

Customary Sanctions for Violation of Health Protocols amid the Covid-19 Pandemic in the Traditional Village of Tabanan City

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Abstract. The emergence of Covid-19 terribly shocked the world. The impact caused by the virus is not only related to health issues but also other aspects of people's lives, especially economic aspects. Bali, an area that relies on the tourism sector, of course experiences a slump because the government closes access to enter the island in an effort to prevent the spread of the virus, in addition to implementing various regulations to suppress the high graph of the death rate resulted from the virus transmission. However, it turns out that the step has not shown effective results, as evidenced by the increasing number of areas in Bali that are included in the red zone category, one of which is the city of Tabanan. The next step taken is assign the government in each region to apply customary sanctions for violators of health protocols. This article discusses the customary sanctions imposed for violations of health protocols in Tabanan City and the effectiveness of these sanctions in the community. The research problem will be answered by using an empirical legal research method related to research data as analysis material. The objective of investigation is to reveal what traditional sanctions are implemented as a measure to prevent the spread of Covid-19 and the effectiveness of these sanctions. The results obtained are that in the city of Tabanan several customary sanctions have been established for violators of the health protocol, but these sanctions do not appear to be effective in breaking the chain of spreading the Covid-19 pandemic.

Keywords: customary sanctions; health protocols; tabanan

1 Introduction

At the beginning of 2020 the world was shocked by an unexpected terrible situation, namely the emergence of a new virus whose impact was fatal because it was deadly. Without warning, this virus can be claimed to destroy the life cycle of people in all corners of the world, one of which is in Indonesia. The virus which experts refer to COVID-19 - an abbreviation of Corona Virus Disease 2019 - is described as a disease caused by infection with the SARSCoV-2, which first appeared in the city of Wuhan, China in December 2019. The death rate caused by the virus

is unmitigated. Since the beginning of the outbreak of the virus to date the death rate continues to increase. This is what causes WHO to place various countries in the world, including Indonesia, into a pandemic period and urges all countries to always be on alert.

Covid-19, which is categorized as a pandemic, not only has a major impact in the form of attacking public health but also has a very large impact on the economic sector. In an effort to prevent the spread of the virus, the government implemented regulations to make people stay at home and emphasized the implementation of Work from Home for schools and offices. Offices, restaurants, shopping centers, hotels, and all sectors deemed to cause crowds are closed for an indefinite period of time. This has a very worrying impact because not a few companies have decided to close their businesses and laid off their workers.

The alarming impact of the Covid-19 pandemic is also felt by people living in Bali. The island of Bali, which has been relying heavily on the tourism sector, has certainly experienced a very large impact, especially with the closure of entry access either by air, land, or water. To prevent the spread of the virus, the provincial government of Bali has taken various ways. One of the actions having been taken in question is issued an appeal to the public to always apply health protocols. The health protocols include everyone washing their hands regularly, always wearing a mask in performing any activity, and keeping a distance from other people when in a crowd. In public places, such as in markets, supermarkets, restaurants, government and private offices, and other public places, hand washing facilities are provided, visitors are always ensured to apply hand sanitizer before entering the public place, and measurement of body temperature is also mandatory for everyone.

The appeal to the public to stay at home and to obey health protocols does not seem to be able to reduce the rate of transmission of Covid-19. There are still many areas in Bali that are set to fall into the red zone category. Based on data sourced from pendataan.baliprov.go.id, it can be seen that a significant increase was shown by cases of infection, recovery, or death. The highest soaring increase in cases of infection with the virus occurred from August to September with a total of 3671 cases and the highest number of deaths occurred in August to September, where 207 people died due to it. Even so, the cure rate is also not small. As of October, 10,624 patients with Covid-19 have been cured.

The data obtained shows that, in Bali itself, prevention against the spread of this virus is still ineffective. Moreover, in September, one of the regencies in Bali that was included in the red zone was Tabanan district. Spokesperson for the Covid-19 Task Force, Wiku Adisasmito, said there were 38 districts/cities that experienced a change from a moderate risk (orange zone) to a high-risk zone (red zone) for Covid-19 transmission, one of the districts/cities in question is Tabanan (source: bali.tribunnews.com). It should be noted that the zoning is based on three indicators, namely epidemiology, public health surveillance, and health services. With these three indicators, the government sets zoning red (high risk), orange (medium risk), yellow (low risk), and green (no cases). Then in October, news was re-released, and it was stated that the cities of Denpasar and Tabanan were again included in the red zone for the spread of the Covid-19. This status appeared due to the spike in Covid-19 cases since the last few days (source: radarbali.jawapos.com).

Seeing this phenomenon, the government does not want to be desperate in protecting all its people. Knowing that the appeals or regulations given by the central government do not also show results, then the next step taken is to completely hand over the responsibility to the local government to think of the right way of preventing the pandemic according to the culture of the people and culture in the area. In this case, the governor of Bali established a rule, namely the Regulation of the Governor of Bali Number 46 of 2020 concerning the Implementation of

Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019 in the New Normal.

The governor regulation was formed with the consideration that, in the context of implementing Presidential Instruction Number 6 of 2020 concerning Discipline Improvement and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019 and Instruction of the Ministry of Home Affairs Number 4 of 2020 concerning Technical Guidelines for Drafting Regional Head Regulations in the Framework of Implementing Discipline and Law Enforcement Protocol Health as an Effort for Prevention and Control of Corona Virus Disease 2019 in the Regions, governor regulations need to be stipulated, namely regarding the Implementation of Discipline and Law Enforcement of Health Protocols as an Effort for Prevention and Control of Corona Virus Disease 2019 in the New Normal.

In addition to referring to the regulations made by the Governor, cities in Bali Province that are declared to be in the red zone or areas experiencing a very high spread of Covid-19, are urged to form regulations that apply in their respective cities or traditional villages. Based on this, this paper discusses what traditional sanctions are imposed for violations of health protocols in Tabanan City and whether these sanctions are effective or not.

2 Research Methods

This study uses an empirical research method. According to Soerjono Soekanto, sociological legal research encompasses the research on legal identification (unwritten) and research on legal effectiveness . In this study, the statute approach), conceptual approach) and analytical approach were used. Data collection techniques used in this research are interview, document study and observation techniques.

3 Results and Discussion

3.1 Customary Sanctions for Violation of Health Protocols in Tabanan City

“Indonesia is a State of Law”. Who has never heard this expression when speaking of legal issues in Indonesia? Every state that adheres to the principle of the rule of law cannot be separated from the principle of legality as a requirement in all forms of government action that must be based on valid and written legislation . With such a statement, then it can be argued that written laws and regulations must be formulated and promulgated first or must exist before administrative actions or actions are violated. Thus, every act or administrative action of a State agency/official must be based on rules and procedures.

In the constitution it is stated that the Indonesian state is a State of Law (*rechtsstaat*), not a State of Power (*machtsstaat*). It includes the notion that there is recognition of the principle of the rule of law and the constitution, the adoption of the principle of separation and restriction of power according to the constitutional system regulated in the Constitution, there are guarantees for human rights in the Constitution, there is a judicial principle, which is free and impartial, which guarantees equality of every citizen under the law, and guarantees justice for everyone, including against abuse of authority by those in power .

Since the law has been one of the important components in the government's space to provide guarantees of protection for the community, then everything needs to be based on the rules, as well as the handling of the Covid-19 Pandemic that we have been facing for several

years. The Covid-19 pandemic has had a huge impact on people's lives, especially in the social, health and economic sectors. In the last 1 year, although the adaptation of new habits has been implemented, the spread of the epidemic continues to soar. Along with these conditions, the government has issued various legal products to suppress and overcome the spread of the virus.

- a. Government Regulation in Lieu of Law (Perppu) No. 1 of 2020 concerning State Financial Policy and State Financial System Stability for Handling the Covid-19 Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability. At present, this Perppu has become Law no. 2 of 2020.
- b. Perppu No. 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws.
- c. PP (Government Regulation) No. 21 of 2020 concerning PSBB (Large-Scale Social Restrictions) in the Context of Accelerating the Handling of Covid-19.
- d. Keppres (Presidential Decree) No. 11 of 2020 concerning the Determination of Public Health Emergency amid the Covid-19.
- e. Keppres No. 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Covid-19 as National Disasters.
- f. Keppres No. 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19 as has been changed to Keppres No. 9 of 2020.
- g. Permenkes (Regulation of Ministry of Health) No. 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19).

As for the Province of Bali itself, there are a number of rules regarding the handling of Covid-19 that have been issued, such as:

- a. Joint Decree of the Governor of Bali, Bali Province Traditional Village Council, Number 472/1571/PPDA/DPMA.05/SK/MDA-PROV BALI/III/2020 of 2020 concerning the Establishment of a Mutual Assistance Task Force for Covid-19 Prevention Based on Traditional Villages in Bali.
- b. Bali Governor Regulation Number 10 of 2021 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as an Effort for Prevention and Control of Corona Virus Disease 2019 in the New Normal.
- c. Mayor Decree of Denpasar Number 188.45/958/HK/2020 of 2020 concerning the Establishment of a Task Force for Handling Corona Virus Disease 2019 (Covid-19) for Denpasar City.
- d. Mayor Decree of Denpasar Number 188.45/959/HK/2020 of 2020 concerning the Establishment of a Task Force for Handling Corona Virus Disease 2019 (Covid-19) in Sub-districts.
- e. Mayor Decree of Denpasar Number 188.45/961/HK/2020 of 2020 concerning the Establishment of a Task Force for Handling Corona Virus Disease 2019 (Covid-19).

With the various legal rules regarding health protocols amid the Covid-19 pandemic in Bali Province, it shows the readiness of the Bali Provincial Government to deal with the spread of the virus. Based on the rules mentioned above, in carrying out their duties, the task force must comply with the protocols set by the government, which include five things, namely communication protocols, education areas, public areas and transportation, especially entrances to Indonesia and health protocols.

In addition, there are also important matters related to the handling of the Covid-19 pandemic in the Province of Bali; first, ensuring an increase in disease handling capacity, particularly in health facilities; second, ensuring the availability of facilities related to

prevention and transmission such as masks, hand sanitizers and disinfectants; third, increasing the capacity for early detection and prevention at entrances such as airports and ports; fourth, increasing efforts to control the spread of the virus by limiting activities that involve large numbers of people; and fifth, intensifying campaigns and education on Hygienic and Healthy Lifestyles (PHBS).

In line with these regulations, Pakraman villages in Bali Province also take part in following up on government policies through Perarem. Based on the Bali Provincial Regulation Number 3 of 2001 concerning Pakraman Village which has been amended to Bali Provincial Regulation Number 3 of 2003, it is prescribed that Pakraman village refers to the customary law community unit in the province of Bali which has a unity of traditions and manners of social life of the Hindu community passed down from generation to generation in the ties of Khayangan Tiga or Khayangan Desa, which has a certain area and its own assets and has the right to take care of its own household.

In terms of the substance, perarem can be classified into 3 categories, namely:

- a. Pararem penyahcah awig, which is Paruman decisions which are the implementing rules of awig-awig;
- b. Pararem ngele/ pararem lepas, namely the Paruman decision which is a new legal rule that has no basis in awig-awig but is made to meet the legal needs of the community; and
- c. Pararem penepas wicara, which is in the form of Paruman's decision regarding a certain legal issue (case), both in the form of a dispute or a violation of the law (pararem penapas wicara).

These regulations aim at making people obey. If anyone violates awig-awig or perarem in its implementation, sanctions will be imposed. The sanction is known as pamidanda, which has the aim of restoring balance if there is a disturbance in the balance of relations in regional (palemahan), social (pawongan) and religious (parahyangan) aspects. The pamidanda in legal literature is better known as customary sanctions. In general, these customary sanctions consist of three categories, namely sanctions related to property (money or goods), called artha danda; sanctions related to mental or physical suffering, referred to as danda jiwa; and sanctions related to efforts to restore the balance of the supernatural (noetic), referred to as panyangaskara danda.

In the news released by the media, all traditional villages in Bali are recorded to have a pararem on the Prevention and Control of Gering Agung. The formation of the pararem in each area of the traditional village is a follow-up to the instructions of the Governor of Bali which aims to accelerate the response to the Covid-19 pandemic in Bali. On Thursday 9 July 2020 which also coincided with the commencement of the implementation of the Protocol for the Order of Life in the New Normal, accompanied by the Regional Secretary of the Bali Province, Dewa Made Indra, and the Chairperson of the Bali Province MDA (Traditional Village Council) Ida Penglisir Agung Putra Sukahet, Governor Koster symbolically handed over pararem regarding the Prevention and Control of Gering Agung Covid-19 in Traditional Villages throughout Bali, represented by the Head of District/municipal MDA in Bali.

Based on the letter from the Bali Province Traditional Village Council Number: 044/MDAProv Bali/VI/2020, regarding the affirmation of the obligation to form pararem for Covid-19, it is hoped that all traditional villages in Bali have followed up with the formation of pararem in their respective traditional villages. In the letter there were 5 points that were conveyed, strated from the obligation of the traditional village to prepare the pararem pangele on the regulation, prevention and control of gering agung for the Covid-19 at the Traditional Village Wewidangan, to the final point regarding the submission, ratification and registration of the pararem in question. The letter also attached technical instructions and procedures for the preparation of the pararem.

Of the various traditional village pararems that have been made and ratified, the pararems that have been set include:

- a. General provisions, definitions of desa adat, banjar adat, village prajuru and pararem.
- b. The purpose and objective of the establishment of the Covid-19 pararem, which is in the context of preventing and controlling the Covid-19.
- c. The scope of prevention and control, which includes healthy living behavior, restrictions on traditional village-based activities, mutual cooperation task forces, handling of exposed cases, ngeneng and ngeneng of traditional villages, sanctions and closing provisions.

The people of Bali hope that with the pararem which aims to prevent and control Covid-19, in the future it can return people's lives. Traditional village of the City of Tabanan has also followed instructions from the Governor to form a pararem related to the prevention of Covid-19, namely the Pararem of Tabanan City Traditional Village Number 5 of 2020 concerning the Prevention and Control of Gering Agung for Covid-19 which took effect on September 1, 2020. In the regulation, a number of firm measures have been regulated, including fines for residents who do not wear masks, violating the opening/closing hours of traditional stalls and modern shops, as well as visiting people's houses after the appointed hours.

People who do not wear masks will be fined IDR. 50,000, traditional stalls violating opening/closing hours are fined IDR. 100,000 and modern shops that violate will be fined with a maximum of IDR. 500,000. Then, for residents who visit other people's places without a strict purpose beyond the permitted hours, they will be fined IDR. 250,000 for hosts and guests. Finally, people who wander around past the restricted hour without a recognized purpose will be fined IDR. 250,000 .

3.2 The Effectiveness of Customary Sanctions against Health Protocol Violations in Tabanan City

Speaking of a rule of law, what will definitely be measured is whether or not the rule or legal norm in society is effective. Soerjono Soekanto argued that the effectiveness of a law depends on five factors, namely :

- a. The legal factor itself (law).
- b. Law enforcement factor, namely the parties that form and apply the law.
- c. Factor of facilities that support law enforcement.
- d. Community factor, namely the environment in which the law applies or is applied.
- e. Cultural factor, namely as a result of work, creativity and sense based on human initiative in social life.

The law will be effective if the purpose of its existence and application can prevent unwanted actions and can eliminate chaos. Effective law in general can make what is designed can be realized. If a disorganization occurs, it is possible that corrections will occur easily, moreover if there is a necessity to implement or apply the law in a different new atmosphere, the law will be able to solve the problem. .

Law is effective if it can ensure to measure the extent to which the rule of law is understood or not understood and obeyed or not obeyed. If a rule of law is understood and obeyed by the majority of the targets to whom it is obeyed, the rule of law concerned will be deemed to be effective. Legal awareness and legal compliance are two matters that will determine the effectiveness or not of implementing legislation or the rule of law in society. Legal awareness, legal compliance, and the effectiveness of legislation are three interrelated elements. People often confuse legal awareness and law compliance; even though the two are closely related to each other, they are not exactly the same. These two elements admittedly determine the effectiveness of the implementation of legislation in society.

To measure the effectiveness of customary sanctions or regulations imposed for violations of health protocol rules in this study, the research team went directly to the field to see firsthand the empirical conditions and by conducting interviews with residents of the surrounding community who implemented and felt directly the impact of the regulation. After conducting interviews, it turns out that there are still many people who are complicated by this rule because there are still many people who have to work or return from work past the hours for the evening that have been restricted.

Moreover, during the Covid-19 pandemic the economy of the people of Tabanan also experienced a slowdown. As a result, if they are added to the restrictions on operating hours or the restricted hours for night activities, their opportunities to earn a living will be increasingly limited. In addition, the high number of positive cases of Covid-19 in the city of Tabanan makes Pararem Number 5 of 2020 concerning the Prevention and Control of Gering Agung for Covid-19 shows the ineffectiveness of the regulation in preventing the spread of the Covid-19.

Furthermore, in the results of interviews conducted to several community members who lived in several villages in Tabanan - namely the Traditional Village of Bongan Puseh and the Traditional Village of Kerambitan - it was found that there were still many people around Tabanan City who do not obey the rules. They deemed that the fines regulated in this Pararem are simply for people who do not wear masks, who will be fined IDR. 50,000. Traditional stalls violating the opening/closing hours will be fined IDR. 100,000 and modern shops that violate will be fined a maximum of IDR. 500,000.

Then, residents who visit other people's places without a definite purpose beyond the specified hour limit will be fined IDR 250,000 each, both the host and the guest. The last, people who wander around past the time limit that have been restricted without a definite purpose will be fined IDR. 250,000 . These regulations are still ineffective to make people obey them. Whereas philosophically, the most underlying fact of a law or legal norm is that a law or norm must be made to encourage one to submit to the law so that order is created in society and security is guaranteed.

The public also objected to the fines imposed in Pararem Number 5 of 2020. According to them amid the Covid-19 pandemic, most of the community was greatly affected because not a few of them were "laid off" by the company at which they used to work. Likewise, people who are business actors, whether of large, small, or medium-sized businesses, all perceive the great impact because their sales rates are decreasing, it's not even uncommon in a day they do not obtain anything.

According to the community, with their ongoing situation, who have been experiencing economic difficulties due to the ongoing pandemic, they feel that the fines imposed by the Tabanan City Government are very difficult to implement. In terms of paying for their daily lives, they find it difficult, plus they have to pay quite a lot of fines.

It is as described in the first discussion, that is to say, about the effectiveness of the law. That to determine whether a rule or legal norm is effective or not in society must be seen from two elements: if a rule of law is understood and obeyed by most of the targets that are the target of its obedience, then the law in question will be considered effective. Legal awareness and legal compliance are two things that principally determine the effectiveness of implementing legislation or the rule of law in society.

Regarding the effectiveness of Pararem Number 5 of 2020 in Tabanan City, according to the results of interviews, community members view this rule as ineffective because, according to them, even though the public understands what the sanctions in the regulation mean, there are still many who violate it. Not a few people who still do not apply the health protocol by not using a mask and the provisions for restricted hours of activity at night are not too ignored.

There are still many cafes or restaurants fully filled with visitors without maintaining physical distance, and people not complying with the predetermined operating hours at night.

4 Conclusion

The development of Covid-19, which to date has not shown a decline, has forced the Government to take various ways to suppress the spread of it. Based on the Circular Letter of the Bali Province Traditional Village Council (MDA) Number: 044/MDAProv Bali/VI/2020, regarding the affirmation of the obligation to make the Pararem or Covid-19, it is hoped that all traditional villages in Bali have followed up by forming pararem in their respective traditional villages. The Traditional Village of Tabanan City has followed instructions to form a pararem related to Covid-19 prevention, namely the Pararem of Tabanan City Traditional Village Number 5 of 2020 concerning the Prevention and Control of Gering Agung for Covid-19, which came into effect on September 1, 2020.

In the regulation, a number of firm measures have been stipulated, including fines for residents who do not wear masks, violating the restricted hours of opening/closing traditional stalls and modern shops, to the provision of activities to visit other people's places after the specified hours. Every member of the public who does not wear a mask will be fined IDR. 50,000. Traditional stall owners, who violate the restricted operational hours, will be fined IDR. 100,000. Modern shop owners who violate the restricted operational hours will be fined a maximum of IDR. 500,000. Then, every citizen who visits other people's places through the restricted hours without definite purposes will be fined IDR. 250,000, both hosts and guests. Finally, people who wander around past the restricted hours without a definite purpose will be fined IDR. 250,000.

However, according to the direct exploration results, what the research team did showed that the Pararem of the Traditional Village of Tabanan City Number 5 of 2020 concerning the Prevention and Control of Gering Agung for Covid-19 has not been effective in suppressing the spread of the virus, because Tabanan is still in the red zone or the area with the highest number of Covid-19 cases. The surrounding community even felt burdened by the existence of the perarem. Seeing this situation, the reconstruction or changes in the content of the perarem issued by the traditional village of Tabanan city need to be carried out by adjusting to the conditions of the community so it can be effective.

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