

# The Disparity of PSBB's Sanctions in Local Government Regulation in Indonesia

Sadam Afian Richwanudin<sup>1,\*</sup> Oce Madril<sup>1</sup>

<sup>1</sup>Fakultas Hukum Universitas Gadjah Mada

\*Corresponding author. Email: [sadamrichwanudin@gmail.com](mailto:sadamrichwanudin@gmail.com)

## ABSTRACT

The *Covid-19* pandemic that hit the entire world, including Indonesia, made several regions in Indonesia apply limited lockdown or in Indonesian policy, it's known as Large-Scale Social Restrictions (PSBB). One of the contents of the PSBB regulation is the existence of administrative sanctions for offenders of the PSBB regulations. The application of sanctions from one region to another has differences in both the type and level of sanctions. This study aims to analyze the differences or disparities of regulation on administrative sanctions based on several local government (PERDA) regulations and the reason for the disparities. Then, this study also analyses the differences in the application of sanctions. The research method used in this study is a normative and empirical approach. Firstly, several local government PSBB regulations will be collected. After being inventoried, the norms are analyzed by comparing the arrangements of administrative sanction by applying the theories regarding administrative sanctions and the related higher regulations. This study produces data on the disparity of sanctions in PSBB regulations in some regional governments and the sociological factors behind it. Furthermore, this research also produces a recommendation on future policy regarding sanctions in applying PSBB. In the end, the results of this study can become a reference for the Government in regulating sanctions in an emergency situation.

**Keywords:** *Local Regulation, Sanction, PSBB, Indonesia.*

## 1. INTRODUCTION

Legal norms and sanctions in setting a policy are inseparable things. This cannot be separated from the character of norms that coerce and regulate, the law itself. Utrecht said that the science of law is a collection of life instructions (commandments) and prohibitions that govern the society and its members. Therefore, violation of these guidelines could lead to action on the part of the government against the community. The imposition of sanctions is the giving of suffering which is given or inflicted on purpose by someone after an offense, crime and wrongdoing have been committed by someone as a way of disciplining.

According to the Black's Law Dictionary, a sanction is "a penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)" or punishment or coercive action as a result of failure to comply the Constitution[1]. Meanwhile, the definition of sanctions according to the Indonesian Dictionary is the responsibility (action or punishment) to force people

to maintain the agreements or comply with statutory provisions; an act of punishment against a country; negative rewards, in the form of burdens or suffering specified by law; and positive rewards, in the form of gifts or gifts specified by law[2].

Meanwhile, in practice, there are several types of sanctions, including criminal sanctions and administrative sanctions. A criminal sanction is a loss in the form of suffering deliberately given by the state to individuals who violate the law[3]. On the other hand, criminal sanctions are also moral education for perpetrators who have committed crimes with the intention of not repeating their actions[4]. There are several types of criminal sanctions given to criminals such as the death penalty, imprisonment, imprisonment, fines, imprisonment, and additional penalties. Administrative sanctions are sanctions imposed on administrative violations or provisions of laws that are administrative in practice. In general, administrative sanctions take the form of fines, license suspension, and other administrative actions.

There are two main sides to the fines as part of the norm in society. The reasons for the imposition of criminal fines are due to objections to corporate punishment for a short period of time. Some of the advantages of fines are:[5] First, fines do not cause stigmatization. Second, the perpetrator who is subject to a fine can remain with his family and social environment. Third, a fine will not cause the perpetrator to lose his job. Fourth, fines can easily be executed. Fifth, the state does not suffer losses due to the imposition of fines. The disadvantage of a fine is that it only benefits people who have more financial capacity.

Regarding its development, the use of sanctions, both criminal and administrative continues to develop until to Regional Regulations level. However, the criminalization policy at the Regional Regulation level should closely consider the important reasons. According to Barda Nawawi Arief, the criminalization process must consider the various aspects as following below:[6]

1. The use of criminal law must consider the objectives of national development, namely creating a just and prosperous society.
2. Acts that criminal law attempts to prevent and overcome must constitute acts that cause harm to society
3. The use of criminal law must also consider the principle of cost and yield, as well as social costs
4. The use of criminal law must also consider the capacity or work power of legal entities, so that they do not experience overbelasting.
5. The characteristics of the relevant areas should be considered.

Sanctions in the Regional Regulations should be required to examine in which how the sanctions are applied from one region to another. Ideally that norms could not be disparity deviation between the regions. One way of doing this is to ensure justice for the community because what is regulated by sanctions is the same action. Besides that, the sanctions in the Regional Regulations should not deviate or conflict with the rules and norms in other higher regulations. This is also to ensure that in its implementation, the application of sanctions does not conflict with the rights of citizens.

There are several gaps that can appear in Regional Regulations, both gaps with higher regulations and

gaps in one level of regulation with different locus. These gaps include differences in the imposition of sanctions, differences in the severity of sanctions imposed on violators, and differences in actions that are sanctioned or not by a norm. This can be happening because the existing regulations do not present clear guidelines for the formation of regulations and because of differences in political will between one region and another in forming norms. This will be the author's concern in analyzing this research so that it can give recommendations for future policymakers in formulating fair regulations.

## **2. RESEARCH METHOD**

The research method used in this study is a *juridis normative* approach. The primary data is any regulations in some region called a Local Government Regulation or "Peraturan Daerah" like "Peraturan Bupati" or "Peraturan Wali Kota" that contains a sanction for violators of the rules regarding lockdown. Then, the data used secondary data by examining the principles of law, especially about sanction and administrative sanction; and elements related to the object of research such as from reputable international journals, book, and dictionary related to the problems persisted on this research.

Firstly, several local government PSBB regulations will be collected by online research from the local government website or other legal document networks. After being inventoried, the norms are analyzed by comparing the arrangements of the norms from one regulation to others. Researchers focus on comparing norms regarding sanctions for violating lockdown provisions, the forms of sanction, amount of fine, and additional sanction.

The next step is to compare the norms written in the regulations with the theories, concepts, and provisions regarding sanctions. That data was analyzed qualitatively by doing a deeper analysis from the valid literature. A comparison was also made to higher regulations to find conformity and harmony between one regulation and another higher regulation.

In this study, the researchers specifically took samples of the Peraturan Walikota Kota Padang Nomor 4/2020 and Peraturan Bupati Bogor Nomor 32/2020. The two regulations regulate "Pedoman Pengenaan Sanksi Terhadap Pelanggaran Pelaksanaan Pembatasan Sosial Berskala Besar" or the guidelines for imposing sanctions on violations of the implementation of Large-Scale Social Restrictions". Although there are other regional regulations that also regulate the same thing as those in Bandung, Jakarta,

or Surabaya, the researcher considers that in this short paper these two regional regulations are sufficient to represent other regions due to several aspects. First, the two regulations are at different *loci*, both in different cities and in different provinces. Second, the two regulations apply at the same time, namely in the Large-Scale Social Restrictions legal regime.

Furthermore, the researchers analyzed the regulation of sanction norms of the two regulations. The researcher looks at the form of sanctions, the amount of fines, and additional sanctions in these regulations. After being analyzed, the researchers compared them to see the difference. After finding the differences in the sanction's arrangement, the researcher concludes whether there are disparities. The analysis delivers the recommendations that the researchers wrote in the Conclusion section.

### 3. FINDINGS AND DISCUSSION

After the outbreak of the *Covid-19* pandemic, the Government has formulated various policies to deal with it. The policy was made from a matter of how to prevent it, to how the economy was recovered locally and nationally. Regulations are made from the central level such as Government Regulations to regional levels such as Regional Regulations and Regional Head Regulations. To strictly prevent the spread of this pandemic, the Government has formulated a limited lockdown policy which in the language of legislation and policies in Indonesia is known by several names, namely Large-Scale Social Restrictions (PSBB) and Enforcement of Restrictions on Community Activities (PPKM). Even at the time, the Government formulated rules regarding the leveling of Social Restrictions in the regions depending on the level of transmission of *Covid-19* in each region.

One of the instruments in the norm used in enforcing lockdown is the existence of sanctions. These sanctions are arranged either in the form of the same regulation with PSBB regulations or regulated in different regulations, depending on the policies of each region. Referring to the Bogor Regent Regulation, the purpose of the sanction's arrangement is to increase public compliance with the provisions regarding physical and social distancing (physical distancing and social distancing) and the implementation of protocols to prevent the spread of handling *Covid-19*; provide legal certainty in the implementation of the PSBB, and optimizing the implementation of the PSBB in reducing the spread of *Covid-19*. In practice, not all districts and cities formulate regulations for their territories, this is

because there are already regulations on higher regulations, namely Local Government Regulation (Peraturan Daerah) at the provincial level so that districts/cities only issue a regulation on their territory.

Some regions that have issued policies containing sanctions for PSBB violations include DKI Jakarta, Bandung City, Tangerang City, Bekasi Regency, Bogor Regency, and Padang City. Some others, such as the city of Surabaya, do not contain specific sanctions but will only follow the latest regulations. Regulations like this are more flexible because they will follow the latest arrangements prepared by the existing policymakers, but the disadvantage is that the regions concerned have a legal vacuum (*Rechtsvacuum*) as long as other regulations have not been drafted.

Some of the actions that are subject to sanctions are violations of the obligation to use masks outside the home in public places or public facilities during the implementation of the PSBB, temporary suspension of activities in schools, offices, and/or other institutions, implementation of protocols to prevent the spread of *Covid-19* in places public such as restaurants and hotels, creating crowds by holding activities with a number of more than 5 (five) people in public places or facilities, limiting the number of people to a maximum of 50 percent of the vehicle capacity, and regulating public motorized vehicle transportation of people who violate the maximum number of people 50 percent, do not use masks in the vehicle, and limit operating hours according to applicable regulations.

Meanwhile, the forms of sanctions that are made also consist of various actions such as administrative fines, social work in the form of cleaning public facilities, administrative sanctions in the form of oral or written warnings, written warnings and administrative fines, sealing service facilities, and temporary suspension of related business activities. Regulations regarding sanctions also involve many agencies in their enforcement, from the Task Force for the Acceleration of Handling Corona Virus Disease (*COVID-19*), the Civil Service Police Unit, the Culture, and Tourism Office, the Transportation Service, the Manpower Office, the Investment Service, and One-Stop Integrated Services depending on the sector of the subject violated.

The drafting of the Regional Regulation regarding PSBB and sanctions against PSBB is based on several existing regulations such as Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (*COVID-19*), Presidential Act (Peraturan Presiden) Number 9 of

2020 concerning Clusters Task to Accelerate Handling of Corona Virus Disease 2019 (*COVID-19*), Presidential Act Number 11 of 2020 concerning the Determination of Public Health Emergencies for Corona Virus Disease 2019, Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (*COVID-19*), and other relevant regulations. So, with the same reference, there should be no differences in the regulations between one Local Government Regulation and another.

However, in practice, there are still several sanctions arrangements that differ from one Local Government Regulation to another. An example is in the norm below:[7]

**Pasal 6 Perwalikota Kota Padang Nomor 4/2020**

Bagian Ketiga

Pembatasan Aktivitas Bekerja di Tempat Kerja

Pasal 6

- (1) Setiap pimpinan tempat kerja pada tempat kerja/kantor yang tidak dikecualikan yang melanggar penghentian sementara aktivitas bekerja di tempat kerja selama pemberlakuan pelaksanaan PSBB dikenakan sanksi administratif berupa: a. penghentian sementara kegiatan berupa penyegelan kantor/tempat kerja; dan/atau b. denda administratif paling sedikit Rp. 1.000.000,00 (satu juta rupiah) dan paling banyak Rp. 10.000.000,00 (sepuluh juta rupiah).
- (2) Dalam hal tempat kerja/kantor yang dikecualikan dari penghentian sementara aktivitas bekerja di tempat kerja selama pemberlakuan pelaksanaan PSBB tidak melaksanakan kewajiban penerapan protokol pencegahan penyebaran Covid 19, pimpinan tempat kerja dikenakan sanksi administratif berupa: a. teguran tertulis; dan b. denda administratif paling sedikit Rp. 5.000.000,00 (lima juta rupiah) dan paling banyak Rp. 50.000.000,00 (lima puluh juta rupiah).

**Pasal 5 Perbup Bogor Nomor 32/2020:**

Bagian Ketiga

Pembatasan Aktivitas Bekerja di Tempat Kerja

Pasal 5

- (1) Setiap pimpinan tempat kerja pada tempat kerja/kantor yang tidak dikecualikan yang melanggar penghentian sementara aktivitas bekerja di tempat kerja selama pemberlakuan pelaksanaan PSBB dikenakan sanksi administratif berupa: a. penghentian sementara kegiatan berupa penyegelan kantor/tempat kerja; dan/atau b. denda administratif paling sedikit Rp. 1.000.000,00

(satu juta rupiah) dan paling banyak Rp. 10.000.000,00 (sepuluh juta rupiah).

- (2) Dalam hal tempat kerja/kantor yang dikecualikan dari penghentian sementara aktivitas bekerja di tempat kerja selama pemberlakuan pelaksanaan PSBB tidak melaksanakan kewajiban penerapan protokol pencegahan penyebaran Covid 19, pimpinan tempat kerja dikenakan sanksi administratif berupa: a. teguran tertulis; dan b. denda administratif paling sedikit Rp. 5.000.000,00 (lima juta rupiah) dan paling banyak Rp. 50.000.000,00 (lima puluh juta rupiah).

**(The contain of norms in English):**

Article 6 Padang City Mayor Number 4/2020

Part Three

Work Activity Restrictions at Work

Article 6

- (1) Every non-exempt workplace/office leader who violates the temporary cessation of work activities at the workplace during the implementation of the PSBB is subject to administrative sanctions in the form of: a. temporary suspension of activities in the form of office/workplace sealing; and/or b. an administrative fine of at least Rp. 1,000,000.00 (one million rupiahs) and a maximum of Rp. 10,000,000.00 (ten million rupiah).
- (2) In the event that the workplace/office that is exempted from the temporary suspension of work activities at the workplace during the implementation of the PSBB does not carry out the obligation to implement the protocol to prevent the spread of Covid 19, the workplace leadership shall be subject to administrative sanctions in the form of: a. written warning; and b. an administrative fine of at least Rp. 5,000,000.00 (five million rupiahs) and a maximum of Rp. 50,000,000.00 (fifty million rupiah).

Article 5 Perbup Bogor Number 32/2020:

Part Three

Work Activity Restrictions at Work

Article 5

- (1) Every non-exempt workplace/office leader who violates the temporary cessation of work activities at the workplace during the implementation of the PSBB is subject to administrative sanctions in the form of: a. temporary cessation of activities in the form of office/workplace sealing; and/or b. an administrative fine of at least Rp.

1,000,000.00 (one million rupiahs) and a maximum of Rp. 10,000,000.00 (ten million rupiah).

- (2) In the event that the workplace/office that is exempted from the temporary suspension of work activities at the workplace during the implementation of the PSBB does not carry out the obligation to implement the protocol to prevent the spread of Covid 19, the workplace leadership shall be subject to administrative sanctions in the form of: a. written warning; and b. an administrative fine of at least Rp. 5,000,000.00 (five million rupiahs) and a maximum of Rp. 50,000,000.00 (fifty million rupiah).

There are at least 2 differences contained in the article above. First, in terms of the types of sanctions, in the Mayor Regulation in Padang we can find that regulators use an imperative mechanism with the terminology "and". This means that the perpetrator can not only be sentenced to one type of punishment but also must be met with other penalties in the same article. For such cases, the leadership is subject to administrative sanctions in the form of temporary suspension of activities in the form of sealing off the office/workplace, and administrative fines. Meanwhile, in the Mayor Regulation in Bogor City, the mechanism used is an alternative-imperative where law enforcers can choose whether to use only one sanction or all of the sanctions contained in the related article. If in that article, law enforcers can choose sanctions for temporary suspension and administrative fines or temporary suspension or administrative fines. Both of course have different implications in their implementation. Because in mechanism imperative the punishment will be heavier than alternative-imperative.

The second difference is in the nominal sanctions contained in the article. As is known, the formulation of sanctions in these norms uses a determinate sentence system where the minimum and maximum limits are determined. The Bogor Perda stipulates that the administrative fine is at least Rp. 1,000,000.00 (one million rupiahs) and a maximum of Rp. 10,000,000.00 (ten million rupiah). Meanwhile, the Padang Mayor Regulation stipulates that the administrative fine is at least Rp. 2,500,000.00 (two million five hundred thousand rupiahs) and a maximum of Rp. 5,000,000.00 (five million rupiah). This indicates that there are differences in determining the minimum and maximum limits for sanctions. The author has yet to find rules and theories that specifically determine the factors behind the formulation of regulations in determining the nominal fines. As an open legal policy in the formulation of regulations, of course, policymakers consider factors

related to the ability of companies to pay fines by looking at the average income of companies in the region, the average penalty sanctions in regional regulations in the related region, and also compliance with related regulations. which is equal or higher.

Furthermore, differences also exist in the provisions regarding additional sanctions such as wearing a vest in carrying out social work as regulated in Article 10 of Mayor Regulation Number 40 of 2020 concerning the Implementation of Sanctions Against Violations of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (*Covid-19*) in Padang City. Meanwhile, no such regulation can be found in the Bandung or Bogor regional regulations. This shows that there are differences in the characteristics and approaches of policymakers in determining the form of sanctions.

There are several things that according to the authors are the background of the disparities in the imposition of sanctions for violations of the PSBB. **First**, is the absence of a higher-level regulation that can be a guide for policymakers at the lower level. The absence of these guidelines has biased policymakers at the regional level in determining the characteristics and forms of sanctions. In several regulations, for example in the provisions concerning Traffic and Road Transportation, regional regulators formulate sanctions in accordance with those regulated by the above regulations such as Ministerial regulations, Government Regulations, and Laws. This can occur because of the existence of guidelines for formers at the lower level, so that the Local Government Regulation only regulates technical matters related to the implementation of sanctions, such as mechanisms and authorized parties. The formulation of this guide is important so that there are no gaps or disparities in regulation between one region and another.

**Second**, the sociological factors that exist in the area, both sociological variables related to sanctions, such as factors that affect sanctions as the authors have previously described. As well as factors that influence the formation of this regulation, such as a large number of *Covid-19* patients or the high number of violations of the PSBB provisions. These factors are one of the determinants in making policies regarding the sanctions for violating the PSBB. The higher the number of the spread of covid and violations of the PSBB provisions, the local government is increasingly pressing for the formation of harsher sanctions and has a deterrent effect. Conversely, the lower the number of the spread of covid and violations of the PSBB provisions, the local government is increasingly making a loose sanction policy. As seen in the imposition of sanctions on business activities in

Padang, a higher minimum limit is applied than in Bogor because the number of distributions in Padang City was detected to be higher than in Bogor Regency whereas in February there were 8,000 to 14,000 patients.

There are also other sociological factors, such as the obedience of local communities to applicable laws. For areas with a high number of law violations, regulators will formulate increasingly heavier sanctions, and vice versa for areas where the number of law violations is low, the regulators will formulate sanctions with light intensity, or even not formulate special regulations such as in several regions in Indonesia.

**Third**, the political will of policymakers where the drafters of regulations measure the effectiveness and impact of the imposition of sanctions on the provisions of the PSBB. The greater the desire of the local government to immediately free its territory from the pandemic, the greater the policy effort in this direction. In addition to productive steps such as increasing the number of rapid tests and educating the public regarding health protocols, but also repressive steps such as the imposition of morning sanctions for PSBB violators.

According to the explanation, these factors influence the disparity in the imposition of sanctions from one region to another. Even so, there is actually a positive side with the existence of an open legal policy in the formulation of sanctions against PSBB violations, namely that it can be made adjustments to local conditions so that the existing sanctions are relevant and possible to be applied. This helps policymakers formulate and determine the character and form of sanctions being imposed.

#### 4. CONCLUSION

From the explanation above, we know that there are indeed disparities in the provisions regarding sanctions for violations of the PSBB. This can be seen from at least three local regulations, namely the Padang Mayor Regulation, the Bogor Mayor Regulation, and others like in Bandung Mayor Regulation. This is due to at least three factors, namely the absence of higher regulations as a guide for policymakers, sociological factors both existing in the region, and the sociological factors underlying the formation of policies.

These three factors make there are differences in the arrangement of sanctions between one region and another. Even so, in fact, this cannot be fully blamed on policymakers at both the central and regional levels

because the pandemic is indeed a *force majeure* that is unexpected by everyone. However, of course, this situation should be a lesson for policymakers to be more aware of the possibility that the pandemic period is still long and the potential for a similar situation in the future. In fact, Indonesia itself already has legal instruments such as the Plague Law, the Health Quarantine Law, and so on. However, in practice, these regulations have not been able to overcome and form protection against policies undertaken by the Government.

In addition, from the explanation in the previous section, it can also be seen that not all regions have regulations regarding the imposition of sanctions on violators of Social Restrictions, even though this is important to suppress the spread of the virus. If one region has set a regulation, of course, it is important for neighboring regions to have it too. Especially if the other regions have a similar level of spread and vulnerability to *Covid-19*.

The author recommends policymakers in Central State, Province, or Regions to immediately formulate strict and convincing regulations. So, in the future policymakers in the regions are sufficiently adept to form technical regulations regarding the mechanism and technical implementation of the sanctions policy. Regulations can also be at the level of Laws and Government Regulations which can apply nationally.

Specifically for setting sanctions, policymakers must include clear sanctions norms for Social Restrictions (in any terms) violators in the regions. Moreover, in the future, social restrictions levels have been established so that it can make it easier for policymakers to set clear and definite sanctions, as well as relevant to be applied in all regions. Through centralized sanctions regulated in Law (Undang-Undang), we can minimize the potential for disparities in all regions.

#### REFERENCES

- [1] Samsul Ramli and Fahrurrazi, *Bacaan Wajib Swakelola Pengadaan Barang/Jasa*, Jakarta: Visimedia Pustaka, 2014, p. 191
- [2] Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta, 1995. p. 1265.
- [3] Phyllis B. Gerstenfeld, *Crime & Punishment in the United States*, Salem Press, Inc., New Jersey: Pasadena, California Hackensack, 2008, p. 743.
- [4] Matt Matravers, *Justice and Punishment, the Rationale of Coercion*, England: Oxford University Press, 2000, p. 251.

- [5] Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, Jakarta: Cahaya Atma Pustaka, 2016, p. 390.
- [6] Tegus Prasetyo, *Kriminalisasi dalam Hukum Pidana*, Bandung: Nusa Media, 2013, p. 160.
- [7] *Mayor Regulation No. 40 of 2020 on the Guidelines for Imposition of Sanctions Against Implementation Breaches Scale of Social Restriction in the Handling of 2019 Corona Virus Disease (Covid-19) in Padang District and Mayor Regulation No. 32 of 2020 on the Guidelines for Imposition of Sanctions Against Implementation Breaches Scale of Social Restriction in the Handling of 2019 Corona Virus Disease (Covid-19) in Bogor District, The Republic of Indonesia 2020.*