

ENFORCEMENT OF ADMINISTRATIVE CRIMINAL SANCTIONS AGAINST PERPETRATORS OF VIOLATIONS OF NEW NORMAL RULES AT THE TIME OF THE OUTBREAK

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ABSTRACT

With the outbreak of the Covid-19 virus in Indonesia, the Government of Indonesia designated the Covid-19 outbreak as a national disaster. In dealing with the Covid-19 outbreak, law enforcement is one of the measures also chosen by the government. After the implementation of PSBB with the covid-19 pandemic condition that is still ongoing, it is necessary to make mitigation efforts and workplace readiness as optimal as possible so that it can adapt through changes in lifestyle in the situation of Covid-19 or New Normal. The purpose of this study is: To analyze positive legal arrangements governing against perpetrators of violations of new normal rules at the time of the Covid-19 virus outbreak; To analyze the implementation of criminal law / criminal law enforcement against perpetrators of violations of new normal rules at the time of the Covid 19 virus outbreak; To analyze the obstacles faced in the enforcement of criminal law at the time of the enactment of the new normal. Data analysis is conducted qualitatively by collecting primary, secondary and tertiary legal materials related to research. Based on the results of the analysis, the advice given is: It is expected that lawmakers can make rules that actually contain rules in accordance with substantive violations committed and do not look for mistakes or violations due to the enforcement of the law so that there is no conflict of positive legal norms and so as not to spread the spread of the covid-19 virus outbreak, the public is expected to follow health protocols and comply with every policy rules made so as not to be exposed to the covid-19 virus.

Keywords: Administrative Criminal Sanctions, New Normal, Outbreak, Covid-19

INTRODUCTION

Covid-19 cases in Indonesia have exceeded 60,000 cases. In April 2020, the Task Force for the Acceleration of Handling Covid-19 estimates that the peak of the pandemic in Indonesia will start in May and end in July. Based on the last update on 08-07-2020, WHO data states that there are 216 countries that have experienced the Covid-19 virus outbreak and 11,669,259 people have been exposed, while 539,906 people have died. While the Covid-19 cases in Indonesia have reached 68,079 people, 31,585 people have recovered and 3,359 people have died.

The determination of the Covid-19 virus outbreak as a national disaster is based on Presidential Decree Number: 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Coronan Virus Disease 2019 (Covid-19) as a National Disaster with four reasons as indicators, namely: 1) Number of victims and losses property caused by Covid-19 is increasing every day, 2) The coverage of the affected area is expanding which has spread to 34 provinces in Indonesia, 3) The impact of the Covid-19 outbreak is not only in terms of health, but also in social aspects wide economy, 4) World Health Organizations (WHO) or the International Health Agency has declared Covid -19 a pandemic.

The World Health Organization (WHO) has provided 6 conditions for a country to revoke its lockdown policy. Meanwhile, the World Health Organization (WHO) requires countries or regions that are allowed to relax social restrictions are those with a transmission rate below 1. In addition, relaxation can be carried out if transmission below 1 can last for 14 consecutive days. Loosening the social restrictions referred to is the application of the new normal.

Meanwhile, the North Sumatra Provincial Government (Pemprov Sumut) is still drafting a concept in realizing a new life order (new normal) that is safe from Covid-19. Including preparing sanctions for people who violate the rules in implementing the new norms which are planned to start July 1. Through searches in online media, it is known that the drafting of the concept of implementing the new normal is still under discussion with a number of experts in the health sector, regional heads and chancellors from state and private universities. The draft arrangement is bottom up towards the new normal, with a transition period until June 13, 2020. After that, the concept was discussed with the North Sumatra DPRD. This new normal is planned to be implemented starting July 1.

Health quarantine to prevent the spread of the Covid-19 virus can be seen from the Minister of Health Regulation Number 9 of 2020 concerning Large-Scale Social Restrictions (PSBB). The scope of PSBB includes school and work vacations, public facilities, except supermarkets, minimarkets, markets, shops, places where drugs and medical equipment are sold as well as basic necessities, social and cultural activities, crowd restrictions, political meetings, sports, entertainment, academics. and culture, the exclusion mode of public or private passenger transportation by taking into account the number of passengers and maintaining the distance between passengers, other activities specifically related to the aspects of defense and security, except for defense and security

activities to uphold State sovereignty, territorial integrity and protect the nation from threats of disturbance and realize security and public order.

By looking at the description above, it can be seen that after the implementation of the PSBB, the Government made a new normal policy in which several agencies have made a new normal rule so that the researcher wants to raise this matter in a study on "Legal Reviews Regarding Sanctions for New Normal Violators During Outbreaks. Covid-19".

METHOD

This study uses a normative juridical approach, namely by reviewing or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the statutory system regulating problems in research, so that this research is understood as library research, namely research on secondary data. Likewise, to solve the problem, research sources are needed in the form of primary materials, both statutory regulations, official records of the minutes of making laws and judges' decisions, and secondary in the form of books, texts, legal dictionaries, legal journals, and comments on court decisions. . The data collection technique is the most strategic step in research because the main objective of the research is to collect data. To obtain the data needed in this study, library research is used to find basic norms, regulations related to research objectives, namely the application of laws related to the Covid-19 virus outbreak in Indonesia. The data analysis was conducted qualitatively by collecting primary, secondary and tertiary legal materials related to the research. The data obtained is compared with the results of the study, which conclusions will be drawn. Data analysis using deductive and inductive methods. Data analysis was carried out systematically, qualitatively, comprehensively and completely. The systematic analysis in this study explains in accordance with the concept so that it can provide answers. Qualitative analysis in research describes quality data in regular sentences so as to facilitate discussion and understanding.

FACTORS AFFECTING LAW ENFORCEMENT

One indicator of a rule of law is the success in enforcing the law. It is said to be successful because the law that has been regulated should be and it is time to be carried out and obeyed by all elements of society. The absence and inadequacy of law enforcement can have implications for the credibility of rule-formers, implementers of regulations and the people who are affected by the rules themselves, so that all elements will be affected. For this reason, it is important to know what law enforcement is. Law enforcement is the process of making efforts to enforce or function legal norms that are in effect and have been regulated as a guideline for behavior in traffic or legal relations in human life in society and in the state. For this reason, the provisions that have regulated it will not stop in the sense of immovable or dead rules, but will still stand up and run forward as determined by official institutions and recognized by the state to regulate them. Broadly speaking, the process in law enforcement involves all legal subjects in every legal relationship. Whoever carries out normative rules or does or does not do something based on the norms of the prevailing legal rules, then this means that they have implemented or enforced the rule of law.

Soerjono Soekanto argues that law enforcement there are factors that can influence and have meaning so that law enforcement can have a positive and negative impact lies in the content of these factors. A disturbance in law enforcement occurs when there is a mismatch between values, rules and patterns of behavior ("trinity"). In the event that there is a mismatch between the paired values and incarnate in conflicting principles, and an undirected behavior pattern that can disrupt the peace of life, then law enforcement cannot be realized. This means that law enforcement will not run properly or will be disrupted in its journey and law enforcement. The main problem of law enforcement lies in the factors that influence it. These factors are first, the legal factor, the second law enforcement factor, third, the facilities or facilities factor, the four community factors and the five cultural factors.

1) The legal factor itself

The law that is meant is a law or written regulation that is generally accepted and made by the Government. The legal factor in question starts with the problematic law itself. The law enforcement that comes from the law is caused

- a) The principles of the law are not followed
- b) There are no implementing regulations that are really needed to implement the law,
- c) The unclear meaning of words in the law will result in confusion in the interpretation and application.

Besides that, it is unclear in the words used in the formulation of certain articles. This is due to the use of words whose meanings can be interpreted very broadly. The consequence is that regulations contain articles with words that can be broadly interpreted (multiple interpretations) and cause confusion in their interpretation or application, which in turn leads to conflict. This means that legal factors, namely regulations that have unclear words in the formulation of the articles, are proven to have influenced law enforcement on disputes in Indonesia. This problem grows because even though a law has been passed and is in effect, up to a certain time an implementing regulation has not been made as an order of the law, so as a result some articles of the law cannot be implemented. For example, one of the obligations of companies to carry out Corporate Social Responsibility (CSR) which is regulated in Article 74 paragraph (3) in Law Number: 40 of 2007 concerning Limited Liability Companies (UUPT) which regulates that: "Further provisions regarding social and environmental responsibility regulated by Government Regulation ". However, until now this Government Regulation has not been made or issued by the Government. As a result of the absence of a Government Regulation, this will not be able to carry out the order to carry out the Corporate Social Responsibility (CSR). This also means that there is no obligation for companies to do so, because they do not know how CSR should be implemented and implemented until the Government Regulation is issued.

Another problem that often arises in laws is the unclear words used in the formulation of certain articles. It is possible that this is due to the use of words whose meaning can be interpreted very broadly or, for example, due to inaccurate foreign language translation problems. Unclear meaning can be found, for example, in 8 paragraphs (1) of Law Number 9 of 1960 concerning Health Principles, which states that: "The government seeks to provide treatment and care for the people throughout Indonesia equally, so that each sick person can get medical treatment and care at the lightest cost." The question about this provision is what is actually meant by "the lightest cost"? How much the light value is also not explained in the explanatory provisions of the law. The meaning of this is not clear so that the meaning of these words is unclear in the law which results in confusion in the interpretation and application in practice. With this condition, it creates a dilemma that is not easy for law enforcers to carry out the provisions stipulated in the law and the negative impact of this is that the law only regulates, but is implemented. What makes this happen is the law itself which is the cause. Sets up, but doesn't run and stops on its own.

2) The law enforcement factor

What is meant by law enforcers are parties who are directly or indirectly involved in law enforcement starting from the Police, Prosecutors, Judges, the Corruption Eradication Commission (KPK), Legal Advisors (Advocates) and up to prison guards. Each law enforcement profession has the authority or power of its respective duties. Judges are in a very decisive role when a decision is expected to be born and the implementation of this task, the judge is in his own independence, while the other duties of law enforcers are to convince and explain to the judge what and how the legal problems are so that a judge's conviction will be obtained for can decide fairly and also wisely. However, the problem is not that simple, because in fact law enforcement is not running in the right corridor so that law enforcement experiences obstacles at the technical operational level in each law enforcer. The causes include, first, the low quality of judges, prosecutors, police and advocates; Second, the principle of the right man in the right place is ignored; Third, their low commitment to law enforcement; Fourth, the absence of an integrated, good and modern law enforcement mechanism; Fifth, strong political influence and intervention and power in the world of chess, especially the police, prosecutors and judiciary; Finally, the strong allegation of corruption and organized crime among members of law enforcement with allegations of judicial mafia. Law enforcement practices are increasingly difficult, due to weak coordination among law enforcers, both at the theoretical and normative level, as well as at the operational level. In fact, legal coordination is one of the important factors for legal empowerment for the community. Based on the lack of coordination between law enforcers, then the desire to realize an integrated legal approach to justice (integrated justice system) echoes. With this condition, law enforcers who are unable to enforce the law as it should have been mandated in the law will have a negative impact on law enforcement.

3) Facility and facility factors

Without the existence or support of adequate facilities or facilities, it is not easy for law enforcement to take place properly, which includes, among other things, highly educated and skilled human resources, good organization, adequate equipment, adequate finance, and so on. If these things are not fulfilled, then it is difficult for law enforcement to achieve its objectives. Highly educated human workers here are defined as qualified and qualified law enforcers who are capable or able to serve and protect the community in accordance with their respective duties and fields. The process of admitting to become a law enforcer actually fulfils the requirements to produce, for example, a police officer who has the ability to serve the public. But in reality, the admissions process is often tainted by the existence of bribes or a small number of people to become members of law enforcement so that the quality of these law enforcement members is questionable and many are not in accordance with what has been determined. As a result, law enforcers tend to be outnumbered by the growing number of people, so that law enforcement officials cannot carry out their duties optimally as a means of law enforcement.

4) Community factor

From a social and cultural point of view, Indonesia is a plural society with many ethnic groups with a variety of different cultures. A law enforcer must recognize the social stratification or community layers that exist in an environment along with the existing status / position and role structures. Every social stratification has its bases. Another thing that needs to be known and understood is about social institutions that exist and are highly valued by the majority of the existing community members. By knowing and understanding these things, it can make it easier for law enforcers to identify values and norms or rules that apply in the environment. In broad outline, society in Indonesia is divided into two, namely the upper class (the rich) and the lower class (the poor). The resolution of the law between the two is very different. This is because the mindset and knowledge are clearly different. If a person from the lower class, wants or obeying a law by someone is very unlikely or does not want to obey the law that has been regulated. This is because their lack of knowledge and education is very limited, and they cannot know that there are sanctions that will be binding if they are violated (blue collar crime). Meanwhile, upper class people tend to follow existing laws or regulations, because they have more knowledge of laws and know the sanctions. This happens tends to be more orderly. In the upper class, if a crime occurs, it can be said that a white-collar crime (for purposes only). People in Indonesia are getting longer, the number of poor people is increasing so that when viewed from community factors, the problem of crime or law enforcement is in this layer. Each social stratification has its own bases, so that it can be done in various ways, including providing legal knowledge to people who may not really understand the law so that it makes it easier for them to identify the values and norms that apply in their environment.

5) Cultural Factors

Culture, according to Soerjono Soekanto, has a very large function for humans and society, namely to regulate people so that people can understand how they should act, act, and determine their attitudes when dealing with other people. Basically, culture includes the values that underlie applicable law, which values are abstract conceptions of what is considered good so that it is followed and what is considered bad so that it is avoided. Actually, cultural factors have similarities with community factors. It's just that, in the cultural factor there is more emphasis on the problem of the value system that exists in the community. In terms of community factors, it is said that the level of community compliance with the obedience of community rules is still low. This is

because the culture of compromise often occurs in Indonesian society. In fact, there will be a cultural tendency for the people to escape from the rules that apply to them.

In law enforcement it is clear that the five factors mentioned above, in the reality of their relationship, will be closely related to one another. This is because in law enforcement one another will be able to influence each other in the course of enforcement. One weakness has an impact on other obstacles, because all of them become the main thing in law enforcement, as well as in order to obtain a measure of the effectiveness of law enforcement. Of the five factors of law enforcement problems, the law enforcement factor itself becomes the central point. This is due both to the fact that the law is drafted by law enforcers, its implementation is also carried out by law enforcers and law enforcement itself, is a role model for the wider community, so that its position becomes very decisive in law enforcement. Although it is admitted that Soerjono Soekanto did not explain which of these factors greatly influenced all of these factors, what should be noted is that one of the factors can support shaping the effectiveness of the law in law enforcement. However, by paying attention to the systematization of these five factors, if law enforcement is to function optimally, then at least the law can be categorized as effective. What is meant is that systematics can build the effectiveness of law enforcement, it should be started by asking how the law is, then how the law enforcers are, then what are the supporting facilities and facilities, then how do people respond and the culture that is built. That is, the order in which the order can be predicted is the basis for thinking in enforcing the law. Therefore, the problems that occur in law enforcement are so complex and complicated when studied more deeply and are not as simple as the naked eye sees. It takes a national joint action movement that is regular, orderly and implemented to foster a just and pro-marginalized law enforcement. Besides, it is time for law enforcers to pay close attention to Soerjono Soekanto's opinion as material for reflection and contemplation in carrying out his role as law enforcers who want to direct where law enforcement will actually aim.

Barriers To Law Enforcement During The New Normal Period

New normal or also known as new normal is an effort made to do activities outside the home as before, before the Covid-19 pandemic attacked Indonesia and other countries so that they can move and adapt to live new situations. This change in situation was accompanied by undergoing health protocols and social restrictions to deal with the spread of covid-19. In the new normal period, the PSBB rules also still apply based on Permenkes Number 9 of 2020 concerning PSBB which states that the Implementation of Large-Scale Social Restrictions includes:

- 1) school and work vacations;
- 2) restrictions on religious activities;
- 3) restrictions on activities in public places or facilities;
- 4) restrictions on social and cultural activities;
- 5) restrictions on the mode of transportation;
- 6) restriction on other activities specifically related to defence and security aspects.

But in fact, during the new normal period with the PSBB policy, the community still did not understand the importance of maintaining health protocols so that the central government and local governments were very busy with the behavior of the community by taking several legal actions for people who violated health protocol rules such as not wearing masks or holding meetings create a large crowd. Even though the government has taken action against violators of PSBB rules, there are still people who do not comply with health protocols to prevent the spread of the covid-19 virus where as if the law can function in dealing with rule violators during the Covid-19 pandemic so that it has an impact on the spread of the covid-19 virus. A legal system can be said to be effective if human behavior in society is in accordance with the applicable legal regulations. Therefore, there are several conditions that must be met in order to make the legal system effective, namely:

- 1) Easy or not the meaning of the rule of law to understand;
- 2) Whether or not there are circles in society who know the rule of law;
- 3) Efficient and effective mobilization of the rule of law;
- 4) The existence of a dispute resolution mechanism that is not only easily accessible to the public but also has to be quite effective in resolving disputes; and
- 5) There is an opinion among the public that legal rules and institutions are indeed capable of being effective.

Therefore, Azmi Syahputra, a lecturer in Criminal Law at the Faculty of Law, Bung Karno University, argued that talking about the interaction of community activities in the public space is closely related to the behavior of each person, the level of one's obedience, so environmental aspects greatly affect the behavior patterns of society. Is the behavior appropriate or deviant behavior. Because the environment is one of the factors shaping both physical and behavioral personality. This is where it becomes urgent if it is related to aspects of criminological studies, referring to Travis Hirschi's theory, which is a social control theory that involves community compliance, because of the effectiveness of the level of compliance. This behavioral discipline is also greatly influenced by environmental aspects starting from the smallest environmental aspects in the family onward gradually to regional government and the attitude of national level government. If there is no obedience and discipline, there tends to be an attitude of omission, it will be difficult for the government to apply the new normal concept. This will actually become an obstacle, especially for security officers in the field if the community is not ready or unwilling to adopt this new behavior. In fact, it is easier for the potential to collide with the community and prevent the effectiveness of the new normal goals from being achieved. Therefore, it is hoped that through community and religious leaders, scientists and all stakeholders, including the head of the family, to continue to urge or encourage every citizen or family member to build awareness of shared responsibility so that each individual participates and adapts and applies the new normal concept This is where the phase tests the level of behavioral compliance and compliance with legal culture as well as part of the means and efforts to accelerate the resolution of the Covid -19 pandemic. Therefore, it is necessary to have commitment and good cooperation from everyone in order to succeed in the new normal era as well as to anticipate the impact of other social symptoms and other social reactions in the future if this new normal situation is not

immediately implemented. The main task of the government must be to ensure that the details of the new normal concept can be properly operationalized, so the government must make systematic, measurable, directed efforts, coordinate the policies of the central government and regional government which are cliques, and must be consistent in conducting open public surveillance and implementing enforcement. law. Other things that are important, include increasing the capacity of the health sector to anticipate a spike in Covid-19 sufferers and strengthening social security that is right on target and priority.

CONCLUSIONS

Based on the juridical review that has been presented in the previous chapter based on the research objectives, it can be concluded as follows:

- 1) Positive laws governing perpetrators of violating the new normal rules at the time of the Covid-19 virus outbreak are regulated in Government Regulation Number: 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19), Ministerial Regulation Health (Permenkes) Number: 9 of 2020 Concerning PSBB Guidelines in the Context of Handling Coronavirus, Articles 212 to Article 218 of the Criminal Code and obstructs the implementation of prevention of disease outbreaks as stated in Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Infectious Diseases Article 14 paragraph (1) and (2), as well as KUHP Article 65, Article 212, Article 214 paragraph (1) and (2), Article 216 and Article 218.
- 2) Implementation of criminal law / criminal law enforcement against perpetrators of violating the new normal rules at the time of the Covid 19 virus outbreak based on the governor's regulation which contains administrative sanctions written warning, social sanctions in the form of cleaning public facilities by wearing vests, administrative fines.
- 3) Obstacles faced in the enforcement of criminal law at the time the new normal takes effect are legal factors, law enforcement factors, facilities or facilities factors, community factors and cultural factors.
- 4) This study can be reconstructive for other country to learn the regulation that has been made by Indonesian Government.

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