

Implementation of Criminal Sanctions in Law Number 6 of 2018 Concerning Health Quarantine for Large-Scale Social Restriction Breakers in the Jabodetabek Area

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ABSTRACT

One of the government's efforts to realize a responsive law is to implement laws such as the implementation of Law Number 6 of 2018 concerning Health Quarantine. The problems studied are how to apply criminal sanctions in Law Number 6 of 2018 for violators of Large-Scale Social Restrictions (PSBB) in the Jabodetabek area and what obstacles are faced in implementing criminal sanctions against PSBB violators and what are the solutions. The research method used is normative legal research which is supported by empirical research, while the data collection technique uses *library research and field research*. The results of the study indicate that the application of criminal sanctions in Law Number 6 of 2018 concerning Health Quarantine is in the form of imprisonment and fines. Obstacles encountered in the application of criminal sanctions against violators of Large-Scale Social Restrictions (PSBB) and efforts to resolve them include unclear references to articles regarding criminal threats in regional regulations regarding PSBB. Another obstacle is the lack of precise application of criminal sanctions against PSBB violators. As an effort to overcome this obstacle, namely, the application of criminal sanctions against PSBB violators is the *ultimum remedium* or last resort.

Keywords:

Criminal Sanctions, Violations, Health, Restrictions, Rules

1. Introduction

Indonesia's national development aims to promote the general welfare, to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945). To achieve this goal, the Government of Indonesia seeks to develop and strengthen all sectors of people's lives, including health. This is in accordance with the right to live needs of Indonesian citizens as reflected in Article 28H paragraph (1) of the 1945 Constitution, which states that: Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to obtain Health services are realized through the development of the health sector. Health development according to Article 3 of Law Number 36 of 2009 concerning Health, aims to increase awareness, willingness, and ability to live healthy for everyone, to realize the health status of the community as high as possible, as an investment for the community. development of human resources (human resources) that are socially and economically productive.

In realizing health development, of course, it is accompanied by the development of law in it, because all implementing instruments and their enforcement require legal instruments. Legal development can be interpreted as fostering the law and improving legal policies in a better direction. Therefore the law must be able to carry out the role of guarding the realization of the desired development goals, which in the development of the law include the development of legal materials, legal structures including legal apparatus, legal facilities, and infrastructure as well as legal awareness and culture.

One of the government's efforts to realize a responsive law is to implement laws such as the implementation of Law Number 6 of 2018 concerning Health Quarantine. This law is used as a legal umbrella to prevent the spread of the pandemic *Corona Virus Disease 19* (Covid-19), namely by implementing Large-Scale Social Restrictions (PSBB). As is known, on December 31, 2019, the *World Health Organization* (WHO) *China Country Office* reported a case of pneumonia of unknown etiology in Wuhan City, Hubei Province, China. On January 7, 2020, China identified pneumonia of unknown etiology as a new type of coronavirus (*coronavirus disease*, COVID-19). On January 30, 2020, WHO has declared it a *Public Health Emergency of International Concern* (KKMMD/PHEIC). The increase in the number of COVID-19 cases is happening quite quickly and has spread between countries.

As of March 25, 2020, a total of 414,179 (four hundred and fourteen thousand one hundred and seventy-nine) with 18,440 (eighteen thousand four hundred forty) deaths (*Case Fatality Rate* cases were reported/ CFR 4.4%) of which cases were reported in 192 (one hundred and ninety-two) countries. On March 2, 2020, Indonesia reported 2 (two) confirmed cases of COVID-19. As of March 25, 2020, Indonesia has reported 790 (seven hundred and ninety) confirmed cases of COVID-19 from 24 (twenty-four) provinces, namely: Bali, Banten, DIY, DKI Jakarta, Jambi, West Java, Central Java, Java. East, West Kalimantan, East Kalimantan, Central Kalimantan, South Kalimantan, Riau Islands, West Nusa Tenggara, South Sumatra, North Sumatra, North Sulawesi, Southeast Sulawesi, South Sulawesi, Lampung, Riau, North Maluku, Maluku and Papua. Regions with local transmission in Indonesia are the Special Capital Region of Jakarta, Banten (Tangerang Regency, Tangerang City), West Java (Bandung City, Bekasi Regency, Bekasi City, Depok City, Bogor City, Bogor Regency, Karawang Regency), East Java (Regency Malang, Magetan Regency, and Surabaya City) and Central Java (Surakarta City) (Isbaniah, et al, 2020).

Based on scientific evidence, COVID-19 can be transmitted from human to human through coughing/sneezing (*droplet droplets*), not through the air. People who are most at risk of contracting this disease are people who are in close contact with COVID-19 patients, including those who care for COVID-19 patients. Recommendations to prevent the spread of COVID-19, namely by implementing large-scale social restrictions.

President Joko Widodo has issued a policy to combat the COVID-19 pandemic in the form of large-scale social restrictions (Yustinus Andri, 2020). Indonesia itself already has legislation in the form of Law Number 6 of 2018 concerning Health Quarantine, which is sufficient to accommodate the need for large-scale social restrictions. In the section considering letter b of Law Number 6 of 2018 concerning Health Quarantine, it is stated that advances in transportation technology and the era of free trade can risk causing health problems and new diseases or old diseases that re-emerge with a faster spread and have the potential to cause public health emergencies, thus demanding a comprehensive and coordinated effort to prevent disease and health risk factors, and requires resources, community participation, and international cooperation.

In the implementation of large-scale social restrictions, the central government and local governments are responsible for the availability of resources needed to implement health quarantine. The large-scale social restrictions have been implemented in several areas, including in the areas of Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek). However, in the implementation of large-scale social restrictions, there are still some violations. The Traffic Directorate of Polda Metro Jaya noted that as of today, Wednesday, May 6, 2020, the police have reprimanded 45,529 (forty-two thousand five hundred and twenty-nine) violators of the Large-Scale Social Restrictions or PSBB regulations in DKI Jakarta and its surroundings. The number consists of 27,348 (twenty-seven thousand three hundred forty-eight) PSBB violations in the DKI Jakarta area and 15,181 (fifteen thousand one hundred and eighty-one) violations in the buffer zone of the capital city. There are eight types of violations recorded, namely motorcycle taxis *online* (ojol) with passengers, drivers not wearing masks, not using gloves, body temperature rules, motorcycle passengers who do not have the same address, the number of passengers exceeds fifty percent (50%) of the vehicle's capacity, operating hours, and the distance between passengers (Arjanto, 2020). The main factor affecting the high number of positive cases of Covid-19 in Indonesia is the decreasing level of citizen compliance, which is representation through a sentiment analysis approach using social media (Tosida et al. 2021)

In practice, if there are violations during health quarantine, including the implementation of large-scale social restrictions, the government has the right to impose criminal sanctions. This is as explained in Article 93 of Law Number 6 of 2018 concerning Health Quarantine, which states: Anyone who does not comply with the implementation of health quarantine as referred to in Article 9 paragraph (1) and/or hinders the implementation of health quarantine, causing a health emergency. the community shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

2. Literature Review

2.1 The theory of criminal law policy

The term policy comes from English, namely *policy* or in Dutch *politiek* which in general can be interpreted as general principles that function to direct the government (in a broad sense including law enforcement officers in managing, regulating, or completing public affairs, community problems, or areas of the drafting of legislation and application of laws/regulations, with the aim of (general) directed to the welfare or the welfare of people (citizens) (Arief, 2010).

Starting from the second term foreign, then the term criminal law policy can also be referred to as criminal law politics. In foreign literature, the term criminal law politics is often known by various terms, including *penal*

policy, criminal law policy Criminal law policy, or staftrechtspolitik (Wisnubroto, 2009). Can be interpreted by acting or policy from the country (government) to use criminal law in achieving certain goals, especially in tackling crime, it is necessary to recognize that some many ways and efforts can be done by each country (government) in tackling crime. One of the efforts to be able to overcome crime, including through a criminal law policy or criminal law politics.

The politics of criminal law is basically an activity that involves the process of determining goals and how to implement those goals. Regarding the decision-making process or selection through selection among various alternatives regarding what is the goal of the future criminal law system. In the context of making these decisions and choices, various policies are formulated that are oriented towards various main problems in criminal law (acts that are against the law, mistakes or criminal liability, and various alternative sanctions, both criminal and action) (Bakhri, 2009).

Based on the definition of criminal law policy that has been described previously, at first glance it appears that criminal law policy is identical to the renewal of criminal law legislation, namely the legal substance, in fact, the scope of criminal law policy is wider than criminal law reform. This is because criminal law policies are implemented through the stages of concretization/operationalization/functionalization of criminal law which consist of (Arief, 2010):

- 1) Formulating/legislative policies, namely the formulation/compilation stage of criminal law;
- 2) Applicative/judicial policies, namely the stage of applying criminal law;
- 3) Administrative/executive policies, namely the stage of implementing criminal law.

Criminal law policy cannot be separated from the criminal law system. In this case, Marc Ancel stated that every organized society has a legal system consisting of criminal law regulations and their sanctions, a criminal law procedure, and a criminal enforcement mechanism. Thus the criminal law policy is related to the overall (criminal) law enforcement process. Therefore, criminal law policies are directed at the concretization/operationalization/functionalization of material (substantial) criminal law, formal criminal law (criminal procedural law), and criminal law enforcement. Furthermore, criminal law policies can be related to the following actions (Wisnubroto, 2009):

- 1) How is the government's efforts to tackle crime with criminal law;
- 2) How to formulate criminal law to suit the conditions of society;
- 3) What is the government's policy to regulate society with criminal law;
- 4) How to use criminal law to regulate society to achieve a bigger goal.

Based on the above, the criminal law policy contains 3 (three) powers/authorities, namely the legislative/formulative power authorized in determining or formulating what actions can be punished which are oriented to the main problems in criminal law including acts that are against the law, criminal liability/accountability and what sanctions may be imposed by legislators. The application stage is the power in terms of applying criminal law by law enforcement officers or courts, and the executive/administrative stage is implementing criminal law by implementing/criminal execution officers.

2.2 Law enforcement theory Law

Enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality. Law enforcement is a process that involves many things (Dellyana, 1998). Joseph Goldstein distinguishes criminal law enforcement into three parts, namely:

- 1) Total enforcement, namely the scope of criminal law enforcement as defined by the substantive law of crime. Total enforcement of criminal law is not possible because law enforcers are strictly limited by the criminal procedure law, which includes the rules for arrest, detention, search, confiscation and preliminary examination. In addition, substantive criminal law itself may provide limitations. For example, a complaint is required in advance as a condition for the prosecution of complaint offenses (klacht delicten). This limited scope is referred to as the area of no enforcement;
- 2) Full enforcement, after the total scope of criminal law enforcement, is reduced by the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally;
- 3) Actual enforcement, according to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds, and so on, all of which result in the necessity of discretion and the rest is what is called the actual enforcement.

As a systemic process, the enforcement of criminal law manifests itself as the application of criminal law (*criminal law application*) which involves various structural sub-systems in the form of the police, prosecutors,

courts, and prisons. This includes, of course, legal advisory bodies. In this case, the application of law must be viewed from 3 (three) dimensions, namely (Dellyana, 1998):

- 1) The application of the law is seen as a normative *system*, namely the application of the entire rule of law that describes social values supported by criminal sanctions;
- 2) The application of the law is seen as an administrative *system* that includes the interaction between various law enforcement officials which are the sub-judicial systems above;
- 3) The application of criminal law is the *asocial system*, in the sense that in defining a crime, various perspectives of thoughts that exist in society must also be taken into account.

3. Method

3.1 Nature of Research

The nature of the research in writing this law is analytical descriptive, meaning that the discussion is carried out by presenting and explaining (explaining) the data in a complete, detailed, and systematic way, then the data is analyzed using theories in legal science, especially law Laws and regulations, especially those relating to criminal arrangements in Law Number 6 of 2018 concerning Health Quarantine, are associated with the implementation of large-scale social restrictions in the Greater Jakarta area.

3.2 Types of Research

Type of research used is normative empirical legal research, namely research based on primary, secondary, and tertiary legal materials with interpretation and systematization between laws and regulations. Normative legal research is supported by empirical research to obtain primary data.

4. Data collection

4.1 Data Collection Techniques

Collection techniques used in this study are as follows:

Literature Research

Research is a method of collecting data based on written legal sources in the form of legislation, books, legal magazines, and other writings that are considered to have something to do with the problems discussed in this legal writing.

Field research

In a field study, the authors conducted interviews directly with any questions are structured with multiple stakeholders who know the issues discussed in legal writing.

4.2 Data Processing

Obtained from the research results are then processed qualitatively, namely by using words and sentences so that a systematic and easy-to-understand, and accountable discussion material is arranged.

5. Discussion

5.1 Analysis of the Application of Criminal Sanctions

The legal paradigm in Indonesia related to PSBB rules through *social distancing* and *lockdown* has a legal basis in the form of Law Number 6 of 2018 concerning Health Quarantine. Health Quarantine according to Article 1 point 1 of Law Number 6 of 2018 concerning Health Quarantine is an effort to prevent and prevent the entry or exit of diseases and/or public health risk factors that have the potential to cause public health emergencies.

The implementation of *social distancing* and *lockdown* is actually an effort of a health emergency. A public health emergency is an extraordinary public health event marked by the spread of infectious diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food that poses a health hazard and has the potential to spread across regions or across countries. In Law Number 6 of 2018 concerning Health Quarantine, the response to health emergencies includes home quarantine, hospital quarantine, regional quarantine, and what is now being initiated by the President is PSBB.

The threat of sanctions that can be imposed on PSBB violators is regulated in various existing laws and regulations. Among other things, Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, Law Number 6 of 2018 concerning Health Quarantine, and Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions to Accelerate Handling of *Corona Virus Disease* 2019 (Covid-19). In addition, there is also a Declaration from the Indonesian National Police Number: Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus (COVID 19) by including criminal threats contained in Article 212 and or Article 218 of the Criminal Code. Prevention of the Covid-19 pandemic

outbreak must be done by providing criminal sanctions for citizens who commit violations. In practice, the application of criminal sanctions in Law Number 6 of 2018 concerning Health Quarantine is not applied by each region in the Greater Jakarta area. However, it refers more to the regional regulations that have been issued by each of these regions based on Law Number 6 of 2018 concerning Health Quarantine.

Table 1. Data regional regulations governing the provisions of criminal sanctions against PSBB violators

No	City/Region	Rules	Implementing
1	Jakarta	Regulation of the Governor of the Special Capital Region of Jakarta Number 41 of 2020 concerning the Imposition of Sanctions for Violations of the Implementation of Large-Scale Social Restrictions in Handling <i>Corona Virus Disease</i> 2019 (Covid-19) in the Province of the Special Capital Region of Jakarta;	✓
2	Bogor	Mayor Regulation Number 30 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling <i>Corona Virus Disease</i> 2019 (Covid-19) in the City of Bogor;	✓
3	Depok	Mayor Regulation Number 32 of 2020 concerning Amendments to Mayor Regulation Number 22 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling <i>Corona Virus Disease</i> 2019 in Depok City;	✓
4	Tangerang	Mayor Regulation Number 29 of 2020 concerning the Imposition of Sanctions for Violations of the Implementation of Large-Scale Social Restrictions in Handling <i>Corona Virus Disease</i> 2019 (Covid-19) in Tangerang City.	✓
5	Bekasi	Law Number 6 of 2018 concerning Health Quarantine. This provision refers to Article 93 which reads: Residents who violate will be subject to 1-year imprisonment or a maximum fine of Rp. 100,000,000 (one hundred million rupiah).	✓

Source: Akbar, the results of an interview with the Head of the Non-Litigation Sub-Section of the Bogor City Regional Secretariat, 2020.

Based on the description above, it can be seen that the local government in the Greater Jakarta area has issued a regional regulation that regulates the provisions of criminal sanctions against PSBB violators. The regional regulation has stipulated provisions regarding criminal sanctions in the form of imprisonment and fines. In its implementation, the criminal sanctions given to PSBB violators are only in the form of fines, while imprisonment has not been applied. For example, in the Bogor Regency area, PSBB violators are subject to fines, where the fine for PSBB violations in the Bogor Regency area until September 2020 reaches Rp. 245 (two hundred and forty-five) million. The money is not only from violating the mask rules but the accumulation of all PSBB violations. Each violation has a different amount of fines, such as a violation of the mask rule which is set at Rp. 100 (one hundred) thousand, up to a violation for companies that violate the PSBB rules whose nominal value is set starting from Rp. 5 (five) million to Rp. 10 (ten) million (Setiawan, 2020).

The provisions of Article 93 of Law Number 6 of 2018 concerning Health Quarantine have clearly provided a threat of criminal sanctions for a maximum of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah), while Article 218 of the Criminal Code states that there is a threat of imprisonment for

a maximum of four months and two weeks or a fine of a maximum of nine thousand rupiahs for anyone when the people come in crowds intentionally not leaving immediately after being ordered to do so. three times by or on behalf of the competent authority.

On the other hand, in Kabupaten Lebak it self, during the enforcement of Lebak Regent Regulation Number 28 of 2020 concerning the Adaptation Period of New Habits to the pandemic 2019 Corona Virus Disease in Kabupaten Lebak, there were 634 (six hundred and thirty-four) violators who were prosecuted. of administrative fines of 107 (one hundred and seven) and social sanctions of 527 (five hundred and twenty-seven), of the number of violators, so far, 70 (seventy) violators have carried out new obligations during the PSBB, both stage 1 (one) and 2 (two) (Didi, 2020).

Table 2. PSBB violation in Kabupaten Lebak

No	Sanctions	Number	Newly Implemented Sanctions
1	Sanctions Administrative Fines	107	70
2	Social Sanctions	527	

Source: Didi, Head of Tibum and Gakda (Pamong Praja Police Unit), Interview, at the Office of the Civil Service Police Unit (SATPOLPP) Kabupaten Lebak, 2020

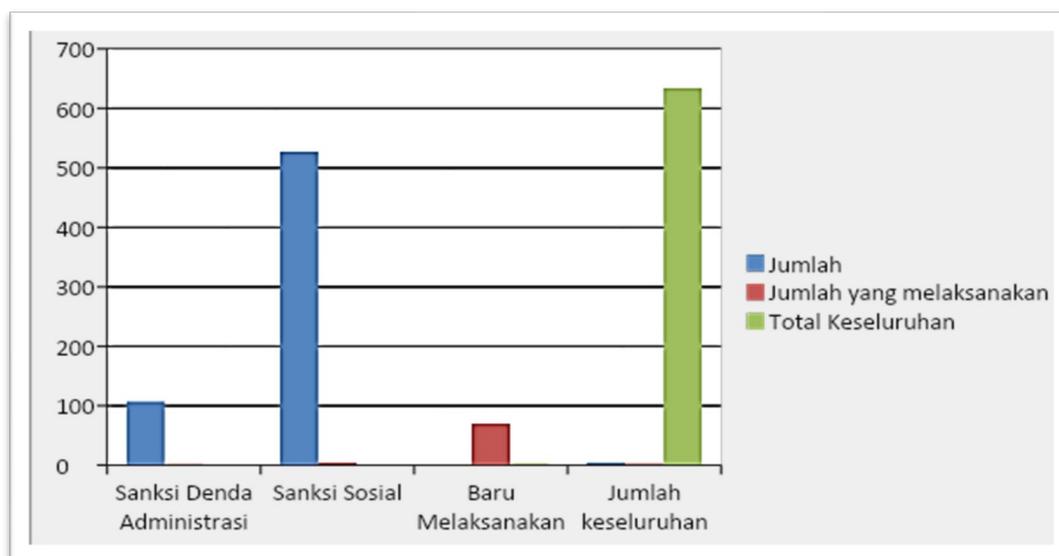


Figure 1. PSBB violation sanctions Jakarta area

The imposition of criminal sanctions on violators of PSBB also functions as a means of law enforcement. However, the application of this criminal sanction must be applied objectively, rationally, and proportionally as a means of deterrence and public education to be aware of the dangers of Covid-19, as well as advice on social control so that the public obeys the rules of *social distancing* and *physics distancing*.

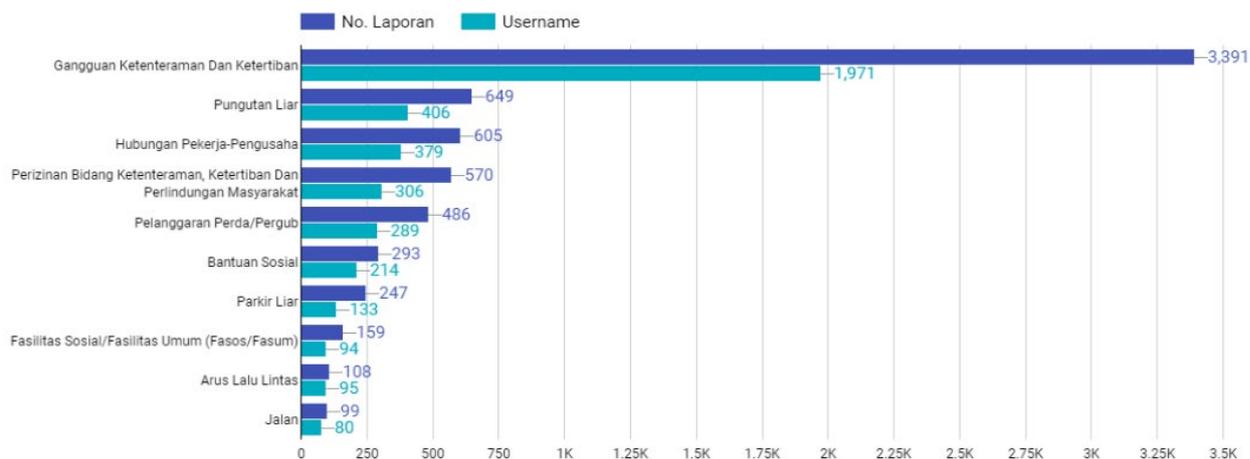


Figure 2. PSBB Most Popular Report Category for Jakarta Area

From the picture above, we can see how throughout the PSBB period, including the Transitional PSBB, the Peace and Order Disruption category topped the list of the ten most popular report categories, with a total of 3,391 reports. Violations related to physical distancing rules, such as crowding more than five people, fall into this category.

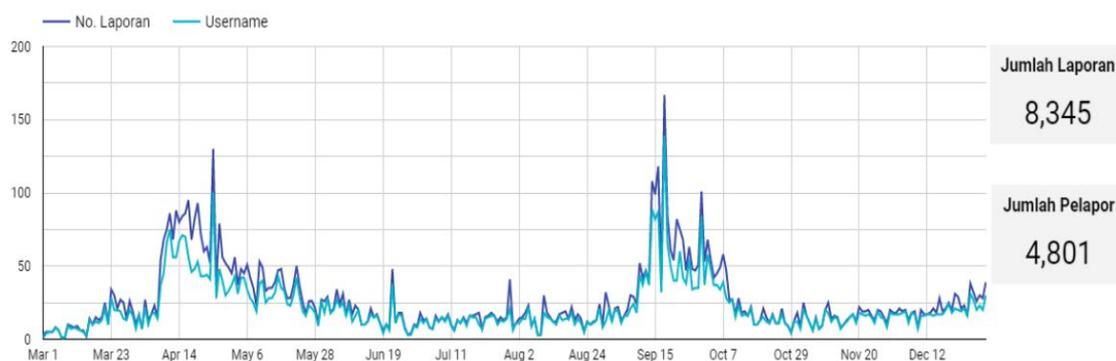


Figure 3. PSBB Report Trends In Jakarta



Figure 4. Report CompletionRate Reaches 97,7% in Jakarta

Data on reports of PSBB violations throughout 2020. Of the total 8,345 reports that were accommodated in the Rapid Community Response (CRM) system, as many as 8,155 or 97.7% were successfully followed up by the ranks of the Jakarta Government.

5.2 Obstacles Faced in Implementing Criminal Sanctions Against Large-Scale Social Restrictions Violators and Efforts to Get Out

Article 93 of Law Number 6 of 2018 concerning Health Quarantine has clearly stated that anyone who does not comply with the implementation of health quarantine and/or hinders the implementation of quarantine health to cause a public health emergency shall be punished with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). However, in practice, the implementation of these criminal sanctions still encounters several obstacles. The following is a list of these obstacles and their solutions.

1. The unclear reference to the article regarding criminal threats in the regional regulation on PSBB;
If you examine Law Number 6 of 2018 concerning Health Quarantine, PSBB is indeed a form of implementing health quarantine which is explained in Article 15 of the law that PSBB is a form of activity from health quarantine at the entrance and in the region. However, what must be considered in Article 93 of Law Number 6 of 2018 concerning Health Quarantine is the next element, namely causing a public health emergency.

To ensnare someone with a criminal threat, every element in the criminal article must be fulfilled, Article 93 contains an element of consequence, that violations of actions in the PSBB can be punished if they cause a public health emergency. Meanwhile, what is meant by a public health emergency in Article 1 number 2 of Law Number 6 of 2018 concerning Health Quarantine is an extraordinary public health incident marked by the spread of infectious diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food that poses a health hazard and has the potential to spread across regions or across countries. This means that PSBB violations in the form of not complying with or hindering the implementation of PSBB can be punished only if they result in extraordinary public health events marked by the spread of infectious diseases that have the potential to spread across regions or across countries.

2. The lack of precise application of criminal sanctions against PSBB violators in the PSBB Covid-19 pandemic situation
Is one manifestation of the health quarantine. In DKI Jakarta, the Police have enforced the regulation, even though the PSBB in DKI Jakarta was only effective on April 10. A total of 18 (eighteen) people were arrested for not heeding the call for *social distancing* at Bendungan Hilir and Sabang. The article imposed in Article 93. This sanction article was criticized and deemed inappropriate. In a press statement Number: 012/Humans/KH/IV/2020 dated April 8, 2020, Komnas HAM stated that instead of imprisonment, PSBB violators should be punished with sanctions and/or social work.

The main reason is that the current condition of the prison is overcapacity. The Ministry of Law and Human Rights even released 30 (thirty) thousand inmates for that reason. It would be contradictory if, on the one hand, the government gave freedom, the apparatus actually carried out arrests and imprisonment. Another reason is that the application of sanctions is not in accordance with the principle *ultimum remedium* (criminal law being the last resort of law enforcement). In addition, sanctions for fines and/or social work are considered more appropriate to raise awareness, be more useful, and encourage solidarity among others.

3. The difficulty of implementing Law Number 6 of 2018 concerning Health Quarantine in all regions
In its implementation, Law Number 6 of 2018 concerning Health Quarantine will be difficult to apply in all regions. This is because the condition of each region has a different level of vulnerability so that it affects the policies taken by the region.

As an effort to solve the problems above, local governments can make policies in the form of regional regulations, so that they can overcome various problems that arise due to the spread of Covid-19 in their regions. The Covid-19 pandemic not only requires solutions from the health and economic fields but also responds with a socio-cultural approach because the increasingly wide spread of the virus and the difficulty of overcoming this pandemic are more of a socio-cultural problem than a health problem.

6. Conclusion

The application of criminal sanctions in Law Number 6 of 2018 concerning Health Quarantine for violators of Large-Scale Social Restrictions (PSBB) in the Greater Jakarta area is in the form of imprisonment and fines.

The imposition of criminal sanctions on violators of PSBB rules must be applied objectively, rationally and proportionally as a means of deterrence and public education to realize the impact of Covid-19 as well as a means of social control so that people comply with the rules of social distancing and physics distancing. Obstacles encountered in the application of criminal sanctions against violators of Large-Scale Social Restrictions (PSBB) and efforts to solve them include unclear references to articles regarding criminal threats in regional regulations regarding PSBB. In the context of accelerating the handling of Corona Virus Disease 2019 (Covid-19), which must explain precisely what actions in the PSBB, if not implemented, will result in a public health emergency, only then can regional regulations implement PSBB in accordance with clear boundaries. Another obstacle is the lack of precise application of criminal sanctions against PSBB violators in the Covid-19 pandemic situation. As an effort to overcome this obstacle, namely the application of criminal sanctions against PSBB violators is an *ultimum remedium* or last resort.

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