

Analysis of Criminal Aspects in Health Quarantine Law

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Abstract. Indonesia as a state of law has an obligation to make regulations regarding the COVID-19 pandemic. One of the health measures to reduce the spread of COVID-19 is quarantine. The difficulty of implementing criminal sanctions in the Health Quarantine Act. The purpose of this study is to analyze the form of criminalization in the Health Quarantine Act and analyze aspects of criminal liability in the Health Quarantine Act. The results show that the formulation of Article 93 of the Health Quarantine Act is problematic because it contains a rubber word clause, cannot be measured, and its application is potentially arbitrary. The clause in question is not complying with and must comply with the implementation of health quarantine. In addition, there is the term obstructing and causing a public health emergency. So there is ambiguity and liberal interpretation. Sentencing as an effort to provide appropriate criminal responsibility for violators of health quarantine is in the form of a restorative punishment, namely the restoration of the situation to the perpetrator and his environment and an integrative punishment, namely in the form of comprehensive prevention of a fatality in a public health emergency.

Keywords: Quarantine, Pandemic, Criminal

1. Introduction

The number of COVID-19 cases since it was first detected in Indonesia on March 2, 2020 and announced directly by the government, has shown a significant increase. Covid-19 is one of the legal and health events or phenomena that occur globally. This incident eventually caused several countries affected by COVID-19 to do everything they could to suppress the spread of the virus, one of which was to make regulations for the sake of handling COVID-19. Indonesia as a state of the law has the obligation to make regulations regarding the COVID-19 pandemic, both in the context of regulating health protocols, and the mechanism for implementing public activities, to the aspect of imposing sanctions on anyone who violates the provisions of the applicable laws and regulations. It is very appropriate if the Government of the Republic of Indonesia to publish a policy regarding the COVID-19 pandemic.

The legal policy is common in a country of law. The policies taken are based more on legal policy [1], which aims for the safety of citizens. Efforts to save citizens are the highest law for a country (*Salus Populi suprema lex esto*) [2]. This policy has been implemented by the government through Presidential Decree No. 11 of 2020 concerning the Determination of the Public Health Emergency of Coronavirus Disease 2019 (Covid-19). The Presidential Decree stipulates that COVID-19 is a type of disease that causes a public health emergency. This is a legitimacy that in Indonesia there has been a health emergency. Therefore, the state has fulfilled the requirements to carry out health quarantine efforts as regulated in the Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine.

One of the health measures to reduce the spread of COVID-19 is quarantine. Quarantine involves restricting the movement of both healthy and sick people with the aim of monitoring

and ensuring early detection of new cases. Quarantine policies were then modified in such a way by various countries. Some apply in full, Partially or locally and to a minimum. Indonesia modified it with the name Large-Scale Social Restrictions which were carried out per region based on the severity of the outbreak whose assessment was determined by the central government through the Ministry of Health [3].

A law is needed to save citizens from the covid-19 pandemic, and regulate people's lives so that order is created in an effort to handle the covid-19 pandemic which includes criminal sanctions to anticipate if other legal functions do not fulfilled. The law that contains criminal sanctions is nothing but criminal law, as a law that has the characteristics of criminal sanctions [4]. Criminal law really deserves space in the policy package for handling the COVID-19 pandemic in accordance with the general functions and special functions of criminal law. However, this argument does not deny the principle of criminal law as the ultimum premium. Ultimum premium is needed to consider first the use of other sanctions before harsh and sharp criminal sanctions are imposed, if other legal functions are lacking, then criminal law is used [5]. The legislators have formulated a legal policy for handling public health emergencies into a statutory regulation which then becomes a reference for efforts to handle the COVID-19 pandemic, namely the Health Quarantine Law and provides space for criminal law in it. Criminal provisions are contained in CHAPTER XIII Article 90 to Article 94

During the implementation of Large-Scale Social Restrictions, no one is subject to criminal sanctions, even though the activities carried out by the community are contrary to the policy of Large-Scale Social Restrictions. This is because the criminalization policy for criminals in a state of health emergency in the Health Quarantine Act is suspected to have been blurred so that it has an impact on the difficulty of implementing the criminal sanctions. The law is formed in such a way as to cope with the existing pandemic, but technical problems in law enforcement often occur in a regulation. Precisely in Article 93 of the Health Quarantine Act. If you look at the provisions, it is clear that in its elements there are two acts regulated in the article and can be punished. The ambiguity of the criminal provisions of Article 93 of the Health Quarantine Act is not limited to the aspect of determining the perpetrators of the crime, but also with regard to criminal causality. With the enactment of the Health Quarantine Law, it is hoped that there will be legal certainty regarding the control and prevention of significant virus transmission. Of course, the law does not only regulate the technical aspects of preventing and controlling the spread of the virus, but also regarding the application of criminal sanctions when a health emergency occurs. Based on the description of the background of the problem, the problems in this study can be formulated What is the form of criminalization in the Health Quarantine Act?, And What is the aspect of criminal liability in the Health Quarantine Act?

2. Method

This type of research is library research. 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 [6]. The approach used in this research is the statute approach. A legal approach is an approach that uses legislation and regulation [7]. Sources of data used in this study in the form of secondary data. Secondary data are data obtained from official documents, books related to the object of research, and research results in the form of reports, theses, theses, dissertations, and laws and regulations [8]. This research data collection technique was carried out through conventional and online literature searches. Conventional library searches are carried out by searching for library materials, purchasing books, and journals, and attending scientific activities. The data analysis method

used in this research is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and basic units of description so that themes can be found that are presented in the narrative form [9].

3. Result & Discussion

3.1. Forms of Criminalization in the Health Quarantine Act

Criminalization can be interpreted as an attempt to expand the validity of criminal law [10]. The legal principles of criminalization are basic conceptions, ethical norms, and basic principles of using criminal law as a means of overcoming crimes or things that are detrimental to the state and society. The principle of criminalization that is most important in determining whether an act is classified as criminalization is the principle of legality. The Indonesian government will not carry out a regional quarantine and this was conveyed by President Joko Widodo [11]. In his explanation, regional quarantine can have a big impact. The Minister of State Secretary also explained about not holding a regional quarantine because it is feared that the government will not be able to finance all the people who have been affected by COVID-19, so they can only carry out PSBB and lockdown, but if the situation becomes increasingly unfavorable, it is necessary to apply a lockdown and regional quarantine.

The formulation of Article 93 of the Health Quarantine Law is problematic because it contains word clauses that are rubbery, cannot be measured, and their application is potentially arbitrary. The clause in question is not complying with and must comply with the implementation of health quarantine. Both the words comply and disobey are clause formulations that have unclear measurements and give rise to multiple interpretations. In Article 93 of the Health Quarantine Law, a provision is clearly and clearly regulated regarding criminal provisions for violators of the implementation of health quarantine by dividing them into two types of offenses. In the first part, it is regulated that "Everyone who does not comply with the implementation of the Health Quarantine as referred to in Article 9 Paragraph (1)". The first element of Article 93 of the Health Quarantine Act is a formal offense that requires a criminal act to be judged from the aspect of action [12]. Second, it is regulated that "...obstructing the implementation of health quarantine so as to cause a public health emergency shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiahs).)".

The term "obstacles" is obscured (obscure libel) and gives rise to a liberal interpretation. This is contrary to the principle of clarity of formulation regulated in Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation, which *expressis verbis* reads that in forming laws and regulations must be carried out based on the principle of establishing good laws and regulations including the principle of clarity of formulation. The legislators did not provide a detailed explanation regarding the definition of "obstructing" in the article so that it would have implications for the application and enforcement of the law in society. The article which contains the phrase "obstructing" is experiencing problems in the field. It should be noted that in the KBBI the term hinder is the same as the meaning of hindering. Therefore, Article 93 of the Health Quarantine Act can cause obstruction of justice and legal uncertainty.

The next problem is in the phrase "causing a public health emergency". If we examine Article 93 of the Health Quarantine Act, a legal view emerges that placing the phrase "cause" in a formulation that should refer to and lead to an "effect" namely "public health emergency" is a mistake in a law formation. A formulation of the elements of a crime should pay attention to the aspect of criminal causality. Causality (causation) is a relationship or process between

two or more events or circumstances of events where one factor causes or causes another factor [13].

Referring to this, it can be concluded that the use of the phrase "Causing a public health emergency" is irrational and irrelevant in criminal law. According to the researcher, the appropriate term to use is "caused" because previously there has been an active action, namely "obstructing" as a (cause). The consequences of the offense must be in het algemeen voorzienbaar (in general it can be recognized as something that is very likely to happen). In het algemeen voorzienbaar is een hoge mate van waarschijnlijkheid (it is realized as something that is very likely to happen).

Regarding the ambiguity of the formulation of the law, it is stated that [14]:

"Laws and statutory regulations regulate various dimensions of people's lives. So that there is no doubt in it, the sentences used must be correct in their content and structure, standard, effective, not long-winded, not convoluted, not winged, and not having multiple meanings. The meaning of the sentence must be clear, not vague, not ambiguous, and the content of the information must be correct so that it does not complicate the understanding and application of the law and the legislation itself."

The phrase "obstructing" in Article 93 of the Health Quarantine Act will open a gap for law enforcers to use analogies as an interpretation, especially for judges. This is because there is no clear definition in the Health Quarantine Act regarding the phrase "obstructing". so if it can be concluded that the criminal provisions of the Health Quarantine Act are not in accordance with the current circumstances. And this rule is very difficult to use or enforce.

Article 93 of the Health Quarantine Act contradicts the legality principle of criminal law. In the formulation and application of the norms of criminal law articles, they must comply with several derived principles, such as *lex stricta*, namely the written law must be interpreted rigidly, cannot be expanded or have multiple interpretations, and *lex certa* which means that the law must be clear and prioritize the importance of certainty as a goal. the earliest laws.

In simple terms, it is not stated in the criminal element of the article that people who violate PSBB can be punished. However, in the interpretation of the legal text of the French Penal Code which reads *la loi poenale est d'interpretation stricte* (criminal law must be interpreted narrowly) [12]. Then it also relates to the interpretation of the law *titulus est lex est rubrica est lex* (the title of the legislation and the chapter of the legislation that determines). So it can be seen that Article 93 of the Health Quarantine Law already covers all health quarantine efforts, including the PSBB.

The ambiguity of the criminal provisions of Article 93 of the Health Quarantine Act is not limited to the aspect of determining the perpetrators of the crime, but also with regard to criminal causality. That the legal consequences of a criminal act can occur if there is a cause (causal verband) [15]. If that is the context, it will be difficult to determine when and to whom the article will be applied. Considering that public health emergencies have occurred before and have been determined by the President.

PSBB is different from quarantine. According to Article 93 of the Health Quarantine Law, only a violation of quarantine can be subject to criminal sanctions according to Article 93 of the Health Quarantine Law. Criminal acts for violating the PSBB are not regulated in the Health Quarantine Act. Sanctions for PSBB violators are regulated by the Regional Government (Pemda), either in the form of a Governor's Regulation (Pergub), a Mayor's Regulation (Perwali), or a Regent's Regulation (Perbup). For example, the DKI Provincial Government which includes a fine of Rp. 50 million for PSBB violators.

PSBB is not as much as regional quarantine. Government Regulation Number 21 of 2020 defines PSBB as restrictions on certain activities in an area suspected of being infected with

COVID-19. In the implementation of PSBB, according to Minister of Health Regulation Number 9 of 2020, restrictions include holidays from schools and workplaces, religious activities, restrictions on activities in public places, to modes of transportation, there is no prohibition against going in and out of an area and the necessities of life are not borne by the central government. While the criteria for regional quarantine are that the quarantine area is given a quarantine line and is always guarded by officers, quarantined residents cannot enter and exit the quarantine area, and the basic living needs of people and food for livestock in the quarantine area are the responsibility of the central government.

Local governments wishing to implement PSBB must obtain presidential approval, through the minister of health. Furthermore, the Minister of Health in determining the PSBB takes into account the considerations of the Chief Executive of the Task Force for the Acceleration of Handling Corona Virus Disease (Covid-19). On the other hand, the chief executive can propose to the minister of health to determine PSBB in certain areas and if the minister of health approves the proposal then the regions in certain areas are obliged to implement PSBB [16].

Everyone is obliged to comply with the implementation of health quarantine. This means that all residents in all regions of Indonesia can be punished according to Article 93 of the Health Quarantine Law. There are controversial regulations here, namely that there are areas that do not apply PSBB because there is no Ministry of Health approval. On the one hand, the government limits regions from implementing PSBB by requiring certain requirements, while the Health Quarantine Law, Article 9 Paragraph (1) states the obligation to comply with the implementation of health quarantine for everyone throughout Indonesia. In this case, the question is that the punishment is intended for quarantine violations only or PSBB or both. There are no regulatory documents that regulate it, giving rise to multiple interpretations and weak legal certainty.

3.2. Aspects of Criminal Liability in the Health Quarantine Act

Law enforcement in handling COVID-19 must be carried out comprehensively while still looking at a person's ability to carry out criminal responsibility. Accountability for criminal acts is only carried out by the perpetrator of the crime based on the principle that applies in criminal law, namely there is no crime without a criminal act, this principle can be understood that to charge someone with a legal responsibility must have committed a crime. Accountability can be held against individuals or legal entities in criminal law.

Criminal responsibility contains the principle of error, which is based on a monodualistic balance that the principle of error based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty. Criminal liability is a mechanism to determine whether a defendant or suspect is responsible for a criminal act that occurred or not. The ability to be responsible can be interpreted as such a psychological state, which justifies the application of a criminal effort. In order to be able to convict the perpetrator, it is required that the criminal act he commits fulfills the elements that have been determined in the law.

The provision of punishment for actions that do not comply with the implementation of health quarantine is in principle too excessive. Efforts that must be made by law enforcers together with those in power are preventive measures, this is in accordance with the principle of *ultimum remedium* (criminal as a last resort). The consideration is that if the country is in a state of emergency (health), sometimes criminal law enforcement can be excluded. However, the priority is to prevent the spread of infectious diseases, especially by utilizing the main duties and functions of health workers and law enforcement (action is *ultimum remedium*).

When the Covid-19 pandemic occurs, punishment can be used as a last resort, what needs to be done first is prevention and handling through enforcement of the main duties and functions of health workers, both through health socialization and vaccination. Another aspect that is recommended is to apply non-criminal sanctions, such as fines or administrative sanctions for violators of health quarantine. Moreover, the formulation of articles in the criminal provisions of the Health Quarantine Act is too abstract or broad.

Handling COVID-19 through simple health quarantine measures is considered a solution. However, it is necessary to analyze the regulation of criminal sanctions in the Health Quarantine Act. The law must be applicable and have a clear impact on society, such as the objectives of the law, namely certainty, justice and expediency. If the law is uncertain, so will its application. The Ministry of Law and Human Rights has practiced preventive measures in suppressing the spread of COVID-19, by issuing Minister of Law and Human Rights Regulation Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Overcoming the Spread of Covid-19 . Followed by the implementing regulations, namely the Decree of the Minister of Law and Human Rights Number M.HH-19.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children Through Assimilation and Integration in the Framework of Prevention and Control of the Spread of Covid-19. This policy is certainly a good effort to implement rather than making criminal the main sanction in dealing with the spread of COVID-19.

When viewed in Article 2 of the Health Quarantine Law, it contains the principle of protection and the principle of state sovereignty. The principle of protection means that health quarantine must be able to protect the entire community from diseases and health risk factors that have the potential to cause public health emergencies. Meanwhile, the principle of state sovereignty means that in implementing health quarantine, national interests must be prioritized and participate in increasing efforts to control public health emergencies that are troubling the world. Both the principle of protection and the principle of state sovereignty, both prioritize control efforts (preventive actions) to prevent public health emergencies. Therefore, the act of imposing criminal sanctions on people who violate health quarantine should not be the main decision that must be taken by law enforcement officials.

The Government of the Republic of Indonesia has issued a Government Regulation regarding the implementation of PSBB as an action to suppress the spread of COVID-19 in Indonesia. The regulation is a derivation of Article 59 Paragraph (1) of the Health Quarantine Law which states that Large-Scale Social Restrictions are part of the response health emergency. Previously, the Government had issued Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency of Coronavirus Disease 2019 (Covid-19) and Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Coronavirus Disease 2019 (Covid-19) as National Disasters. The entire policy is a formal procedure in dealing with any public health emergency.

The Indonesian public health emergency status that has been established through the Presidential Decree legitimizes law enforcement officers to immediately implement the criminal provisions of the Health Quarantine Act. Therefore, as a state of law (*rechtsstaat*), Indonesia is obliged to make and implement laws. Every criminal law product produced must contain provisions that can be implemented in the field. A law will only become a dead law if its implementation stops. Especially if the law opens up the potential for analogy or extensive interpretation. The Health Quarantine Act is a legal product that prioritizes punishment (*primum remedium*) while the Health Quarantine Law emphasizes control and prevention aspects. Health quarantine itself contains a meaning that verbatim puts forward the aspect of prevention. This of course raises an argumentum a contrario between the definition of health quarantine and the

existing criminal provisions. In the criminal provisions of the Health Quarantine Act, it is stated that the sanction given to health quarantine violators is imprisonment. In the Indonesian Criminal Code, imprisonment is a heavier punishment than confinement. The difference lies in the rights of the convict and the application of the time limit for the execution of the crime.

It is clear that the criminal provisions of the Health Quarantine Act contain an absolute punishment system. Whereas in a public health emergency, the aspect of punishment should be used as a last resort or not prioritized. Even though it is needed, appropriate sanctions are given to violators of the implementation of health quarantine, not necessarily an absolute punishment. Remembering a health emergency is not the same as during a normal situation.

Law is present not only in tackling crime and violations, but also as a means of social control or control. The role of law as social control is a normative aspect that applies in people's lives, can be in the form of prohibitions, demands, punishments, and can also be in the form of giving compensation. The role of law as a tool of social control does not stand alone in society, but that role is carried out together with other social institutions that both carry out the function of social control. Here the law is passive, meaning that the law must adapt to the existing conditions of people's lives.

The proper punishment for violators of health quarantine is in the form of a restorative punishment, namely restoring the situation to the perpetrator and his environment and an integrative punishment, namely in the form of comprehensive prevention of a fatality in a public health emergency. This is because, the application of a crime must also be rational for a community condition. The Health Quarantine Act was established on the basis of non-natural disaster management. Thus, it is appropriate if the punishment of health quarantine violators is directed at prevention and recovery:

4. Conclusion

Based on the discussion, it can be concluded :

1. The formulation of Article 93 of the Health Quarantine Law is problematic because it contains word clauses that are rubbery, cannot be measured, and their application is potentially arbitrary. The clause in question is not complying with and must comply with the implementation of health quarantine. In addition, there is the term obstructing and causing a public health emergency. So there is ambiguity and liberal interpretation.
2. Sentencing as an effort to provide appropriate criminal responsibility for violators of health quarantine is in the form of a restorative punishment, namely the restoration of conditions to the perpetrator and his environment and an integrative punishment, namely in the form of comprehensive prevention of a fatality in a public health emergency.

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