

# **THE VALIDITY OF FINES IMPOSED AS A SANCTION BY REGIONAL GOVERNMENTS TO CONTROL COMPLIANCE WITH COVID-19 HEALTH GUIDELINES**

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*Abstract:* As an effort to deal with the Covid-19 pandemic, the Government issued 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 (Covid-19). In Presidential Instruction 6/2020 Regional Heads are instructed to make Regional Head Regulations (Perkada) which contain sanctions for violation of obligations contained in the health protocol. Referring to Law Number 12 of 2011 concerning Formation of Legislation, Regional Head Regulations are not included in the hierarchy of statutory regulations. So this study discusses the validity of administrative sanctions in the form of fines contained in the Regional Head Regulation.

*Keywords:* Administrative Fines, Regional Head Regulations, Covid-19.

## **Introduction**

World Health Organization (WHO) announced Covid-19 as a global pandemic, and the Indonesian Government, through Presidential Decree Number 11 of 2020 concerning Public Health Emergency of Corona Virus Disease 19 (Covid-19), declared this pandemic as a non-natural disaster requiring some measures to mitigate this issue in an integrated form, and these measures need

to involve all the members of the public and components in society.

The Constitution has given legitimacy to the state, considering that it should also take into account public interests above all. That is, it is more than acceptable for the Indonesian Government to make policies concerning Covid-19 that comply with the principle of *salus populi suprema lex esto* (the security of the people is the top priority). To hamper the rate of the spread of the pandemic, the government set Law Number 6 of 2018 concerning Health Quarantine (henceforth referred to as Law 6/2018).

The imposition of sanctions in Indonesian administrative law is vital, as it is a coercive measure in the enforcement of the administrative law by the state for its citizens to obey. This involves the norms that impose obligations, orders, or prohibitions governed in the legislation made by the Government. In the purview of sociological studies, a sanction serves as an attempt to enforce the law. Law enforcement is a process to bring about the goal the law is achieving. This expectation is sourced from the thoughts of lawmakers formulated into laws and regulations.<sup>1</sup> Sanctions (coercive measures) may involve administrative, civil, and criminal sanctions.

In the structure of modern constitutional science, the tasks of the state in governance and national development leave the consequences of government intervention in all aspects of life in society. The birth of this state has been marked by the birth of laws and regulations in all areas made by the Government in performing its tasks. The Government with all its instruments is optimized to execute all plans outlined in the legislation concerning relevant matters.<sup>2</sup>

Departing from Article 60 Law 6/2018 stating “further provisions concerning criteria and house quarantines, regional

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<sup>1</sup> Satjipto Rahardjo, *Masalah Penegakkan Hukum; Suatu Kajian Sosiologis* (Bandung: Sinar Baru, 1984).

<sup>2</sup> Novita Listyaningrum and Rinda Philona, “Penegakkan Hukum Protokol Kesehatan Di Masa Pandemi,” *Jurnal Media Bina Ilmiah* 15, no. 7 (2021).

quarantines, hospital quarantines, and large-scale social restrictions are governed in Government Regulation”, the provision of this article was issued under the Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (henceforth referred to as PSBB) policies to help accelerate the mitigation of Covid-19, considering the serious impacts left by the pandemic.

The policies regarding the implementation of PSBB were included in the Regulation of Health Minister Number 9 of 2020 concerning PSBB to accelerate the mitigation of Covid-19 (Health Minister Regulation 9/2020). Article 18 of Health Minister Regulation 9/2020 mentions “In terms of socializing and supervising Large-Scale Social Restrictions (PSBB), institutions are authorized to enforce the law according to the provisions of the legislation.

The effectuation of the Government Regulation Number 21 of 2020 concerning PSBB (gov reg 21/2020) does not include any instruments governing administrative, civil, and criminal sanctions. Such sanctions are only set forth in Presidential Instruction Number 6 of 2020 concerning the Improvement of Discipline and Law Enforcement regarding Health Guidelines in Covid-19 Mitigation and Control (Pres Instruction 6/2020).

Pres instruction 6/2020 governs several sanctions imposed on those violating health guidelines, which can be given in the form of written or oral warning, social work, fines, dismissal, and/or temporary closure of businesses. Governors, regents, and/or mayors along with their staff as implementing apparatuses at regional levels are expected to make regulations for their regions in the mitigation of the spread of Covid-19. The Presidential Instruction requires regional heads to make governor regulations, mayor regulations, and regent regulations that govern sanctions imposed on several violations of health guidelines. This Pres instruction 6/2020 represents an attempt of the government to enforce obedience to health guidelines.

In an emergency state following the massive outbreak of Covid-19, all the rules and regulations set forth as the basis of law in governance are something that all parties should be aware of, and the implementation should also be under some guidelines.

Regional governments, according to Law 9/2015 in conjunction with Law 32/2014 concerning Regional Government serve as an institution responsible for the operation of regional governments and Regional House of Representatives according to the principles of autonomy and co-administration task with the principle of full autonomy under the system and principle of the Unitary State of the Republic of Indonesia, as intended in the 1945 Constitution of the Republic of Indonesia. Article 18 Paragraph (7) of the 1945 Constitution implies that the regional government administration is regulated by statutory regulations and this governance aims to accelerate the well-being of society through the improvement of services, empowerment, public participation, and competitiveness at regional levels by adhering to the principles of democracy, equal distribution, justice, and the characteristics of regional areas within the system of the unitary state. Article 1 of Law 9/2015 in conjunction with Law 23/2014 concerning Regional Regulation, Paragraph (3) asserts that regional government refers to the regional head as an element of the governance at a regional level responsible for the government administration under autonomous authority.

Departing from this definition, the Unitary State of the Republic of Indonesia was formed by provinces consisting of regencies and municipalities. Each province, regency, and municipality run administration under its own provincial, regency, and municipal government respectively.<sup>3</sup>

Law 9/2015 in conjunction with Law 23/2014 concerning Regional Government governs the functions of regional government, including absolute, mandatory governmental,

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<sup>3</sup> Ani Sri Rahayu, *Pengantar Pemerintahan Daerah: Kajian, Teori, Hukum Dan Aplikasinya* (Jakarta: Sinar Grafika, 2018).

elective governmental, and public governmental functions, all of which must be defined. Regional governments must run their governmental functions if they are related to society within the areas governed. This is to ensure that no multicultural or plural society emerges. In general, mandatory government administration provides fundamental public services in, inter alia, health, social matters, education, environment, and population control.

Indonesia as a unitary state only has one sovereignty, thereby less prone to conflict of authority between the Central and Regional Governments. Regional Governments always abide by and serve as the subordinate of the Central Government. Similarly, Hans Antlov, as cited by Suharizal, argues that the principle of the unitary state adheres to the sovereignty of the state as a whole. He elaborates *“The unitary principle grounds sovereignty in the nation as a whole. A government repressing a unitary nation has the right to delegate powers downward to region and local institutions, through legislation, but the region has no right to any of these powers. A unitary state can highly be centralized (like France) or it can be decentralized, with a substantial degree of autonomy for provinces or communes (like Britain and the Netherlands) at any rate, it is a unitary state. The power held by local and regional organs have been received from above, and can be withdrawn through new legislation without any need for consent from the communes or province concerned”*.

Hans Antlov’s view indicates that a good and centralized or decentralized unitary state gives autonomous rights to regional organs or institutions through the Central government to Regional Governments. This autonomy is to be obeyed and executed by the Regional Governments according to the decentralization principle.<sup>4</sup> This matter also involves fines imposed as an administrative sanction in Regional Governments.

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<sup>4</sup> Suharizal, *Demokrasi Pemilukada Dalam Sistem Ketatanegaraan RI*, (Semarang: UNPAD Press, 2021).

Government administration is fully run at a central government level, and, according to Administration law, all public administration under the jurisdiction of the Central Government is deemed to be absolute authority, and public administration under the jurisdiction of provincial and/or regional governments at regency/municipal level is deemed to be concurrent authority of both the Central Government and Regional Governments.

All the governmental power is under the authority of the Central government which can delegate its power to constituents, while the delegated matters can also be withdrawn. *“A unitary, as opposed to a federal system of government is one in which a constitution vests all government power in the central government. The central government, if it so chooses, may delegate authority to constituent units but what it delegates, it may also take away”*.<sup>5</sup>

Absolute government administration as intended in Article 9 Paragraph (2) consists of a) foreign policy; b) defense; c) security; d) justice; e) national fiscal and monetary; and f) religion (Article 10 paragraph (1) of Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government). On the other hand, the concurrent government authority or mandatory government administration related to basic services as outlined in Article 11 Paragraph (2) consists of; a). education; b) health; c) public work and spatial planning; d) public housing and housing areas; e). security, public order, and public protection; and f). social aspect (Article 12 Paragraph (1) of Law 23/2014).

In terms of health issues, some matters are under the jurisdiction of the Central Government and some are under the jurisdiction of regional governments at a regency/municipal level. Specifically, the amounts of fines imposed on violations of Health Guidelines in every region in Indonesia vary.

In general, this research studies the policy regarding the mitigation of the Covid-19 pandemic through health guidelines.

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<sup>5</sup> Hariyanto, “Hubungan Kewenangan Antara Pemerintah Pusat Dan Daerah Berdasarkan Negara Kesatuan Republik Indonesia,” *Jurnal Volksgeist* 3, no. 2 (2020).

Statutory regulations have not governed any procedures of imposition of sanctions in case of violations of health guidelines. In several regions, regional heads have initiated fines imposed as an administrative sanction on every person violating health guidelines. However, the mechanism and the proportion of these fines vary across areas due to the absence of a consistent regulatory basis that every region should refer to.

This research has found that there has not been any norm regulating administrative sanctions imposed on the violations of Covid-19 health guidelines through the regulations of Governors/Regents/Mayors. This research employed statutory and conceptual approaches, examining all rules and regulations relevant to the legal issue being researched.<sup>6</sup>

### **Validity of Imposition of Fines as an Administrative Sanction in Regulation of Regional Head (Perkada)**

Elections represent a democratic process where people vote for their leaders and vice-leaders in a government across all levels. Every state has its own rules of elections concerning eligible age to vote, campaign period, voting methods, and vote calculation. Elections are intended to improve and maintain democracy, and it gives a chance to the members of the public to vote for the representatives freely and justly.<sup>7</sup>

The last part of regulations in law sets forth sanctions. The provisions regarding sanctions in legislation are intended to encourage proper law enforcement with no violations in the implementation. Henry Campbell, in terms of sanctions, mentions “that part of a law which is designed

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<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 2017th ed. (Jakarta: Kencana, 2017).

<sup>7</sup> Indriyanto Seno Adji dan Edi Suharto, *Pemilu Dan Partai Politik Di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2010), 45.

to secure enforcement by imposing a penalty for its violation or offering a reward for its observance".<sup>8</sup> Furthermore, Bryan A. Garner defines sanction as "A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)".<sup>9</sup> Utrecht defines sanction as a result of an act taken or reaction shown by another party.<sup>10</sup>

The imposition of administrative sanctions is related to a general measure intended to foster public order, and legal certainty, and guarantee the protection of the right of every person from any violations. The enforcement of administrative legal norms is under the power of state administration to stop violations through the imposition of administrative sanctions. Administrative sanctions are generally understood as punishment imposed by the Government without the intervention of courts or tribunals.<sup>11</sup>

However, deciding the proportion of sanctions given is an issue for lawmakers, since sanctions should be made in a capacity that can reduce or even completely cease violations. It indicates that administrative sanctions are both non-judicial preventive and repressive. Entering the pandemic era, administrative sanctions have been massively governed, involving the imposition of fines across regions to help the state hamper the incidence of Covid-19 cases resulting from the violations of health guidelines.

Article 7 in conjunction with Article 8 of Law 12/2011 concerning Legislation Making (henceforth referred to as

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<sup>8</sup> Henry Campbell Black, *Blacks Law Dictionary With Prononciations* (West Publishing CO, St. Pul, 1873).

<sup>9</sup> Bryan A. Garner, *Black's Law Dictionary* (United state of America: Thomson Business, 2004).

<sup>10</sup> E. Utrecht, *Pengantar Dalam Hukum Indonesia*, ed. M.S. Djindang (Jakarta: Ichtiar Baru, 1989).

<sup>11</sup> Sri Nur Hari Susanto, "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi," *Journal of Administrative Law & Governance* 2, no. 1 (2019).



Law 12/2011) states in Article 7 Paragraph (1) of Law 12/2011:

Types and hierarchies of statutory regulations comprise:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. The Decree of the People's Consultative Assembly of Indonesia;
- c. Statute/Government Regulation in Lieu of Law
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regional Regulation at a regency/municipal level.

Furthermore, Article 8 Paragraph (1) of Law 12/2011 states that any provision other than that of Article 7 Paragraph (1) involves the regulation set by the People's Consultative Assembly, House of Representatives, Regional House of Representatives, Supreme Court, Constitutional Court, State Audit Agency, Judicial Commission, Bank Indonesia, Ministry, body, institution, or commission equal to those established under statute or by the Government in compliance with the statute, Provincial House of Representatives, Governor, Regional House of Representatives of regency/municipal level, Governors/Mayors, Village Heads or equal.

The imposition of the administrative sanctions imposed regarding the violations of Covid-19 health guidelines governed in the Perkada is not under the mandate of higher regulations, meaning that there are no regional regulations, not even a single one, setting forth the imposition of fines as an administrative sanction on violations of the health guidelines. That is, the Perkada, either the Governor Regulation or the Regent/Mayor Regulation concerning Administrative Sanctions, specifically

the fines, imposed on the violations concerned, is not part of the legislation or not within the hierarchy of the legislation as intended in the provision of Law 12/2011.

The primary legal basis used to mitigate the Covid-19 pandemic is Law Number 6 of 2018 concerning Health Quarantine, and this law also highlights a state of emergency regarding health. Constitutional Law also includes the study of Emergency Constitutional Law. This Emergency Constitutional Law lays its constitutional basis in the 1945 Constitution of the Republic of Indonesia, particularly in Article 12 governing the state of emergency in the nation and Article 22 governing the presidential authority to issue Government Regulation in Lieu of Law.

In labor-related matters, legal scholars are aware of the “best interest” as a situation where the nation is in a state of emergency and it needs mitigation. The enforcement of health guidelines imposes sanctions to encourage people to help mitigate Covid-19 by wearing masks, implementing social distancing, and avoiding crowds, and this measure was deemed effective since it enforced sanctions as a controller. The policy is to be enacted in the form of regulations at a central government and/or regional government level.

Article 2 of law Number 12 of 2011 concerning Legislation-Making states that legislation is made of written rules consisting of legal norms with binding force in a general scope; it is approved by government institutions or officials with authorities through the procedures set forth in the legislation.

The provision of Article 5 of the Regulation of the Minister of Home Affairs Number 120 of 2018 concerning the Amendment to the Regulation of the Minister of Home Affairs Number 80 of 2015 covers the following two: a) Governor Regulation and/or; b) Regent/Mayor Regulation. Each regulation is drafted by regional government

administrators at a provincial/regency/municipal level. Governor Regulation is drafted following the law positioned higher and according to authority.

Governor Regulation is not a law recognized according to the provision set forth in Article 7 Paragraph (1) of Law 12/2022 concerning Legislation-Making. However, Governor Regulation is mentioned in the provision of Article 8 of the Law concerning Legislation that is deemed correct and holds permanent legal force as long as it is mandated by higher law or the law made by the authority

As discussed earlier, regarding the authority to regulate the policy of PSBB at a central government level through the stipulation of the Gov Reg 21/2020 concerning Covid-19 Large-Scale Social Restrictions and Health Minister Regulation 9/2020, Law 12/2011 Article 8 concerning Covid-19 Large-Scale Social Restrictions as the higher law does not mandate any further regulatory provisions concerning the social restrictions. However, the Regulation of Health Minister is deemed appropriate to be put in place due to the authority delegated under the legislation, specifically Article 15 Paragraph (2) letter b and Paragraph (4) of Law Number 6 of 2018 concerning Health Quarantine.<sup>12</sup>

Of sanctions imposed above, either those at a central or regional level, vary in terms of whether they are for persons, institutions, or schools. For persons, administrative sanctions in the form of written warnings or community service involving cleaning public facilities may be imposed. Article 48 Paragraph (6) of Law Number 6 of 2018 concerning Health Quarantine mentions "further provisions

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<sup>12</sup> Tomsom Situmeangan, "Keberadaan Denda Administratif Terkait Peraturan Gubernur DKI Jakarta Nomor 33 Tahun 2020 Tentang Pelaksanaan PSBB Dalam Pelaksanaan Covid-19 Di Provinsi DKI Jakarta," *Jurnal Hukum Untuk Melindungi Masyarakat Fakultas Hukum Universitas Kristen Indonesia* 6, no. 2 (n.d.).

concerning the imposition of administrative sanctions is governed in Government Regulation.”

To date, there has not been any Government Regulation enforcing health guidelines. Gov Reg 21/2020 only governs PSBB. The provisions regarding legal apparatuses governing sanctions are only stipulated in Pres Instruction 6/2020 concerning the Improvement of Discipline and Law Enforcement regarding Health Guidelines to help mitigate and control Covid-19. The President instructed Regional Heads to issue governor Regulations, Regent Regulations, and/or Mayor Regulations, including sanctions imposed due to violations of obligations set forth in Covid-19 health guidelines.

Fines imposed as an administrative sanction on health guidelines violations in Perkada are the discretion as intended in Article 22 Paragraph (2) letter d of Law 30/2014 concerning Government Administration to tackle “stagnant government” under a certain condition for the sake of public merit and interest. The “stagnant government” as mentioned in Law 30/2014 refers to the condition where particular government activities cease due to dysfunctions in the government administration.

Article 24 of Law 30/2014 concerning discretion mentions: a). according to the objective of the discretion as intended in Article 22 Paragraph (2); b). not contravening the provisions in the legislation; c) according to the General Principles of Good Governance (AUPB); d) according to objective reasons; e) not raising conflict of interest; and f) done with good faith.

Article 238 paragraph (1) of Law Number 23 of 2014 concerning Regional Government asserts that imposing fines to enforce regulation over violations can only be stipulated in Regional Regulation highlighting the importance of the session with the Regional House of Representatives. The Perkada only regulates the enforcement of Regional

Regulation or the authority of Legislation according to Article 246 of the Law concerning Regional Regulation. Sanctions should not be regulated in Perkada but in Regional Government. Sanctions restrict the rights of citizens, and, thus, the decision over sanctions should involve both regional heads and the Regional House of Representatives.

Fines as administrative sanctions should be imposed on people violating Covid-19 health guidelines under Regional Regulation, either Provincial Regulation or the Regulation at a regency/municipal level. That is, the regulations regarding the Covid-19 pandemic should fulfill the requirements set forth in the provisions of Law 30/2014. If this discretion is not enforced according to the provision of Article 24 of Law 30/2014, this discretion can be deemed “exceeding authority” or “arbitrary”.

### **Disparity in the Amounts of Fines as Administrative Sanctions in Covid-19 Health Guidelines**

Regional autonomy across regional areas in Indonesia is the trigger to improve the well-being of the people, while this well-being was regulated by the central government during New Order. Regional Governments can make an adjustment to the development of regional areas, depending on the potential and the nature of each area.<sup>13</sup> Regional autonomy first took place according to Law Number 22 of 1999 concerning Government Regulation (Law 22/1999). In 2004, Law Number 22 of 1999 was seen as irrelevant to the development and state administration. Departing from this condition, Law Number 22 of 1999 was amended to Law 32/2004 concerning Regional Government. To date, Law 32/2004 concerning Regional Government has gone through some changes,

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<sup>13</sup> Akadun, “Mengkakselerasi Kinerja Otonomi Daerah,” *Journal of Regional Public Administration (JRPA)* 2, no. 2 (2017).

with the last amendment to Law Number 23 of 2014 concerning Regional Government.

The validity of the steps taken by the government is measured by the authority governed by the legislation. Law Number 30 of 2014 concerning Government Administration (Law 30/2014) Article 1 point 6 asserts that authority is the power of a government body/officials or other state administrators to act within the purview of public law. Authority is the right belonging to the government body and/or government officials or other state administrators in decision-making and/or any conduct in government administration.

Hasan Shadhily defines authority as the right or power that gives an order or acts to influence the action done by others to ensure that something is done as expected.<sup>14</sup> Prajudi Atmosudirdjo defines authority as formal power resulting from legislative power (given by statute) or executive/administrative power.<sup>15</sup>

The amounts of fines imposed as administrative sanctions in the context of covid-19 health guidelines vary across Indonesia. In the Province of East Java through Governor Regulation of East Java Number 53 of 2020 concerning the Enforcement of Health Guidelines to Mitigate and Control Corona Virus Disease 2019 (Covid-19) (Governor Regulation of East Java 53/2020), violators are required to pay Rp. 250,000 fine over the violations committed.

Mayor Regulation of Surabaya City Number 67 of 2020 concerning the Enforcement of Health Guidelines to Mitigate and Stop the Spread of Corona Virus Disease 2019 (Covid-19) in Surabaya City mentions Rp. 150,000 paid as an administrative fine, with the regional minimum wage in Surabaya City not more than Rp. 4,375,479.

Mayor Regulation of Mojokerto Number 55 of 2020 concerning the Amendment to Mayor Regulation of Mojokerto Number 47 of 2020 concerning New Normal Guidelines Amidst

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<sup>14</sup> Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Bahasa Indonesia* (Jakarta: Balai Pustaka, 1989).

<sup>15</sup> Prajudi Atmosudirdjo, *Hukum Administrasi Negara* (Jakarta: Ghalia, 1994).

Corona Virus Disease 2019 Pandemic in Mojokerto City charges Rp. 200,000 fines, with the regional minimum wage of about Rp. 4,354,787.

Governor Regulation of Bali Number 10 of 2021 concerning the Enforcement of Discipline and Law Regarding Health Guidelines as a Measure to Mitigate and Control Corona Virus Disease 2019 (Covid-19) in New Era Life set 100,000 for the fine and 1,000,000 imposed on foreigners or foreign tourists, while the regional minimum wage in the area is not more than Rp. 2,516,971.

Governor Regulation of Central Java Number 33 of 2020 concerning Impositions of Administrative Sanctions on Violations of Corona Virus Disease 2019 (Covid-19) Health Guidelines by Civil Servants and Non-Civil Servants within the environment of Regional Government of the province of Central Java regulates Rp. 300,000 fines, with the regional minimum wage in the Province of Central Java about Rp. 1,813,011.

There have been many violations of the Covid-19 guidelines committed by citizens. Mostly, they were found without masks while doing activities in the crowd or riding. Every regional area initiated a patrol to ensure that people follow the guidelines by imposing sanctions with the amounts varying across regional areas. These varying amounts have been questioned in terms of what types of funds these fines are categorized

In this context, administrative fines imposed on the violations of health guidelines are included in Regional Government Budget (APBD). This APBD covers:

1. Revenue Budget covers:
  - a. Regional Own-Source Revenue sourced from regional tax, regional levies, and Regional Assets Management.
  - b. The balanced fund, including profit-sharing fund, general allocation fund (DAU), and Special Allocation Fund (DAK)
2. Regional budget for government activities in a regional area.

The above elaboration indicates that the regional budget is sourced from fines imposed on those violating health guidelines amidst the pandemic included in other revenues. According to Law Number 33/2004 concerning the financial balance between the Central Government and Regional Governments, valid PAD comes from regional revenue not included as tax and the revenue from separated asset management. Valid PAD involves the revenue of the sale of unseparated regional assets; demand deposit and interest; exchange rate difference between Rupiah and foreign currency and commission; and deduction or another form like deduction as a result of sales and/or procurement of goods and/or services by regional areas.

Imposition of fines as administrative sanctions on the violations of the health guidelines concerned must be governed in the legislation to limit the rights of the people concerned and to guarantee legal protection and legal certainty for all. Perkada concerning fines as administrative sanctions imposed on the violations are not part of the legislation.

Perkada issued by a governor, regent, or mayor regarding the fines imposed on violations of the health protocol is deemed invalid; therefore, it needs to be revoked according to the principle of *Ius Contrarius Actus*—a principle derived from Roman Law giving the government the authority to withdraw a decision or regulation with the consideration that this withdrawal is performed by the institution that made it.<sup>16</sup> This principle can be seen from a condition where the officials of state administration under state administrative law issue a decision of state administration, and, *mutatis mutandis*, the body or the officials of state administration making the decision holds the authority to withdraw the decision concerned.

Philipus M. Hadjon and Tatiek Sri Djatmiati argue that the principle of *Ius Contrarius Actus* in administrative law applies

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<sup>16</sup> Victor Immanuel W Nalle, "Asas *Ius Contrarius Actus* Pada Perpu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia," *Jurnal Ilmu Hukum*, 2017.



notwithstanding the absence of a proper clause that guarantees. If an error is found later, the decision of the state administration will be reviewed.<sup>17</sup> Furthermore, Lutfi Chakim explains that in practice, if a decision of state administration bears errors or is juridically defective, this decision must be withdrawn by the officials/institution issuing the decision. The withdrawal process must comply with current principles and provisions. This withdrawal must not take place if the relevant statute forbids it.

### **Conclusion**

The position of the Regulation of Regional Head (Perkada) concerning Administrative Sanctions in the enforcement of health guidelines amidst the pandemic is not part of the provision in the legislation, but it should be part of the discretion of the government. The imposition of administrative sanctions such as fines for the violations of the health guidelines in the system of regional finance is considered invalid and, thereby, must be withdrawn according to the principle of *Ius Contrarius Actus*. Thus, the fines received by the regional budget under the section of other revenues of the regional budget must be withdrawn from the regional budget and returned to the people. The government must, therefore, issue a law governing fines as administrative sanctions on violations of health guidelines as the basis for making the regulations below it. All forms of discretion, especially money withdrawal from the public must be done lawfully according to the current legislation, or the Government is prone to claims. Therefore, before taking any measures, the Government is required to perform assessment and supervision over all measures taken.

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<sup>17</sup> Philipus M Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gajah Mada University Press, 2005).

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