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# **Imposition of Sanctions For Regional Heads For Disclaimer of Violations of The Covid 19 Health Protocol**

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## **ABSTRACT**

Covid pandemic has been determined by WHO which has an impact on all countries around the world, the impact of Covid 19 is not only on the global economic sector but on the social and cultural sectors as well. To prevent and combat this pandemic, it is necessary to enforce legal rules regarding health protocols by the central and local governments along with the participation of the community to make Indonesia free from Covid 19. It was found that there were still violations of the Covid 19 health protocol committed by the community, the regional head as the holder. regional authorities are liable for violations of health protocols.

**Keywords:** Covid 19, Local Government, Sanctions

## **1. INTRODUCTION**

Corona Virus Disease 2019, hereinafter referred to as COVID-19, is an infectious disease caused by severe acute respiratory syndrome corona virus. In 2020, the world will experience the Corona Virus Disease 2019 (COVID-19) pandemic. The spread of Corona Virus Disease 2019 (COVID19) has posed a risk to public health and has even claimed lives for the infected in various parts of the world, including in Indonesia. The 2019 Corona Virus Disease (COVID-19) pandemic has significantly disrupted economic activity and has major implications for the economies of most countries around the world, including Indonesia. Global economic growth is predicted to decline from 3% (three percent) to only 1.2% (one point five percent) or even lower than that. The development of the Corona Virus Disease 2019 (COVID-19) pandemic also has the potential to disrupt economic activities in Indonesia. One of the implications is a decrease in Indonesia's economic growth, which is estimated to reach 4% (four percent) or lower, depending on how long and how severe the spread of the Corona Virus Disease 2019 (COVID-19) pandemic affects or even cripples community activities and economic activities.

One of the efforts to prevent the spread of covid 19 is carried out by PSBB in various regions, the legal basis for PSBB is based on the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning guidelines for large-scale social restrictions in order to accelerate the handling of COVID 19. According to the Permenkes Large-Scale Social Restrictions are restrictions certain activities of residents in an area suspected of being infected with Corona Virus Disease 2019 (COVID-19) in such a way as to prevent the possible spread of Corona Virus Disease 2019 (COVID-19). PSBB is carried out by submitting an application for Large-Scale Social Restrictions to the Minister accompanied by the following data:

- a. increase in the number of cases over time;
- b. distribution of cases over time;
- c. local transmission events.

Data on the increase in the number of cases over time are accompanied by an epidemiological curve. Article 13 PERMENKES PSBB explains that the implementation of large-scale social restrictions includes:

- a. school and work vacations;
- b. restrictions on religious activities;
- c. restrictions on activities in public places or facilities;
- d. restrictions on social and cultural activities;
- e. restrictions on transportation modes; and
- f. restriction of other activities specifically related to defense and security aspects.

Large-scale social restrictions are implemented during the longest incubation period and can be extended if there is evidence of dissemination. Coaching and supervision of the implementation of Large-Scale Social Restrictions are carried out by the Minister, the Task Force for the Acceleration of Handling of the Corona Virus Disease 2019 (COVID-19), the governor / regent / mayor, in accordance with their respective authorities. Enforcement of health protocols both in the PSBB era and in the new normal era requires the participation of various parties, such as in the province of Bali in the Governor of Bali Regulation Number 46 of 2020 concerning the Application of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Corona Virus Disease 2019 in Living Orders New era.

The Bali Regional Regulation in Article 7 (1) states that individual stakeholders are required to follow health protocols in the form of:

- a. Use personal protective equipment in the form of a mask that covers the nose and mouth to the chin if you have to leave the house or interact with other people whose health status is unknown;
- b. Washing hands with soap in running water or with a hand sanitizer;
- c. Limiting physical interactions and always maintaining a minimum distance (physical distancing) of 1 (one) meter, except for the education sector at least 1.5 (one point five) meters;
- d. Not doing activities in public places / crowds if you experience clinical symptoms, such as fever / cough / runny nose / sore throat;
- e. Implementing Clean and Healthy Living Behavior (PHBS);
- f. Willing to be examined by a health worker in order to prevent the spread of COVID-19; and
- g. Willing to comply with further handling procedures in the event that the examination

results show clinical symptoms of COVID-19.

Business Actors, Managers, Organizers or Person in Charge of Places and Public Facilities are required to make health protocols such as carrying out socialization and education using various information media to increase compliance and compliance of related parties in preventing and controlling COVID-19, providing means of preventing COVID-19 -19 includes:

- a. a place to wash hands and their equipment at an adequate distance;
- b. signs indicating the location of the hand washing place and hand sanitizer in places that are easily seen;
- c. minimal hand sanitizer at the entrance and exit; and
- d. a body temperature measuring device (thermo gun / thermo scanner) with an adequate number.

Often found violations of health protocol to rises in the curve of patients who contracted the virus, it is the responsibility of the regional head for negligence in handling the practical implementation of prevention of transmission of covid 19. In this study, we review more about the Imposition of Sanctions For Negligence Regional Heads Up Against Abuse 19 Covid Health Protocols.

## **2. RESEARCH METHODS**

This research uses a normative research method, which is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues at hand. In this study, researchers used three methods of approaching the problem, namely, a statutory approach and a conceptual approach. This study used *astatute approach* which was carried out by examining all laws and regulations related to the legal issue being handled. In addition, a conceptual approach is used that comes from the views and doctrines that are developed in the science of law.

## **3. DISCUSSION**

### **Pandemic Covid 19 As A National Emergency**

Cicero, the Italian philosopher said that "*Salus populi suprema lex esto*", the safety of the people is the highest law for a country. Satjipto Rahardjo said that law exists in society with the aim of integrating and coordinating interests that can collide with one another. The coordination of these interests is carried out by limiting and protecting these interests (Satjipto Rahardjo, Ilmu Hukum, 2000). Philipus M. Hadjon argued that "The principle of legal protection for the people against government actions rests on and originates from the concept of recognition and protection of human rights. The birth of the concepts of recognition and protection of human rights is directed at limiting and placing obligations on society and the government. (Philipus M. Hadjon, Protection of the People for the People in Indonesia (a Study of Its Principles, Handling it by Courts in the

General Courts and Establishment of State Administrative Courts), 1987) A protection can be said to be legal protection if it contains the following elements :

- a. There is protection from the government for its citizens.
- b. Legal certainty guarantee.
- c. With regard to the rights of citizens.
- d. There are penalties for those who violate

Corona Virus Disease 2019, hereinafter referred to as COVID-19, is an infectious disease caused by the severe acute respiratory syndrome corona. The spread of Corona Virus Disease 2019 (COVID19) is a non-natural disaster as in Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management (hereinafter referred to as the Disaster Management Law) Non-natural disasters are disasters caused by non-natural events or series of events which include failure. technology, failed modernization, epidemics, and disease outbreaks. Article 5 of the Law on Emergencies states that the Government and regional governments are responsible for implementing disaster management. The Government's responsibilities in implementing disaster management include:

- a. disaster risk reduction and integration of disaster risk reduction with development programs;
- b. protection of the community from disaster impacts;
- c. guarantee the fulfillment of the rights of the community and refugees affected by the disaster in a fair manner and in accordance with the minimum service standards;
- d. recovery from disaster impacts;
- e. allocation of adequate disaster management budget in the State Revenue and Expenditure Budget;
- f. disaster management budget allocation in the form of ready-to-use funds; and
- g. maintenance of authentic and credible archives / documents from the threat and impact of disasters.

The authorities of the Government in implementing disaster management include:

1. To stipulate disaster management policies in line with national development policies;
2. preparation of development plans that incorporate disaster management policy elements;
3. determining the status and level of national and regional disasters;
4. determining policies for cooperation in disaster management with other countries, agencies, or other international parties;
5. formulation of policies regarding the use of technology that is a potential source of disaster threat or danger;
6. formulation of policies to prevent control and exploitation of natural resources that exceed the capacity of nature to carry out restoration; and

7. controlling the collection and distribution of money or goods on a national scale.

Determination of the status and level of national and regional disasters includes the number of victims, property loss, damage to infrastructure and facilities, wide coverage of the affected areas, and the resulting socio-economic impacts. The responsibilities of local governments in implementing disaster management include:

- a. guarantee the fulfillment of the rights of the community and refugees affected by the disaster in accordance with the minimum service standards;
- b. protection of the community from disaster impacts;
- c. disaster risk reduction and integration of disaster risk reduction with development programs; and
- d. allocation of adequate disaster management funds in the Regional Revenue and Expenditure Budget.

Disaster management is not only carried out by the central government, the Emergency Law gives regional governments authority in implementing disaster management, among others, stipulating disaster management policies in their regions in line with regional development policies, making development plans that incorporate disaster management policy elements, implementing cooperation policies. in disaster management with other provinces and / or regencies / municipalities, regulating the use of technology that has the potential as a source of threat or disaster hazard in its territory, formulating policies on preventing control and exploitation of natural resources that exceed the natural capacity in their territory, controlling the collection and distribution of money or goods at the provincial, district / city scale.

The Emergency Law provides a legal basis for the formation of the National Disaster Management Agency which has the following tasks:

- a. Provide guidance and direction for disaster management efforts covering disaster prevention, emergency response management, rehabilitation and reconstruction in a fair and equal manner;
- b. Stipulating standardization and requirements for disaster management based on Legislation;
- c. Convey activity information to the public;
- d. Report disaster management operations to the President once a month in normal conditions and at any time in disaster emergency conditions;
- e. Use and account for national and international donations / assistance;
- f. Account for the use of the budget received from the State Revenue and Expenditure Budget;

The President Has Defined the Covid 19 Pandemic as a National Disaster Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-

Natural Disaster for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster which states that non-natural disasters are caused by the spread of Corona Vints Disease 2019 (COVID-19) / as a national disaster). The Government through Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine in Article 4 The Central Government and Local Government are responsible for protecting public health from diseases and / or Public Health Risk Factors that have the potential to cause Public Health Emergencies through the implementation of Health Quarantine.

### **The Role of Central And Regional Governments And Regional Governments In Handling Pandemic Covid 19**

Granting some authority (power) to the regions based on autonomy rights (a unitary state with a decentralized system), but at the final stage, the highest power remains in the hands of the center. So, the authority inherent in the regions does not mean that the regional government is sovereign because the supervision and supreme power still rests in the hands of the central government. The relationship between the central government and the regions in a unitary state that is decentralized, the central government forms regions, and delegates part of its authority to the regions. (Agussalim Andi Gadjong, Regional Government for Political and Legal Studies, 2007).

In the concept of a unitary state, the responsibility for implementing governmental tasks basically remains with the central government. However, the Indonesian government system, one of which adheres to the form of a decentralized unitary state, causes certain tasks to be managed by itself, which creates a reciprocal relationship that creates a relationship of authority and supervision (Ni'matul Huda, Indonesian Constitutional Law, 2007). Jimly Asshiddiqie argues that the Indonesian state is a unitary state. Power rests with the central government, however the limits of the central government's authority are determined in the constitution and statutes, while the powers that are not stated in the constitution and statute are determined as the authority possessed by the regional government. With such constitutional arrangements. (Jimly Asshiddiqie, Introduction to the Thinking of the Unitary State of the Republic of Indonesia, 2001)

The essence of regional government is related to the authority it has in managing and managing its household. The authority of the local government is related to the distribution of power in government administration, which is patterned in the government system of the federal state or the unitary state. The federal state system is structured into three main level structures, namely the federal (central) government, state (provincial) governments, and autonomous local governments. Meanwhile, the unitary state system is patterned into two main level structures, namely the central government and. Government Affairs are governmental powers that fall under the authority of the President whose implementation is carried out by state ministries and administrators of Regional Governments to protect, serve, empower and prosper the community.

(RM.ABKusuma, Birth of the 1945 Constitution, 2004).

Article 9 of Law No. 23 of 2004 on Regional Government divides government affairs into absolute government affairs, concurrent government affairs, and general government affairs. Absolute governmental affairs are governmental affairs that fall fully under the authority of the central government. Concurrent government affairs are governmental affairs that are divided between the central government and provincial and district / city governments. Article 10 of the Regional Government Law becomes an absolute government affair covering:

1. foreign policy;
2. defense;
3. security;
4. yustisi;
5. national monetary and fiscal; and
6. religion.

Article 12 of the Regional Government Law divides Compulsory Government Affairs related to basic services including education, health, public works and spatial planning, public housing and residential areas, peace, public order, and community protection; and social. Optional government affairs as meant in Article 11 paragraph (1) of the Regional Government Law are marine and fisheries, tourism, agriculture, forestry, energy and mineral resources, trade, industry, transmigration. Article 65 (1) of the Regional Government Law states that regional heads have the following tasks:

- a. Lead the implementation of Government Affairs which become the authority of the Region based on the provisions of laws and regulations and policies stipulated jointly with the DPRD;
- b. Maintain public order and peace;
- c. Compile and submit draft Perda on RPJPD and draft Perda on RPJMD to DPRD to be discussed with DPRD, as well as compile and stipulate RKPD;
- d. Compile and submit a draft Perda on APBD, a draft Perda on amendments to the APBD, and a draft Perda on accountability for APBD implementation to DPRD for joint discussion;
- e. Represent the region inside and outside the court, and can appoint a legal representative to represent him in accordance with the provisions of laws and regulations;
- f. Propose the appointment of deputy regional heads; and g. carry out other duties in accordance with the provisions of laws and regulations. Article 67 of the Regional Government Law provides for the obligations of regional heads and deputy regional heads including:
- g. Uphold and practice Pancasila, implement the 1945 Constitution of the Republic of

Indonesia and maintain and maintain the integrity of the Unitary State of the Republic of Indonesia;

- h. Comply with all provisions of laws and regulations; '
- i. Developing a democratic life;
- j. Maintain ethics and norms in the implementation of Government Affairs which fall under the authority of the Region;
- k. Applying the principles of clean and good governance;
- l. Implementing national strategic programs; and
- m. Establish working relationships with all vertical agencies in the regions and all regional apparatus.

Apart from obligations and duties, there are prohibitions against regional heads as in Article 76 (1) of the Regional Government Law, namely making decisions that specifically provide benefits for personal, family, cronies, certain groups, or political groups that are contrary to the provisions of laws and regulations, making policies which is detrimental to the public interest and disturbs a group of people or discriminates against citizens and / or other groups of society that is contrary to the provisions of laws and regulations, becomes the administrator of a company, whether private or state / regional owned or management of foundations in any field, misuses the authority that benefit themselves and / or harm the region being led, commit corruption, collusion and nepotism and receive money, goods, and / or services from other parties which influence decisions or actions to be taken, abuse authority and violate their oath / promise of office, concurrently jaba tan as other state officials as stipulated in the provisions of laws and regulations, travel abroad without permission from the Minister, leave the task and work area for more than 7 (seven) consecutive days or not in a row within 1 (one) time. months without the Minister's permission for the governor and deputy governor and without the governor's permission for the regent and deputy regent or mayor and deputy mayor.

Regarding the handling of COVID 19 by referring to the laws and regulations above, there is the responsibility of the regional head to prevent and handle the Covid 19 pandemic as a national emergency. Accountability is a concept used to explain the role of the state or corporation in complying with laws and regulations or caring about social aspects outside of legal obligations (Hanif Nurcholis, Theory and Practice of Government and Regional Autonomy, 2005). In legal theory there are two kinds of definitions of responsibility. in a narrow sense, namely responsibility without sanctions and responsibility in a broad sense, namely responsibility with the existence of sanctions (Ismail Suny, Pancasila Democracy Mechanism, 1987). Responsibility or responsibility is the obligation of a person to carry out properly what has been obliged to him. It is also stated that accountability means that even though a person has the freedom to carry out a task that is assigned to him, he cannot free himself from the results or consequences of his freedom of action, and he



can be required to carry out appropriately what is required of him. (Arifin PA, Accountability mechanism, Jakarta, 1986).

There are still many cases of violations of health protocols that have been established by the government, such as creating crowds without paying attention to applicable regulations, this has led to an increase in the number of positive cases of Covid 19. The government gives instructions to the Minister of Home Affairs to the Regional Heads in the Minister of Home Affairs Instruction Number 6 of 2020:

- a. Consistently enforce the Covid-19 health protocol to prevent the spread of Covid-19 in their respective areas in the form of wearing masks, washing hands properly, maintaining distance, and preventing crowds that have the potential to violate the protocol
- b. Take proactive steps to prevent transmission of Covid-19 and not only act responsively / reactive. To prevent is better than to act. Prevention can be carried out in a humane way and action including crowd dispersal is carried out in a firm and measured manner as a last resort.
- c. Regional heads as the highest government leaders in their respective regions must be role models for the community in complying with the Covid-19 health protocol, including not participating in crowds that have the potential to violate health protocols.
- d. Whereas in accordance with Law Number 23 of 2014 concerning Regional Government, regional heads are reminded of the obligations and sanctions for regional heads as follows Article 67 letter b which reads: "obey all statutory provisions. Article 78 (1) Regional heads and / or representatives regional head stops for:

death, his own request or dismissed.

The regional head and / or deputy regional head dismissed because:

- a. Expired jabatann
- b. Unable to carry out tasks on an ongoing basis or remains incapacitated consecutively for 6 months;
- c. Is declared to have violated the oath / promise of office and deputy regional head as referred to in Article 67 letter b;
- d. does not carry out the obligations of the regional head and deputy regional head as referred to in Article 67 letter b;
- e. Has committed a disgraceful act;
- f. Is given a task in a certain position by the President prohibited from concurrently by the provisions of laws and regulations;
- g. Use documents and / or notes false groans as a requirement at the time of the nomination of regional heads / deputy regional heads based on evidence from the institution authorized

to issue documents; and / or.

h. Get sanction of dismissal.

Based on the instruction in the fourth Dictum, a regional head who violates the provisions of the legislation may be subject to dismissal sanctions. To reduce the rate of increase in covid patients, the provincial government of Bali in local regulation No 46/2020 in Article 8 (1) states that the Governor provides guidance to the implementation of Discipline and Law Enforcement of Health Protocols by stakeholders as an effort to carry out prevention and control of COVID-19. Guidance in the form of assistance to district / city governments. Assistance can be in the form of massive socialization of the application of the Health Protocol in an effort to prevent and control COVID-19. Furthermore, Article 9 (1) of the Perda states that supervision and enforcement are carried out by:

a. Patrol; and / or

b. Curbing operations.

The policing operation as intended includes elements of the Traditional Village Mutual Cooperation Task Force, the Police, and / or the TNI.

#### **4. CONCLUSION**

Covid 19 is an emergency in the form of a disaster which causes the economy to weaken to a recession. To reduce the number of increases in Covid 19 patients, regulation and law enforcement are needed by remembering that people's safety is the highest law.

The Regional Head is responsible for the safety of its citizens, so he is obliged to take action for violations of Covid 19. Regional Heads can be dismissed from their duties if they cannot carry out their duties. mandated by laws and regulations regarding the handling of covid 19

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