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## **JURIDICAL ANALYSIS OF THE PROVISIONS OF SOCIAL WORK ADMINISTRATION SANCTIONS IN TERNATE MAYOR REGULATION NUMBER 20 OF 2020**

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### **Abstract**

*The objectives to be achieved in writing this research are to find out whether social work sanctions are included in administrative sanctions, and to find out whether the Ternate Mayor Regulation No. 20/2020 contradicts the Minister of Home Affairs Regulation No. 80/2015. The legal materials obtained by the author will be analyzed using a literature study and the whole is analyzed qualitatively. The results of this study indicate that the law enforcement especially the application of sanctions in Indonesia still has problems. Especially in the application of social work sanctions for violators of the Health protocol in the Regulation of the Mayor of Ternate Number 20 of 2020. This social work sanction has different implementation or implementation in each region, especially Jakarta, North Kalimantan, and Ternate. In addition, this sanction is basically not a sanction that can be applied administratively. Rather, it refers to a reaction to a criminal act. so that this sanction is more closely related to criminal sanctions than to administrative sanctions. The legal effect of the application of the law causes legal uncertainty and contradicts the Minister of Home Affairs regulation number 80 of 2015 concerning the formation of regional legal products and is contrary to law number 12 of 2011 concerning the formation of laws and regulations. So a revision is needed to improve the content of the Ternate Mayor Regulation Number 20 of 2020.*

**Keywords:** *Law Enforcement, Social Work, Contrary Law.*

### **INTRODUCTION**

The Covid-19 pandemic that has hit Indonesia today, has made the government demanded to provide solutive policies in order to prevent or reduce various adverse impacts produced by the spread of Corona Virus Disease 2019 (Covid-19). These policies are not only medical treatment, but also legal policies.

Prevention of the virus is certainly important to involve all components of government, both central and regional. Thus, prevention efforts such as the spread of the Covid-19 Virus can be carried out more evenly and thoroughly through the role of the Regional Government.

In order to achieve compliance with the community, the central government through Presidential Instruction Number 6 of 2020, the President also complemented it by advocating for every regional government to impose sanctions. In the Presidential Instruction, it mentions the types of administrative sanctions that can be applied by local governments to emphasize the community in complying with Covid-19 protocols. The sanctions include

- a. Verbal reprimand or written reprimand;
- b. Social work
- c. Administrative fines
- d. Suspension and temporary closure of business operations<sup>1</sup>.

The sanctions are a reference for local governments in Indonesia, including Ternate City. Therefore, on August 19, 2020, the Mayor of Ternate, Burhan Abdurrahman issued a Legal Policy in the form of Ternate Mayor Regulation Number 20 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019, to follow up on orders from President Joko Widodo, as an effort to prevent and to anticipate the widespread spread of Corona Virus Disease 2019 in the city of Ternate.

However, if referring to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, in article 5 paragraph (5) mentions that administrative sanctions may be 2:

1. Verbal reprimand
2. Written reprimand
3. Temporary suspension of activities
4. Permanent cessation of activities
5. Temporary revocation of permits
6. Permanent revocation of permissions
7. Administrative fines and/or
8. Other administrative sanctions in accordance with the provisions of the laws and regulations.

It is clear that the sanctions of "social work" are not contained in the Regulation of the Minister of Home Affairs. If you look at Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, precisely in the appendix to the technique for drafting laws and regulations point 66, it is explained that administrative sanctions can be in the form of :

1. License revocation
2. Dissolution
3. Supervision

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<sup>1</sup> Pemerintah Republik Indonesia, *Health Protocols in the Prevention and Control of Corona Virus Disease 2019*, 2019.

<sup>2</sup> Minister of Home Affairs State, *Regulation of the Minister of Home Affairs State Number 80 of 2015 Concerning the Formation of Regional Legal Products*. (Indonesia, 2015).

4. Temporary suspension
5. Administrative fines
6. Police force

According to the author, police coercion is equivalent to one type of administrative sanction in the form of government coercion (Bestuurdwang/politiedwang). According to Ridwan HR, Government coercion can be deciphered as the authority of the organs of government to end situations that are contrary to the legal norms of state administration, since the obligations arising from those norms are not carried out or that citizens perform<sup>3</sup>.

If it is associated with the sanction of "social work" as referred to in the Regulation of the Mayor of Ternate No. 20 of 2020, the application of this sanction is in the form of cleaning the environment in certain areas, and with a duration of 30 minutes<sup>4</sup>. The act, in no way ends the violation as stipulated in the Regulation of the Mayor of Ternate No. 20 of 2020.

From the subject matter above, there are 2 points of problem formulation, namely:

1. Whether social work sanctions include administrative sanctions?
2. Is Mayor Regulation Number 20 of 2020 contrary to The Minister of Home Affairs Regulation Number 80 of 2015?

## RESEARCH METHODS

### A. Research Type

The type of research used in this study is the empirical legal approach, as this research studies the mechanisms that can be carried out by the police as mandated by the law, concerning legal protection for crime victims<sup>6</sup>. Do the actions carried out by the police following what is mandated by the law or inversely, what is expected by the law and whether or not it is in line with the expected goals.

### B. Research Location

The location of the research was at the Sula Islands Police Resort Office. By conducting research in this location, the authors hope to obtain accurate data to obtain objective and comprehensive research results.

The authors chose this research location as these two agencies handed cases of livestock theft.

### C. Types of Data and Data Sources

The types of data used are:

- a. Primary Data, namely the data obtained through interviews or from field research. The research was carried out directly with the parties who have been determined as respondents. Secondary Data, namely the data obtained through a literature study of various kinds of literature related to the research objectives such as documents, articles, books, and other sources.

### D. Data Collection Techniques

The data collection procedure was carried out by:

1. For primary data, the authors interviewed related parties, namely: Officers at the

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<sup>3</sup> Ridwan H R, *State Administrative Law*, (Jakarta: Rajawali Press, 2016).

<sup>4</sup> 'No Title', *Poskomalut.Com* <<https://poskomalut.com/kembali-puluhan-citizen-city-ternate-charged-perwali-number-20/>> [accessed 20 February 2021].

Waitina and Sula Islands Police Forces. For this study, the authors conducted interviews and observations with the Waitina and Sula Islands Police Forces and the victims of livestock theft.

2. For secondary data, literature research is carried out by collecting, reading, and reviewing library material, legislation books, print media, articles, etc. related to the object of research.

#### **E. Data Analysis Techniques**

The data that has been obtained (both primary data and secondary data) were processed and analyzed to produce conclusions. Then it is presented descriptively to provide a clear and focused understanding of the research results. The data analysis seeks to provide a clear and concrete description of the research problems discussed qualitatively. The data is then presented descriptively, by explaining and describing the problems that are closely related to this research.

### **ANALYSIS**

#### **Position of Social Work Sanctions in the Type of Sanctions in Laws and Regulations**

Basically, the meaning of this social work sanction is not contained in the laws and regulations. In fact, the meaning of this social work sanction is not contained in its original regulation. The regulation in question is Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019.

Because of the uncertainty about the meaning of these social work sanctions, making the meaning of these social work sanctions is left entirely to law makers. So that it can give rise to various assassinations that tend to be wild. However, these social work sanctions can be found in Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the prevention and control of corona virus disease 2019.

- 1) Social work sanctions in Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement health protocols in the prevention and control of corona virus disease 2019.

Efforts to prevent the spread of the COVID-19 virus that has hit Indonesia, make the government required to provide effective solutive policies. These policies are incarnated in various ways, including legal instruments. Legal instruments have different types and their own groups. This is incarnated in the hierarchy of laws and regulations.

Given the emergency that is currently hitting, making the government in addition to being required to be solutive and effective, the government is also required to act quickly and immediately. This includes making such a solutive and effective instrument.

In view of this, the central government, in this case, is the president, making a legal instrument in the form of Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of health protocols in the prevention and control of corona virus disease 2019.

The use of legal Instruments of the type of Instruction according to the author is an appropriate action given that these legal Instruments do not take a long time in their manufacture. Compared to other Instruments such as the Act which takes quite a long time and requires a considerable budget of costs.

However, this Instrument (Presidential Instruction) has its drawbacks. Among them, because of the Presidential Instruction is an Instruction, hence this Statutory Instrument has no binding legal force, and is useful as a mere recommendation. Thus, it does not give rise to legal obligations for the subject of regulated law.

Returning to the handling of covid-19 through Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement Health protocols in the prevention and control of corona virus disease 2019, this instruction in addition to ordering local governments to implement 4 M (Keeping Distance, Washing Hands, Using Masks and Staying Away from Crowds), this instruction was also followed by sanctions. Including social work sanctions.

The choice of social work sanctions is an option taken by the central government in implementing sanctions for violators of health protocols. Considering that law enforcement in enforcing healthy behavior efforts is related to the social life of the community, sanctions are made that are related to people's lives as well. Thus, this social work sanction is considered very appropriate to be applied.

- 2) Ternate Mayor Regulation Number 20 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019

In following up on the provisions in the Presidential Instruction President Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019, the local government of the city of Ternate, in this case the Mayor of Ternate, issued a legal instrument in the form of Ternate Mayor Regulation Number 20 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019.

The Ternate Mayor's Regulation does not change the sanctions provisions ordered by the Presidential Instruction, and still uses social work sanctions as a type of sanction for violators of the Covid-19 Health Protocol. These social work sanctions are embodied in chapter 5, chapter 7 verse 2 which reads ; (2) The sanctions for violations as referred to in paragraph 1 are as follows:

a) For individuals

- 1) Verbal or written reprimand
- 2) Social work
- 3) Administrative fines with an amount of at least Rp. 50.000,- (fifty thousand rupiah) and a maximum of Rp. 250.000,- (two hundred fifty thousand rupiah)

So that the Ternate Mayor Regulation Ternate Mayor Regulation Number 20 of 2020 concerning

The implementation of discipline and law enforcement of health protocols as an effort to prevent and control corona virus disease 2019, is a follow-up to the presidential mandate which was stated in Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Corona Virus Disease 2019.

The sociological basis of the establishment of ternate mayor regulation number 20 of 2020 is vaguely stated in the consideration considering, on point a, namely, as an effort to anticipate the widespread spread of Corona Viruses Desease 2019 (Covid-19), within the Ternate City area which has an impact on social, economic and community

welfare aspects.

It is clear that, in addition to following up on Presidential Instruction Number 6 of 2020, this regulation aims as a tool in helping to reduce the spread of the corona virus in the city of Ternate, especially in terms of law enforcement. The enforcement of the law also includes the application of sanctions with the aim of providing a deterrent effect for violators. Thus, it is clear that Ternate Mayor Regulation Number 20 of 2020 sociologically helps provide law enforcement with tools in enforcing the law to the community, to reduce the spread of the coronavirus in Ternate City<sup>5</sup>.

## RESULT

### **Legal Consequences of the Implementation of Social Work Sanctions and Their Relation to the Kelsen-Nawiansky Legal Norm Level Theory**

Since the birth of Indonesia with the proclamation of independence and the establishment of the 1945 Constitution as its constitution, a system of legal norms of the Republic of Indonesia was also formed. To understand the legal norm system, Hans Kelsen's legal norm level theory approach and Hans Nawiansky's legal norm level theory are needed, because this theory influences the formation of the Indonesian legal norm system. In Hans Kelsen's view that the norms of the law are tiered and layered in a hierarchy / arrangement system, so that in terms of the arrangement of the norm system, the highest norm becomes the basis and the place where the norms depend under it, if the basic norms change, it will become damaged by the system of norms that are under it<sup>6</sup>.

Furthermore, Hans Kelsen divides the norm level into several levels of naming in layers or stages, starting from *grundnorm* (as the norm level highest) up to norm (as the level of norm that is below it)<sup>7</sup>.

Hans Kelsen's theory was later developed by a student, named Hans Nawiansky, in his theory that related the level of legal norms to the existence of a state. In his view, that the level of legal norms is not only tiered but also grouped.

According to Hamid.S.Attamimi, Hans Nawiansky's theory, if it is connected with the Indonesian legal state, has the following structure of the hierarchy of the arrangements:

1. Staatsfundamental norm: Pancasila (Preamble to the 1945 Constitution )
2. Staatsgrundgesetz: The torso of the 1945 Constitution, the TAP MPR, and the Constitutional Convention .
3. Formell gesetz: Act
4. Verordnungen autonome satzung: Hierarchically from Government regulations to Regent or Mayoral Decrees.

The hierarchy of legal norms is aimed at determining their respective degrees with consequences if there are conflicting regulations then those declared applicable are those of a higher degree. In this case applies the principle of *lex superiori derogat legi inferiori* (law whose higher degree overrides the law of a lower degree)<sup>9</sup>.

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<sup>5</sup> Pemerintah Provinsi TERNATE, *Considerations Considering Point A of Ternate Mayor Regulation No. 20 of 2020*, 2020.

<sup>6</sup> Pemerintah Provinsi TERNATE.

<sup>7</sup> Jazim Hamidi, *The Indonesian Legal Revolution: The Meaning, Position, and Legal Implications of the Proclamation Manuscript of August 17, 1945 in the Constitutional System of the Republic of Indonesia* (Jakarta: Constitution Press, 2006).

<sup>8</sup> A.Hamid. S. Attamimi, 'The Role of Presidential Decrees of the Republic of Indonesia in Organizing State Government, An Analytical Study of Presidential Decrees That Function as Regulatory In The Period of Pelita I-Pelita IV' (University of Indonesia, 1990).

<sup>9</sup> Bagir Manan, 'Theory and Politics of the Constitution' (UII Press, 2003).

Forming laws and regulations basically has a flow and arrangements that are contained in the law. In general, the guidelines for the formation of laws and regulations are contained in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

At a lower level such as the mayor's regulation, the guidelines used will be more specific, namely contained in the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products.

The regulation regarding regional legal product guidelines is needed considering that it is a complement to the rules that have not been included in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Thus, the rules become clearer and more detailed by being contained in the Ministerial Regulation.

In accordance with article 2 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, there are 2 types of regional legal products, namely legal products areas that are in the form of regulations, and regional legal products that are in the form of determinations<sup>10</sup>.

The regional legal product in the form of a regulation is further divided into several parts, namely<sup>11</sup>:

- a. Local Regulations
- b. Regional Head Regulation
- c. PB KDH
- d. DPRD Regulations

It has been clearly stated that the mayor's regulations as the object of analysis in this thesis, including in the regional legal products in the form of regional head regulations with legal products of the type of regulations.

Perauran Menteri Negeri Number 80 of 2015 concerning the Establishment of Regional Legal Products, does not include in detail the content material in the regulation at the level of Regional Head Regulation. Thus, according to the author, this results in the formation of regional legal products, especially the regulations of regional heads of centering are still abstract.

If you look back at Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, there is a provision regarding the loading of criminal sanctions in the laws and regulations, namely can only be contained in Local Laws and Regulations<sup>12</sup>.

This suggests that other laws and regulations, such as regulations at the level of regents/mayors or below, should not include criminal sanctions, both mild and severe. Because it will cause legal contradictions.

If referring to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, article 5 paragraph (5) states that administrative sanctions can be in the form of<sup>13</sup>:

1. Verbal reprimand
2. Written reprimand
3. Temporary suspension of activities
4. Permanent cessation of activities
5. Temporary revocation of permits
6. Permanent revocation of permissions

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<sup>10</sup> Minister of Home Affairs State.

<sup>11</sup> Minister of Home Affairs State.

<sup>12</sup> Pemerintah Republik Indonesia, *Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations* (Lembaran Negara Republik Indonesia, 2011).

<sup>13</sup> Minister of Home Affairs State.

7. Administrative fines and/or
8. Other administrative sanctions in accordance with the provisions of the laws and regulations.

It is clear that the sanctions of "social work" are not contained in the Regulation of the Minister of Home Affairs. If you look at Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, precisely in the appendix to the technique for drafting laws and regulations invitation point 66 explained that administrative sanctions can be<sup>14</sup>:

1. License revocation
2. Dissolution Experience
3. Temporary suspension
4. Administrative fines
5. Police force.

## CONCLUSION

The meaning of social work sanctions is not contained in the laws and regulations. Even the meaning of this social work sanction is not contained in the original regulation, namely Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols in the prevention and control of Corona Virus Disease 2019. This resulted in the implementation of different sanctions in various regions such as in Jakarta, North Kalimantan, and Ternate City.

Moreover, this sanction is not essentially an administratively applicable sanction. Rather it is sanctions that refer to reactions to criminal acts . so that these sanctions are more closely related to criminal sanctions than administrative sanctions.

This is evidenced by the discussion regarding the renewal of the Draft Criminal Law (RKUHP) in its draft, one of the criminal sanctions is social work criminal sanctions, the application of which is very identical to social work sanctions for violators of the Covid-19 Health protocol based on the mayor's regulation number 20 of 2020. So the author concludes that social work sanctions are criminal sanctions.

The legal consequences of the application of Article 7 of the Ternate mayor Regulation Number 20 of 2020 The Application of Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019, is contrary to Article 5 paragraph 5 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products.

Not only that, after researching various literature, Ternate mayor Regulation Number 20 of 2020 Implementation of Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019, violates the provisions of the norms in Article 15 paragraph 1 of the Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

## SUGGESTIONS

1. For the central government and local governments, especially the regional government of the city of Ternate, to be more observant and pay attention to the content of the legislation so that there is no legal uncertainty that leads to misunderstandings in the application of laws and regulations. It would be better if the local government studied its own legal products more.

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<sup>14</sup> Pemerintah Republik Indonesia, *Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations*.



2. Suggestions to the local government, especially the Ternate city government, to revise the Ternate mayor's regulation number 20 of 2020 regarding the Implementation of Discipline and Law Enforcement of Health Protocols as an Efforts to Prevent and Control Corona Virus Disease 2019. Especially in section 7 of Chapter V related to social work sanctions

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