

# SANCTION POLICY AGAINST PUBLIC OFFICERS WHO ARE NOT RUNNING THE OATH OF OFFICE USE TO REALIZE THE GENERAL PRINCIPLES OF GOOD GOVERNANCE

**Henry Indraguna, Universitas Sebelas Maret**  
**Hartiwiningsih, Universitas Sebelas Maret**  
**I Gusti Ayu K.R.H, Universitas Sebelas Maret**

## ABSTRACT

*The behavior of officials is a role model for society; therefore they have to give a good example. Currently, there are several officials who do not carry out their oath of office, even though when they made his oath, he has promised before the public and God and they should carry out what has been pledged. Even though there is no administrative, civil and criminal sanctions against public officials who do not carry out their oath of office does not mean that they can violate them freely, because all of them are part of official political ethics. It is necessary to set a criminal sanction formula to eliminate public officials from violating or failing to carry out the oath of office. It is because the official's actions are included into public deception, the criminal sanction of 5 (five) year's imprisonment is required so that when the official is proven guilty and punished by the court he cannot return to be a public official.*

**Keywords:** Sanctions, Officials, Oaths, Position

## INTRODUCTION

Currently there are no administrative, civil or criminal sanctions against officials who broke the oath of office, while they are elected by the people to fight for the community's aspirations, many cases occur when someone who has taken an oath of office such as Regent, Mayor, Governor and Parliament members who do not carry out their oath of office, even they leave their posts and choose a higher position, even though they have not carried out their duties as it should be. There is a mayor who resigned because nominated as Governor, or governor who resigned because he was nominated as President, there was even a member of the Parliament who just took the oath of office, a month after that he resigned due to obtaining the position of Minister.

Because of that, the government and the Parliament should have made administrative, civil and criminal sanctions regulations against officials who do not carry out the oath of office, because the oath he uttered was witnessed by all elements of the nation, so he should carry out what he said. When the oath is not carried out, the person concerned has deceived the public and deserves a criminal sanction to get deterrent effect. The current laws and regulations have not reached the sanctions given to officials who do not carry out the oath of office; it is undeniable that laws and regulations are a political product, which puts political interests as priority. It is understandable

when legislators do not include sanctions on the oath of office because they are the ones who have the potential to violate the oath of office.

Not carrying out the oath of office also including into violates political ethics. Political ethics demands that officials of power is carried out in accordance with applicable law (legality), democratic legitimacy and do not conflict with basic moral principles. We can call these three demands as normative or ethical legitimacy because they are based on the belief that power is only ethically valid if it is in accordance with those three demands.

The problem based on the description above, is "How is the formulation of sanctions policy in the oath of office"

## THEORY REVIEW

According to G. Peter Hoefnagels in the politics of criminal policy that overcoming social problems by using the law is part of the politics of legal policy or is known by taking other actions according to responsible law (Peter, 2012). Therefore, it can be said that law enforcement does not mean the implementation of laws only, although the reality in Indonesia, it tends to be like that, so the notion of law enforcement is so popular.

There are 6 (six) most principle requirements that legislators pay attention to related with the use of criminal law, namely: Criminal law is not used solely for the purpose of retaliation; the criminal act committed does not cause harm and many victims. Criminal law is not used if there are other better and excellent methods. Losses incurred due to conviction must be smaller than the result of the crime which have the community support, it can be applied effectively.

The complexity of a law to be made, makes the public have to think about what alternatives can be done to accelerate or at least overcome copyright. Criminal law is the last tool (ultimum remedium), but criminal law is not a powerful tool because of overcoming crimes with criminal law is only a symptomatic treatment (Peter, 2012).

The use of criminal law in handling the crime of perjury should pay attention to the ultimum remedium principle where law is the last tool in law enforcement because copyright infringement is not an extra-ordinary crime but is more to be private, so the parties in dispute prioritize the restorative justice process, If the restorative justice process does not work, then the law enforcement process can be carried out according to the level of the violation.

The purpose of punishment is to prevent the occurrence of a crime by imposing a criminal threat that is severe enough to frighten criminal candidates. If a potential criminal knowing the punishment received for committing a crime, then he automatically feels afraid, this is effective if the sentence is carried out in public (Peter, 2012). Improvement or education for criminals Improvement theory, criminals are given education in the form of criminals, so that later they can return to society in a better and more useful mental state. There are three kinds to improve criminals, those are: intellectual improvement; Moral improvement; Juridical improvement.

The purpose of the judicial process is to seek formal and material truth, justice and legal certainty. In short, it can be interpreted as a system in society to handle crime so that it is still within the limits of community tolerance. This description is only one of the objectives of the criminal justice system that exists in general, so that the scope of the criminal justice system's duties is broad, those scopes are: one, to prevent people from becoming victims of crime; two, to resolve the crimes so that the public is satisfied that justice has been served and the perpetrators have been

convicted; and three, trying those who have committed the crime do not repeat their actions again (Peter, 2012).

The purpose of law is not only for order and justice, but also as a way to change and renew the society. Law can also renew people's attitudes and ways of thinking so that the law can participate in dealing with the development situation in the Indonesia, which is basically a process that involves human life aspects (Peter, 2012).

The term "government official" or "public official" consists of two syllables, namely "Official" and "Public". Indonesia Dictionary (KBBIH) defines "official" as: government employees who hold important positions (elements of leadership). Meanwhile, 'Public: is defined as: the crowd (society) (Peter, 2012).

## ANALYSIS AND DISCUSSION

Legal development should not only look into the law, but also look into changes and advances that have occurred in other fields.<sup>1</sup> Law as a means of community renewal or as a means of development is that law in the sense of a legal rule which has a fiction as a tool or direction regulator the human activities in the direction desired by renewal or development (Jan, 2003).

The purpose of law according to Otje Salman is order to achieve justice, legal certainty, peace (harmony between order and peace), happiness and law as a means of reforming society (Jan, 2003). Law does not only aim to achieve order and justice, but also as a means to change or renew society. Law can also renew people's attitudes and ways of thinking, so that law can participate in dealing with the development situation in Indonesia which basically is a process that involves human life aspects (Jan, 2003).

The interference towards the law enforcement may occur if there is a mismatch between the values of "trinity", rules and patterns of behavior. This disturbance occurs when there is a mismatch between paired values, and undirected behavior patterns that disturb the social peace of life for law enforcement officials. According to Abdussalam, the immense authority obtained from the law is legal certainty to guarantee legal certainty for law officers in making peace that is made between the parties in resolving the cases, it is obligatory to obey the norms in society that reflect a sense of justice, and uphold human rights (Jan, 2003). Law-based government is a government that upholds the rule of law and is not power-oriented, which Sudikno called the term "the governance not by man but by law" Jan, (2003). In a law state, law is placed as the highest reference in the administration of the state and its government (rule of law) Jan, (2003). Concretely, there is an existence of "the rule of law" Jan, (2003). This places the law in the highest position. Law is made to be the guiding principle for all activities of state organs, government, officials and their people.

This is in line with the "distribution of power adopted by the 1945 Constitution"<sup>16</sup> which is intended to restrict and prevent the possibility of power abuse or accumulation in government agencies/institutions or officials.

Law officers are guardians of life, therefore it is not an exaggeration if the legal profession is called as a noble profession, and the law provides a reason for free individuals to live together in bonds. If Cicero says where the company is right, modern society understands the opposite, where is the right of society, because the law is an excuse for individuals to contract and live in the state? The strongest motivation that encourages free individuals to be bound in society is because of the hope to attain prosperity, and it is possible to manifest in social life.

Official ethics demand that power is running appropriate with applicable law (legality), democratic legitimacy and not in conflict with basic moral principles (moral legitimacy). We can call these three demands as normative or ethical legitimacy because they are based on the belief that power is only ethically valid if it is in accordance with those three demands. Ethical legitimacy presupposes that power is entirely human's responsibility. Where power is understood as a supramundane reality, ethical legitimacy cannot be claimed. This point needs to be described in more detail. By legality, it means that power is obtained constitutionally and used in accordance with the applicable laws. The notion of legality presupposes that the law has the highest authority and that the ruler is under the law.

Generally, people who break the oath of office are the same as people who break the ordinary oath. But the legal consequences are different. accountability to the public is the fulfillment of the oath of office that has been pronounced. People who have broken the oath of office should apologize to the public in the form of returning to their original position and publicly apologizing. Otherwise the society must provide moral punishment. The moral punishment can be in the form of not selecting a person who has broken his oath of office. Basically a district head (in this case is the Governor) makes an oath, and one of which is to uphold the 1945 Constitution of the Republic of Indonesia and all the implementing laws and regulations. Considering whether a district head broke his oath of office by not completing the length of service or not must be seen more carefully. If we look at the description of Article 110 paragraph (3) of Law No. 32 of 2004, we can see that there is no requirement that a district head has to complete his length of service for 5 (five) years. Rather, it only regulates the length of service that is owned by the Governor, after which the district head can be re-elected for 1 (one) length of service (5 years).

The sanctions for public officials who do not carry out their oath of office have not been regulated in laws and regulations, as it is well known that the Government and the parliament who has authority to form laws and regulations, parliament represent the political parties, which of course, have a bigger political agenda rather than law enforcement, so that the rules are made as if it gives room for someone to break the oath of office.

Public officials should be role models for society by fulfilling or carrying out their duties according to their oath of office, the position given is a mandate given by society to them and that is a belief that should not be denied. When a public official has taken the oath of office, his moral responsibility to the public cannot be ignored, so that the public will trust to the officials and they can be easily invited participate in elections for public officials.

## CONCLUSION

The sanction policy against public officials who do not carry out the oath of office should be formulated in laws and regulation, so that it can be used as a legal protection for law enforcers to carry out their duties to impose sanctions. If there is no regulation that regulates the sanction then it cannot be implemented. Sanctions against public officials who broke their oath of office are deemed most appropriate and can have a deterrent effect is criminal sanctions with a sentence of 5 (five) years, so that the person cannot be nominated as public official as in several statutory provisions.

## ENDNOTES

Peter, H.S.G. (2012). Peacemaking police model from an Alternative Dispute Resolution (ADR) perspective. Diponogoro University Publishing Agency, *Semarang*, 55.

- Jan, R. (2003). Comments on the most important articles of the Indonesian criminal code. *Jakarta*. Gramedia Pustaka Utama, 345.
- Ibid, 463.
- www. Legal online access date, 20 Septemebr 2020.
- Mochtar, K. (1984). Otje, S. (1984). An introduction to legal sociology. *Armico. Bandung, 9*.
- Soetidjo., (1990). Rineka, C.P.T. (1990). "The relationship between central government and regional government. *Jakarta, 5*.
- Satjipto, R. (2009). Building and reforming Indonesian law with an interdisciplinary approach. Genta Publishing. *Yogyakarta, 23-24*.
- Mochtar, K. (2016). Law, society and national law development. Binacipta. *Bandung, 13*.
- Otje, S. (2009). & Refika, A. (2009). Philosophy of law (development & dynamics of problems). *Bandung, 107*.
- Mochtar, K. (1989). & Otje, S. (1989). An introduction to legal sociology. Armico. *Bandung, 9*.
- Abdussalam, (2006). Prospects of Indonesian criminal law (in realizing a sense of justice in society (formal criminal law). Publisher Restu Agung, *Jakarta, 684-704*.
- Ibid, 705.
- Sudikno, M. (2000). Efforts to improve the supremacy of law. In *Justitia Et Pax Magazine*, Faculty of Law, Univ. Atmadjaya, *Yogyakarta, 2*.
- Bagir, M. (2001). Welcoming the dawn of regional autonomy, Center for legal studies (PSH) FH-UII, *Yogyakarta, 18*.

## REFERENCES

- Abdussalam, A. (2006). *Prospects of Indonesian criminal law (in realizing a sense of justice in society (formal criminal law)*. Publisher Restu Agung, *Jakarta*.
- Jan, R. (2003). Comments on the most important articles of the Indonesian criminal code. *Jakarta*. Gramedia Pustaka Utama, 345.
- Mochtar, K. (1984). Otje, S. (1984). An introduction to legal sociology. *Armico. Bandung*.
- Mochtar, K. (2016). Law, society and national law development. *Binacipta. Bandung*.
- Otje, S. (1984). An introduction to legal sociology. *Armico. Bandung*.
- Otje, S. (2009). Philosophy of law (development & dynamics of problems), Refika Aditama. *Bandung*.
- Satjipto, R. (2009). Building and reforming Indonesian law with an interdisciplinary approach. Genta Publishing. *Yogyakarta, 2009*.
- Soetidjo, (1990). & Rineka, C.P.T. "The relationship between central government and regional government. *Jakarta*.
- Suparmin, (2012). Peacemaking police model from an Alternative Dispute Resolution (ADR) perspective, Diponogoro University Publishing Agency, *Semarang*.
- Bagir, M. (2001). Welcoming the dawn of regional autonomy. Center for legal studies (PSH) FH-UII. *Yogyakarta*.
- Sudikno, M. (2019). Efforts to improve the supremacy of law, justice and peace Magazine. Faculty of Law. Univ. Atmadjaya, *Yogyakarta*.