LEGAL SANCTIONS FOR HEALTH PROTOCOL VIOLATIONS DURING THE COVID-19 PANDEMIC IN LAW ENFORCEMENT PERSPECTIVE

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ABSTRACT
The spread of the Corona virus does not only attack human health, the new Corona virus also causes the economic decline of countries in the world. Public understanding and awareness of COVID-19 prevention is still low. In addition, the level of community compliance to carry out social distance is also still low. In this research, the author gives an example of a case of a crowd in Petamburan and in Megamendung where the defendant is Muhammad Habib Rizieq Shihab (MHRS) whose case has been sentenced by the East Jakarta Court. The research method that the author uses is the normative juridical method, namely research using library data, carried out by searching, citing, recording, inventorying, analyzing, and studying data in the form of library materials needed and related to legal sanctions for violators of health protocols in Indonesia, during the Covid 19 pandemic. Based on the results of the study, the authors conclude that the mechanism of action in the context of law enforcement against people who violate the health protocol during the Covid 19 pandemic is prioritized more on administrative sanctions which in this case are regulated as sanctions for violations of the health.

INTRODUCTION
The purpose of law enforcement is to create greater order and legal certainty in society. To achieve this, among other things, it is necessary to control the functions, duties, and authorities of the institutions responsible for law enforcement in accordance with their respective scopes, as well as build a good cooperation system that supports the goal to make it happen (Sanyoto, 2008).

Law enforcement is the process of enforcing and actually functioning legal standards as traffic guidelines or legal relations in social and state life, as defined by Jimly Asshididique. Laurensius stated in his writings that in modern state organizations, law enforcement is carried out by the executive component and carried out by the executive bureaucracy (Arliman, 2015). As a result, law enforcement cannot be separated from the involvement of law enforcement, because those who participate in law enforcement will ultimately implement the law (Ansori, 2018). A corrupt mindset among law enforcers will result in corrupt law enforcement, and vice versa, a good mentality among law enforcers will produce good and responsive laws that are implemented/enforced by good and responsive law enforcers (Ismantara et al., n.d.).

During the Covid-19 outbreak, everyone is required to comply with health standards when doing activities outside the home, including wearing masks, avoiding close contact with other people, and washing hands (n.n, 2020). Due to the spread of the Corona virus, it not only endangers human health but also has the potential to cause economic collapse in several...
countries in the world (Susanto & Asmara, 2020). A study by Sagala et al. (2020) entitled Knowledge Relations and Public Attitudes Against Covid-19: Literature Review stated that public understanding and awareness of Covid-19 prevention was still low. Furthermore, the level of community compliance with social distancing is still low, as evidenced by residents who continue to leave their homes for recreation, sit in groups, gather without masks, or maintain distance, making the possibility of spreading it difficult to realize. Improve their understanding of self-isolation in accordance with standard operating procedures (Sagala et al., 2020).

In the midst of this COVID-19 outbreak, all parties must comply with a set of rules and criteria in order to carry out their duties safely (Syamsiar, 2021). To ensure that people can carry out their daily activities without endangering themselves or others, a health protocol has been drawn up (Lumanauw & Gupta, 2022). Disciplined individuals comply with all the rules outlined in the health protocol, which helps reduce the chances of transmitting COVID-19 (Handayani, 2021).

Health protocols are divided into several categories, including prevention and control (Fathimah et al., 2021). To prevent the spread of Covid-19, health protocols must be adhered to. Starting with discipline at home, especially if a family member is involved in extracurricular activities outside the home, is an efficient way to get started (Hartika et al., 2021). The importance of awareness and the role of all family members in taking care of each other by implementing the protocol to prevent the spread of COVID-19 is very important, and they will get used to socializing in the wider community, so that the implementation of the Health protocol has become a matter of discipline and public awareness in daily activities.

The previous research related this theme are conducted by Devianti & Michael (2021) conducted research on accountability of mosque administrators against violation of Covid-19 health protocols in the mosque environment. Kajeepta et al. (2021) researched on estimating spatial and racist inequalities in the enforcement of COVID-19 mandates by New York City police. In addition, Aborisade (2021) researched on accounts of the Nigerian Police Force's illegal use of force and misbehavior in enforcing COVID-19 measures.

Public awareness is very important to stop the transmission of Covid-19 or the Coronavirus that emerged from Wuhan, China, at the end of 2019 and has since spread throughout the world, according to Lukman Isnawan's paper entitled The Importance of Public Awareness in Breaking the Chain of COVID-19 Transmission. It has been reported to the World Health Organization (WHO) in China that a new type of pneumonia of unknown etiology has been identified.

The spread of the coronavirus must be stopped as soon as possible, according to the World Health Organization. It is not only the government's obligation to limit the spread of the Corona Virus; The community also plays an active role in this effort. Policies set by the government must be enforced in the future, especially in the provision of legal sanctions against those who violate government regulations that have established policies in the form of:

1. On March 31, 2020, the government issued Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19). The regional government (Pemda) has the authority to impose Large-Scale Social Restrictions (LSSR) for all
provinces or certain districts or cities in one province. LSSR is implemented at the suggestion of the Minister of Health by the governor/regent/mayor.

2. On April 3, 2020, the Minister of Health issued Regulation of the Minister of Health Number 9 of 2020 concerning LSSR Guidelines in the Context of Accelerating the Handling of Covid-19 which is called the "Covid-19 Guidelines". There are several LSSR policies, including: 1) school and work holidays; 2) restrictions on religious activities; 3) limitation of activities in public places/facilities; 4) limitation of socio-cultural activities; 5) restrictions on transportation modes; and 6) restrictions on other activities related to defense and security.

3. On April 7, 2020, the Minister of Health approved the implementation of the LSSR in DKI Jakarta which will take effect immediately. LSSR is carried out for a total of 14 days. Passengers are not allowed to be transported by online motorcycle taxis. The KRL schedule has been re-evaluated and has been summarized. Basic food products worth Rp. 200 thousand per family will be supplied throughout the Greater Jakarta area, according to the plan. Later, beneficiaries will receive Rp 600 thousand per household, which will be distributed over three months.

The author gives an example in this thesis about the case of Muhammad Habib Rizieq Shihab (MHRS) being found guilty committing the crime of crowding at Petamburan that violated the health standards of the COVID-19 pandemic. The celebration of the Prophet Muhammad's Birthday at Petamburan ignores Megamendung's health regulations. Article 93 of Law Number 6 of 2018 concerning Health Quarantine and Article 55 paragraph (1) 1 of the Criminal Code are considered to violate the beliefs of Habib Rizieq et al. The defendant in this third alternative charge was sentenced to 8 months in prison. To date, MHRS has been found guilty of the Megamendung mob and sentenced to a fine of Rp. 20 million, with a mandatory minimum sentence of 5 months in prison. He was found guilty of violating health regulations and forbidding COVID-19 officers from visiting his Islamic boarding school in the Megamendung area.

Based on the description above, the author has determined the research title of this thesis is: "LEGAL SANCTIONS FOR HEALTH PROTOCOL VIOLATIONS DURING THE COVID-19 PANDEMIC IN LAW ENFORCEMENT PERSPECTIVE (Examples of Cases the Petamburan crowd and at Megamendung).

METHOD RESEARCH

It was decided to use the normative juridical method in this legal research because it is more efficient. Normative legal research is research that prioritizes library data, especially research based on secondary data. Depending on the type of secondary data, the data can be in the form of primary, secondary, or tertiary legal documents. Research on the provisions of the legislation in force in Indonesia related to legal sanctions for violators of health protocols during the Covid-19 pandemic from the point of view of law enforcement is included in this study. The research locations are in the jurisdictions of DKI Jakarta and Bogor Provinces, especially in the case of crowds in Megamendung. This research was conducted by the author within 3 months, starting from July to the end of September 2021.
RESULT AND DISCUSSION

1. Legal Arrangements Against Health Protocol Violators

The spread of Covid-19 was so fast that the first and second cases were announced by the central government on March 2, 2020, and the third and fourth cases were announced on March 6, 2020, according to the latest available data. It is impossible to overestimate how much the Covid-19 epidemic has changed the course of human history and interactions between countries. This global epidemic seems to be a complement to the deglobalization trend that has been going on for the past few years, at least from the point of view of international relations (Vermonte & Wicaksono, 2020).

Sampurno et al. (2020) indicated that Coronavirus (Covid-19) is an infectious disease caused by a new version of the corona virus which was discovered at the end of 2019 and is caused by a new version of the corona virus. The majority of illnesses experienced by patients infected with the Covid-19 virus will manifest as mild to moderate respiratory illnesses that will heal on their own without the need for additional treatment. Individuals over the age of 65 and those with a history of medical problems such as cardiovascular disease, diabetes, chronic respiratory disease, and cancer, are more likely to be infected with the Covid-19 virus and have more serious illnesses than the general population (Sampurno et al., 2020).

Although Covid-19 did not cause physical damage to property or infrastructure, the event had a major economic impact, including widespread unemployment, cessation and reduction of trading activities in the tourism sector.

Meanwhile, according to H. Nurianto Rachmad Soepadmo, the Indonesian government has been alerted to the dangers posed by Covid-19 since early March. However, the government's reaction, which is usually only a verbal answer, is often considered far from professional (Nugroho et al., 2020).

Covid-19 can be transmitted from one person to another through coughing/sneezing droplets, according to Jeki Refialdinata in his article entitled Analysis of Covid-19 Prevention Efforts in Campus Communities (droplets). In addition, people can become infected by touching a surface that has been contaminated with the Covid-19 virus and then touching the face that is infected with the virus (e.g., eyes, nose, and mouth).

Physical distancing measures, such as staying away from large groups of people or gatherings, avoiding large groups of people, and maintaining a safe distance from other individuals, can help reduce the chances of contracting Covid-19 (Refialdinata, 2020).

With the increasing number of Covid-19 patients, the government was forced to take strategic steps to contain the disaster. Several regulations were finally enacted during this pandemic. It is stipulated in Article 4 of the 1945 Constitution of the Republic of Indonesia which establishes a unitary state and a republican government, that the President of the Republic of Indonesia has governmental power in accordance with the Constitution. The President is assisted and assisted by a Vice President in carrying out his duties. The President can declare a state of danger, according to the Constitution of the Unitary State of the Republic of Indonesia contained in Article 12 of its Basic Law. Conditions of danger and their consequences are regulated by applicable laws and regulations.

Since February 4, 2020, President has designated Covid-19 as an epidemic of public health concern. HK.01.07/MENKES/104/2020 issued by the Minister of Health of the Republic of Indonesia stipulates Novel Corona Virus Infection (2019-nCoV Infection) as a disease that
has the potential to cause disease (Determination of Novel Corona Virus Infection as a Disease with Potential to Cause Disease). Outbreaks and Disease Control Efforts Until now, there has been no public health emergency statement.

In the context of preventing the spread of Covid-19 and ensuring legal certainty, the Government of Indonesia has issued Presidential Instruction Number 6 of 2020 concerning Improvement of Discipline and Law Enforcement of Health Protocols, which will help increase the effectiveness of prevention and control, the spread of Covid-19 throughout the region while strengthening efforts to control the disease. Then it was decided to continue efforts to prevent and control Covid-19 in the regions, which culminated in the issuance of the Minister of Home Affairs Instruction Number 4 of 2020 concerning Technical Instructions for the Preparation of Regional Regulations in the Framework of Implementation. Discipline and Law Enforcement of Health Protocols as part of efforts to prevent and control Covid-19 in the regions.

In accordance with the laws and regulations set by the government, the Regional Government must take firm action against those who do not comply with the health protocol because it involves the lives of people whose health is threatened by the spread of Covid-19 through interaction. people who are not known to have been exposed to Covid-19 and for not complying with health protocols can result in depression the spread of Covid-19. The sanctions that have been set in the Regent/Mayor regulations are applied in daily life so that public knowledge about the dangers of the corona virus increases.

If at the time of enactment of the Regional Head Regulation concerning the implementation of the Covid-19 health protocol, it is found that there are attempts to refuse, disobey, or other efforts that cause public unrest and disrupt the stability of security and public order, order, then strict law enforcement efforts against anyone by law enforcement officers will be carried out by law enforcement officers. In addition to Article 212 of the Criminal Code, Article 214 paragraphs (1) and (2) of the Criminal Code, Article 216 of the Criminal Code, and Article 218 of the Criminal Code are referred to as references. Furthermore, Article 84 and Article 93 of Law Number 6 of 2018 which regulates Health Quarantine (Law Number 2 of 2002) are revoked.

Article 216 of the Criminal Code used against the defendant Habib Rizieq states that anyone who intentionally disobeys orders or demands made according to laws and regulations by a civil servant who is required or authorized to investigate or examine an act may be punished, and whoever intentionally prevent, hinder, or thwart an act committed by a civil servant, guilty of committing a criminal act (CC 92). What is meant by a civil servant in the first part of the paragraph above is anyone who is required to carry out public functions permanently or temporarily in accordance with the prevailing laws and regulations. (CC 92; CC 93). It is possible to increase the sentence by a third if the offense is committed within two years of the previous guilty verdict for the same crime.

The articles mentioned above can be classified as follows: the punishment in this article is for deliberately violating the orders or demands of civil workers, and the punishment is death. According to this article, the order or demand must be carried out according to the laws and regulations, otherwise a penalty will be imposed. Public officials must not act arbitrarily to be punished; however, the order or demand must be carried out by a civil servant who is obliged to supervise or who is obliged to investigate or assess activities that may result in a criminal offence. In this article, whoever intentionally hinders, hinders, or thwarts an act committed by...
the civil servant mentioned above which is carried out according to the limitations of statutory regulations, is also threatened with legal consequences. While this is going on, Article 218 of the Criminal Code states that anyone who gathers intentionally, does not leave immediately after being ordered three times by or on behalf of the competent authority, is threatened with a maximum imprisonment of four months and two weeks or a maximum fine of nine months one thousand rupiahs for joining the group.

When people gather with people who cause mass chaos (volksolops), it is stated in this article that those who are not peaceful, and peaceful people usually leave immediately if they are forced to disperse. Ordered three times: the command had to be given out loud so that everyone could understand it.

According to Article 84 of Law Number 6 of 2018 concerning Health Quarantine, in addition to investigators from the Indonesian National Police, certain civil servants within the Ministry of Health who carry out government affairs in the health sector are given special authority as investigators, as referred to in the Law that regulates procedural law, as well as investigators from the Indonesian National Police. violation of health quarantine as the basis for investigation of criminal acts in the field of health quarantine; Implementation of the Health Quarantine as referred to in Article 9 paragraph (1) and/or obstruction of the implementation of the Health Quarantine causing a Public Health Emergency shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of Rp. 100,000,000,00, in accordance with Article 93 of Law Number 6 of 2018 concerning Health Quarantine (one hundred million rupiah).

Law enforcement must take firm action against those who violate the approved health protocols. As stated in the Articles of Association, if the policy of the Regent/Mayor cannot be implemented by implementing the sanctions regulated in the Regent/Mayor Regulation concerning the Implementation of Discipline and Law Enforcement of Health Protocols in Langsa City, then law enforcement can be carried out by enforcing the Criminal Code. The articles mentioned above, as well as other rules related to preventing the spread of Covid 19, are enforced to ensure that the public does not despair and follows the health protocol as long as the Regency/City community is present.

The Criminal Code contains strict sanctions whose application can be imposed by law enforcement officers then processed in accordance with the criminal procedure law, so that even though there are sanctions, there are still many people who ignore them because the sanctions are not heavy enough for some people who are not disciplined.

2. Law Enforcement Starts From Public Facilities

According to data and a poll conducted by the Central Statistics Agency (CSA) in September 2020, the market is one of the public facilities that does not comply with occupational health and safety regulations. A total of 17.32 percent of respondents who answered the survey questions stated that the traditional markets they visited did not follow health protocols. Several BPS surveys revealed that the implementation of standard health protocols in public spaces such as markets did not run smoothly. In addition, security officers or members of the Covid-19 Task Force at the market did not issue warnings for those who violated health protocols while they were there. According to Soerjono Soekanto, law enforcement can be influenced by various elements, including legal considerations, law
enforcement, facilities or facilities, society, culture, and others. Legal considerations, such as laws and regulations governing health protocols, such as Law Number 6 of 2018, Presidential Instruction Number 6 of 2020, as well as regulations of governors/mayors/regents regarding LSSR, are discussed further below. Law enforcement guidelines for implementing health standards already exist, but their implementation is not yet at the highest possible level of efficiency. According to Article 14 of DKI Jakarta Governor Regulation Number 41 of 2020, administrative sanctions and social work sanctions are the only types of sanctions that can be imposed on those who violate health regulations. There is no evidence that these consequences provide a deterrent effect for those who violate the health protocol requirements. The factors of law enforcement, especially law enforcement officers, especially the police and Satpol PP are discussed.

One of the directions given by the National Police Chief in Presidential Instruction Number 6 of 2020 is to streamline law enforcement against those who violate health protocols. Regional agencies such as Satpol PP are also entrusted with implementing health protocol guidelines to ensure local regulations are adhered to.

The effectiveness of law enforcement in enforcing health service norms is currently declining. According to the Ministry of Home Affairs, there are several factors that have caused the decline in health protocol discipline, including saturation of the community and officers, as well as the easing of health protocol requirements. Factors such as facilities or facilities such as a place for washing hands and directions for entry and exit of guests into the building are important. This is in accordance with Circular Letter Number 12 of 2020 issued by the Minister of Trade of the Republic of Indonesia with the topic of restoring commercial activities carried out during the Corona Virus Disease 2019 (Covid-19) outbreak.

A series of strict health protocols must be implemented by malls or shopping centers, including limiting the number of visitors to 35 percent of the total population and requiring the use of masks, face shields and gloves. Other requirements include providing hand washing facilities and limiting the distance between visitors to no more than 1.5 meters. As a result, shopping center owners are required to offer hand washing facilities as well as signage directing customers in and out of the building. Factors that affect the community, namely factors that have a significant effect on the implementation of law enforcement. This component is important because the greater the public's understanding of the laws and regulations, the more effective law enforcement will be in the long term. Implementation of health protocols related to compliance with community regulations. The use of a mask or the use of a mask but not covering the nose and mouth are two examples of health procedures that are often neglected today. Another offense is failing to maintain a safe distance between the two people. The cultural component is still another consideration. The aspect of culture is very important to consider when setting policy because culture serves as a guide for people in terms of how they act and how they shape their attitudes. A culture of compliance with laws and regulations needs to be fostered so that people understand that regulations are made to keep them safe and comfortable. The habit of the community in complying with the health protocol guidelines implies that the community is actively involved in avoiding the spread of Covid-19.

The DPR RI plays an important function in ensuring that regulations governing health procedures are followed by the letter and spirit of the law. For this reason, the Indonesian House of Representatives has formed a Supervisory Team for the Implementation of the Covid-19
Pandemic Disaster Management (Timwas DPR RI) whose task is to ensure that the government's handling of the Covid-19 pandemic is carried out effectively, and appropriate ways from the perspective of regulatory and institutional frameworks, as well as disaster mitigation. target. The DPR RI Timwas must play an active role in overseeing the implementation of health protocols, especially in shopping centers, in order to prevent the development of the spread of Covid-19.

3. Application of Primum Remedium Principles Against Prokes Violators

If you only consider the application of the ultimum remedium principle, it becomes less precise because it is not comprehensive. In the previous debate, it seemed very clear that the imposition of administrative sanctions was the best option for prokes violations. Therefore, the author will also discuss how to take action against prokes violators with the principle of primum remedium. The use of the criminal as the first drug is considered a defining moment. Because criminal law regulates human behavior in society, is coercive and binding, is carried out by official institutions (executive and judicial), and these laws are supported by strong consequences, it is considered a necessary crime.

In terms of sanctions, criminal law is in the serious category because it is used not only as retaliation, but also as a means of reparation. The convict's part of his human rights as part of the punishment needs to be denied in the hope of protecting the community, rehabilitating those who were wrong, restoring public trust, and requiring penance.

The imposition of criminal sanctions is necessary because of the desire of the community to punish the perpetrators of these crimes or violations. Sanctions are needed to restore public order and security.

Criminal sanctions are still considered the most up-to-date in order to create fear and overcome crime in society:

a. Moreover, the Indonesian National Police has issued Telegram, including:

b. Telegram letter number ST/1098/IV/HUK 7.1./2020 concerning Handling of Crimes that Potentially Occur during Large-Scale Social Restrictions (LSSR).


d. Telegram letter number ST/1101/IV/HUK 7.1./2020 regarding the handling of crimes that have the potential to occur during the LSSR implementation period.

e. Telegram letter number ST/1102/IV/HUK 7.1./2020 concerning Handling of newly arrived passengers or TKI from endemic countries or countries infected with Covid-19.

f. Telegram letter number ST/183/II/Ops.2/2021 ordering the strengthening of the handling of the covid-19 pandemic

The telegraph sent shows that the police are taking the spread of Covid-19 very seriously. In law enforcement, the police have an important role in preventing and responding to crimes that occur as a result of the pandemic. The police are trying to take firm action by giving criminal sanctions to those who violate the law. Primum remedium is an attempt to use criminal law as the main tool to create a deterrent effect for criminals and for everyone not to commit criminal acts. Because criminal law is always used as a primum remedium in practice, and that the primum remedium principle (criminal law as the first and foremost effort) can also
be called a paradigm in law enforcement because it provides several conditions under which the application of the ultimum remedium principle can deviate from) can also be described as a paradigm in law enforcement.

In the opinion of H.G. de Bunt, criminal sanctions must be used as a primary measure (primum remedium) if absolutely necessary and other laws cannot be used; when there are many victims; when the loss is irreversible; and when other, lighter law enforcement mechanisms become less useful or are no longer considered effective. Hoefnagels emphasized the importance of paying attention to various factors when criminalizing (applying criminal sanctions based on formal criminal law) to maintain the fulfillment of the ultimum remedium and avoid overcriminalization, including: Not using criminal law emotionally; not using criminal law to punish acts whose victims or losses are unclear; do not use criminal law if the loss caused by the punishment will be large; do not use criminal law if the loss caused by the punishment will be serious, the severity of the offender's fault, the large or small consequences of the actions committed by the perpetrator, and whether or not public unrest arises as a result of the perpetrator's actions are factors that must be considered in determining whether or not it is necessary or not. the act. apply criminal law as an initial or final remedy in certain situations.

Due to the failure of administrative and civil sanctions to adequately protect the public interest, it is imperative to prosecute individuals for criminal offenses committed against them. Among other things, the applicant must assess whether the use of a criminal act is considered excessive or not; whether efficient or not; and whether the expenditure is acceptable to enforce a crime or not in order to overcome a social problem or an act of the perpetrator. Considering the importance of the victim in committing a crime against an individual becomes important because it can make it easier for victims to receive compensation without having to take legal action on their own to resolve problems caused by the perpetrators for consideration.

The effectiveness of administrative sanctions will be lost, according to Wcipto Setiadi, if the conditions in the administrative regulations specified are not followed or violated. As previously stated, there is an additional need, namely the attachment of elements of a criminal act that occur concurrently with an administrative offense.

This can be taken from the essence of criminal law enforcement which takes precedence over other laws, if it meets the following criteria, which the author will explain in terms of being associated with prokes violations by MHRS. The criteria are as follows:

3.1. Effectiveness of Criminal Application

If criminal law is to be used as the first line of defense in this situation, the efficiency of criminal law as a primum remedium must be evaluated in light of the need for criminal law and other laws that cannot be applied or are not expected to be enforced. Other law enforcement procedures that are less severe than criminal law are not very effective, even if they are recognized at all. Criminal law enforcement is not allowed to get involved emotionally. Strong community support for criminal law enforcement against those who commit crimes In some cases, criminal law enforcement must consider the relative importance of regulatory interests on a priority scale. To be effective, criminal law must be used in conjunction with prevention programs. Potential losses due to punishment will be smaller than losses due to unlawful acts that will be formulated, and Considerations of efficiency, resource expenditure, and the use of criminal acts in order to overcome social problems or the actions of the perpetrators are all factors to be considered.
It has been determined that determining these criteria is very difficult because it requires a philosophical, economic, political, and legal investigation of the surrounding circumstances, all of which are time consuming. According to Sudikno Mertokusumo, law enforcement must pay special attention to the concepts of legal certainty (rechtssicherheit), expediency (zweckmassigkeit), and justice, especially in terms of legal considerations (gerechtigkeit). In response to this section, the much debated application of sanctions against MHRS, both for and against, can also pose considerable challenges to law enforcement, as has been shown in the past.

Meanwhile, according to the author, the eight factors that determine the effectiveness of the application of a crime can be summarized into one main factor, namely the existence of a public interest that must be considered in determining whether or not a crime is necessary. Non-criminal sanctions must be applied as an initial effort in law enforcement. According to Andi Hamzah, the public interest consists of the interests of the state and the interests of the community. Thus, the two core interests, among others, must cover various aspects such as the economy, socio-political life, cultural diversity, legal certainty, justice, and other factors. If there is a state interest, this has an impact on the legal and political will of the government to determine the best sanctions; sometimes the consideration of criminal or administrative sanctions is based on the most favorable; ideally, other aspects also need to be considered to determine whether the public interest is compromised by the violation of the process or not; MHRS is in charge of the investigation. In addition, the differing interests of the community must be considered, and the advantages and disadvantages of applying penalties should be examined appropriately.

One of the events that took place was the organization's child wedding, which was attended by more than 10,000 people. Previously there had been prokes violations, with the first incident involving the gathering of MHRS from abroad reaching tens of thousands of people and the second involving an association in Megamendung, Bogor Regency reaching 3,000 people.

In criminal law, it is one of the dimensions of public law because it imposes an obligation on the government to punish those who commit crimes in addition to defending those who are injured, all in the public interest. These reasons have prompted the state to carefully consider public concerns about the current situation related to the Covid-19 pandemic, namely the possibility that a large number of people (crowding) will have the ability to accelerate the spread of Covid-19.

According to the author, based on the facts described above, it is very clear that MHRS and other event organizers ignore the prokes, so that the role of the state as a tool to maintain control over the community, causes them to apply criminal sanctions in the first place. Line of defense against MHRS during the Covid-19 period, a decision made by the state for ignoring the process has the potential to endanger the survival of other humans. In the administration of justice, it is hoped that the state's considerations in the application of crimes are carried out in the most fair and appropriate way for all prokes violators, and not only for MHRS.

3.2. Certainty of Losses Suffered by Many Victims
Violation of policies carried out by
MRHS has the potential to cause large numbers of victims, as in the case of your child's marriage, where MRHS allows the spread of the virus because the event is held on a
large scale number. In the KBBI, the word mass means many people. Terrorism, genocide and other activities deliberately designed to take the lives of large numbers of people are not a violation of the prohibition. However, when teaching about intentionality in the context of potential criminal law, MHRS should have considered the fact that holding an event attended by many people during Covid-19 could endanger many human lives. Even though the public has been informed through various media about factors that can facilitate the transmission of the virus, such as crowded places with lots of people congregating, close contact with other people, closed spaces, and lack of (inadequate) air ventilation ducts, the virus continues to spread. To prevent the spread of Covid-19 to the wider community, the procedure is carried out in crowded or closed public places such as schools, workplaces, gyms, theater rooms, and other places that have physical contact with each other. This helps reduce the risk of spreading the infection throughout the community.

However, the author's point of view on the MRHS sentence is still lacking because it alludes to Frank Hagan's opinion that not all offenses are considered crimes. Furthermore, the exact number of victims or losses in this case cannot be determined with certainty.

3.3. The perpetrator is a recidivist

Recidivists, also known as repeat offenders, are those who commit a crime after they have committed another crime with a ruling that has the force of law for the rest of their lives.

If the recidivist has obtained a permanent court ruling for the same offence, he or she may face a more severe sentence. The perpetrator of a crime is the same person who committed the previous crime, the crime is repeated again and the previous crime has been decided and has permanent legal force, the perpetrator has served the sentence imposed on him, and the repetition occurs within a certain period of time.

The Criminal Code divides the recidivist category into several categories:

a. General recidive, because the nature of repeated criminal acts is not disputed, meaning that the convict repeats his actions even though the act is not the same as the previous criminal act, then the repeated criminal act is still defined as repetition. The Criminal Code regulates general recidivists under Articles 486, 487, and 488. Offenses of a similar nature are grouped into one category, while crimes of a similar nature are grouped together.

b. Special Residive, The nature of the repeated crime must be the same as the nature of the previous crime, meaning that the convict must repeat an act of the same type or class as the previous crime, in which the convict has/is still serving a sentence term for a previous crime. This category includes articles of the Criminal Code that contain teachings on special regulations regarding recidivist, such as Article 489 paragraph (2), Article 495 paragraph (2), Article 512 paragraph (3), and so on.

MRHS himself had been a prisoner on two separate occasions. The first sentence he received was a prison term of seven months in 2003, for violating Articles 154 and 160 of the Criminal Code, as well as Article 65 paragraph (1) of the Criminal Code. In 2008, he was sentenced to one year and six months in prison under Article 170 Jo, which was applied to his second term. 1 CC, Article 55 Paragraph 1 (first CC). Because the crime he committed was not an article intended to be a recidivist article, then MHRS does not qualify as a recidivist according to the conditions set out above.
3.4. Unrecoverable Losses

According to the author, the expression "irreversible" refers to the difficulty level of the state as a victim in compensating for the losses incurred by the perpetrators of criminal acts. People who are confirmed positive for Covid-19, on the other hand, can be tried to recover, which will have an impact on increasing public spending for healing people who are confirmed positive for Covid-19. This is especially true for those who participate in crowding events but do not comply with the rules and regulations set by the organizers. If the interests of the state as victims are taken into consideration, it is necessary to consider the application of punishment to perpetrators and the state as victims.

According to the point of view of law enforcement concluded in this paragraph, the losses incurred by the convict must be compensated by the convict through a civil compensation scheme or even have been regulated through state administrative penalties. Given the absence of criminal sanctions, it is not possible to arrange for the convict to provide compensation or pay a fixed amount of fines, unless the criminal law specifically stipulates fines as a form of criminal sanction. However, if it is related to the imposition of fines, MHRS has replaced the administrative fines of DKI Jakarta due to the violation of the Pergub. Then, there is no plan on which party will be responsible, whether it is the country, which you will be responsible for, or the party that will organize the event.

3.5. Administrative Offenses Concomitantly Inherent in the Elements of a Criminal Acts

Individual penalties may be applied in cases

Administrative offenses that occur while also meet the criteria for criminal offences. Due to the existence of criminal rules and other regulations that contain punishment (the principle of legality), a legal act is no longer subject to the ultimum remedium principle, which is no longer valid because criminal rules have been established.

According to the author’s observation, the incident of Prokes violation that occurred in Petamburan, when MHRS married his son, was indeed sentenced by the DKI Jakarta Provincial Government Number 79 of 2020, but MHRS was also named a suspect, and the case was extended. until the end of the jury trial. According to Article 160 of the Criminal Code or Article 93 of Law Number 6 of 2018 concerning Health Quarantine, MHRS violated Article 55 paragraph 1 of the Criminal Code, and Article 216 of the Criminal Code which violated Article 55 paragraph (1) 1 of the Criminal Code, MHRS was charged with a crime.

Administrative law does not recognize the principle of nebis in idem because the nature and purpose of administrative sanctions are different from criminal sanctions. Nebis in idem is similar to the proverb ‘nemo debet bis vexsari’, which implies that a person cannot be prosecuted for the same crime more than once in the same court. It can be concluded that criminal sanctions and administrative sanctions can be carried out independently of each other, regardless of the principle of nebis in idem. Thanks to the Telegram Letter from the police, which directs all police officers who have the authority to take firm action against any perpetrators who violate the Health Protocol to face criminal sanctions, the crime is committed by law enforcement officers, especially the police. As part of efforts to reduce health care violations, this initiative was launched,
which also makes it difficult to apply the ultimum remedium principle in the application of sanctions against health service violators.

The author argues, after discussing the five factors mentioned above, these conditions have not been fully linked to cases of prokes violations committed by MHRS, especially in determining whether or not the public interest is disrupted, the effectiveness of criminal application during the Covid-19 pandemic, and the perpetrators are recidivist or not. In determining whether or not the public interest is disturbed. It is also not possible to calculate the losses incurred by prokes violators. Considering that there are still several factors that give rise to advantages and disadvantages, the author is of the opinion that administrative sanctions are more appropriate to apply if it refers to the objectives to be achieved through the application of sanctions. Because, in addition to preventing, there are aspects that are sought through the imposition of fines, such as returning things to their original state.

However, in essence, based on the considerations above, it is the state's authority to determine whether to apply the principle of ultimum remedium or primum remedium in imposing sanctions on prokes violators, with the state's consideration in this case whether the public interest has been fulfilled or not, disturbed and the effectiveness of the implementation of the crime. However, these factors must be supported by the rule of law as well. The last sub-section of this discussion explains that if the elements of a criminal act have been fulfilled, the police or the prosecutor's office are obliged to carry out legal processes without considering the application of administrative sanctions that have been applied to the perpetrators. MHRS before, so that in this case, both administrative and criminal sanctions can be applied independently.

4. The verdict on the case of crowds in Petamburan and crowds in Megamendung

The Public Prosecutor previously charged Rizieq with five charges, but by the judge only one indictment was deemed fulfilled, namely the third indictment of Article 93 of the Republic of Indonesia Law Number 6 of 2018 concerning Health Quarantine in conjunction with Article 55 paragraph (1) of the Criminal Code. Other indictments, namely the first indictment of Article 160 of the Criminal Code concerning Sedition, the second indictment of Article 216 Paragraph 1 of the Criminal Code in conjunction with Article 55 Paragraph 1 of the 1st Criminal Code of the Criminal Code, the fourth indictment of Article 14 Paragraph 1 of Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases in conjunction with Article 55 Paragraph 1 The 1st Criminal Code of the Criminal Code, is considered unfulfilled.

4.1. The verdict on the case of the crowd in Petamburan

MHRS was sentenced to 8 months in prison in the Petamburan mass case, in which he was a defendant. According to the court, MHRS was found guilty of violating the rules related to the Covid-19 pandemic that occurred at the same time as the birthday of the Prophet Muhammad and his daughter's wedding in Petamburan, which was deemed to have violated the rules.

In its decision on 27 May 2021, the East Jakarta District Court stated that the defendant MHRS had been legally and convincingly proven guilty based on the court's own findings.

It was determined that MHRS and others had violated Article 93 of Law Number 6 of 2018 concerning Health Quarantine in conjunction with Article 55 paragraph (1) of
the Criminal Code which was proven to be true. This article is the third alternative charge, and sentenced the Defendant to eight months in prison in accordance with the provisions of the sentence.

When the judge looked at the crowd during his daughter's wedding and the commemoration of the Prophet Muhammad's Birthday at Petamburan, he found MHRS guilty of exceeding the maximum number of people allowed. As a result, it is considered to meet the requirements of not complying with the current health quarantine to prevent the spread of the Corona virus.

4.2. The Case of the Crowd in Megamendung

As a result of the Megamendung mass incident, MHRS was sentenced to a fine of Rp. 20 million, which is subject to five months in prison. He was found to have violated health regulations and prevented Covid-19 officers from visiting his Islamic boarding school in the Megamendung area, Bogor Regency, which was considered confirmed to him.

On 27 May 2021, the East Jakarta District Court decided that the defendant MHRS had been legally and convincingly proven guilty according to law, and sentenced him to a fine of Rp. 20 million, which must be repaid over five months, plus five months in prison.

HRS organizers are subject to Articles 160 and 216 of the Criminal Code which regulates the implementation of HRS (CC). Meanwhile, the other five suspects are only subject to Article 93 of Law Number 6 of 2018 concerning Health Quarantine. Thus, Habib Rizieq is not charged with Article 212 of the Criminal Code which states that anyone who uses violence or threats of violence against a civil servant in carrying out his legal duties, or against a person who assists a civil servant in carrying out his duties. His legal obligations because of his obligations under the law or at the request of a civil servant, guilty of committing a crime. As stated in Article 160 of the Criminal Code, anyone who incites to commit a crime, commits violence against a public authority, or does not comply with both the provisions of the law and the rules issued in accordance with the provisions of the law.

In accordance with Article 216 paragraph (1) of the Criminal Code, whoever intentionally disobeys orders or requests made according to law by officials whose job is to supervise something, or by officials acting in carrying out their duties, as well as those who are authorized to investigate or examine criminal acts, as well as those who intentionally prevent, hinder, or thwart actions to carry out the provisions of the law by one of these officials, are threatened with a maximum imprisonment of four months and two weeks or a maximum fine of Rp. 9,000. The sound of Article 93 of Law Number 6 of 2018 concerning Health Quarantine is, "Anyone who does not comply with the implementation of Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of Health Quarantine causing a Public Health Emergency to be punished with a maximum imprisonment of 1 year and/or a maximum fine of Rp. 100 million".123

MHRS was declared to have violated Article 93 of Law Number 6 of 2018 concerning Health Quarantine. The panel of judges also stated that the crowd in Megamendung when MHRS was there met the elements of causing a public health
emergency. The panel of judges is of the opinion that a criminal act has occurred in this incident.

MHRS was also declared not to have given an appeal to comply with health protocols to prevent the Covid-19 outbreak. Habib Riziek stated guilty of not complying with the implementation of health quarantine. The verdict of the panel of judges is lower than the demands of the public prosecutor. Previously, the prosecutor demanded that Habib Riziek be imprisoned for 10 months and a fine of IDR 50 million, subsidiary of 3 months in prison. The DKI Jakarta High Court upheld the verdict that the East Jakarta District Court sentenced Habib Riziek Shihab to 4 years in prison for this case. Based on the decision of the Supreme Court Number 4471 K/Pid.Sus/2021 the panel of judges who decided the case included Suhadi as the presiding judge, Soesilo and Suharto as member judges and the Substitute Registrar Agustina Dyah, whose decision was "Improve the Decision of the DKI Jakarta High Court Number 210 /Pid.Sus/2021/PT DKI dated August 30, 2021 which amended the Decision of the East Jakarta District Court Number 225/Pid.Sus/2021/PN Jkt. Tmr dated June 24, 2021 regarding the sentence imposed on the Defendant to imprisonment for 2 (two) years.

As for the consideration of the Panel of Judges at the Cassation level to improve the sentence, because the chaos that arose as a result of the fake news made by Riziek Shihab only covered the scope of social media. This is as the first primary alternative indictment that the public prosecutor filed against Riziek Shihab in this case. Will

However, as a result of the publication of the disturbances from the actions of the Defendant only occurred at the level of the mass media, there were no casualties/physical or property losses. Not only that, another consideration was that the cassation panel handed down a verdict against Riziek Shihab, because apart from the a quo case, he had also been sentenced in other cases which were a series of events related to Covid-19. So with the Supreme Court's decision Number 4471 K/Pid.Sus/2021, the decision on Riziek Shihab already has permanent legal force (inkracht van gewizde).

CONCLUSION

Legal arrangements for violations of health protocols are accommodated in various laws and regulations, from the federal level to the district and city levels. The policy to prevent the spread of COVID-19 is carried out by the government as evidenced by Governor Regulations, Regent/Mayor Regulations concerning the Implementation of Discipline and Enforcement of Health Protocols, as well as by issuing mayoral regulations to anticipate and respond to future COVID-19 outbreaks. The most effective way to prevent the spread of the corona virus is to impose sanctions on those who violate health regulations. Violations of health standards are often ignored by the public because people no longer care about the corona virus, but the government continues to make efforts to prevent the spread of the corona virus in the community, educate and encourage the public to continue to follow health rules in carrying out daily activities.

Mechanism of action in the context of law enforcement against people who violate health protocols during the Covid-19 pandemic takes precedence over administrative
sanctions which in this case are regulated as sanctions for violating health procedures as stipulated in DKI Jakarta Governor Regulation Number 79 of 2020 which is a priority for administrative sanctions in this case. Administrative penalties are related to state administrative law in a number of ways. State administrative law regulates the supervision of government organs (in this case the DKI Jakarta Regional Government) so that they can carry out their responsibilities in accordance with or based on written regulations, as well as supervision of decisions that impose obligations on the individual. The application of criminal penalties, on the other hand, is necessary in the context of law enforcement. This also requires a number of considerations, especially considering the severity of the criminal penalties. Because the state has absolute authority to impose sanctions, the application of the primum remedium principle that prioritizes criminal sanctions is the state's full consideration to safeguard the public interest. However, the effectiveness of the application of the crime, the losses suffered by the victims, and the losses that cannot be recovered are all difficult to determine because the state has absolute authority to apply sanctions. Criminal law as the first line of defense or as the main mechanism of law enforcement.

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