

Limitations for Formulation of Criminal Provisions in Regional Regulations

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Abstract. The purpose of this study is to examine the formulation of criminal sanctions in regional regulations and the obstacles to enforcement of criminal sanctions in regional regulations. The approach used in this research is the legal approach. This research data collection technique was carried out through conventional and online literature searches. The data analysis technique used in this study is qualitative because the data is presented in a narrative-descriptive manner. The results of the study show that criminal sanctions in regional regulations still emphasize retaliatory criminal sanctions which view that punishment is retaliation for mistakes. Ideal regional regulations, the content of which is both the formulation of criminal acts and the sanctions, is the elaboration of higher laws and regulations. The content must contain the conditions of the area concerned, do not conflict with the public interest and the laws and regulations above it and do not conflict with the authority that has been given, either by law or by codified criminal law. Violations of regional regulations that occur generally occur due to a lack of public awareness and participation in maintaining peace and public order. It is known that there is a Civil Servant Investigator in enforcing criminal sanctions in regional regulations. It can be seen the problems faced by Civil Servant Investigators in Tegal Regency in enforcing criminal sanctions in regional regulations.

Keywords: Region, Regulation, Criminal

1. Introduction

Criminal law in its development turns out to be increasingly used and relied upon in order to regulate and bring order to the community through statutory regulations. The dynamics of the law can be seen from the existence of a policy on the use of criminal sanctions through the inclusion of a chapter on "criminal sanctions provisions" at the end of most of the products of legislation in Indonesia [1]. The inclusion of the chapter on criminal provisions is not only seen in the products of central legislation in the form of laws, but can also be seen in the products of local laws and regulations in the form of regional regulations [2].

So far, in legislative practice in the regions, there is a tendency to regulate various matters with regional regulations accompanied by criminal threats [3]. The existence of criminal law with its criminal sanctions is still prioritized in the policy of drafting regional regulations, even though regional regulations are not actually criminal legislation in the true sense. Regional regulations are seen from the basis of their formation and the material regulated is actually included in the scope of administrative law regulations.

The existence of criminal sanctions in regional regulations which are part of administrative law is only to strengthen administrative sanctions (administrative penal law)

[4]. The logic is that criminal sanctions should be used if administrative sanctions have not hit. In addition, regional regulations whose purpose is more to regulate economic activities and government administrative activities, if a violation occurs, it will actually be faster if they use more economical and administrative sanctions.

The use of criminal sanctions in regional regulations can essentially be said to be part of criminal politics or criminal policy [5]. The main purpose of loading the threat of criminal sanctions in regional regulations is actually only to force the public to obey the contents of the regional regulations. It can be seen that enforcing the provisions of regional regulations, the use of the type of imprisonment is still prioritized for law enforcement of regional regulations in order to support the implementation of regional development [6]. However, in the provisions of the Law of the Republic of Indonesia Number 23 of 2014, which gives the authority to local governments to use criminal law provisions in the formation of regional regulations, it becomes a separate problem when viewed from the overall criminal system [7].

The use of criminal sanctions against the provisions of regional regulations that are included in the scope of administrative law, it is interesting to question whether the use of criminal law in the field of administration in Indonesia can be referred to as administrative penal law and whether the offense it creates can be identified with terms known in the literature, namely administratif delikten, regulatory offenses [8]. Formulating a criminal act in a regional regulation is a tough and difficult job. This matter that must be formulated is not a concrete event, but as far as possible the formulation must be in such a way that it covers everything and in all circumstances, so that no action or opportunity is left to escape the formulation. The formulation of the problem in this research are How to formulate criminal sanctions in regional regulations?, and What are the obstacles to enforcing criminal sanctions in regional regulations?

2. Method

This type of research is library research [9]. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials[10]. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature.

3. Discussion

3.1. Formulation of Criminal Sanctions in Regional Regulations

The product of regional regulations is the authority of the regional government and the Regional People's Representative Council. Especially since the implementation of regional autonomy through the Law of the Republic of Indonesia Number 5 of 1974 concerning the Principles of Government in the Region and the Law of the Republic of Indonesia Number 22 of 1999 concerning Regional Government as amended to Law of the Republic of Indonesia Number 9 of 2015 concerning the Second Amendment On the Law of the Republic of Indonesia Number 23 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 32 of 2004.

Regional regulations are formed by the Regional People's Representative Council which are discussed together with regional heads for mutual approval. Discussion and mutual agreement on the formed regional regulations take place in the Regional People's Representative Council. The formation of regional regulations does not just happen, but begins

with the process of drafting regional regulations. The quality of a regional regulation and decision making on the draft regional regulation into a regional regulation is largely determined by how and in the manner in which the draft regional regulation is drafted. It takes shared wisdom between the regional government, the Regional People's Representative Council, and the community in making regional regulations.

As emphasized in the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. The rule of law is a state that guarantees human rights [11]. The rule of law is an ideal definition and is a condition (*condition sine quanon*) [12]. The rule of law is considered as a complement to a democratic state. The product of regional regulations in which it regulates permits and/or obligations of community members in certain contexts, especially in addition to realizing security and public order, and harmony and success, also supports the income of money for regional development.

The process of law formation (legislation) is a relatively very important process as it is relatively important to see the process of implementation and enforcement of the law itself [13]. The processes that occur in the formation of the law will, however, also influence the process of implementing and enforcing the law. Errors in the process of forming the law can have fatal consequences, because from the process of forming the wrong law, it can give birth to legal products that are criminogenic in association with the community.

The making of regional regulations involves the ranks of the Regional People's Representative Council and the regional government. Political and legal interactions in terms of making local regulations, in the event that there are limited human resources at the Regional House of Representatives and local governments, sometimes local regulations are found to be handed over to academics in various law faculties, both private and public. In addition, the Legal Division at the Regional Office of the Ministry of Law and Human Rights also provides supervision and assistance to support the making of regional regulations.

As a democratic legal state, implicitly and explicitly all products of legislation in Indonesia cannot conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia. In other words, the Indonesian legal system is based on Pancasila and the Constitution of the Republic of Indonesia. Indonesia in 1945 [14]. In accordance with Article 238 of the Law of the Republic of Indonesia Number 23 of 2014, the product of regional regulations contains the threat of imprisonment or fines, sanctions that are restoring to their original condition, and administrative sanctions. The phenomenon of the inclusion of criminal sanctions in regional regulations, in addition to enforcing the effectiveness of regional regulations made, is also adjusted to the harmony and proportionality that violators of regional regulations can or deserve to be given criminal sanctions [15].

Regarding the inclusion of criminal sanctions contained in the regional regulation itself, it is closely related to the purpose of punishment [16]. Basically there are three main ideas about the goals to be achieved with a punishment including:

1. To improve the personality of the criminal himself.
2. To make people become deterrent in committing crimes.
3. To make certain criminals incapable of committing other crimes, namely criminals who by other means cannot be repaired.

The policy of criminal sanctions in regional regulations so far refers to the types of crimes regulated in Article 10 of the Criminal Code. According to Article 10 of the Criminal Code, the punishment consists of the main punishment consisting of the death penalty, imprisonment, confinement, fines, criminal closures, and additional penalties consisting of revocation of certain rights, confiscation of certain goods, and announcement of the judge's

decision. . The main types of crimes used in regional regulations are imprisonment and fines. additional punishment in the form of confiscation of certain goods. In addition to using criminal sanctions regulated in the Criminal Code, regional regulations also use administrative sanctions.

The use of criminal sanctions in regional regulations is a warning (prevention) so that the substances regulated in the legislation are not violated. In general, there is no point in including obligations or prohibitions for citizens in local regulations, when the rules of conduct cannot be enforced by state administration.

The use of criminal law policies in tackling crime is the basis for the operation of the criminal justice system [17]. The existence of criminal sanctions in administrative law is essentially a manifestation of the policy of using criminal law as a means to enforce or implement administrative law or in other words it is a form of functionalization or operationalization or instrumentalization of criminal law in the field of administrative law. The function of administrative criminal sanctions mainly has an instrumental function, namely controlling prohibited acts. Administrative criminal sanctions are aimed at protecting the interests protected by the violated provisions. The existence of criminal sanctions in administrative law is closely related to efforts to achieve the objectives of the administrative law regulations themselves.

The types of criminal sanctions used in regional regulations are closely related to the weight and qualifications of criminal acts regulated in regional regulations [18]. Referring to the division of offense qualifications in the Criminal Code which divides crimes and violations, the Law of the Republic of Indonesia Number 9 of 2015 concerning the Second Amendment to the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government generally qualifies criminal acts of violating regional regulations as violations.

With regard to such qualifications, in general, the regional legislature in formulating the types of criminal sanctions in regional regulations places more emphasis on confinement as an alternative to fines [19]. The legislators of regional government assume that the offenses regulated in regional regulations are offenses which according to their nature are mild, do not indicate the existence of a mental breakdown and do not show any evil nature in the perpetrators, so they are only threatened with imprisonment. Only in certain regional regulations such as regional regulations on local taxes are threatened with imprisonment.

If local regulations are free to include types of criminal sanctions in accordance with regulations that are higher above it will cause complications in the application of sanctions, whether carried out by Civil Servant Investigators in the region or Police Investigators, then legal remedies can be appealed to the high court or directly appealed to the Supreme Court. and if the criminal acts regulated in regional regulations are lighter in terms of punishment compared to the provisions of the laws governing them, of course, criminals will ask for lighter legal arrangements. Regional regulations must still have limitations on setting criminal sanctions as referred to in Law of the Republic of Indonesia Number 9 of 2015 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 32 of 2004 concerning Governance Regions and Law of the Republic of Indonesia Number 20 of 2004 concerning Amendments to Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation.

The basic concept of local governments in formulating criminal sanctions in regional regulations that are not delegated by law is that there is no uniformity, some regional regulations formulate sanctions by stating the minimum and maximum number of criminal sanctions, while some regional regulations only state the maximum limit of criminal sanctions

imposed and the amount of the fine imposed. Criminal sanctions in regional regulations still emphasize retaliatory criminal sanctions (retributive theory), which views that punishment is retaliation for mistakes that have been made with the aim of giving suffering to violators so that they feel the consequences of their actions, judging by the types of regional regulations sanctions that exist in Central Java.

Ideal regional regulations, the content of which is both the formulation of criminal acts and the sanctions, is the elaboration of higher laws and regulations [20]. The content must contain the conditions of the area concerned, not conflict with the public interest and the laws and regulations on it. Many regional regulations were canceled because the formulation of the crime did not meet legal standards, as well as the sanctions that were formulated. If the process of making local regulations is in accordance with applicable legal standards, The ideal can be effective, because it has fulfilled the juridical, sociological and physiological elements. The fact that the enactment of regional regulations is not fully in accordance with the ideal, many legal products in this case regional regulations do not fulfill all elements of effective law enforcement.

Formulating criminal regional regulations as far as possible in sync with the law above them by using the principle of *lex superiore derogat legi inferiore*, and aspects of equality and legal deviations by using the principle of *lex specialis derogat legi generalis*. The distribution of criminal sanctions in regional regulations can be qualified into confinement sanctions, fines and sanctions for recommended actions with administrative sanctions. Criminal sanctions in regional regulations generally use imprisonment and fines.

3.2. Obstacles to Enforcement of Criminal Sanctions in Regional Regulations

Every local government has the authority and responsibility for the wheels of government and its economy, in the sense that there is a right to regulate and manage their own household, then the region has the right to make regional regulations [21]. These regional regulations of course only apply and are enforced within the territory of each region which are special regulations in each region, but remain within the limits and supervision of the central government. The regional regulations must fulfill the limits of authority that have been determined with the attachment in relation to the central government which is manifested in the form of preventive supervision, prevention control and general supervision.

Regional regulations are regulations that contain the characteristics of each region as well as an elaboration of higher laws and regulations. Regional regulations contain provisions for criminal sanctions in the form of confinement and fines which are intended so that these regional regulations have sanctions for every community who violates, as stated in Article 238 of Law of the Republic of Indonesia Number 23 of 2014 as amended by Law of the Republic of Indonesia Number 9 2015 concerning Regional Government. Thus, local regulations must be enforced as part of law enforcement efforts.

Law enforcement is a problem faced by every society. The word law enforcement has the connotation of upholding, implementing provisions in society, so that in a wider context law enforcement is an ongoing process of realizing abstract concepts into reality. The law enforcement process in reality culminates in its implementation by law enforcement officials themselves.

Enforcement of rules or laws is defined as an effort by special law enforcement officials to guarantee and ensure that a regulation can be implemented as intended. In this regard, law enforcers can forcefully enforce the law to ensure that the law is truly upheld. There are several things that affect the implementation and enforcement of the law. Success in law

enforcement is determined by the substance of the law (legal products to be produced), legal structure (authority of law enforcement agencies), and the legal culture and culture of the community.

There are several things that affect the enforcement of the law. Among them are legal factors, namely statutory regulations, besides that law enforcers are also influential where they are the ones who create laws and enforce the law, law enforcement is also supported by infrastructure factors, and community factors, namely the place where the rules are recognized and implemented (sociological), and cultural factors.

The term sanctions in regional regulations is sometimes placed to group parts of punishment to enforce the regional regulations themselves, namely in the form of administrative sanctions, civil sanctions, and criminal sanctions in one chapter or section. The meaning of criminal cannot be separated from the term criminal law itself because crime is the main force of criminal law. In principle, criminal sanctions are the last action (*ultimum remedium*) if legal steps do not get results for law enforcement. In determining the crime, in addition to considering the impact caused by criminal acts in society and the element of wrongdoing by the perpetrator, they must also consider the evil nature of the act.

Enforcement of regional regulations is one of the authorities of district/city regional governments. This is as contained in the attachment of letter E number 1 point b of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government regarding the Division of Government Affairs in the Field of Public Peace and Order and Community Protection. With the enforcement of regional regulations, it is hoped that the number of violations of regional regulations in Tegal Regency will decrease. Violations of local regulations that occur generally occur due to lack of public awareness and participation in maintaining peace and public order. Activities that have been carried out are counseling, guidance and continuous supervision in order to increase understanding, awareness, and compliance with local regulations and regent regulations in order to maintain peace, public order and prevention of crime.

Seeing the vast territory of Tegal Regency which consists of 18 sub-districts and 286 villages/*kelurahan* and the population of Tegal Regency which reaches 1,437,225 people (BPS 2018 data), many issues of peace and public order must be addressed. As an effort to maintain peace and public order, the Civil Service Police Satpol conducts standby patrols throughout the Tegal Regency, which are the patrol targets, namely crowded places, night entertainment, street vendors selling along the shoulder of the road, places that are prone to disturbances to peace and order. general and local regulations violations.

Standby patrols are also carried out in the context of securing the anniversary of Tegal Regency, Eid al-Fitr, Independence Day of the Republic of Indonesia, Christmas and New Year and other local government activities. Enforcement of regional regulations for the Satpol Pamong Praja requires hard work and cooperation with relevant agencies and the community. It is known that there is a Civil Servant Investigator in enforcing criminal sanctions in regional regulations. This institution which according to the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government is entrusted with the authority to conduct investigations into violations of regional regulations. This is regulated in Article 74 of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government which confirms that with regional regulations other officials can be appointed who are given the task of investigating violations of regional regulations.

It is possible to submit investigations of violations of regional regulations to institutions other than the Police based on Article 6 of the Criminal Procedure Code and Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number

27 of 1983 concerning Implementation of the Criminal Procedure Code. After submitting the investigation of violations of regional regulations to the Civil Servant Investigative Agency, the authority to investigate violations of regional regulations that was previously submitted to the help magistrate (which mostly consisted of the Civil Service Police who had received a vet from the Attorney General's Office based on HIR and RIB) has ended its authority on August 1, 1985.

The problems faced by Civil Servant Investigators in Tegal Regency in enforcing criminal sanctions in regional regulations, namely :

1. Institutional
2. Human Resources
3. Network
4. Unfavorable Environment

Supporting and inhibiting factors will contribute to the success or failure of a process of implementing the authority of the Tegal Regency Civil Servant Investigator in enforcing criminal sanctions in regional regulations.

1. Supporting Factors
 - a. The ability of the Tegal Regency Civil Servant Investigator to carry out investigations
 - b. Level of education
 - c. Role of government/regulation
2. Inhibiting Factor
 - a. Facilities or equipment
 - b. Giving punishment/deterrent effect

The existence of Civil Servant Investigators in the context of enforcing criminal sanctions in regional regulations is important in addition to being intended to overcome the limited number of Polri investigators, it is also intended to make these investigators more professional considering that most of the substances regulated in regional regulations involve the fields of understanding, legal awareness of the community, public order and local levies. The existence of this Civil Servant Investigator personally and institutionally is not ready yet. So far, law enforcement of regional regulations is still carried out by the Police, assisted by public order officers from the regional government. The consequence of this is that the enforcement of regional regulations is hampered. Many violations of regional regulations are then left untouched by law enforcement.

4. Conclusion

Criminal sanctions in regional regulations still emphasize retaliatory criminal sanctions which view that punishment is retaliation for mistakes. A good local regulation, namely the content of both the formulation of a criminal act and its sanctions, is a higher elaboration of legislation. The content must contain the conditions of the area concerned, do not conflict with the public interest and the laws and regulations above it and do not conflict with the authority that has been given, either by law or by codified criminal law. The use of criminal sanctions in regional regulations is a warning so that the substances regulated in the legislation are not violated. After the purpose of the punishment has been determined, then what type and form of sanction is most appropriate for the violation of the regional regulation.

Violations of regional regulations that occur generally occur due to a lack of public awareness and participation in maintaining peace and public order. It is known that there is a

Civil Servant Investigator in enforcing criminal sanctions in regional regulations. It can be seen the problems faced by Civil Servant Investigators in Tegal Regency in enforcing criminal sanctions in regional regulations. Among them are about institutions, human resources, work networks, an environment that is not yet conducive. The inhibiting factors for implementing the authority of Civil Servant Investigators in enforcing criminal sanctions in regional regulations include facilities or equipment and the provision of punishment or a deterrent effect.

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