of legislation so far which shows that the use of criminal law is part of the policy or legal politics adopted by Indonesia. In this regard, according to Barda Nawawi Arief, efforts to combat crime by using criminal sanctions (laws) are the oldest method, which is as old as human civilization itself (Arief, 1998). The criminal law policy in dealing with Covid-19 is an effort to make the public comply with the threat of criminal sanctions for violators of health protocols. Criminal law policy can occur in a state of law. The policies taken are based on legal policies aimed at the benefit of the community. Efforts to save people from the Covid-19 pandemic. A policy in determining an act that was not originally a criminal act becomes an act that can be punished. So essentially the criminalization policy is part of the criminal policy (criminal policy) by using the means of criminal law (penal) so that it is part of the criminal law policy (penal policy) (Firdaus & Pakpahan, 2020).

Furthermore, the juridical basis for administrative criminal sanctions in dealing with Covid-19 in Indonesia is the constitutional mandate to the government as the organizer of health development, which is obliged to increase the eradication of infectious diseases and people's diseases as part of national development. In addition, in the health sector, the government is also obliged to provide health service facilities as mandated in Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which mandates that the state is responsible for providing adequate health care facilities and public service facilities.

The basic issue of criminalization in the field of administrative law is very relevant to be brought back at this time, amid the government's efforts to overcome the Covid-19 pandemic. The basis for consideration or reasons for the use of criminal sanctions are not discussed separately but seem to be included in the discussion of the grounds for the conviction of certain acts. In other words, this is not discussed explicitly in the discussion of the criteria for a criminal act (Arief, 2010). In general, the DPR and the government focus more on matters relating to the basics or reasons for being convicted of an act. In the considerations or reasons for criminalizing

the practice of legislation so far, there has never been an issue with the use of criminal sanctions. However, its use is selective, namely criminal sanctions are used against actions that are contrary to decency, religion, and Pancasila morals, endanger the lives of the community, nation, and state, and hinder the achievement of national development.

This means that with the stipulation of the justification for the issuance of the relevant criminal legislation, it is deemed that there is sufficient justification for determining the type of crime. In line with that, it is only natural that the use of criminal sanctions in the administrative law of dealing with Covid-19 has never been discussed. Based on research, both in the minutes and in the draft related laws and regulations, it was never revealed that there was a special discussion regarding the basics of administrative criminal law policies in dealing with Covid-19. This kind of phenomenon is seen by Barda Nawawi Arief as if the use of criminal sanctions in the concept of a draft law is seen as a natural thing, so it has never been questioned.

### **The Dilemma of the Functionalization of Administrative Criminal Sanctions during the Covid-19 Pandemic**

Various government policies in dealing with Covid-19 are aimed at minimizing the number of Covid-19 spreads. This policy is an effort by the state so that people do not get infected with Covid-19. Not only implementing Emergency PPKM, but the government will also seriously implement strict sanctions for violators of PPKM. The purpose of imposing sanctions is so that health protocols are adhered to by all elements of society. The legal instrument used as a legal space and reference is to rely on several rules that are used as state law space.

To enforce the law against Covid-19, it must be strictly enforced by law enforcers. It's not enough to just urge people not to crowd. Likewise, it is not enough just to appeal to the public to comply with health quarantine. All of this must be followed by proper law enforcement. So far, the government is only in the range of an appeal, but in law enforcement, it is not visible. What is visible is what happened to the Rizieq Shihab case. The rest were not found law enforcement to others. Law enforcement in the context of dealing with Covid-19 must be more progressive and more independent so that there is law enforcement. Law is a regulator of the rhythm of society. Not the other way around, the law as a taste for state power.

Furthermore, the optics that must be seen from legislators, especially in the field of dealing with Covid-19, are how to harmonize the elements of *rechtstaats* which are thick with the content of legal certainty and elements of the rule of law which are more inclined to substantial justice, namely justice that is sourced from the community to the grassroots. This substantial justice is expected by community members as legal addresses when a statutory regulation is enacted. The exploration of the living law in the community, local wisdom, and local customary culture to be transformed into the drafting of laws and regulations has its place (Nugroho, 2013).

In the Pancasila legal system, there is no such thing as a taste for state law in law and law enforcement. What exists is a state of law and the taste is the same, namely every violator of the provisions must be punished. Don't just use the law as a tool to scare you. During the Covid-19 pandemic, the law was used only to scare the public. While the law itself is not enforced. The dilemma that occurs is the number of prokes violations during the Covid-19 pandemic. There are still many who ignore and there is no action from the government. Emergency PPKM must also

be directly proportional to law enforcement. The increasing number of Covid-19 is due to the many violations by the community. There were still a lot of people crowding around. There are still many people who do not obey the health quarantine, but all of them are just left unsuspecting. Especially the violation of health protocols by the policymakers and implementers themselves, being made a suspect, not even is made a defendant and a convict.

Law enforcement is still barren and does not have the balls to enforce. The lack of law enforcement in every violation of the Covid-19 conditions and the Emergency PPKM indicates that the country is weak and only sees law enforcement as a display of cowardice. Such a dilemma must be a joint problem-solving. No more messing with existing rules. Make existing rules a legal paradigm so that they are always enforced. Law enforcement against health protocol violators is a test of the courage of law enforcers who already have the mandate to enforce it. There is no need for reports from the public or anyone else, that there is a violation of health protocols. As long as violations are found, the state must be present to enforce the law.

Legal policies during the Covid-19 pandemic must be able to minimize deaths and the economic impact of the spread of Covid-19. Minimizing deaths as low as possible will be the highest priority for individuals, therefore the government must implement measures to remedy the unavoidable economic crisis as well as wise legal policies so that criminal sanctions, both imprisonment and fines are not wise policies during an economic crisis and an unpredictable situation. Uncertain in today's society. In line with David Easton's view when the government makes public policies, at that time the government also allocates values to the community because every policy contains a set of values in it (Taufiqurokhman, 2014).

## CONCLUSION

There has not been found an adequate argument regarding the policy basis for implementing criminal sanctions for violations of health protocols, especially regarding the use of masks, maintaining distance, and preventing crowds. Based on research, both in the minutes and in the draft related laws and regulations, it was never revealed that there was a special discussion regarding the basics of administrative criminal sanctions policy in dealing with Covid-19. During the Covid-19 pandemic, laws tend to be used as a means of scaring the public, while the laws themselves are not enforced. The dilemma that occurs is the number of prokes violations during the Covid-19 pandemic. There are still many who ignore health protocols, but there is no action from the government. Especially the violation of health protocols by the policymakers and implementers themselves, being made a suspect, not even being made a defendant and a convict. Such a dilemma must be a joint problem-solving. Legal policies during the Covid-19 pandemic must be able to minimize deaths and the economic impact of the spread of Covid-19. Therefore, criminal sanctions, both imprisonment and fines, are not wise policies during the economic crisis and uncertain situation in today's society.

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**Received:** 12-Oct-2021, Manuscript No. JLERI-21-8927; **Editor assigned:** 14-Oct-2021, PreQC No. JLERI-21-8927(PQ); **Reviewed:** 28-Oct-2021, QC No. JLERI-21-8927; **Revised:** 22-Feb-2022, Manuscript No. JLERI-21-8927(R); **Published:** 01-Mar-2022