



REVIEW OF CRIMINAL LAW ON THE PROBLEM OF VIOLATION OF HEALTH PROTOCOL IN THE IMPLEMENTATION OF REGIONAL HEAD ELECTIONS (Perspective of the Pilkada Law System and the Quarantine Law in Indonesia)

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Abstract

The spread of the virus that was never expected (or never anticipated) will reach Indonesia is still continuing. The Center for Mathematical Modeling and Simulation at the Bandung Institute of Technology estimates that this pandemic will reach its peak at the end of March and end in mid-April 2020. Even with the dynamics of existing data, these predictions may change. Based on the state of the Covid-19 outbreak, which continues to spread in the territory of Indonesia, the Government is making every effort to suppress its spread, including locking down in several places and also closing access to flights abroad. This effort is also carried out by the government to institutions that are said to be prone to being affected or places that can spread the Corona virus. The regulations for the implementation of the Regional Head General Election in Indonesia have undergone such changes, which are currently regulated in Law Number 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Second Amendment to Law Number 10 of 2016 concerning the Third Amendment to the Act. -Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Laws. As well as several other laws and regulations related to the implementation of regional head elections. It becomes a problem when the Pilkada is constitutionally protected, but the crowds at the time of the Pilkada at each stage is an act that can be punished. This research is a normative legal research with descriptive analysis using secondary data sources. Based on the results of the research that the activities of implementing the Regional Head Elections are constitutionally protected by laws and regulations, especially Law Number 6 of 2020, but on the other hand, the Pilkada activities have the potential to cause crowds as evidenced by the implementation of the last 2020 Regional Head Elections which resulted in the spread of Covid-19 19 increased significantly. The crowd in question is included in actions that can be punished according to Law Number 6 of 2018. The problem of criminal law enforcement against health protocol violators in the post-conflict local election can at least be resolved by looking at each component in the legal system that directly affects law enforcement.

Keywords: Criminal Law, Health Protocol, Regional Head Election

1. INTRODUCTION

It is known that recently Indonesia is experiencing a disaster due to an outbreak called COVID-19. When it was first declared a global pandemic on March 11, 2020 by WHO, the number of infections worldwide had reached more than 121,000. Instead of Indonesia still feeling safe from the virus outbreak that has paralyzed some countries in the world, President Joko Widodo at the beginning of March, who had put people in a comfort zone, had to admit defeat with reports of cases of COVID-19 caused by the virus. SARS-Cov-2 or better known as the Corona virus.

The spread of the virus that was never expected (or never anticipated) will reach Indonesia is still continuing. The Center for Mathematical Modeling and Simulation at the Bandung Institute of Technology estimates that this pandemic will reach its peak at the end of March and end in mid-April 2020. Even with the dynamics of existing data, these predictions may change. This data is certainly not to create panic in the community, but rather to make the public alert and provide an overview for the government in handling it. Namely handling it comprehensively, especially to prevent wider spread so that the number of infections can be suppressed.

Based on the state of the Covid-19 outbreak, which continues to spread in the territory of Indonesia, the Government is making every effort to suppress its spread, including locking down



in several places and also closing access to flights abroad. This effort is also carried out by the government to institutions that are said to be prone to being affected or places that can spread the Corona virus. One of the other efforts made by the government to suppress the spread of Covid-19 is by issuing a health protocol policy as stated in the Decree of the Minister of Health of the Republic of Indonesia Number Hk. Prevention and Control of Corona Virus Disease 2019 (Covid-19).

It becomes a dilemma and a problem when the government's efforts seem to be inversely proportional and in vain when the government at the same time in 2020 continues to hold the Regional Head General Election in the midst of the current Pandemic condition even though the implementation of the Regional Head General Election has the potential for violations of health protocols, especially in the potential for crowds. time.

Indeed, juridically the real form of a democratic state is with the General Election (Election) including the Regional Head Election. Article 22E paragraph (1) of the 1945 Constitution states the principles of elections which include direct principles, general principles, free principles, secret principles, honest principles, and fair principles which are carried out every 5 (five) years. In a more exclusive arrangement, these principles are set forth in the laws and regulations concerning elections, both in the form of laws, KPU regulations, Bawaslu regulations, DKPP regulations, as well as Joint Regulations (Perber) of KPU, Bawaslu and DKPP. The quality and routine of holding elections will determine the level of democracy of a country, because elections are a consequence of a democratic country.

One of the juridical consequences of a democratic rule of law system in Indonesia is the election of leaders in a democratic way. The election of leaders, including the election of leaders in the regions or commonly known as regional heads. In Indonesia today, general elections are categorized into several things, starting from the general election for President, Vice President, legislative elections, including the General Election for Regional Heads (Pemilu Kada). that exist in Indonesia, both at the provincial and district/city levels. Of course, in the implementation of this regional head election, there are several problems or problems, ranging from administrative violations to criminal violations.

The regulations for the implementation of the Regional Head General Election in Indonesia have undergone such changes, which are currently regulated in Law Number 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Second Amendment to Law Number 10 of 2016 concerning the Third Amendment to the Act. -Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Laws. As well as several other laws and regulations related to the implementation of regional head elections.

Through the above legal regulations, the implementation of the Regional Head Election is expected to run well in accordance with the existing stages and provisions. However, it becomes a problem when the Regional Head Election is carried out during the Covid-19 Pandemic. This is because the Regional Head Election activities themselves have stages. - the stages starting from the campaign activities of each candidate pair (paslon) to the stage of the election time at TPS which requires the community to gather to carry out these activities.

Sharp criticisms of government policies emerged when the 2020 regional elections were held. Because Pilkada activities have the potential to have an impact on the spread of Covid019. As a result, positive cases of Covid-19 are increasing. Even though the government, DPR and KPU as the authority for organizing the regional elections make a number of regulations to change the work pattern of each stage of the regional election in accordance with health protocols. -19 spread more and more after the implementation of the last Regional Head Election and created new clusters for the spread of Covid-19.

In Banten, the task force for handling Covid-19 stated that the election cluster took place in four regions that held the democratic party, namely Serang, South Tangerang, Cilegon and Pandeglang districts. Then in Purbalingga, Central Java, candidate pairs, successful teams, and election officials were exposed corona virus. An epidemiologist from the University of Indonesia said that one of the causes of the creation of the Pilkada cluster was the weak contact tracing carried out in the middle of a democratic party event that triggered a crowd. Ati Pramudji Astuti, said that the pilkada cluster was predicted to occur not only during the voting process, but also in previous stages such as declarations, registrations and campaigns that caused crowds.



Based on data on the acceleration of handling Covid-19 in Indonesia on December 17, 2020, the total positive cases increased by 7,354 compared to yesterday to a total of 643,508 with a death toll of 19,390. Meanwhile, 526,979 people have recovered. The number of cases has now increased by about four times compared to September 4, 2020, when registration for regional head election candidates was opened, which amounted to around 180,000 cases. So, based on this data, we cannot close our eyes that the implementation of the 2020 Pilkada still has a lot of crowds as part of a violation of health protocols which basically can be punished for it.

The foregoing proves that even though policies have been established to prevent crowds during the Pilkada to prevent transmission and even the formation of new clusters of the Covid-19 virus, in the end the transmission still occurs. This fact is problematic because basically, on the one hand, the implementation of the Pilkada is protected by Law Number 6 of 2020 to ensure the implementation of democratic parties constitutionally in each region. However, on the other hand, the stages of implementing the Regional Head Election which have the potential to cause crowds to cause Covid-19 transmission clearly violate the provisions of Law Number 6 of 2018 concerning Health Quarantine, which in the end can be punished.

Based on this, it is necessary to have the right legal policy to accommodate the interests of both the interests of organizing the post-conflict local election and also the interests of protecting the community against the Covid-19 Virus, because basically public health is the main thing, and some outside the Criminal Code or in a separate law. So that the perspective of criminal law policy that needs to be studied is how to fix the current Indonesian criminal law system, which includes:

1. regulation of the substance of material criminal law;
2. regulation of the institutional structure of professional criminal law; as well as;
3. regulation of a humane criminal and criminal system.

It becomes a problem when the Pilkada is constitutionally protected, but crowds of people at the time of the Pilkada at each stage is an act that can be punished. Of course, the crowd during the Pilkada process cannot be ignored, because there are rules of criminal law that apply there which can lead to legal consequences. in accordance with the laws and regulations. Legal relationship is a relationship regulated by law.

This is interesting because basically the activities of implementing the Regional Head General Election are constitutionally protected by laws and regulations, especially in Law Number 6 of 2020, but on the other hand, the Pilkada activities have the potential to cause crowds as evidenced by the implementation of the last 2020 Regional Head Elections which resulted in For the spread of Covid-19, the crowd in question is included in actions that can be punished according to Law Number 6 of 2018. Therefore, it is necessary to review the implementation of the Pilkada related to the stages of the Pilkada that have the potential to create a mass crowd which is part of a violation of health protocols. , especially in the section on providing criminal sanctions for perpetrators of violators of the health protocol. Because in other words the implementation of the Pilkada becomes a forum for the community to gather in one place in large numbers.

2. RESULTS AND DISCUSSION

Legal Policy in Handling Covid-19 in Indonesia

Entering 2020, the world was shaken by the corona virus outbreak which spread very quickly throughout the world. In Indonesia itself the government pushed to make efforts and take policies to deal with the corona virus in Indonesia. The first step taken by Indonesian President Joko Widodo was to order the Indonesian embassy in China to pay more attention to Indonesian citizens who are isolated in Wuhan. The precautionary step taken by the local government is to prepare 100 hospitals and as many as 135 international airports and ports have prepared body temperature detectors.

Regarding this matter to prevent the spread of Covid-19 On August 4, 2020 President Joko Widodo issued a Presidential Instruction regarding the Implementation of the Covid-19 Health Protocol. This policy is stated in Presidential Instruction Number 6 of 2020 concerning Discipline Improvement and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019, necessary for the prevention and control of Covid-19. This Presidential Instruction is intended for all provinces, regencies/cities and all regions of Indonesia.



The aim is to handle and prevent the spread of the virus, the government issued several policies to put pressure on the public so that people do not violate the rules which resulted in the increasing number of victims of the corona virus. Among them are the Lockdown Policy, calls for social distancing, calls for physical distancing, wearing masks, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB), Presidential Decree (Keppres) Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona. Virus Disease 2019 (Covid-19), Presidential Decree (Keppres) No. 9 of 2020 which discusses several structural changes (granting distribution permits and imports of medical devices by the Head of the National Disaster Management Agency/BNPB).

In the existing policies, it has been very clearly regulated in breaking the chain of the spread of Covid-19. In these regulations, there have been prohibitions to urge the public to fight together in the face of this pandemic. Because of the importance of this appeal, existing policies state the sanctions imposed for violators of health protocols.

Furthermore, in the implementation of the health protocol, every person or community member is required to apply a health protocol, including using 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, then washing hands regularly using soap with running water or hand sanitizer, limiting physical interaction (physical distancing), and increasing body resistance by implementing Clean and Healthy Living Behavior (PHBS). Furthermore, business actors, managers, organizers, or persons in charge of public places and facilities must implement health protocols in the form of socialization, education,

Policies related to the implementation of these health protocols are detailed in a legal regulation, namely the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/382/2020 concerning Health Protocols for the Community in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease. 2019 (Covid-19). So that it is associated with the obligation to implement the health protocol in question, everyone must obey it if it is violated there are sanctions that can be given including criminal sanctions.

The Problem of Implementing Criminal Acts of Violation of Health Protocols in the Implementation of Regional Head Elections

The general election is a means of sovereignty to be an interesting study to study because the people's process will determine the leader. Part of the political superstructure consisting of the President, Vice President, Governor, Deputy Governor, Regent, Deputy Regent and Mayor, Deputy Mayor, DPR RI, DPD, Provincial DPRD and Regency City DPRD, Village Heads and even RW and RT are determined through general elections.

Based on the mandate of Article 1 paragraph (2) of the 1945 Constitution affirms that sovereignty is in the hands of the people and is carried out according to the Constitution. This implies that Indonesia is a democratic country. One way to implement democratic values is by means of general elections or abbreviated elections. There are 3 types of General Elections in Indonesia, namely, Legislative General Elections, Regional Head Elections and Presidential and Vice-Presidential Elections.

For the sake of the implementation of a safe, peaceful, orderly and smooth Regional Head Election, the handling of reports of violations of Regional Head Elections is handled by the Indonesian National Police. The National Police of the Republic of Indonesia has the task of providing security at every stage of the implementation of the Regional Head Election, so that the implementation of the Regional Head Election can run safely and smoothly conducting investigations of criminal acts in the Regional Head Election that are reported to the Indonesian National Police (Polri) through the General Elections Supervisory Agency (Badan Election Supervisory). Bawaslu), the Provincial Election Supervisory Committee (Panwaslu), Regency/Municipal Panwaslu, perform other tasks according to the applicable laws and regulations.

During the Pilkada in 2020 there was something different because at that time the world, including Indonesia, was experiencing an outbreak of a disease called the Covid-19 Virus. As is known, as in the previous regional elections, there are stages that must be passed in its implementation, starting from the campaign to the election process at the TPS. This becomes a problem when the Regional Head General Election is aimed at implementing the constitution but can cause problems for the public in their health, because the Corona virus is still very much found



in cases. For that matter, previously there were rules that regulated if someone violated the health protocol for the prevention of Covid-19 in question. may be subject to criminal sanctions against him.

Regarding the determination of criminal sanctions for perpetrators of health protocol violators, the Indonesian National Police finally issued a Maklumat of the National Police Chief Mak/2/III/2020 which was issued March 19, 2020 with the reason "Salus populi suprema lex esto" namely "people's safety is the highest law" is an appeal to the community not to carry out activities that gather large numbers of people, both in public places and in their own environment, in which the appeal is also the long arm of existing government policies. However, if the community continues to violate it by not heeding the appeal from the Police/apparatus not to congregate or gather, they can be subject to criminal sanctions with multiple layers of articles starting from Articles 212, 216, and 218 of the Criminal Code up to Article 14 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases and Article 93 of Law Number 6 of 2018 concerning Health Quarantine. With the sanctions given, it will bind the community as violators of the appeal, and it is deemed less effective with the current situation or situation.

The application of criminal sanctions for perpetrators who violate health protocols is one manifestation of the legal function itself, in the sense that existing laws such as criminal provisions in Law Number 6 of 2018 can be applied properly. The law functions as the protection of human interests. In order to protect human interests, the law must be implemented. Law enforcement can take place normally, peacefully, but it can also occur due to violations of the law. In this case the law that has been violated must be enforced. make reality. In enforcing the law, there are three elements that must always be considered, namely: legal certainty (rechtssicherheit), expediency (zweckmassigkeit) and justice (gerechtigkeid).

Criminal law is the whole of the regulations that determine what actions are prohibited and are included in criminal acts, and determine what penalties can be imposed on those who commit them. According to Moeljatno, criminal law is part of the overall law that applies in a country, which provides the basics and rules for: Determining which actions should not be carried out and which are prohibited, accompanied by threats or sanctions in the form of certain crimes for goods. who violates the prohibition. Determine when and in what cases those who have violated the prohibitions can be imposed or sentenced to the punishment that has been threatened. Determine how the imposition of the punishment can be carried out if someone is suspected of having violated the prohibition. Meanwhile, according to Sudarsono, in principle, criminal law is the one that regulates crimes and violations of the public interest and such actions are threatened with punishment which constitutes suffering. Thus criminal law is not holding its own legal norms, but already lies in other norms and criminal sanctions.

A criminal act is an act/action that is prohibited by law and is threatened with a crime, where the meaning of action here is in addition to active actions (doing something that is actually prohibited by law) as well as passive actions (not doing something that is actually required by law by law).). Criminal law experts generally classify criminal law into two major groups, general criminal and special criminal. Some scholars distinguish it from the provision of an offense in the Criminal Code, so it is called a general crime. Furthermore, if the offense is regulated in laws other than the Criminal Code, outside the Criminal Code, it is called a special crime. This is in accordance with the application of the principle of *lex specialis derogate legi generali*. According to this principle, all the elements of a formulation of the offense are found or found in other regulations, while the second (special) regulation, in addition to all the elements of the first (general) regulation, also contains one or more other elements. In relation to the election, another element in question is that the crime occurred in relation to/in the process of organizing the election.

Giving criminal sanctions to perpetrators of health protocol violators in the implementation of regional head elections cannot be separated from the principle of criminal responsibility adopted in the Criminal Code which is in line with Criminal Sanctions in the Health Quarantine Law, Law Number 4 of 1984 concerning Infectious Diseases outbreaks, as well as regulations other relevant legislation. As has been explained that the definition of criminal law which includes provisions regarding 3 (three) kinds/things, namely as follows:

1. The general rules of criminal law and those associated with or in matters relating to the prohibition of carrying out certain actions are accompanied by criminal threats for those who violate the said prohibition (a criminal act).



2. There are special conditions that must be met for parties who violate the rules of criminal law as stated above, so that those who violate the above can be punished as threatened.
3. State efforts that must and can be carried out by state equipment in the event that the state enforces or implements the said criminal law.

Against liability in criminal law adheres to the principle of no crime without error (geen straf zonder schuld). Although it is not formulated in law, but it is adopted in practice. It cannot be separated between guilt and responsibility for actions. Only people who commit mistakes are burdened with responsibility for the crimes they have committed. In the past, in this case, there was an understanding of accountability. This understanding is also known as material action understanding. This means that if the person's actions are in accordance with the actions in the law, then without paying attention to the person's fault, the judge can impose a sentence.

Law enforcement is intended as an effort to realize legal ideas or desires into reality. goals to achieve goals through people, techniques and information that are run based on a certain organizational structure. Therefore, in a law enforcement organization also includes people, behavior, facilities and also organizational culture. Therefore, the judge in giving the final decision must look at various aspects and elements that can affect the content of the decision to be given.

Before someone is said to have violated the health protocol regulated in the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/382/2020 concerning Health Protocols for the Community in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease 2019 (Covid-19), Of course, it must first be proven that the elements of criminal liability that can be applied to the person must be proven. Previously, perpetrators of violating this health protocol could be punished on the basis of Article 93 of Law Number 6 of 2018 concerning Health Quarantine which states:

Anyone who does not comply with the implementation of the Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of the Health Quarantine causing a Public Health Emergency shall be subject to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Although the formulation of the offense in Article 93 above is of a general nature, it does not seem difficult in its application. Because, the main phrase or keyword in the formulation of the offense is "implementing health quarantine." when going to prove this, it is enough to open a perwali/perbub/pegub that technically regulates the implementation of PSBB in the city/regency/province in question and then relates it to the qualifications of the perpetrator's material actions. If viewed in terms of the severity of the criminal sanctions regulated in Article 93 of the Health Quarantine Law, the formulation of the offense includes violations whose perpetrators during the investigation and examination process in court do not require detention. except, if later it is judged that he is proven to have committed the said crime based on the inkracht van gewisjde decision. then detained for serving the sentence. However, the instrument of imprisonment for the perpetrators of this offense does not need to be applied, but only a maximum fine of Rp. 100 million.

Furthermore, Article 9 paragraph (1) of the Health Quarantine Law states "Everyone is obliged to comply with the implementation of Health Quarantine". Therefore, before a person can be given criminal sanctions as a result of violating health protocols, he must first fulfill the elements contained in the article. but the real problem is when the health protocol violation seems to be "facilitated" by the organizers by continuing to carry out the Pilkada in 2020. Even though it is constitutionally true that the Pilkada is a guaranteed democratic activity, but for a virus disaster situation like Corona, there are urgent rules so that there is no spread of Covid-19 at the time of the election.

Then when in the implementation of the Pilkada in accordance with the provisions of Law Number 6 of 2020 there was a violation of health protocols such as a large crowd of people, the party who should be criminally responsible became unclear. Is it the organizers or the crowd? This becomes very ambiguous in the application of the criminal law in the Health Quarantine Act. So it is indeed necessary to prove comprehensively if there is a violation, including clearly proven parties who should be criminally responsible in the implementation of the Pilkada.

Martiman Prodjohamidjojo argues that the process of proving or proving contains the intention and effort to state the truth of an event, so that it can be accepted by reason for the truth



of the event. In addition, Darwan Prinst argues that proof implies that it is true that a criminal event has occurred and the defendant is guilty of doing it. so you have to take responsibility for it.

The problem of enforcing criminal law against violators of health protocols in the post-conflict local election can at least be solved by looking at each component in the legal system that directly affects law enforcement. legal substance. The substance of the law is the rules, norms, and patterns of real human behavior that are in the system. Second, the legal structure (legal structure) or the structure of the legal system. Friedman calls it a framework or framework or part that persists or a part that gives some form and limitation to the whole. The existence of a legal structure is very important, because no matter how good the legal norms are, if they are not supported by good law enforcement officers, law enforcement and justice are just in vain. Third, legal culture (legal culture). Legal culture is opinions, beliefs (beliefs), habits, ways of thinking, and ways of acting, both from law enforcers and from citizens about the law and various phenomena related to law.

Criminal law policy is a solution or a way to resolve criminal acts of violation of health protocols in the implementation of local elections during the Covid-19 pandemic, because these two things are very contradictory but related, in other words, the implementation of local elections is protected by the constitution, but on the other hand it is a violation of health protocols. including at the time of the election can be punished. Basically, the mechanism for resolving criminal acts of violating health protocols in the post-conflict local election is not much different from other criminal settlement mechanisms, which must go through the criminal justice system, starting from the police, prosecutors, to the judiciary. When the case enters the judiciary, it will go through stages like criminal cases in general, namely through the District Court, High Court and Supreme Court at the Cassation level. However, the thing that becomes difficult is the violation of the health protocol, the main cause is the implementation of the Regional Head Election which is actually protected by legislation.

3. CONCLUSION

The activities of implementing the Regional Head Election are constitutionally protected by laws and regulations, especially in Law Number 6 of 2020, but on the other hand, the Pilkada activities have the potential to cause crowds as evidenced by the implementation of the last 2020 Regional Head Elections which resulted in the spread of Covid-19 increasing significantly. . The crowd in question is included in actions that can be punished according to Law Number 6 of 2018. Therefore, there is a need for an assessment of the implementation of the Pilkada related to the stages of the Pilkada that have the potential to create a crowd which is part of a violation of health protocols, especially in the provision of criminal sanctions for those who violate the health protocol.

The problem of enforcing criminal law for violators of health protocols in the post-conflict local election can at least be solved by looking at each component in the legal system that directly affects law enforcement. During the Covid-19 Pandemic, because these two things are very contradictory but related, in other words, the implementation of the Pilkada is protected by the constitution, but on the other hand, violations of health protocols, including during the implementation of the Pilkada, can be punished.

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