

# Humanization of Criminal Sanction Formulation As A Covid-19 Emergency Management Effort

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**Abstract.** The Corona Virus Disease 2019 (Covid-19) outbreak is currently a major problem for the world community and has worried all countries including Indonesia. At first, the Indonesian government did not immediately deal with the virus by information obtained from other countries due to minimize the existence of hoax news and so that people did not panic. Many people have fallen victim to the Covid-19 virus. Given the seriousness of the Covid-19 pandemic, health quarantine efforts are urgently needed. It is hoped that this will be an effort to break the chain of the spread of the Covid-19 virus. This effort must be immediately carried out by the government with the main target of suppressing the increase in the number of victims. The legal instrument used to deal with the Covid-19 pandemic is Law Number 6 of 2018 concerning Health Quarantine, which was followed up by issuing Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). The government's policy to enforce legal policies during the Covid-19 pandemic is to protect the health problems of the Indonesian people. On the one hand, this legal policy is a firm and effective practical solution to solving various problems related to Covid-19. One of the interesting things about the substance of Law Number 6 of 2018 is the aspect of criminal law relating to criminal provisions as contained in Chapter XIII, especially Article 90 – Article 94 of Law Number 6 of 2018. Based on this, it is necessary to conduct a study in depth related to "Humanization of the Implementation of Criminal Sanctions as an Effort to Handle Covid-19 Emergency".

*Keywords:* Humanization, Criminal Sanctions, and Covid-19

## 1 Introduction

The inclusion of criminal sanctions in law is a consequence of the adoption of the principle of legality in the legal system in Indonesia. The principle of legality has the meaning of *Nullum crimen, nulla poena sine lege scripta*, namely there is no criminal act, there is no crime without a written law. According to Eddy OS Hiariej, that principle has a consequence, meaning that all criminal provisions must be written down. In other words, prohibited acts and criminal penalties for prohibited acts must be written expressively in the law. [1]

In line with this, Sudarto argues that punishment is suffering that is intentionally imposed on people who commit acts that meet certain conditions. Meanwhile, Roeslan Saleh stated that punishment is a reaction to an offense and this is in the form of a misery deliberately inflicted by the state on the offender [2]. Sanction is one of the three main problems in criminal law, in addition to the problem of criminal liability, and the problem of criminal acts. Criminal law is a special feature of criminal law and distinguishes it sharply from other types of law. Criminal means providing sorrow, misery, or suffering imposed on the perpetrator of a crime [2]. This is following Van Bemmelen's statement which states "criminal law determines sanctions for violations of prohibition regulations. The sanction consists in principle of willfully adding to the suffering".[3]

The humanistic approach also demands attention to the idea of criminal individualization in criminal law policies/reforms. The idea of criminal individualization contains the following characteristics:

- a. Criminal liability is personal or individual (personal principle).
- b. Criminal punishment can only be given to guilty people (culpability principle).

- c. Criminal sanctions must be adjusted to the characteristics and conditions of the perpetrators, which means there is leeway for judges to choose criminal sanctions and there must be the possibility of criminal modifications in the form of adjustments in their implementation. [4]

This research is also related to research conducted by Y. A. Triana Ohoiwutun & Samsudi (2017) which discusses the principle of individualization of child drug cases. This study discusses drug criminal cases against children. The imposition of imprisonment without any rehabilitation measures against children who use narcotics is not in line with the purpose of punishment. The principle of criminal individualization and the principle of the double-track system can be applied in cases of narcotics crimes by child perpetrators. Judges in imposing sanctions on children should be oriented to the principle of the best interests of children, so that the punishment of children, especially the crime of deprivation of liberty, is used as a last resort (*ultimum remedium*). [5]

C. Maya Indah in her research concludes that judges have not fully decided cases of child crimes, judges have not fully introduced the principle of criminal individualization. Judges tend to impose imprisonment rather than action, and short-term prison sentences are also more decided by judges than action orientation. In some facts, the judge's judgment ignores the results of community research. The high criminal disparity due to the absence of a criminal pattern makes the principle of criminal individualization not yet fully implemented. In the context of applying the principle of criminal individualization, the judge's interpretation of the juridical text should also consider philosophical and sociological aspects, to read the hidden meaning of the text in a concrete case that is being decided in the best interests of the child. [6]

Tri Wahyuni Wiidiastuti (2010) whose research focuses more on discussing how a humanistic approach in the use of criminal sanctions does not only mean that the punishment imposed on the perpetrator/maker must be following civilized human values but also must be able to raise awareness of the perpetrator/maker. of human values and the values of social life. This humanistic value-oriented approach requires attention to the principle of criminal individualization in the use of criminal sanctions as a means of crime prevention. [7] Some of the characteristics of the principle of criminal individualization according to Barda Nawawi Arief are:

- a. Criminal responsibility is personal/individual (personal principle). It is the person who is guilty of committing a crime who must be responsible for his actions and cannot be represented by another person.
- b. Criminals are only given to guilty people (culpability principle). This means that the person who commits a crime with a fault can be punished. The error is either intentional or negligent.
- c. The crime must be adapted to the characteristics and circumstances of the perpetrator. This means that there must be leeway/flexibility for judges in choosing criminal sanctions (type and severity of the crime) and there must be the possibility of criminal modifications (changes/adjustments) in their implementation. [8]

The policy on the formulation of criminal law in the health sector, especially in discussing efforts to overcome the Covid-19 emergency in its implementation, turned out to cause various problems, especially related to the application of the provisions of the article that regulates criminal sanctions. One of these problems arises because law enforcers take action against the same legal act using different policies.

This paper focuses more on discussing the Humanization of Criminal Sanctions Formulation as an Effort for Covid-19 Emergency Management. Regarding the development of the coronavirus, the Government finally took immediate action to tackle the spread of Covid-19 by issuing Law Number 6 of 2020 concerning Health Quarantine [9] and followed up by the Government. by issuing Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB).[10] Legal policies for handling the Covid-19 pandemic in Indonesia as formulated in the two legal policies have not been implemented properly, because there are still many people who violate PSBB activities. Although it is very clear that there are criminal sanctions that can be imposed for those who commit violations.

Based on the description of the background above, it is clear that the scope is very broad, to prevent the extent of the coverage, and to facilitate the discussion, the problem in this research is how is the Humanization of Criminal Sanctions Formulation as an Effort for Covid-19 Emergency Management?

## 2 Discussion

The sentencing paradigm has undergone a shift, namely shifting to a sense of justice that must be obtained by all parties, the judge is not only satisfied to convict the perpetrator, or the victim is satisfied with the judge's verdict, but also the perpetrator has the opportunity to improve himself and the community is satisfied. [5]

The challenge of the dynamics of legal events that occur especially in Indonesia is a challenge for the state in its position as a state of law. The application and enforcement of the law are elements of the legal system that must be continuously addressed, to realize the legal position in a legal state and benefit the interests of the community, nation, and state. [11] According to Soerjono Soekanto that the law to function in society, there is a need for harmony between four factors, namely first, there is a systematic synchronization between legal rules or regulations both vertically and horizontally so that they do not conflict with each other; second, law enforcement officers have clear guidelines regarding their authority in carrying out their duties, as well as the personality qualities of officers to implement and comply with the applicable regulations; third, the degree of community legal compliance with the law greatly affects the implementation of the law. The degree of legal compliance depends on the law-making process. Fourth, the facilities or means to support the implementation of the law must be physically adequate. [12] Conceptually, law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and embodied rules and attitudes of action as a series of final stages of value elaboration, to create, maintain, and maintain a peaceful social life. The conception that has a philosophical basis requires further explanation so that it will appear more concrete.

Law Number 6 of 2018 concerning Health Quarantine, in particular article 93, has already regulated the rules for violators of large-scale social restrictions (PSBB) threatening a maximum criminal sanction of 1 (one) year and/or a maximum fine of Rp. 100,000. 000.00 (one hundred million rupiahs) In addition to Article 218 of the Criminal Code, it is stated that there is a threat of imprisonment for a maximum of four months and two weeks or a maximum fine of nine thousand rupiahs for anyone when people come together, intentionally not leaving immediately after being ordered three times by or on behalf of the competent authority. This was then followed up by the government by issuing Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). Therefore, when the Government Regulation has been officially issued, the police, as mandated by the President, strictly take action to enforce the law for violators. This means that the prevention of the Covid-19 pandemic must be carried out by providing criminal sanctions for people who commit violations. Through the Decree of the Chief of Police Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus, then the police took action to secure people who did not obey the rules regarding the PSBB. [13]

In the context of law enforcement, there are 3 (three) things that need attention. First, the legal substance, namely statutory regulations must be carried out as it should. Second, the legal structure, namely the need for judicial strengthening of various aspects in the field of legal institutions to be able to carry out statutory orders. The third, legal culture which includes the attitude of both law enforcement officials and the community. Thus, the field of law enforcement is a strategic issue determining the role of legal functions in creating legal certainty to achieve justice. Of course, if this firmness is enforced, many people who violate it will become prisoners, who then legally must be tried and imprisoned.

In connection with the above, the formulation of the humanization of criminal sanctions as formulated in Article 93 of Law Number 6 of 2018 concerning Health Quarantine, has indeed regulated the rules for violators of large-scale social restrictions (PSBB) by threatening a maximum of 1 (one) criminal sanction. ) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs). In addition to Article 218 of the Criminal Code with the threat of imprisonment for a maximum of four months and two weeks or a fine of a maximum of nine thousand rupiahs for anyone when the people come together deliberately do not leave immediately after being ordered three times by or on behalf of the competent authority based

on the author's analysis. has based on the idea of the principle of criminal humanity, not only at the level of punishment imposed by adjusting to personal/individual conditions but criminal sanctions that have been imposed and have permanent legal force (*inkracht van gewijde*) can also be changed or adjusted based on developments or improvements. convict individuals and consider the purpose of sentencing. Article 57 paragraph (1) of the 2015 Criminal Code concept states that "criminal decisions and actions that have obtained legal force can still be made changes or adjustments taking into account the development of prisoners and the intent of sentencing". Furthermore, the 2015 Criminal Code concept also provides leeway for parties who can apply for this adjustment, which can be carried out by the inmates themselves, parents, guardians, legal advisors, public prosecutors, or supervisory judges (Article 57 paragraph (2)). Changes or adjustments to the criminal code according to the Criminal Code Concept are not allowed to be heavier than the original decision and can take the form of (a) revocation or termination of the remaining criminal or action, or (b) replacement of the type of crime or other action. If the application for change or adjustment is rejected by the judge, it can only be re-submitted one year later after the rejection, except in special circumstances which indicate that the re-application deserves consideration.

Meanwhile, the provisions regarding changes or adjustments to criminals that have been imposed and have permanent legal force (*inkracht van gewijde*) based on the development or improvement of convicted individuals in the 2019 Draft Criminal Code have been abolished/no longer formulated in articles of the 2019 Draft Criminal Code, this is because it is contrary to the principle of legal certainty.

#### 4 Conclusion

The application of the principle of criminal humanization has been stated through policies as outlined in the formulation of criminal sanctions in Article 93 of Law Number 6 of 2018 concerning Health Quarantine. The recommendation from this paper is that essentially the criminal sanctions imposed on the perpetrators must be following the scale of the state losses incurred. This means that the length of imprisonment refers to the scale of state losses, so that it reflects the state judiciary that enforces the law for the sake of justice based on Article 3 paragraph (2) of Law no. 4 of 2004 concerning Judicial Power which has been amended by Article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which stipulates "The State Court shall apply and enforce Law and Justice based on Pancasila.

#### References

- [1] Eddy OS. Hiariej, *Asas Legalitas & Penemuan Hukum Dalam Hukum Pidana*, (Jakarta: Erlangga, 2009).
- [2] Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Hukum Pidana*, (Bandung: Alumni, 1984).
- [3] Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana Dua Pengertian Dasar Dalam Hukum Pidana*, (Jakarta: Aksara Baru, 1983).
- [4] Ahmad Bahiej, "Prinsip Individualisasi Pidana dalam Pembaharuan Hukum Pidana Materiel Indonesia", *Jurnal Sosio-Religia*, Vol. 3 No. 4, Agustus 2004.
- [5] Y. A. Triana Ohoiwutun & Samsudi, Penerapan Prinsip "Kepentingan Terbaik Bagi Anak" Dalam Kasus Tindak Pidana Narkotika, *Jurnal Yudisial*, Vol 10 No. 1, Komisi Yudisial RI, 2017, Jakarta, hal 189. <http://dx.doi.org/10.29123/jy.v10i1.41>.
- [6] C. Maya Indah, "Konstruksi Pertimbangan Hakim dalam Penerapan Prinsip Individualisasi Pidana demi Mewujudkan Perlindungan Anak", *Jurnal Masalah Masalah Hukum*, Vol 43 No. 2, April 2014, Fakultas Hukum Universitas Diponegoro, 2014, Semarang, hal 189. DOI: 10.14710/mmh.43.2.2014.188-196.
- [7] Tri Wahyu Widiastuti, "Prinsip Individualisasi Pidana dalam Hukum Pidana dan Hukum Pidana Islam di Indonesia", *Jurnal Wacana Hukum*, Vol 9, No 2, 2010, Fakultas Hukum Universitas Slamet Riyadi, 2010, Solo, hal 45. <https://doi.org/10.33061/1.jwh.2010.9.2.275>
- [8] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung, Citra Aditya, 2002).
- [9] Jessica Martha, "Pemanfaatan Diplomasi Publik oleh Indonesia dalam Krisis Covid-19", *Jurnal Ilmiah Hubungan Internasional*, Edisi Khusus, 2020.
- [10] Aras Firdaus, "Kebijakan Hukum Pidana sebagai Upaya Penanggulangan Kedaruratan Covid-19", *Majalah Hukum Nasional* Volume 50 Nomor 2 Tahun 2020 P-ISSN: 0126-0227; E ISSN: 2772 – 0664 DOI : 10.33331/mhn <https://mhn.bphn.go.id>.

- [11] Faisal Santiago, 2017, Penegakan Hukum Tindak Pidana Korupsi oleh Penegak Hukum untuk Terciptanya Ketertiban Hukum, Pagaruyung Law Journal, Vol. 1, No. 1.
- [12] Soerjono Soekanto, Sosiologi Hukum Dalam Masyarakat, (Jakarta: Rajawali, 1979).
- [13] Nur Rohim Yunus, 2020, Kebijakan Covid-19, Bebaskan Narapidana dan Pidanakan Pelanggar PSBB, 'Adalah: Buletin Hukum Dan Keadilan, Vol. 4, No. 1.