



Effectiveness Implementation of Fine Criminal Sanction in Extraordinary Events or Pandemic Outbreak According to the Law Number 17 of 2023 Concerning Health (Health Omnibus Law)

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ABSTRACT

Pandemic outbreak is a non-natural disaster that is physically invisible and difficult to detect. Along with the experience and high death rate in Covid-19, it has encouraged the Government to issue Law No. 17 of 2023 concerning Health (Health Omnibus Law). Criminalization is the path chosen by the government as a form of state priority for the people in overcoming the spread and transmission of the pandemic outbreak. However, currently there is still a polemic about how legal action uses criminal sanctions during a pandemic. The study was conducted using a descriptive method, which aims to examine the effectiveness of the application of criminal sanctions for anyone who obstructs the implementation of efforts to control pandemic outbreak or violates health protocols. The results of this study indicate that Article 446 of Law No. 17 of 2023 concerning Health (Omnibus Law of Health) is the basis for criminalization for violators of the pandemic outbreak response, with the imposition of a maximum criminal fine of IDR 500,000,000 (Five hundred million Rupiah). With restrictions on movement accompanied by administrative sanctions alone, it has made the people's economy very difficult, especially if it is added to criminal fine. The sense of justice and legal certainty for the community is increasingly absent. The application of criminal sanctions should not be applied during a pandemic, because everyone has the right to maintain their own lives. This only adds to the suffering of people who do not agree with government policies by forcing them to follow health protocol rules that are contrary to their conscience.

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INTRODUCTION

The Covid-19 pandemic situation that Indonesia and the world are facing is real evidence that the pandemic is not only about health issues. The pandemic has made us aware that problems that are always related to society will always be related to the law (*ubi societas ibi ius*). Learning from the experience of dealing with the COVID-19 outbreak which is difficult to detect, the government must really work hard to be able to overcome its spread. So far, the policy to overcome the pandemic outbreak is to carry out tracing, rapid tests and physical distancing. The government routinely provides appeals for worship, study, and work activities to be carried out at home. However, not everyone is willing or able to do this, such as those who work in the private sector and must still go in or who are in the public service. The worst possibility is that the Covid-19 pandemic will continue to spread because physical restrictions have not been implemented effectively. The ineffectiveness of these physical restrictions has caused the transmission of the Covid-19 outbreak in Indonesia to accelerate. For this reason, various efforts have been made by the government through various forms of policies or legal regulations by implementing strict sanctions in their implementation and for those who resist policies or legal regulations that have been implemented.

Seeing the many disputes in handling the Covid-19 outbreak, especially the fundamental problems that occur because they are related to the ethical basis of various views, the influence of teachings, dogmas, religions, noble values and various values as the basis for considering the behavior of each individual, citizen, society that faces socio-religious, socio-economic and socio-political problems. At this point, the function of the state is needed to prevent and hinder the freedom carried out by one person against another. However, at the same time, excessive state intervention in the personal lives of citizens is also vulnerable to rejection from society itself. The awareness of justice in relation to the law is not only owned by the people. The law freely determines its own behavior to overcome the problems that arise during the pandemic outbreak.

The new legal product issued by the government is Law 17 of 2023 concerning Health. This law replaces Law Number 36 of 2009 concerning Health and 10 other laws related to the provision of health services. The law also regulates the provisions of criminal fines for anyone who intentionally obstructs the implementation of efforts to overcome the pandemic outbreak. This is seen as one of the government's seriousness in handling the transmission of the pandemic outbreak in the future. However, there are many pros and cons regarding the provisions of this criminal fine. Does the criminal fine realize justice for the community in a pandemic outbreak? And will its implementation be effective when a pandemic outbreak occurs again? Regulations that do not contain moral and ethical values are not real laws. If the law is free from the norms of Justice, the possibility is that the law that is established is an unjust law. It takes a shared understanding, especially the government, that the law must be able to realize Justice in people's lives. So according to the view of the real law is positive law which is a realization of the principles of Justice. Therefore, it is necessary to study more deeply the effectiveness of the application of criminal sanctions in the form of fines in an epidemic situation based on Law 17 of 2023 concerning Health.

Research Problem

The problem that arise from this topic is how effectiveness implementation of fine criminal sanction in extraordinary events or pandemic outbreak according to the law number 17 of 2023 concerning health (Omnibus Law of Health).

RESEARCH METHOD

In writing this paper, the method used is a normative legal approach, namely writing that emphasizes the interpretation of positive law and analyzing using library materials, written legal norms. Normative research includes research into legal principles, legal systematics, positive legal inventory, philosophical basis (dogma or doctrine) of positive law. When viewed from the nature of the writing, the method used is a descriptive analytical method, namely trying to describe the symptoms that arise in society when criminal sanctions in the form of fines are applied during a pandemic and trying to analyze and provide a solution. The method used is based on general data and information, including Legislation, theories and doctrines, expert opinions, and several legal cases that have occurred.

DISCUSSION

Penal Policy during Pandemic Covid-19 in Indonesia

Criminal law as the basis for the state to enforce the rule of law for the benefit of both individuals and society, considering the importance of criminal provisions as a tool to protect all existing interests, especially in a pandemic situation. It is undeniable that the Covid-19 pandemic which came suddenly and quickly hit almost all countries in the world, requires preventive and repressive measures. The law clearly and firmly regulates the steps that must be taken when a Public Health Emergency occurs in the Health Quarantine Law. Therefore, fair criminal law is an important aspect in realizing an orderly and harmonious society. Just as good law is a law that is able to provide justice and a sense of security to society, law exists for humans and not the other way around. Law as a philosophical basis for providing justice to society is confined to a standardized concept called legislation. It is important to re-examine what kind of law we want to apply to society. The turmoil of change and problems will continue to challenge rigid laws that do not favor the sense of justice of society, especially in a pandemic situation. Breakthroughs are present in the concept of progressive legal thinking. The idea of progressive law takes part in viewing law in efforts to enforce criminal law. Progressive law takes over how law is present by emphasizing humans as the center of law enforcement itself. Insight studies in progressive law require that the law not only enforces the rules written in the law. Progressive law requires that the law be able to see humans as the main reason for the presence of the law itself.

Therefore, humans are not tools that are only seen as objects of the law, but humans are the subjects of the law. Reflecting on the idea of progressive criminal law and the importance of enforcing criminal law that provides a sense of justice, criminal law needs to absorb and protect the legal interests of society during this pandemic. It has been stated that the application of criminal law is not always the main one (primum

remidium). Sometimes criminal law is the last weapon in law enforcement (*ultimum remidium*). Especially when facing a dilemma due to the Covid-19 pandemic. The framework for the application of sanctions to violators needs to be based on the philosophy of Indonesian national life, namely balance, harmony, and harmony between social and individual life. Applying criminal sanctions also needs to consider the principles of justice and legal benefits. Legal breakthroughs are needed to be able to execute the application of criminal law that prioritizes human interests. The principle of restorative justice is present as one of the principles of law enforcement in resolving legal problems that prioritize recovery. Restorative justice is an alternative resolution of criminal acts in the criminal justice procedure mechanism that focuses on the process of dialogue and mediation to create a fair and balanced case resolution and emphasizes the importance of restoring the original state and restoring good community relations patterns and not as a form of retaliation. The principle of restorative justice emphasizes how to improve the situation and how the perpetrator can correct his mistakes. The use of restorative justice in criminal law during the Covid-19 pandemic is very important to understand considering that the resolution of criminal cases does not have to use criminal sanctions considering the condition of correctional institutions which are already inadequate (overload capacity).

The application of restorative justice in enforcing criminal law policies during this pandemic will certainly bring more benefits and legal justice considering that the community also understands the importance of working together to obey and not obstruct the implementation of Health Quarantine. However, it is undeniable that violations of the law will always occur. The existence of these criminal provisions guarantees the certainty of the application of criminal sanctions for every violator. However, the application of this criminal law also considers justice and legal benefits. In addition, the application of criminal law in the principles of *primum remidium* and *ultimum remidium* is also considered. Restorative justice is also a special consideration in implementing criminal law during a pandemic.

Implementation of Fine Criminal Sanctions in Pandemic Outbreak

Before the issuance of Law No. 17 of 2023 concerning Health (Omnibus Law), Indonesia already had several laws governing health and disease outbreaks. One of the related laws is Law No. 6 of 2018 concerning Health Quarantine. According to its considerations, the Health Quarantine Law was formed based on considerations of advances in transportation technology and the era of free trade which are at risk of causing health problems and new diseases or old diseases with faster spread and potentially causing public health emergencies, thus requiring comprehensive and coordinated disease prevention efforts and health risk factors, and requiring resources, community participation, and international cooperation. The existence of the Health Quarantine Law is expected to bring something new to Indonesia in responding to every disease outbreak, especially during the Covid-19 pandemic. The government is trying its best to reduce the number of people exposed. One way the government does this is to maximize the use of criminal sanctions proportionally and wisely. The legal provisions of Article 93 of the Health Quarantine Law state that anyone who violates or even obstructs the implementation of health quarantine as referred to in Article 9 paragraph (1) can be punished with imprisonment and/or a fine. Article 9 paragraph (1) of the Health Quarantine Law states that everyone is required to comply with and participate in the implementation of health quarantine. Article 1 number 1 of the Health Quarantine Law states that Health Quarantine is "an effort to prevent and counteract public health risk factors that have the potential to cause public health emergencies." Thus, all maximum power and efforts are made to support health quarantine.

The provisions regarding criminal fines are regulated in Article 93 of Law No. 6 of 2018 concerning Health Quarantine, which states that: "Any person who does not comply with the implementation of Health Quarantine as referred to in Article 9 Paragraph (1) and/or obstructs the implementation of Health Quarantine, thereby causing a Public Health Emergency, shall be punished with imprisonment for a maximum of 1 (one) year and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)."

Based on that provision, in Article 93 of the Health Quarantine Law, there are two important variables along with the criminal sanctions regulated therein. First, namely the act of "not complying" with the provisions of Article 9 Paragraph (1) of the Health Quarantine Law. Second, namely the act of "obstructs the implementation of health quarantine which causes a health emergency". Based on the method of legal interpretation according to linguistics (Grammatical) and Legal Interpretation, it can be concluded that Article 93 of the Health Quarantine Law already covers all health quarantine efforts including matters regarding the Implementation of Community Activity Restrictions (PPKM), compliance with health protocols, burial of the bodies of Covid-19 victims, implementation of Vaccinations for the community, and so on. The problem that arises, if we look at and examine Article 93 of the Health Quarantine Law in detail, the legal provisions regulate and require the existence of a "consequence" (*materiele delicten*) arising from a criminal act in this case, namely violating the provisions of health quarantine, resulting in a health emergency, which will make the provisions of the law difficult to enforce and implement. This is because the causality or cause and effect relationship of the criminal law realm is difficult to fulfill or will never be fulfilled at all. Legal consequences for a criminal act can occur if there is a reason (*causal verband*).

In addition to the above problems, the problem that arises from the existence of Article 93 of the Health Quarantine Law is the existence of phrases that are considered open to multiple interpretations, such as "obstructing" which is considered to be an analogy. In fact, in criminal law which is closely related and cannot be separated from the principle of legality, making an analogy is something that is absolutely not allowed. The phrase "obstructing" in Article 93 of the Health Quarantine Law will open up a gap for law enforcers to use analogy as an interpretation, especially for judges. This is because there is no clear definition in the Health Quarantine Law regarding the phrase "obstructing". In short, a formulation of an Article that is contrary to or inconsistent with the principle of legality (legal certainty) will open up space for the use of analogical interpretation. The criminal provisions of the Health Quarantine Law contain an absolute criminalization system. In fact, in a public health emergency, the criminalization aspect should be used as a last resort or not prioritized. Even though it is necessary, the appropriate sanctions to be given to violators of the implementation of health quarantine do not always involve absolute criminal penalties considering that health emergencies are not the same as normal situations.

The issue above should be a lesson for the government in making a new Law on Health. However, what happened was the opposite, namely with the issuance of Law No. 17 of 2023 concerning Health, in which Article 446 regulates criminal sanctions in the form of fines which state that: "Any person who does not comply with the implementation of efforts to control KLB and Epidemics and/or intentionally obstructs the implementation of efforts to control KLB and Epidemics as referred to in Article 400 shall be punished with a maximum fine of IDR 500,000,000.00 (five hundred million rupiah)."

Although imprisonment has been removed from the substance of the article, the criminal fine sanction stipulated in Law No. 17 of 2023 concerning Health is higher in value than that previously stipulated in Law No. 6 of 2018 concerning Health Quarantine. A criminal fine is a punishment in the form of an obligation for a person to restore legal balance or erase his mistakes by paying a certain amount of money. Based on this understanding, the criminal fine sanction can be interpreted as a threat of punishment, as a means of forcing compliance with a rule or principle, law or public legal norm that threatens unlawful acts by paying a certain amount of money as punishment for an act that violates the regulation. In its implementation in a pandemic outbreak, criminal fines actually become a burdensome punishment for people who cannot meet the nominal fine.

Niniek Suparni provided a lot of input from the justice side regarding the implementation of fines, including:

Fine payments are easy to implement and can be revised if there is a mistake, comparable to other types of punishment, such as imprisonment which is difficult to utilize;

Fines are a punishment that benefits the government because it does not cost much, if not accompanied by imprisonment for those who are unable to pay;

Fines are easy to see, can be arranged so as not to surprise violations and other circumstances more easily compared to other types of punishment;

Fines do not bring or result in a disreputable name like that experienced by those sentenced to prison;

Do not hinder violators from improving their lives;

Fines will become regional and city state income.

The weaknesses contained in criminal fines are as follows:

Criminal fines can be paid or borne by a third party (employer, husband or wife, parents, friends/good acquaintances and others) so that the punishment imposed is not directly felt by the convict himself. This results in the failure to achieve the nature and purpose of punishment to foster the perpetrator of the crime to become a useful member of society, and to educate the perpetrator of the crime to be responsible for his actions;

Criminal fines can also burden innocent third parties, in the sense that third parties are forced to share in the punishment.

This criminal fine is more beneficial for people who are able, because for those who are unable, no matter how much the fine is, it is still a burden or problem, so they tend to accept other types of punishment, namely deprivation of liberty;

There are difficulties in the implementation of the collection of fines by the executing prosecutor, especially for convicts who are not detained or not in prison.

Of the several weaknesses of criminal fines that are most often highlighted, namely when viewed from the perspective of general justice, there is an assumption that criminal fines are more beneficial for people who are able, while from the perspective of the purpose of punishment, imposing criminal fines on people who are able (rich) is considered to have no special preventive power.

CONCLUSION

Departing from the many problems that exist, imposing criminal sanctions on people who violate is not the only solution or not the main solution. The imposition of criminal sanctions must always be ultimum remedium, meaning that criminal acts are always the last resort when all efforts have been made and have not yet succeeded. Law is not only limited to the form of legislation (legal material) alone, but also includes the law enforcement, culture and facilities and infrastructure, so that it is said by him that law is a system. Understanding the provisions of criminal law on fines in the Health Law is very important considering that the implementation of the pandemic period by the Central Government has had a significant impact on the regulation of outbreak management in the regions. Moreover, the formulation of the criminal provisions of the Health Law is too abstract or broad. It would be better to try to implement restorative justice, which has previously been practiced by the Ministry of Law and Human Rights of the Republic of Indonesia, namely by issuing Regulation of the Minister of Law and Human Rights Number 10 of 2020 concerning the Requirements for Granting Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Overcoming the Spread of Covid-19. This seems more positive, considering that during the pandemic, the entire community felt the negative impact, especially on health and financial.

Therefore, there needs to be harmony between all elements of law; legal substance, namely government regulations, legal structure, namely the government and the parties implementing and supervising, and also from the culture or legal culture, namely the awareness of the community itself to implement government policies properly, not only with fear of the threat of criminal penalties alone. The goal is to prevent overcriminalization based on the many regulations and problems of the relevant laws and regulations, so that certainty, justice, and legal benefits for the community will be achieved.

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