

Application of Large-Scale Social Restrictions (PSBB) Sanctions in the Perspective of Criminal Law



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ABSTRACT: Indonesia is a country based on law, so any human or community activity that is its life activity must be based on the rules and norms that apply in society. This PSBB is an object intended in Article 93 because the PSBB is a form of health quarantine. The application of this criminal sanction aims to provide a deterrent effect to violators of the PSBB policy. Indeed, the imposition of criminal sanctions on PSBB violators is not appropriate, but considering that there are still many people who do not heed this policy, they do not feel deterred if they are only given sanctions such as social work. The formulation of the problem is how to apply large-scale social restrictions (PSBB) sanctions in the criminal law perspective and the construction of criminal sanctions on the formulation of the offense in Article 93 of Law No. 6 of 2018 concerning Health Quarantine. The research method used is normative juridical.

KEYWORDS: Application of criminal sanctions, Large-Scale Social Restrictions (PSBB).

A. INTRODUCTION

Indonesia is a country based on law, so any human or community activity that is its life activity must be based on the rules and norms that apply in society. The law is inseparable from human life because the law is a rule to regulate human behavior in his life. One of the Covid-19 pandemics that has hit the world is Indonesia, so that in handling and preventing the spread of the virus, the government issued several policies including the implementation of *social distancing*, *physical distancing*, to Large-Scale Social Restrictions (PSBB) and issued rules on health protocols and sanctions for violators.

Based on Article 2 of the Regulation of the Minister of Health Number 9 of 2020, PSBB is applied to a Province/Regency/City area that has met 2 criteria. The first criterion is the implementation of Large-Scale Social Restrictions (PSBB) in areas that have a high rate of death cases due to Covid-19 and spread in several regions significantly. The second criterion for regions with the application of PSBB is for areas in which there are epidemiological-like diseases similar to other countries. During the implementation of the PSBB, several things were restricted, one of which was activities in the educational environment and the workplace. In this case, the restrictions carried out are to stop activities that are usually carried out in the school environment and work environment such as teaching and learning activities and school activities that are usually carried out daily. For activities in the work environment as usual, it is stopped with alternative work *from home* or work from home options. *Work from home* is enforced by each office agency against their employees with an appeal to carry out work from home without having to set foot in the office.

With the development and increase in the number of covid 19 infection cases in Indonesia, the PSBB policy imposed by the government is certainly made for a clear reason. The positive impact of implementing the PSBB, one of which is suppressing the spread of the COVID-19 virus, of course, remains with the commitment of the community to comply with existing policies and start implementing health protocols for themselves. Related to the implementation of the PSBB as a measure to prevent the spread of the COVID-19 virus, it is certainly inseparable from community involvement in it. There are many pros and cons to the government's policy of implementing Large-Scale Social Restrictions (PSBB). Some groups of people still do not comply with government policy rules. People still do gatherings together in places where sambal hangs out to eat food and drinks to joke with their friends. Even though the government has strictly banned this action because it can increase the risk of spreading the covid-19 virus quickly. A group of young people are still doing their daily activities outside the house without any worries. The government has planned criminal sanctions for those who violate this PSBB policy. DKI Jakarta as the first region to implement PSBB on April 10, 2020 through Governor Regulation Number 23 of 2020 which will be implemented on April 23, 2020. The legal basis for the sanctions imposed on violators is Article 93 jo Article 9 of Law Number 6 of 2018 concerning Health Quarantine. The provisions of Article 93 which stipulate that people who do not comply with the funds or obstruct the implementation of health to the point of causing a public health emergency can be sentenced to criminal sanctions for 1 year and/or a maximum fine of one hundred million.

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Based on Article 17 of the ninth part in Governor Regulation Number 41 of 2020 concerning the provision of sanctions for violators of the PSBB rules, it is stipulated that the imposition of criminal sanctions for violations of the implementation of the PSBB is carried out by the Police in accordance with the provisions of the laws and regulations. In this case, based on a statement from the Head of Public Relations of Metro Jaya Kombes Yusri Yunus explained how to provide criminal sanctions to violators, firstly the enforcement of officers from the DKI Provincial Government which refers to DKI Governor Regulation (Pergub) Number 41 of 2020 concerning Sanctions for Violators of PSBB Rules. If the violator is uncooperative, then the police will intervene by providing criminal sanctions, the violator will be entangled in Article 93 of Law No. 6 of 2018 concerning Health Quarantine or Article 212 or Article 214 of the Criminal Code related to resisting officers. In addition, if the offender resists the officer by not heeding what the officer said, resists violently, it will be subject to Law No. 6 of 2018.

This PSBB is an object intended in Article 93 because the PSBB is a form of health quarantine. The application of this criminal sanction aims to provide a deterrent effect to violators of the PSBB policy. Indeed, the imposition of criminal sanctions on PSBB violators is not appropriate, but considering that there are still many people who do not heed this policy, they do not feel deterred if they are only given sanctions such as social work. For example, what has happened before, a number of violators of the homecoming ban are only asked to return home by the officers so that it does not cause a deterrent effect. It should be necessary to add legal instruments in the PSBB so that the role of the police can be maximized. One of them is by using the criminal element. That way, the Police will be more flexible in cracking down on PSBB violators, such as by providing imprisonment sentences.

Based on the description above, the author wants to raise this issue in a thesis entitled "**APPLICATION OF LARGE-SCALE SOCIAL RESTRICTIONS (PSBB) SANCTIONS IN THE PERSPECTIVE OF CRIMINAL LAW**"

B. PROBLEM FORMULATION

As previously described, the author will formulate the subject matter as follows:

1. How is the implementation of Large-Scale Social Restrictions (PSBB) sanctions in a Criminal Law Perspective?
2. How is the construction of criminal sanctions for the formulation of the offense in Article 93 of Law No. 6 of 2018 concerning Health Quarantine?

C. RESEARCH OBJECTIVES

From the provisions of the problem formulation that has been described above, the objectives of this study are as follows:

1. To find out the application of Large-Scale Social Restrictions (PSBB) sanctions in a Criminal Law Perspective.
2. To find out the construction of criminal sanctions for the formulation of the offense in Article 93 of Law No. 6 of 2018 concerning Health Quarantine.

D. RESEARCH METHODS

The approach method used in this study is normative juridical. Juridical legal research means research that refers to existing literature studies or on secondary data used. While normative, it means legal research that aims to obtain normative knowledge about the relationship between one regulation and another and its application in practice.

The research materials used in this writing are primary legal materials and secondary legal materials. The type of research is a choice of research models that are able to provide a comprehensive picture of the research objectives to be achieved. This type of research is descriptive, that is, to describe in detail the social phenomena of the law and then analyze them.

This study seeks to describe in detail how legal politics is in the perspective of church law. The research approach is a strategy chosen by the researcher to observe, collect information and to present an analysis of research results. In this study, the strategy used is a qualitative approach, namely a research strategy that utilizes and collects more information by exploring the phenomenon under study.

The resulting data in this writing are laws related to research results including:

1. Law No. 6 of 2018 concerning Health Quarantine.
2. Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19).

E. DISCUSSION

1. Application of Large-Scale Social Restrictions (PSBB) Sanctions in a Criminal Law Perspective

A punitive measure imposed by a particular state or group due to an offense committed by a person or group. The criminal law system has two types of sanctions that have the same position, namely criminal sanctions and action sanctions. Criminal sanctions are the type of sanctions that are most widely used in imposing punishment on a person who is found guilty of committing a criminal act.^[2]

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Sanctions are defined as dependents, actions, penalties to force people to keep agreements or obey the provisions of the Law. Action sanctions are a type of sanction that is more widely outside the Criminal Code, the forms of which are in the form of hospitalization and returned to their parents or guardians for irresponsible people and minors.^[3]

A pandemic is an outbreak of a disease that spreads very quickly to people and occurs almost in all regions of the world, covering a very wide range, as well as crossing international borders.^[4] Corona virus is a large family of viruses that cause disease in humans and animals. In humans, it usually causes respiratory infections, ranging from the common cold to serious diseases such as Middle East Respiratory Syndrome (MERS) and severe acute respiratory syndrome (SARS). A new type of coronavirus found in humans since an extraordinary event appeared in Wuhan China, in December 2019, was later named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-COV2), and caused the disease Coronavirus Disease-2019 (COVID-19).

The transmission rate of Covid-19 is very high so that some countries have taken preventive steps in dealing with the rate of spread of the Covid-19 virus. The steps taken are by closing access to social mobilization of the community and human physical interaction carried out in several countries such as Europe, America and Asia by carrying out regional quarantine or called *lockdown*.^[5]

In the laws and regulations in Indonesia, it is known as Regional Quarantine and Large-Scale Social Restrictions which have the same meaning and purpose as Lockdown. The President then issued Government Regulation of the Republic of Indonesia Number 21 of 2020 as an Implementing Regulation of Law No. 6 Article 60 of 2018 which is used as a legal basis in the implementation of Large-Scale Social Restrictions (PSBB).

Government Regulation No. 21 of 2020 concerning Large-scale Social Restrictions in order to accelerate the handling of Covid-19 as an implementing regulation that requires further explanation of the three provisions whose explanations have not been detailed. However, in PP No. 21 of 2020 concerning Large-Scale Social Restrictions, the discussion is still very limited.

Indonesia as a legal country in implementing a legal product uses the theory of legal norms that are tiered (hierarchical) in the sense that the legal product under it must not conflict with the higher legal product above it (*lex superior derogate leg inferior*).

Punishment based on criminal law is the imposition of sanctions, the application of the law The theories of punishment adopted by Indonesia are divided into three, namely the theory of retaliation, the theory of purpose and the last is the combined theory. The theory of retribution says that the conviction is imposed in retaliation for the act against the person who has committed the crime While the theory of purpose says that the criminal conviction has a specific purpose that has benefits, one of which is to protect the community and also to prevent the occurrence of crime. And the last is a combined theory that emerged as a reaction to both previous theories, this theory says that the conviction was given in retaliation for the crime that has been made by the perpetrator and is also given to achieve a certain goal. In this case, the imposition of criminal prison sanctions on PSBB violators is considered inappropriate because the weight of the violations committed is not as heavy as the weight of the crime errors regulated in the Criminal Code so as to allow the imposition of criminal sanctions. Imprisonment is a penalty of restricting freedom of movement or deprivation of liberty, where a person will be placed in a special place called a community institution. Imprisonment is usually sentenced to the perpetrator of the crime. A crime is an act that is considered contrary to justice, where even if the word deed is not threatened with punishment, it is still seen as something contrary to justice.

2. Construction of Criminal Sanctions for the Formulation of Delik in Article 93 of Law No. 6 of 2018 concerning Health Quarantine

Case Position

The Public Prosecutor's Criminal Charges against the Defendants are as follows:

1. Declaring Defendant MOH RIZIEQ BIN HUSEIN SYIHAB Alias HABIB MUHAMMAD RIZIQ proved lawfully and conclusively guilty of committing a criminal offence "Any person who does not comply with the implementation of quarantine Health as referred to in Article 9 paragraph (1)" as regulated and threatened with criminality in the First Alternative Indictment Article 93 of Law Number 6 of 2018 concerning Health Quarantine;
2. Sentence the Defendant MOH RIZIEQ BIN HUSEIN SYIHAB Alias HABIB MUHAMMAD RIZIQ in the form of imprisonment for 10 (Ten) months and a fine of Rp. 50,000,000, - (Fifty million rupiah) subsidiary 3 (three) months confinement;
3. Declare evidence in the form of:
 1. 1 (one) banner / billboard appeal that reads "*PROTECT YOURSELF AND YOUR FAMILY FROM THE CORONA VIRUS (COVID-19), THE HEALTHY LIVING COMMUNITY MOVEMENT USING MASKS, WASHING HANDS AND MAINTAINING DISTANCE, THE COVID-19 TASK FORCE* , Megamendung District , Bogor Regency " which installed at the gate or entrance gate of Jalan Cikopo Selatan Bogor Regency (Gadog);
 2. 1 (one) baner / billboard warning that reads "*NON-MASKED VISITORS ARE PROHIBITED FROM ENTERING!!*" REGENT REGULATION NUMBER 35 of 2020 which was installed at the Gate of the Megamendung District Office ;
 3. 1 (one) banner / billboard appeal that reads "*YOU ENTER THE MANDATORY MASK AREA, GOGOR REGENCY, BOGOR REGENCY COVID-19 TASK FORCE* " which is in install at Simpang Gadog Jalan Pasir Muncang Gadog Village, Megamendung District, Bogor Regency;

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4. 1 (one) banner / billboard appeal that reads "YOU ENTER THE MANDATORY MASK AREA, GOGOR REGENCY, BOGOR REGENCY COVID-19 TASK FORCE" which was installed in Simpang, Jalan Lieutenant District Sunyata Sukhmani Village, Megamendung District, Bogor Regency;

Returned to witness Iwan Volunteer, S. Sos.

1. 1 (one) piece of SanDisk brand black Flagstick containing CCTV footage at the Gadog 24-Hour Clinic location on November 13, 2020 at 08.25 WIB until it is completed;
2. 1 (one) piece of black Flagstick brand SanDisk usb 3.0 containing CCTV footage at the Simpang Gadog location on November 13, 2020 at 06.50 WIB until it is completed;
3. 1 (one) piece of Black Flagstick brand V-GeN 8 GB containing video recordings at the location of the Markaz Syariah Megamendung Agricultural Islamic Boarding School when MR Alias HMR Bin HS delivered a lecture, on November 13, 2020, the duration was 16.05 minutes obtained from front TV's YouTube channel;
4. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 16 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease (Covid-19) in Bogor Regency was issued on April 14, 2020.
5. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 35 of 2020 concerning Guidelines for Large-Scale Social Restrictions proportionally as Preparation for the Implementation of New Habit Adaptation for Prevention and Control of Handling Corona Virus Disease (Covid-19) in Bogor Regency was issued on June 04, 2020;
6. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 40 of 2020 concerning Large-Scale Social Restrictions during the transition period to a healthy, safe and productive society. Issued on July 02, 2020;
7. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 42 of 2020 Large-Scale Social Restrictions pre-adapting new habits towards a healthy, safe society and productive issued on July 16, 2020;
8. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 52 of 2020 concerning Amendments to Regent Regulation Number 42 of 2020 Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society issued on August 13, 2020;
9. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 60 of 2020 concerning the Implementation of Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society in Bogor Regency. Issued on September 10, 2020;
10. 1 (one) photocopy bundle in the legalization of Regent Regulation Number 61 of 2020 concerning Health Protocols in the Implementation of Large-Scale Social Restrictions pre-adaptation to habits new to a healthy, safe and productive society in Bogor Regency Issued on September 10, 2020;
11. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 360/200/Kpts/Per-UU/2020 concerning the Establishment of a Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on the date March 17, 2020;
12. 1 (one) photocopy bundle in the legalization of the Regent's decree Number: 360/215/Kpts/Per-UU/2020 concerning Amendments to the Regent's Decree Number: 360/200/Kpts/Per-UU/2020 concerning the Establishment of a Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on March 31, 2020;
13. 1 (one) photocopy bundle in the legalization of Regent's Decree Number: 360/216/Kpts/Per-UU/2020 concerning the Second Amendment to Regent's Decree Number: 360/200/Kpts/Per-UU/2020 concerning the Establishment of a Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency issued on April 02, 2020;
14. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/234/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on April 14, 2020;
15. 1 (one) photocopy bundle in the legalization of regent's decree Number 443/258/Kpts/Per-UU/2020 concerning the Extension of the Implementation of Large-Scale Social Restrictions in Handling Corona Disease 2019 (Covid-19) in Bogor Regency was issued on April 28, 2020.
16. 1 (one) photocopy bundle in the legalization of regent's decree Number: 443/274/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on May 12, 2020;
17. 1 (one) photocopy bundle in the legalization of regent's decree Number: 443/282/Kpts/Per-UU/2020 concerning Amendments to Regent's Decree Number: 443/274/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on May 20, 2020;
18. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/284/Kpts/Per-UU/2020 concerning the Third Extension of the Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in Bogor Regency was issued on May 29, 2020;

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19. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/293/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions proportionally in preparation for the implementation of adaptation to new habits for the prevention and Control of Corona Virus Disease 2019 (Covid 19) in Bogor Regency was issued on June 04, 2020;
20. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/308/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions during the transition period to a healthy, safe and productive society was issued on July 02, 2020;
21. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/321/Kpts/Per-UU/2020 concerning the Implementation of Large-Scale Social Restrictions before adapting to new habits towards a healthy, safe and productive society was issued on July 16, 2020;
22. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/342/Kpts/Per-UU/2020 concerning the Extension of the Implementation of Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society was issued on July 30, 2020
23. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/388/Kpts/Per-UU/2020 concerning the Second Extension of the Implementation of Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society Issued on August 13, 2020;
24. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443 / 432 / Kpts / Per-UU / 2020 concerning the Third Extension of the Implementation of Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society in Bogor Regency was issued on September 10, 2020;
25. 1 (one) photocopy bundle in the legalization of the Regent's Decree Number: 443/450/Kpts/Per-UU/2020 concerning the Fourth Extension of the Implementation of Large-Scale Social Restrictions pre-adaptation to new habits towards a healthy, safe and productive society in Bogor Regency was issued on September 29, 2020; Considering, that the Panel of Judges of the East Jakarta District Court handed down decision Number 226/ Pid.Sus/ 2020 / PN. Jkt Tim dated May 27, 2021, which is as follows:
 1. Declared Defendant MOH. RIZIEQ Bin SAYYID HUSEIN SHIHAB Alias HABIB MUHAMMAD RIZIEQ SHIHAB has been validly and conclusively proven guilty of committing the criminal act of "Disobeying the Implementation of Health Quarantine";
 2. Sentence the Defendant to a fine of Rp. 20,000,000.00 (Twenty million rupiah) provided that if the fine is not paid, it is replaced by a Sentence of Confinement for 5 (Five) Months;

If negative behaviour can be a consequence of an effect, then we agree that criminal acts formulated in the form of delicta omissions, negative acts in which can cause an effect, it is not so easy that it can be accepted and applied to the context, in case psbb violators or someone who if it meets the formulation of article 93 of the Health Quarantine Law. Against the formulation of the quo, between the deeds and the consequences caused, it is very likely that it also has a fairly long-time span. There is no possibility between the act of disobeying and/or obstructing the implementation of health quarantine, with the consequences in the form of a public health emergency occurring shortly after the act or behaviour occurred. If it was previously explained that it is very possible that the consequences of causing consequences come from more than one action, then this is true, especially between actions and consequences, it is very likely to have a fairly long-time span.

This should be a concern for law enforcement because it is related to determining criminal liability, because when talking about the criminal element, it can be punished that a person not only meets the formulation of the offense but also fulfills criminal liability.

F. CLOSING

1. Conclusion

- a. Punishment based on criminal law is the imposition of sanctions, the application of the law The theories of punishment adopted by Indonesia are divided into three, namely the theory of retaliation, the theory of purpose and the last is the combined theory. The theory of retribution says that the conviction is imposed in retaliation for the act against the person who has committed the crime while the theory of purpose says that the criminal conviction has a specific purpose that has benefits, one of which is to protect the community and also to prevent the occurrence of crime. And the last is a combined theory that emerged as a reaction to both previous theories, this theory says that the conviction was given in retaliation for the crime that has been made by the perpetrator and is also given to achieve a certain goal. In this case, the imposition of criminal prison sanctions on PSBB violators is considered inappropriate because the weight of the violations committed is not as heavy as the weight of the crime errors regulated in the Criminal Code so as to allow the imposition of criminal sanctions. Imprisonment is a penalty of restricting freedom of movement or deprivation of liberty, where a person will be placed in a special place called a community institution. Imprisonment is usually sentenced to the perpetrator of the crime. A crime is an act that is considered contrary to justice, where even if the word deed is not threatened with punishment, it is still seen as something contrary to justice.
- b. If negative behavior can be a consequence of an effect, then we agree that criminal acts formulated in the form of delicta omissions, negative acts in which can cause an effect, it is not so easy that it can be accepted and applied to the context, in case psbb violators or someone who if it meets the formulation of article 93 of the Health Quarantine Law. Against the formulation

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2. Suggestion

1. Criminal law is necessary in the implementation of the Covid-19 pandemic because of its essential function. Article 93 of the Health Quarantine Law provides legality for the state to provide punishment for violators of health quarantine, in which case the government realizes it in the form of PSBB.
2. Countermeasures outside of punishment will be much better and effective such as shaping people's legal consciousness.

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^[2] Mahrus Ali, Basics of Criminal Law, 9 Jakarta, 2015), p. 10. 193.

^[3] Article 44 and Article 45 of the Criminal Code.

^[4] Masrul Abdillah, Covid-19 pandemic, (Yayasan Kita Tulis, 2020), p. 10. 2

^[5] Rahmawati Lely Marita, et al, "Juridical Analysis of Government Regulation of the Republic of Indonesia Number 21 of 2020,"Scientific Journal of Law, Volume 27 Number 6, p. 820.



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