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Limitation of Indonesian Administrative Criminal Law for Pandemic Treatment Against Health Protocols Violation*

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Abstract

Criminal Law to deal with Corona Virus Disease 2019 (Covid-19) is under the spotlight during the handling of the pandemic. Criminal Law is intended to be used when the patient's moral responsibility to declare that he has been abroad having not been fulfilled, and the government's health protocols are ignored. Meanwhile, various laws for Covid-19 pandemic treatment does not provide strict norms; on the contrary, it is sometimes using blanket offence formulation. This study explores the limits of Administrative Criminal Law in the health sector and pandemic management to impose penalties for health protocols violation. Using the normative systematic interpretation method, the study results show no difference formulation of criminal law norms in special laws, which are administrative with criminal law norms in special laws. However, the difference exists within the theoretical realm. Administrative criminal law is not aimed at free individuals and is not socially and psychologically illegal. Still, it is aimed at humans as players of particular roles required to conform with other forms of action according to their role. Unfortunately, administrative criminal law exists outside the Criminal Code, primarily aimed at freeing individuals and socially and psychologically illegal. Law enforcement practices cannot provide a gradation for these two groups of laws—conditions where the fundamental rights of citizens are threatened by the power to impose penalties. This study proposes broadening justification and excuse in the Indonesian Criminal Code, which is appropriate for the character of administrative criminal law.

Keywords: Blanket Offence Formulation; Excuse; Justification

Abstrak

Hukum Pidana untuk Penanganan Corona Virus Disease 2019 (Covid-19) menjadi sorotan selama penanganan pandemi. Hukum Pidana dimaksudkan untuk digunakan ketika tanggung jawab moral pasien untuk menyatakan bahwa ia telah di luar negeri belum terpenuhi, dan protokol kesehatan pemerintah diabaikan. Sementara itu, berbagai undang-undang penanganan pandemi Covid-19 tidak memberikan norma yang tegas; sebaliknya, kadang-kadang menggunakan rumusan blanket offence. Kajian ini menelusuri batasan Hukum Pidana Administrasi di bidang kesehatan dan manajemen pandemi untuk menjatuhkan sanksi bagi pelanggaran protokol kesehatan. Dengan menggunakan metode interpretasi sistematis normatif, hasil penelitian menunjukkan tidak ada perbedaan rumusan norma hukum pidana dalam undang-undang khusus yang bersifat administratif dengan

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norma hukum pidana dalam undang-undang khusus. Namun, perbedaannya ada dalam ranah teoretis. Hukum pidana administrasi tidak ditujukan untuk individu yang bebas dan tidak ilegal secara sosial dan psikologis. Namun, itu ditujukan pada manusia sebagai pemain peran tertentu yang diperlukan untuk menyesuaikan diri dengan bentuk tindakan lain sesuai dengan perannya. Sayangnya, hukum pidana administrasi ada di luar KUHP, terutama ditujukan untuk membebaskan individu dan ilegal secara sosial dan psikologis. Praktik penegakan hukum tidak dapat memberikan gradasi bagi kedua kelompok hukum ini—kondisi di mana hak-hak dasar warga negara terancam oleh kekuasaan untuk menjatuhkan hukuman. Penelitian ini mengusulkan perluasan justifikasi dan dalih dalam KUHP Indonesia, yang sesuai dengan karakter hukum pidana administrasi.

Kata Kunci: Formulasi Blanket Offense; Mengizinkan; Pembeneran

A. INTRODUCTION

Criminal Law to deal with Corona Virus Disease 2019 (Covid-19) is under the spotlight during the handling of the pandemic. Criminal Law is intended to be used when the patient's moral responsibility to declare that he has been abroad has been not fulfilled and the health protocols issued by the government are ignored. The legal framework for overcoming epidemics that threaten public health is based on Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases (Law No. 4/1984 on Outbreaks of Infectious Diseases), Law Number 24/2007 on Disaster Management (Law Number 24 of 2007 concerning Disaster Management), Law Number 36 of 2009 concerning Health (Law No. 36/2009 concerning Health), and Law Number 6 of 2018 concerning Health Quarantine (Law No. 6/2018 concerning Health Quarantine). Based on some of the legislative regulations above, orders, prohibitions, permits, and dispensations were born for the community and the government to tackle infectious disease outbreaks. These legislative regulations come with several criminalization which in Indonesian criminal law theory grouped as Administrative Criminal Law.

The many reviews of Administrative Criminal Law indicate that there is a problem with what we know as Administrative Criminal Law. Countries with civil law and common law legal systems are familiar with this topic, although perhaps with different terms. The criminal law literature in Indonesia also recognizes this term. However, it is necessary to convey that the discussion of "Administrative Criminal Law" in the Indonesian legal system will experience language and terminology barriers juxtaposed with other countries' legal systems.

The term "Hukum Pidana Administrasi" in the Indonesian criminal law literature is equated with the term Administrative Penal Law, *ordnungstrafrecht/ordeningstrafrecht/verwaltungsstrafrecht/bestuursstrafrecht*. While the term "Tindak Pidana Administrasi" is equated with the term "Administrative Crime/Administrative Offense/Regulatory Offence". However, the literature in Indonesia does not inherit the same debates on "Administrative Crime" and "Administrative Penal Law" as in other countries. The debate on "Administrative Crime" put forward by Edmund H. Schwenk, for example, involves a review of constitutionality and standards set by law to assess whether judges can apply the offence.[1] This is not the case in Indonesian literature.

Sudarto discussed problems that might arise in the regulation of “delik-delik administrasi” (regulatory offences / ordnungdelikte) in special laws [2]. Ruslan Saleh reviewed the implementation of the principles of criminal law and criminalization in "ordeningsstrafrecht", the field of criminal law that was born as a result of the use of criminal sanctions in special laws in various fields of life [3]. Barda Nawawi Arief shows several meanings and equivalents of the term "Hukum Pidana Administratif", including "criminal law from rules" (ordnungstrafrecht/ordeningsstrafrecht), "government criminal law" (verwaltungsstrafrecht and bestuursstrafrecht) and "Criminal law in the field of violations administrative law" when discussing Administrative Criminal Law policies in Indonesian legislation. Furthermore, it is questioned whether the use of criminal law in the field of administration in Indonesia can be appropriately referred to as "administrative penal law" (ordeningsstrafrecht/ordnungstrafrecht/verwaltungsstrafrecht) [4]. Muladi uses the term "administrative penal law" to refer to the many acts in administrative law that include criminal sanctions to strengthen administrative sanctions. [5] Maroni reviews various issues of criminal law policy on Administrative Criminal Law in Indonesia. [6] Dinoroy Marganda Aritonang discussed the complexity of administrative criminal law enforcement concerning corruption crimes. [7]

The term "Administrative Criminal Law" in Indonesia is not a juridical term but an academic term found in various criminal law literature. The division of criminal law in Indonesia generally recognizes General Criminal Law and Special Criminal Law, General Crimes and Special Crimes. Special Criminal Law and Special Crimes are distinguished primarily with the Codified Criminal Law, which regulated in the Criminal Code (KUHP / Wetboek van Strafrecht which was promulgated by Law Number 1 of 1946 concerning Criminal Regulations in conjunction with Law Number 73 of 1958 concerning the Enactment of Law Number 1 of 1946 concerning Criminal Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code) and regulated in the Criminal Procedure Code (KUHAP / Law Number 8 of 1981 concerning Criminal Procedure Law).

The discussion of the term and definition of "Administrative Penal Law" was also carried out by Byung-Sun Cho. This term refers to the development of Criminal Law in Germany, which recognizes Gesetz über Ordnungswidrigkeiten (OWiG/act on the law of infringements) since March 25, 1952, was widely introduced by James Goldschmidt's "Das Verwaltungsstrafrecht". Cho reviews at least 2 (two) competing definitions in defining "Administrative Criminal Law". First, the term is associated with granting authority from administrative bodies to impose sanctions similar to punishment. Goldschmidt uses this first definition. Second, define as part of criminal law to protect public administration. Administrative Criminal Law thus contains criminal provisions in acts/regulations other than the codification of criminal law. [8]

The "Administrative Criminal Law" term in Indonesia from the various works of literature previously mentioned is widely used closer to the second meaning of Byung-Sun Cho. Sudarto uses it to designate administrative offences in special laws. Ruslan uses to designate the use of criminal sanctions in special laws that regulate various areas of life. Barda also uses to designates the use of criminal law in the field of administration.

Muladi uses it to refer the many legislative regulation in administrative law that include criminal sanctions to strengthen administrative sanctions. Likewise with Maroni. These various writers often make comparisons between Criminal Law and Administrative Criminal Law.

Meanwhile, Dinoroy compares Administrative Law with Administrative Criminal Law. As stated by ByungSun Cho, the term "Administrative Criminal Law" is defined according to the first meaning, which is identical to granting authority to administrative bodies to impose sanctions that have characteristics and similarities to criminal acts. Such a distinction correlates with the emergence of administrative sanctions with characteristics and similarities to criminal sanctions. Administrative sanctions are not limited to coercive measures to stop violations of regulations so that undesirable consequences do not occur but are also imposed for act occurred. Administrative sanctions are thus also punitive. Dinoroy's suggestion to formulate an appropriate model or mechanism regarding a system of examination and the imposition of more effective and punitive administrative sanctions before entering the stage of examination in court, according to the author, in line with the Law of Infringements which this idea came from Gesetz über Ordnungswidrigkeiten (OWiG) in Germany.

Supporting the above statement, the criminal law literature in Indonesia does not recognize the "Law of Infringement" group even though this term could be a concept to answer the many uses of criminal sanctions in Indonesia in the future. Another reason also comes from the doctrine of the separation of functions and powers and the doctrine in the Civil Law Legal System, the determination of acts that are punishable as criminal acts and the determination of criminal sanctions for such acts are the authority of the legislative body. From a legislation point of view, Article 15 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Establishment of Law and Regulation Rule) as amended by Law Number 15 of 2019, stipulates that criminal material provisions can only be contained in legislative regulation, provincial regulations or regency regional regulations. The procedure for placing administrative sanctions and criminal sanctions in the Establishment of Law and Regulation Rule is different. Criminal sanctions are placed in a separate chapter, namely the Criminal Provisions Chapter, while administrative sanctions are not placed in a separate chapter. Administrative sanctions are regulated in Appendix II points 64 - 66. Administrative sanctions are directly attached to norms that will be subject to administrative sanctions. If the norm to be attached to administrative sanctions is more than one article, it is formulated in the last article of the section. There is no known formulation which criminal sanctions, administrative sanctions, and civil sanctions in one chapter. Administrative sanctions can be in license revocation, Dissolution, Supervision, Temporary Dismissal, Administrative Fines, or Police Force.

While the Criminal Provisions, which contain the determination of acts that are subject to criminal sanctions and the determination of criminal sanctions, are regulated in Appendix II numbers 112 to 126. Suppose the legislation uses a chapter by chapter grouping. In that case, the criminal provisions are located after the primary material of the legislative regulation and before the chapter on transitional provisions or closing provisions if there are no transitional provisions. Suppose no chapter by chapter

grouping is carried out. In that case, the criminal provisions are placed in an article directly before the article containing transitional provisions or articles containing closing provisions if there are no transitional provisions.

Meanwhile, the types of criminal sanctions are not regulated in the Establishment of Law and Regulation Rule but follow Article 10 of the Penal Code (KUHP), which is divided into Basic Penalties (Death penalty, imprisonment, confinement, and fines) and Additional Penalties (Revocation of Certain Rights, Confiscation of Certain Goods, and Announcement of Judges' Decisions). Through Law No. 20 of 1946 concerning the Coverage Penalty, the Basic Penalty has added Coverage Penalty, which is a substitute for imprisonment if the judge views that the person who commits the crime has an intention that deserves respect.

The distinction between Administrative Sanctions and Criminal Sanctions, both in the type and procedure of formulation in the laws in Indonesia, limits the discussion on "Administrative Criminal Law" in Indonesia. The discussion limit for the determination of acts that are punishable by criminal acts and their criminal sanctions in regulation outside the Penal Code (KUHP) that establish how the government regulates (administration) a field of life. The term "Administrative Criminal Law" in Indonesia is not used to refer the authority of an administrative body to impose punitive sanctions. A criterion similar to this first definition in Indonesia is blank criminal law (*Blanket Strafgesetze*). [9] Ruslan also mentioned this when discussing Administrative Criminal Law as a law that gives the government the authority to regulate legal materials autonomously. At the same time, the legislators themselves have determined the penalties for violations of the regulations that are still to be enacted. This article intends to emphasize how several legislative regulations grouped as Administrative Criminal Law should deal with a health protocol violation.

B. METHODS

This research uses a normative method known in legal research as "seeking to find those authorities in the primary sources of the law that are applicable to a particular situation" or "a scientific research procedure to find the truth based on scientific logic from the normative side." Come along with this method, this research uses a statute approach and conceptual approach. These approaches lead this research to find the normative aspects of legislation and provide a theoretical basis for rationality on a legal issue. [9]

C. RESULTS

The use of the term "Administrative Criminal Law" in the second sense, as reminded Byung-Sun Cho, is not appropriate if it becomes the rationale for changing the principles of criminal law. Administrative Criminal Law is only distinguished from Criminal Law because its formulation is outside the Penal Code (KUHP). The imposition of a criminal offence against the occurrence of administrative offences in a special law due to negligence, even though the offence does not determine the element of negligence, is an idea that comes from the first meaning of "Administrative Criminal Law". Likewise, it is inappropriate if "Administrative Criminal Law" used in the sense

of the second term makes its application not subject to the principle of guilty known in criminal law.

The distinction between the first and second meanings as done by Byung-Sun Cho, in the author's opinion, does not only lead to the conclusion that there is no need to change the application of criminal law principles to Administrative Criminal Law used in the second sense. However, it can also be a criticism of applying criminal law principles that are not sensitive to "Administrative Criminal Law". If the erroneous conception of "Administrative Criminal Law" makes administrative offences unnecessarily subject to the principle of guilty, various possible reasons for justifying and forgiving reasons (removing guilty) in administrative offences can be justified. According to the author, this opinion is relevant in Indonesia, which does not recognize the Law of Infringements, does not recognize the error (Error Facti and Error Juris) as the reason for eliminating guilt in positive law, and many uses of criminal sanctions in administrative laws. The reason that criminal law is sensitive to Administrative Criminal Law, as stated by Ruslan, is that the *Orderingstrafrecht* is not aimed at free individuals and is not socially and psychologically illegal but is aimed at humans as players of particular roles and is required to conform with other forms of action according to their role. These characteristics make the criteria for criminalization wide open, make the principle of subsidiarity - criminal law as the *ultimum remidium* - shift to *primum remidium*, the principle of legality is affected considering the number of criminalization.

In contrast, law enforcement officers are limited and make the principle of equality affected because the limited law enforcers are more inclined to the victims with high social status when there is much criminalization. In line with Ruslan, Jan Rummelink stated the same thing when expressing a sociological view on legal norms and subjects. In this view, humans or individuals are primarily role players, even a set of roles, because individuals (eventually) function in some collectivities. In short, we live by fulfilling multiple roles. [10]

D. DISCUSSION

Various laws governing the control of infectious disease outbreaks give birth to obligations and prohibitions accompanied by penal sanction for the community. There are criminal acts and criminal sanctions in the field of criminal law. Likewise, giving birth to the government's authority to carry out government affairs for the sake of public welfare is an aspect of state administrative law. Even though there is a law, not everything related to controlling the transmission of disease outbreaks is regulated. Against this, there is the principle of *freies ermessen* or freedom of action from the state administrative organs on their initiative to resolve problems that arise suddenly. The settlement regulations do not yet exist. However, this independence should not be exercised to the detriment of citizens without a proper reason. State administration officials may not exercise their authority to carry out a public interest other than those referred to in the regulations on which their authority is based. To carry out their duties, the state administration and making regulations can make provisions.[11]

Various laws that can be applied to deal with Covid19 have many derivative regulation. Law no. 4/1984 concerning Outbreaks of Infectious Diseases is further

regulated in Government Regulation Number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases (PP No. 40/1991). Law No. 24/2007 concerning Disaster Management is further regulated in Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management (PP No. 21/2008) and Government Regulation Number 22 of 2008 concerning Funding and Management of Disaster Aid (PP No. 22/2008). Law No. 6/2018 concerning Health Quarantine is implemented by Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Covid 2019 (PP No. 21/2020). In addition, there are presidential regulations, presidential decrees, presidential instructions, ministerial regulations, and ministerial decisions that follow. Among the regulations and decisions promulgated are related to health protocols to deal with Covid-19.

In Law No. 4/1984 concerning Outbreaks of Infectious Diseases, the main focus is on outbreaks and how to deal with them. An outbreak of an infectious disease or in this law referred to as an epidemic, in Article 1 letter a, is defined as an outbreak of an infectious disease in the community whose number of sufferers has significantly increased beyond the usual situation at a particular time and area and can cause disaster. Article 2 of this law stipulates the aim of protecting the population from the havoc caused by the plague. For this purpose, Article 3 of this law authorizes the Minister of Health of Indonesia to determine the types of diseases that can cause epidemics. Article 4 authorized to determine and revoke the determination of areas within the territory of the Republic of Indonesia that are affected by the epidemic. Various forms of epidemic control efforts are regulated in Article 5 paragraph 1, which includes: epidemiological investigations; examination, treatment, care, and isolation of patients, including quarantine measures; prevention and immunity; the extermination of the cause of the disease; handling of corpses due to epidemics; outreach to the public; and other countermeasures. Article 13 of this law also stipulates the obligation of every party that manages materials that contain diseasecausing substances and can cause epidemics to fulfil specific provisions stipulated in government regulations.

Following the ratio of epidemic control based on Law No. 4/1984 concerning Outbreaks of Infectious Diseases, although the Minister of Health was given the authority to determine and revoke outbreak areas, until June 2021, no ministerial decree was issued regarding the determination of outbreak areas. The determination of the Plague Area is further regulated in Government Regulation No. 40/1991 concerning Disease Outbreak Management. Article 3 of PP 40/1991 concerning the Control of Disease Outbreaks determines that the stipulation of an outbreak area is applied to one district. The policy not to determine outbreak areas is related to the scope of which areas can be carried out in response efforts. Without any determination of the epidemic area, other forms of prevention efforts will be implemented throughout State territory.

The scope of Law No. 24/2007 on Disaster Management is wider than the Infectious Disease Outbreak Law. Article 1 paragraph 1 of this law defines a disaster as an event or series of events that threaten and disrupt people's lives and livelihoods caused by both natural and or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property losses, and psychological impact.

Article 1 point 3 explains that non-natural disasters are disasters caused by non-natural events or series of events, including technological failures, failed modernization, epidemics, and disease outbreaks. Article 1 point 5 stipulates that the implementation of disaster management is a series of efforts that include establishing development policies that pose a risk of disaster, disaster prevention activities, emergency response, and rehabilitation. The implementation of disaster management is regulated in Article 6, which includes: Disaster risk reduction and integration of disaster risk reduction with development programs; Protection of the community from the impact of disasters; Guarantee the fulfilment of the rights of communities and refugees affected by disasters fairly and following minimum service standards; Recovery of conditions from the impact of disasters; The allocation of the disaster management budget in an adequate state revenue and expenditure budget; implementation of disaster management budget in a ready-to-use form; and Maintenance of authentic and credible archives/documents from the threat and impact of disasters.

Law No. 24/2007 on Disaster Management also established the National Disaster Management Agency (BNPB) both at the national and regional levels. There are three public obligations stipulated in Article 27 of this law, among others: maintaining a harmonious social life of the community, maintaining balance, harmony, consistency, and preserving environmental functions; carry out disaster management activities; and provide correct information to the public about disaster management. Article 33 divides disaster management into three stages: the pre-disaster stage, the stage during emergency response, and the post-disaster stage. At the emergency response stage, based on Article 48, disaster management can be carried out by determining the status of an emergency. The status of a disaster emergency is defined in Article 1 point 19 as a condition determined by the Government for a certain period based on the recommendation of the Agency assigned the task of dealing with disasters. Determination of emergency response status based on Article 51 paragraph 2, at the national scale is carried out by the President, the governor carries out the provincial scale and the regent/mayor carries out the district/city scale. When the emergency response status is determined, the National Disaster Management Agency and the Regional Disaster Management Agency have easy access, which includes: mobilizing human resources; deployment of equipment; logistics deployment; immigration, excise, and quarantine; licensing; procurement of goods/services; management and accountability of money or goods; rescue; and command to command the sector/institution. Based on Article 60, paragraph 2, the government and local governments can encourage public participation in providing funds originating from the community. Management of disaster relief resources includes planning, using, maintaining, monitoring, and evaluating goods, services, and/or national and international aid money.

Following the ratio of various provisions in Law no. 24/2007 concerning Disaster Management, on April 13, 2020, the President stipulates Presidential Decree Number 12 of 2020 concerning the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. Before the issuance of the presidential decree, based on Presidential Regulation Number 17 of 2018 concerning the Implementation of Disaster Management in Certain Circumstances, BNPB issued a

Decree of the Head of BNPB Number 9.A. of 2020 concerning the Determination of the Status of Certain Emergency Disasters due to Corona Virus Disease which is valid for 32 days from January 28 to February 28, 2020. The implementation of disaster management under certain circumstances is when the status of a Disaster Emergency has not been determined or has ended but is not extended. Furthermore, the Status of Certain Emergencies was extended through the Decree of the Head of BNPB Number 13.A of 2020 concerning the Extension of the Status of Certain Emergency Disasters due to Corona Virus Disease, which is valid for 91 days from February 29 to May 29, 2020.

If Law No. 4/1984 on Outbreaks of Infectious Disease focuses on tackling disease outbreaks, while Law No. 24/2007 on Disaster Management is building a system to prevent and cope with various disasters, then Law No. 6/2018 concerning Health Quarantine focuses on preventing the entry and exit of diseases or health risk factors. Based on Article 1 point 1 of Law No. 6/2018 concerning Health Quarantine, it is an effort to prevent and prevent the entry or exit of diseases or public health risk factors that have the potential to cause public health emergencies. Article 9 stipulates that there are two obligations for everyone, namely complying with the implementation of health quarantine and participating in the implementation of health quarantine. Based on Article 10 paragraph 1, the Central Government is given the authority to determine and revoke the status of Public Health Emergency. In addition, Article 10 paragraph 2 authorizes the central Government to stipulate and revoke the determination of entrances or areas in the country affected by public health emergencies. The procedure for determining and revoking the status of a Public Health Emergency and the stipulation and revocation of the stipulation of Entrance Doors and/or areas in the country Affected by a Public Health Emergency shall be regulated by a Government Regulation. Article 15 paragraph 1 determines that Health Quarantine at the Entrance Gate and in the territory is carried out through observation of disease and Public Health Risk Factors for Transport Equipment, people, goods, and/or the environment; and response in the form of Health Quarantine action. Health Quarantine measures are regulated in Article 15 paragraph 2 in the form of : Quarantine, Isolation, vaccination or prophylaxis, referral, disinfection, and/or decontamination of people according to indications; Large-Scale Social Restrictions; disinfection, decontamination, disinsection, and/or deratization of the Transport Equipment and Goods; and/or health, security, and control of environmental media. A Ministerial Regulation shall regulate further provisions regarding Health Quarantine measures.

Article 17 stipulates that Health Quarantine at the Entrance is held at Ports, Airports, and State Land Cross Border Posts. Meanwhile, Article 18, paragraph 1 stipulates that Health Quarantine in an area is held in a place or location suspected of being infected with an infectious disease and/or exposed to public health risk factors. Article 18, paragraph 3 determines the place or location for the implementation of Health Quarantine in the area, which can be in houses, areas, and hospitals. Furthermore, it is regulated in Chapter VI Article 19 to Article 48, specifically regarding the Implementation of Health Quarantine at the Entrance. Article 48 stipulates various Administrative Sanctions for violations of the provisions in Chapter VI, directed to the captain, pilot captain, and the driver or person in charge of land vehicles. In Chapter VII,

it is also explicitly regulated regarding the Implementation of Health Quarantine in the territory which is regulated in Articles 49 to 60. At the end of Chapter VII, Administrative Sanctions are not regulated.

Following the ratio of Law No. 6/2018 concerning Health Quarantine, on March 31, 2020, Presidential Decree No. 11 of 2020 was issued concerning the Determination of Public Health Emergency of Corona Virus Disease 2019. Although authorized to determine and revoke the determination of entrances and/or areas in the country infected by a health emergency until June 2021, there is no determination of the Entrance to the infected health emergency or the determination of the area affected by the health emergency. Thus, the coverage area of Health Emergency and Health Emergency measures seems to be applied at every Entrance and in all area. This policy is also seen in the Circular Letter of the Minister of Health Number HK.02.01/MENKES/332/2020 concerning Health Protocols for Handling Return of Indonesian Citizens and Arrivals of Foreign Citizens from Abroad at State Entrances and Territories in Situations of Large-Scale Social Restrictions (PSBB) in the Context of Prevention Spread of Corona Virus Disease 2019 (COVID-19). In the circular letter, the health protocol is applied not specifically but applied at all State Entrances. The procedure for determining and revoking the Entrance and/or Areas Affected by Health Emergency based on Law 6/2018 concerning Health Quarantine is further regulated in government regulations.

Until June 2021, at least nine government regulations were made in the context of accelerating the handling of Covid-19. (1) Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019; (2) Government Regulation Number 23 of 2020 concerning Implementation of the National Economic Recovery Program in Order to Support State Financial Policies for Handling the 2019 Corona Virus Disease Pandemic and/or Facing Threats That Endanger the National Economy and/or Financial System Stability and Rescue the National Economy; (3) Government Regulation Number 29 of 2020 concerning Income Tax Facilities in the Context of Handling Corona Virus Disease; (4) Government Regulation Number 49 of 2020 concerning Adjustment of Contributions for the Employment Social Security Program during Non-Natural Disasters for the Spread of Corona Virus Disease 2019; (5) Government Regulation Number 43 of 2020 concerning Amendments to Government Regulation Number 23 of 2020 concerning Implementation of the National Economic Recovery Program in the Framework of Supporting State Financial Policies for Handling the 2019 Corona Virus Disease Pandemic and/or Facing Threats That Endanger the National Economy and/or Stability Financial System and National Economic Rescue; (6) Government Regulation Number 53 of 2020 concerning the Second Amendment to Government Regulation Number 66 of 2007 concerning State Equity Participation of the Republic of Indonesia for the Establishment of Company Companies in the Sector of Infrastructure Financing; (7) Government Regulation Number 55 of 2020 concerning the Second Amendment to Government Regulation Number 35 of 2009 concerning State Equity Participation of the Republic of Indonesia for the Establishment of Company Companies in the Infrastructure Guarantee Sector; (8) Government Regulation Number 57 of 2020 concerning the Second Amendment to Government Regulation Number 5 of 2005

concerning State Equity Participation of the Republic of Indonesia for the Establishment of Enterprise Companies in the Secondary Financing of Housing; and (9) Government Regulation Number 64 of 2020 concerning the Addition of the Republic of Indonesia's State Equity Participation into the Share Capital of the Company PT Pembangunan Wisata Indonesia. Of the nine government regulations, only Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 regulates health quarantine measures. Eight other government regulations regulate financial and economic policies to deal with the Covid-19 pandemic. Determination of Entrances and/or Areas Affected by Health Emergency according to the author, is in line with the structure of Law 6/2018 concerning Health Quarantine which regulates in a special chapter on Implementation of Health Quarantine at Entrances and a special chapter on Implementation of Health Quarantine in Regions. Such a distinction is related to the implementation of Health Quarantine at the Entrance and in the area, carried out in two forms. First, through disease observation activities and Public Health Risk Factors for Transport Equipment, People, Goods and/or the environment. Second, through a response in the form of Health Quarantine action. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 is not comprehensive enough. Although the status of a Health Emergency has been determined, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 only regulates one of the four Health Quarantine Measures provided by law. While LargeScale Social Restrictions are regulated, other forms of Quarantine Actions are: Quarantine, Isolation, vaccination or prophylaxis, referral, disinfection, and/or decontamination of people according to indications; disinfection, decontamination, and/or derivatization of the Transport Equipment and Goods; and/or health, security, and control of environmental media, are not specifically regulated in government regulations.

While Law no. 36/2009 concerning Health is general and does not only apply during a pandemic, it is beyond this paper's limits. All the laws discussed above are regulations on how the Government handles the Covid19 pandemic. These regulations are administrative, as the Government's basis in tackling Covid-19.

In Law No. 4/1984 concerning Outbreaks of Infectious Diseases, several criminal acts were stipulated. Article 14 paragraph 1 acts that intentionally hinder the implementation of epidemic control as stipulated in the law as a criminal act and are threatened with imprisonment for a maximum of one year and/or a maximum fine of one million rupiahs. Elucidation of Article 14 paragraph 1 states that it is only limited to the efforts regulated in Article 5 paragraph 1. While Article 14, paragraph 2 stipulates that negligence results in obstruction of the implementation of epidemic control as stipulated in the law, which is punishable by a maximum imprisonment of six months and/or a maximum fine of five hundred thousand rupiahs. Article 15 paragraph 1 stipulates that the act of intentionally improperly managing materials containing diseasecausing substances to cause epidemics is punishable by a maximum imprisonment of ten years and/or a maximum fine of one hundred million rupiahs.

Article 15, paragraph 2 stipulates that the act of neglecting to manage improperly materials containing disease-causing substances that can cause epidemics is punishable by a maximum imprisonment of one year and/or a maximum fine of ten million rupiahs. The legal subject or address of Article 14 and Article 15 of Law No. 4/1984 concerning Infectious Disease Outbreaks is everyone. In Indonesia's doctrine of criminal law, the Penal Code (KUHP) only recognizes natural persons as subjects of criminal law. Changes in the Criminal Code, a legacy of the colonial era, are running very slowly. Special laws outside the Criminal Code that regulate criminal matters can regulate differently from the Criminal Code under Article 103 of the Criminal Code. Article 103 of the Criminal Code states that the provisions in Chapters I to Chapter VIII of the general rules of Book I of the Criminal Code apply to acts that are subject to criminal sanctions by other laws and regulations unless the law provides otherwise. Article 15 paragraph 3 determines that a criminal act in Article 15 paragraph 1 can be committed by a legal entity (Rechtsperson). Regarding natural persons, it pays attention to Ruslan Saleh's opinion that the *Ordeningstrafrecht* does not aim at free individuals. It does not aim to socially and psychologically illegal. It is aimed at humans as players of specific roles and must conform with the appropriate forms of action with his role. The intended role is at least as an Indonesian citizen.

The act prohibited in Article 14 is to hinder the implementation of the outbreak control as stipulated in the law. Article 14, paragraph 1 of the act is carried out intentionally, while Article 14, paragraph 2 is carried out by negligence. Implementation of epidemic control based on Article 5 paragraph 1 in the form of : (a) epidemiological investigations; (b) examination, treatment, care, and isolation of patients, including quarantine measures; (c) prevention and immunity; (d) elimination of the cause of the disease; (e) handling of corpses due to epidemics; (f) outreach to the public; (g) other countermeasures. The implementation of epidemic control as regulated in Article 5 paragraph 1 is carried out by the Government by involving the community. Obstruction is an active action. This action is directed so that the Government is hampered or unable to implement the outbreak control. Various forms of the implementation of epidemic control, as mentioned earlier, can be directed to other people and the address of the criminal law itself. That is, the Government can implement Plague Management for ourselves or others than us. Suppose the implementation of Plague Management is carried out to other people. In that case, we take an action directed to the implementation of Plague Management carried out by the Government. It can be said that we are carrying out active actions aimed at the implementation of epidemic control by the Government. If the implementation of Plague Management is directed at oneself, while oneself does not want various forms of implementation by the Government to be carried out, then these actions can also be said to hinder the implementation of Plague Management. However, these active actions are not directly directed to the Government's actions to carry out outbreak control. Suppose the actions are not directed directly at the Government's actions to carry out Plague Management. In that case, the author believes that this is a criterion for determining the existence of negligence. So that this last act can be subject to Article 14 paragraph 2.

Article 14, paragraph 1 and paragraph 2 of Law No. 4/1984 on Outbreak of Infectious Disease formulate its elements loosely. Limitations of actions that can be included in the formulation of the implementation of Plague Management based on Article 5 paragraph 1 are not specifically determined. Even Article 5 paragraph 1 stipulates that there are other countermeasures, such as Article 5 paragraph 1 letter g, the boundaries of which are not yet clear. In the explanation of Article 5 paragraph 1 letter g, other countermeasures are actions taken in controlling the epidemic, namely that for each disease, special actions are taken. The author believes that Article 14 is identical to the formulation of a blank offence that has not determined the forms of acts that are punishable by crime. The various forms of plague management implementation are primarily carried out by the government and involving the community in the second place. From this point of view, hindering the implementation of the plague control carried out by the government does not same precisely with violating health protocol that government establish.

In Law No. 24/2007 on Disaster Management, several criminal acts are also stipulated. Article 75 paragraph 1 stipulates that acts due to negligence in carrying out high-risk construction that is not equipped with a disaster risk analysis resulting in a disaster are punishable. The punishment is imprisonment for a minimum of three years and a maximum of 6 years, and a fine of at least three hundred million rupiahs and a maximum of two billion rupiahs. Article 75 paragraph 2 is a weighting of the criminal threat of Article 75 paragraph 1 if there is loss of property or goods. Article 75 paragraph 3 is a weighting of the criminal sanction of Article 75 paragraph 1 if it arises as a result of the death of a person. Article 76 paragraph 1 is an aggravation of the actions of Article 75 paragraph 1 if it is done intentionally. Article 76 paragraph 2 is a weighting of Article 75 paragraph 2, which is carried out on purpose. Likewise, Article 76 paragraph 3 is a deliberate weighting of Article 75 paragraph 3. Article 77 stipulates that the act of intentionally obstructing the ease of access of BNPB during the emergency response status is punishable by imprisonment for a minimum of three years and a maximum of six years and a fine of at least two billion rupiahs and a maximum of four billion rupiahs. Article 78 stipulates that the act of intentionally misusing the management of disaster relief resources is punishable by imprisonment for a minimum of four years and a maximum of twenty years and a fine of at least six billion rupiahs and a maximum of twelve billion rupiahs. Article 79 is a regulation regarding acts in Articles 75 to 78 if corporations carry them out.

In Law no. 24/2007 concerning Disaster Management, a criminal act that defines an act with a broad limitation is Article 77. The subject of a criminal act in Article 77 is every person, the same legal subject as described in Article 14 of Law no. 4/1984 on Plague Management. The prohibited act intentionally hinders the ease of access as referred to in Article 50 paragraph (1). Elements of prohibited actions, namely obstacles that are directed at the ease of access owned by BNPB. Not specifically formulated specific actions that are part of the inhibiting act. The range of action of this element is extensive. If an action is directed at various forms of ease of access and causes ease of access to be hampered, the act can be categorized as intentionally hindering. Actions that are not directed at the ease of access in the author's

opinion cannot be categorized as intentionally inhibiting but can be categorized as negligent resulting in obstruction.

Given that Article 77 requires intentional action, negligent acts obstruct easy access to BNPB, and regional disaster management agencies are not punished. Article 50 paragraph 1 itself formulates various forms of ease of access for BNPB and regional disaster management agencies, which include: (a) mobilization of human resources; (b) deployment of equipment; (c) logistics deployment; (d) immigration, excise duty, and quarantine; (e) licensing; (f) procurement of goods/services; (g) management and accountability of money and/or goods; (h) rescue; and (i) command to command the sector/institution. Almost all the ease of access stated in Article 50 paragraph 1 is directed at other government administrative bodies. In the author's opinion, it is not directly related to the broader community. Only Article 50 paragraph 1 letter h, namely the ease of access to carry out rescues related to the broader community. The provisions regarding the rescue are further regulated in Article 46 of Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management. BNPB and regional disaster management agencies to carry out rescues have the authority to: (a) remove and/or destroy goods or objects in disaster locations that can endanger lives; (b) removing and/or destroying goods or objects that may interfere with the rescue process; (c) ordering people to leave a location or prohibiting people from entering a location; (d) isolate or close a location whether public or private; and (e) instructs the head of the relevant agency/institution to turn off the electricity, gas, or close/open the floodgates.

Criminal provisions of Law No. 6/2018 concerning Health Quarantine are regulated in Chapter XIII, including Articles 90 to 94. Article 90 is addressed to the captain who lowers or raises people and/or goods before obtaining Health Quarantine Approval with the intention of spreading disease and/or risk factors health emergencies that give rise to health emergencies. The threat of criminal sanctions in Article 90 is imprisonment for a maximum of ten years or a fine of a maximum of fifteen billion rupiahs. Article 91 is directed to a pilot captain who commits the same act as regulated in Article 90. The criminal threat of Article 91 is the same as Article 90. Article 92 is directed to a Land Vehicle Driver who commits the same act as Article 90 and Article 91. The criminal threat is also the same as Article 90 and 91. Article 93 addressed to anyone who does not comply with the implementation of Health Quarantine as regulated in Article 9 paragraph 1, which regulates the obligations of each person. The criminal threat of Article 93 is a maximum imprisonment of 1 year and/or a maximum fine of one hundred million rupiahs. Meanwhile, Article 94 does not regulate new acts but regulates the conditions under which corporations can be held criminally responsible if they commit acts regulated in Articles 90 to 92.

The legal subjects of Article 90, Article 91, Article 92 show the characteristics of Administrative Criminal Law by stipulating the Captain, Flight Captain, and Land Vehicle Driver sequentially. The legal subject is not aimed at free individuals but is aimed at humans as players of specific roles and must conform to the forms of action according to their roles. The legal subject of Article 93 is any person who, based on Article 1, number 31 of Law No. 6/2018 concerning Health Quarantine, is defined as an individual and/or entity, whether in the form of a legal entity or not legal entity. With

the provisions regarding the understanding of each person, Law No. 6/2018 concerning Health Quarantine regulates differently from the general rules of the Indonesian Penal Code (KUHP). Acts prohibited in Article 93 are not complying with the implementation of Health Quarantine as referred to in Article 9 paragraph 1 and/or obstructing the implementation of Health Quarantine so as to cause a Health Emergency. There are at least two actions that are prohibited, either done simultaneously or singly. First, not complying with the implementation of the Health Quarantine as referred to in Article 9 paragraph 1. This provision is in line with the obligation of everyone to comply with the implementation of the Health Quarantine as stipulated in Article 9 paragraph 1. The act of not obeying means not complying. Meanwhile, Health Quarantine, based on Article 1 point 1, is an effort to prevent and prevent the entry or exit of diseases and/or public health risk factors that can cause public health emergencies. The implementation of Health Quarantine as referred to in Article 93 is bound by the ratio of the settings in Law No. 6/2018 concerning Health Quarantine. Second, hindering the implementation of Health Quarantine, causing a Health Emergency. Obstructing is also interpreted as hindering, so blocking can be interpreted to create obstacles and obstructions. The limitation of this act is very broad; no specific obstructive act is specified, as long as it causes a Health Emergency to fulfil the obstructive element in this article. However, in the author's opinion, it is necessary to emphasize that the implementation of Health Quarantine carried out by the Government must be carried out in line with the provisions in Law No. 6/2018 concerning Health Quarantine. Otherwise, penal sanction to the community obligation to obey the implementation of health quarantine is irrelevant.

E. CONCLUSION

The Indonesian Ministry of Health has released guidelines for the prevention and control of COVID-19. The prevention guidelines issued in July 2020 noted that there had been twelve health protocols and guidelines related to Covid-19. There are four protocols outlined in the circular letter of the minister of health. The rest are in the form of guidelines and guidelines. The various protocols are intended as guidelines and guidelines for officers and the general public. The various forms of behaviour specified in the health protocol are precise, and the goal is to prevent and overcome the spread of Covid. The intended behaviour can be categorized as behaviour towards oneself/people, behaviour towards goods, and behaviour towards the environment. The protocols are applied in every life sector, whether in public facilities, during self-isolation, in education areas, offices, during funerals, in the service and trade sectors. Suppose it is related to a criminal act in Article 14 paragraph 1 of Law No. 4/1984 concerning Outbreaks of Infectious Diseases, as long as the actions are not directed directly at the officers in implementing the protocol to prevent the epidemic is hindered. In that case, they cannot be punished based on this article. Suppose the actions taken are not directed at the officers but do actions that avoid and do not carry out the protocol for themselves. In that case, the officer can still carry out the health protocol, but the response's effectiveness is reduced. Basically, according to the author, it does not prevent officers from carrying out outbreak control but makes the implementation of outbreak control

by officers ineffective. The legal policy of Article 14 paragraph 2 by regulating negligence seems to be reaching out to similar acts as illustrated.

If it is related to Article 77 of Law No. 24/2007 on Disaster Management, not complying with health protocols does not in itself hinder the ease of access for BNPB and regional disaster management agencies. The author believes that this article cannot punish noncompliance with health protocols. If it is related to Article 93 of Law No. 6/2018 concerning Health Quarantine, not complying with health protocols is not the same as not complying with the implementation of Health Quarantine. The limitations of implementing Health Quarantine are determined by Law No. 6/2018 concerning Health Quarantine. If the implementation of government administration is not based on Law No. 6/2018 concerning Health Quarantine, disobeying the officers is not the same as not complying with the implementation of Health Quarantine. And vice versa.

At this point, it can be said that not complying with the health protocol for oneself is more appropriate if it is subject to Article 14, paragraph 2 of Law No. 4/1984 concerning Infectious Disease Outbreaks. Other articles doctrinally contain objections if they are to be imposed on acts of not complying with health protocols.

Considering that the offences discussed earlier can be categorized as Administrative Offences, the objection to the use of these articles for non-compliance with health protocols comes from the theoretical realm. As discussed at the outset, the use of justifications and excuses for criminal abolition as widely as possible in the author's opinion can be justified. Suppose the judge finds convincing reasons that the defendant cannot know his obligations and roles as expected by law. In that case, the writer believes that the judge must decide acquittal.

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