



# Enforcement of Criminal Sanctions of Health Quarantine Law Trespasser in Indonesia

Rina Elsa Rizkiana<sup>1</sup>✉, Michael Gerry<sup>2</sup>

<sup>1,2</sup> Faculty of Law, Social and Political Science, Universitas Terbuka

✉Corresponding author: xxx.elsa1357@gmail.com

**Abstract:** WHO stated there was an additional variant of the Corona virus that were more easily transmitted and resistant to vaccines. The Indonesian government required to prevent the entry of these variants into Indonesian territory. This prevention realized by implementing a quarantine policy which guided by Law Number 6 of 2018 on Health Quarantine. However, there is a gap between the number of violations and the low rate of case resolution. One of the causes is people's non-compliance with quarantine provisions after traveling abroad. This contradicted by the purpose of the Health Quarantine Act. This study aims to describe the legality and legal construction of the Health Quarantine Act formulation. This research was a normative juridical by using a statute approach and a conceptual approach. The results of the study indicate that violations of the Health Quarantine Act can be punish in order to provide certainty and law enforcement based on the ultimum remedium principle if they meet the provisions of the Health Quarantine Act. Thus, evaluation of legal content related to juridical consequences, and socialization as a persuasive effort and communication strategy need to be carried out so that transparency of legal consequences can be accepted and obeyed by the community.

**Keywords:** Criminal; Health Quarantine; Legality

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## A. Introduction

World Health Organization (WHO) declared a COVID-19 pandemic on March 12, 2020, based on the number of infected cases in the global scope. This virus is spreading more widely which is mark by an increase in the number of infected cases and the number of deaths.<sup>1</sup> Meanwhile, the COVID-19 Data Analysis Report in Indonesia as of December 26, 2021 shows that in the past week at the national level: the number of infected cases decreased by 13.3% (1,402 to 1,215 inhabitants), the number of deaths decreased by 15.6 % (64 to 54 people), and the number of recoveries decreased by 8.2 % (1,568 to 1,440 inhabitants). Thus, if the data on COVID-19 in Indonesia calculated as a whole and compared with data at the international level, Indonesia is known to have a death toll of 144 .055 people (1.45 % above the world average), the number of cures is 4.113.049 people (7.2 % above the world average), and the number of active cases is 4.655 inhabitants (8.65 % below the world average).<sup>2</sup>

The increases cases of COVID-19 infection in Indonesia "forces" the government to take countermeasures by implementing various policies. Indonesian Constitution (Article 28H paragraph (1) of the UUD 1945) mandates the state to protect and provide health services to the community. This mandate based on the principle of inherent human rights which assumes that every human being has inviolable human rights, the *wohlfaarstaats* principle which considers the state as a tool for the welfare of the people, and the adage expressed by Cicero, *salus populi suprema lex esto* which means people's safety is the highest law for a country.<sup>3</sup>

One of the policies is the quarantine policy regulated in Law Number 6 of 2018 on Health Quarantine. Article 1 point 6 of the Law defines quarantine as a restriction on the movement of both healthy and sick people with the aim of monitoring and ensuring early detection of new cases. In addition to implementing a quarantine policy, the government has established a health emergency status as stated in Presidential Decree No. 11 of 2020 on the Establishment of Covid-19 Public Health Emergency and Large-Scale Social

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<sup>1</sup> WHO Coronavirus (COVID-19) Dashboard, WHO Coronavirus (COVID-19) Dashboard with Vaccination Data accessed at <https://covid19.who.int/>

<sup>2</sup> Satuan Tugas Penanganan Covid-19, "Analisis Data COVID-19 Indonesia (Update per 30 Januari 2022)", *Online*, 2022, accessed at <https://covid19.go.id/artikel/2022/02/05/analisis-data-covid-19-indonesia-update-30-januari-2022>

<sup>3</sup> Rina Elsa Rizkiana, "Transformation of Law Paradigm: Representation of "Salus Populi Suprema Lex" In the Implementation of Virtual Civil Court", *Proceedings The 3<sup>rd</sup> Open Society Conference 2021*, (July, 2021): 1-14. <http://osc.fhisip.ut.ac.id/wp-content/uploads/2021/09/PROSIDING-THE-3rd-OSC-Agustus-2021.pdf>

Restrictions (PSBB) policy on April 1, 2020 through Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions.

Although various policies have been set, the facts on the ground show different results through the increase in cases of COVID-19 infection. This phenomenon occurs because the implementation of these policies is not accompanied by a strict law enforcement process. Concrete evidence that supports this statement shows from the presence of the COVID-19 quarantine mafia case at Soekarno Hatta Airport, as well as cases of foreign travelers who do not carry out quarantine obligations.

These cases occur because there are elements who help prevent Indonesian citizens (WNI) and foreign citizens (WNA) who come from traveling abroad from carry out of quarantine. Indonesian government implemented the obligation to carry out a 14-day quarantine for Indonesian citizens and foreigners who came from abroad. The occurrence of these cases increases the risk of spreading COVID-19 in Indonesia. This is proofing of the Health Quarantine Act implementation has not been optimal.

This problem being a high level of urgency because it related to the creation of justice. As is known, fairness can only be pursued if legal uncertainty (*rechtsonzakerheid*) and legal vacuum (*rechtvacuum*) have been eliminated. Therefore, the efforts to ensure that a rule is clear (does not cause a variety of interpretations), does not conflict with each other, and has implementing regulations is absolutely necessary.

Based on this explanation, in order to realize the protection of the benefit of the Indonesian people from the COVID-19 pandemic as mandated in Article 28H paragraph (1) of the UUD 1945, it is necessary to have a law which provide a deterrent effect as an anticipation of less effective the other laws. The law is criminal law as a law that has the characteristics of criminal sanctions.<sup>4</sup> In the onther side, criminal law is very appropriate for handling the COVID-19 pandemic in accordance with the general functions and special functions of criminal law. However, this argument does not deny the principle of criminal law as the *ultimum remidium*. This adage (*ultimum remedium*) as a first reminder to consider imposing other lighter sanctions before imposing harsh and sharp criminal sanctions. If other legal functions turn out to be less deterrent, then criminal law can be used.<sup>5</sup> (Rahmawati, 2013)

The legislators have formulated legal policies for handling public health emergencies into a statutory regulation (the Health Quarantine Act) that

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<sup>4</sup> Edward Omar Sjarief Hiariej, *Prinsip-Prinsip Hukum Pidana*. (Yogyakarta, Cahaya Atma Pustaka, 2016).

<sup>5</sup> Nur Ainiyah Rahmawati, "Hukum Pidana Indonesia: Ultimum Remedium atau Primum Remedium", *Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 2, No. 1 (2013): 39-44. <https://doi.org/10.20961/recidive.v2i1.32002>

used as a reference in dealing with the COVID- 19 pandemic. The law has provided room for criminal law as contained in Chapter XIII Article 90 to Article 94 of the Law *a quo*. However, the researcher focuses on sanctions aimed at *adressat* or legal subjects of people as *natuurlijke persoon* in general which regulated in Article 93. Therefore, researchers want to answer these problems through this research with the formulation of the problem: "How is the legality of Health Quarantine Law? How is the enforcement of criminal sanctions of health quarantine law trespasser in Indonesia?"

## B. Method

This research method used a *library research* which collected various data and information with the help of various materials in the library. The literature study was carried out by tracing the concepts, regulations, and implementations consisting of: (1) primary legal materials in Indonesian laws and regulations which include Indonesia Constitution (UUD 1945), Law Number 6 of 2018 on Health Quarantine, Regulation of the Minister of Law and Human Rights Number 27 of 2021 on Restrictions of Foreigners Entering Indonesian Territory during the Enforcement Period of Restrictions on Emergency Community Activities, and the Criminal Code; (2) secondary material contained in the form of books, academic journals, news, opinions, cases, and official reports; and (3) tertiary material in the form of dictionaries and encyclopedias. The material explored, discussed, and linked to the issues contained in this study.

This research was a normative juridical which oriented towards normative legal phenomena, sourced mostly from library data collection. Based on the consideration of the problems studied, the analysis of this research used a conceptual approach and a statute approach. The use of a conceptual approach will bring up interesting objects from the point of view of practical knowledge, so the research can be determined precisely. This becomes one of the elements processes to come up with the right new ideas through identification of the principles, views, and doctrines that are already available. In addition, the statute approach used in the analysis of this research to understand the comprehensively analyze the hierarchy and principles in statutory regulations. Thus, this research was conducted by examining all laws and regulations that are related to the legal issue being studied.<sup>6</sup>

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<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta, Kencana Prenada Media Group, 2010).

## **C. Result and Discussion**

### **1. Analysis of Quarantine Violations Health Cases in Indonesia**

Indonesia is a country which implements civil law legal system. This can be seen from one of the Indonesia's legal system characteristics with the main characteristics of civil law legal system, namely transforming various rules into written form (statutory regulations). As a result, statutory regulations (written regulations) become the main reference to regulate social life, while unwritten laws and regulations which made by non-governmental entities don't have any legal binding forces.<sup>7</sup> Furthermore, the implementation of this concept is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "*Indonesia is a state of law*".

The implementation of civil law legal system has several consequences. According to F. J. Stahl, one principle that a legal state must have been a law based-government (*wetmatigheid van bestuur*).<sup>8</sup> This means that a regulation must be set up first before the government can do their activities. In this case, laws and regulations become the basis of government's actions legality and legitimacy, and also provide guarantees for citizens' basic rights and legal standing (*het legaliteits beginsel beoogt de rechtspositie van de burger jegens de overheid te waarborgen*).<sup>9</sup> This also means that any government actions which are carried out without any legal basis cannot influence nor change its citizens' legal position.

This concept also applies in the health sector which can be seen from the stipulation of Law Number 6 of 2018 on Health Quarantine by the Indonesian government as legitimacy to implement various related policies. One of these policies is the health quarantine which conducted on every Indonesia's entrance as a preventive measure against COVID-19 virus' transmission.

However, stipulating a regulation doesn't guarantee that people's behavior will change according to what being stipulated. The gap between

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<sup>7</sup> Zaka Firma Aditya and Rizkisyabana Yulistyaputri, "Romantisme Sistem Hukum di Indonesia: Kajian Atas Kontribusi Hukum Adat dan Hukum Islam Terhadap Pembangunan Hukum di Indonesia (The Romanticism of Legal Systems in Indonesia: The Study of The Contribution of Islamic Law and Islamic Law for Legal Development in Indonesia)", *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 8, No. 1 (April 2019): 37-54. <http://dx.doi.org/10.33331/rechtsvinding.v8i1.305>

<sup>8</sup> Azhary Azhary, *Negara Hukum Indonesia: Analisis Yuridis Normatif tentang Unsur-unsurnya*. (Jakarta, UI-Press, 1995). See also Friedrich Julius Stahl, *The Recovery of Historical Law: Volume 1B of the Philosophy of Law: The History of Legal Philosophy*. (WordBridge Publishing, 2021).

<sup>9</sup> Sadhu Bagas Suratno, "Pembentukan peraturan kebijakan berdasarkan asas-asas umum pemerintahan yang baik", *Lentera Hukum* 4, No. 3 (2017): 164-174. <https://doi.org/10.19184/ejhl.v4i3.5499>

*law in the books* and *law in action* which is the focus study of sociological jurisprudence proves that the phenomenon of legal subjects' disobedience to regulations is a certain thing. Every regulation that currently prevail can't be fully obeyed by all layers of society. This occurs because every individual in every society has their own interests, and it is possible that these interests are not in the same page with the existing regulations.<sup>10</sup>

This "non-compliance" thing to regulations also occurs in Indonesia's health quarantine sector as analyzed below.

#### ***a. Indispliner of Carrying Out Health Quarantine Case***

In 2021, there was a health quarantine case that attracted a lot of public attention. The case happened to an artist with the initials RV for allegedly not carrying out quarantine obligations after traveling abroad. The action classified as an offense because it has violated a criminal law provision in Law no. 6 of 2018 on Quarantine Law.

The principle of legality is a guideline in criminal law that an act can only be punished if there have been regulations governing actions classified as criminal acts. The policy of health quarantine obligations violated by RV was set on August 11, 2021 through the Circular of the Task Force for Handling Covid-19 No. 18 of 2021. Meanwhile, RV known to have committed her actions (returning to Indonesia after visiting the New York Fashion Week) on September 16, 2021.<sup>11</sup> Thus, the principle of legality in the RV case has been fulfilled, and she can be charge with criminal sanctions applicable.

It was deemed to have fulfilled the elements of criminal responsibility which consisted of:

- 1) Subjective elements (*mens rea*), in the form of:
  - a) The subject's ability to take responsibility  
RV as the defendant has a healthy physical and mental condition because she has no history of mental disorders. She qualified as a legal subject who held criminally responsible.
  - b) An element of error  
RV bribed the OP in the amount of 40 million rupiah, so she assisted to avoid quarantine. This is strong evidence to state that RV willed and aware of her actions and consequences, so RV have intentionally (*dolus*) to commit the crime she had.

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<sup>10</sup> Nandang Alamsyah Deliarnoor, *Pengantar Ilmu Hukum Pengantar Tata Hukum Indonesia* (Tangerang Selatan, Universitas Terbuka, 2010).

<sup>11</sup> Dian Rosadi, "Depan Boy William, Rachel Vennya Cerita Kronologi Pulang dari AS dan Pesta di Bali", *MERDEKA Online* (October, 2021). Retrieved from <https://www.merdeka.com/artis/depan-boy-william-rachel-vennya-cerita-kronologi-pulang-dari-as-dan-pesta-di-bali.html>

c) Devoid of forgiveness reason

The results of the information provided by RV do not indicate a reason for eliminating the element of RV's guilt actions. The Criminal Code has regulated several for excuses are: Inability to take responsibility (Article 44 of Criminal Code), forced power/ *overmacht* (Article 48 of Criminal Code), forced defense that exceeds the limit (Article 49 paragraph (2) of Criminal Code), carry out office orders without authority (Article 51 paragraph (2) of Criminal Code). Furthermore, RV's history of physical and mental health never experienced a disorder negates the element of forgiving excuses.

2) The objective elements (*actus reus*):

a) Legal actions and visible legal consequences (*causality*),

RV didn't carry out the obligation after traveling abroad. RV has committed an act which contrary to her legal obligations. Furthermore, RV's actions interpreted as legal actions that cause legal consequences of the enforcement of Article 93 of the Quarantine Law. This article applies to those who violate the provisions for implementing health quarantine, *in casu* the mandatory 8x24 hour quarantine policy.

b) Nature against the law (*wederrechtelijkeheid*)

RV's action included as formal unlawful acts. This act is contrary to Article 9 paragraph (1) of Law no. 6 of 2018 jo. Circular of the Task Force for Handling Covid-19 No. 18 of 2021 which required every individual to undergo a health quarantine for 8x24 hours if they wanted to enter Indonesia after traveling abroad.

c) No justification

Criminal Code recognizes 4 reasons that remove the element of guilt from an offense committed by the defendant: Acts committed in an emergency (Article 48 KUHP); defending forced/*noodweer* (Article 49 paragraph (1) of Criminal Code); implementing laws and regulations (Article 50 of Criminal Code); executing a valid position order (Article 51 of Criminal Code). During the proceedings, RV didn't provide any information that committed her actions under conditions which the Criminal Code considers as justification.

Thus, there is no reason that can justify RV's actions. The analysis shows that RV has complied with the principle of legality and the principle of criminal responsibility, so she can be subject to criminal sanctions with the provisions of Article 93 Quarantine Law with maximum imprisonment of 1 year and/or a maximum fine of 100 million rupiah.



### **b. Covid-19 Quarantine Mafia Cases**

A similar case (violation of health quarantine) also occurred in the same year. An Indonesian citizen (WNI) with the initials JD does not carry out quarantine obligations after traveling abroad. The focus of attention was the involvement of 3 other suspects with the initials S, RW, and GC who helped JD to commit a crime. This phenomenon categorized as a Covid-19 quarantine mafia as a secret society that is engaged in crime (criminal).

The three suspects basically charged with the same article, Article 93 jo. Article 9 paragraph (1) of Quarantine Law, Article 14 paragraph (1) of Law Number 4 of 1984, and Article 378 of Criminal Code. However, the information obtained by police investigators shows that the three suspects have a different role when carrying out their actions. As a result, the suspect GC who has an essential role charged with more articles than suspects S and RW, Article 263 paragraph (1) of Criminal Code for making fake documents state that JD has been referred to inn carry out quarantine. The actions entered the realm of criminal law because they have fulfilled the legality principle as described above.

More analysis needed on the elements of criminal principal responsibility for each suspect. The goal is to find out whether each suspect really deserves to get criminal sanctions. Here are the elements:

1) Subjective elements (*mens rea*)

S, RW, and GC have no history of mental disorders, they have a healthy physical and mental condition. They qualified as a legal subject who held criminally responsible for the criminal. The fulfillment of intentional error elements (*dolus*) shows from the information provided by the Head of Public Relations Polda Metro Jaya that the three suspects deliberately escaped JD from the obligation to carry out health quarantine in exchange for 6.5 million rupiah.<sup>12</sup> This is strong evidence to state that the three suspects were willing and aware of their actions and their consequences. Therefore, they qualified to intentionally (*dolus*) commit the crime.

The devoid of forgiveness reason element can't be found in this quarantine mafia case because the three suspects are able to take responsibility and carry out their actions based on their own will, or in order to earn income. They have released passengers from the mandatory.

2) The objective element (*actus reus*)

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<sup>12</sup> Agung Sandy Lesmana and Muhammad Yasir, "Kasus Mafia Karantina di Bandara Soetta, Polisi Tetapkan 4 Orang Tersangka", *Suara Online* (April, 2021). Retrieved from <https://www.suara.com/news/2021/04/28/133825/kasus-mafia-karantina-di-bandara-soetta-polisi-tetapkan-4-orang-tersangka>



The three suspects in this case carried out legal actions, avoiding JD from the obligation to participate in health quarantine. As a result, the implementation of health quarantine can't run effectively in reducing the spread of Covid-19 in Indonesia. Their actions can ultimately qualified as acts that hinder the implementation of health quarantine and prohibited by Article 93 of Quarantine Law and Article 14 paragraph (1) of Law Number 4 of 1984. Furthermore, their actions resulted in a public health emergency and increasing the potential for the spread of Covid-19 in Indonesia.

GC who made false documents (to pretend that JD had been referred to an inn in order to carry out a health quarantine) caused losses to the government. This loss shows by comparing the large amount of budget by the government to carry out health quarantine with the goal to be achieved, reducing the spread of COVID-19 or removing the public emergency status. JD's escape from the mandatory health quarantine due to fake documents increased the potential for the spread of Covid-19. JD maybe exposed to Covid-19 without his knowledge, and accidentally came into contact with other people. This is inversely proportional to the purpose of budgeting funds from the APBN to implement health quarantine (health quarantine funds are included in the 2021 National Economic Recovery (PEN) budget).

This was unlawfully using false dignity (*in casu* claiming to be the DKI Jakarta Tourism and Creative Economy Agency) to get a profit of 6.5 million rupiah. In fact, Gumilar Ekalaya as Acting (PLT) Head of the DKI Jakarta Tourism and Creative Economy Agency (Disparekraf) said that the suspects had no affiliation with Jakarta Disparekraf.<sup>13</sup> Their actions also resulted in JD handing over 6.5 million rupiah, so it can be said that the suspects had committed a criminal act of fraud which is punishable by criminal sanctions under Article 378 of Criminal Code.

The three suspects obstructed the implementation of health quarantine which should applied to every party who would enter the territory of Indonesia. Meanwhile, the action categorized as violating the provisions Article 9 of Quarantine Law and Article 14 paragraph (1) of Law Number 4 of 1984. The action is against the formal law.

The actions of the three suspects were not carried out in the context of: an emergency as regulated in Article 48; forced/ *noodweer defense* as

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<sup>13</sup> Rosiana Haryanti, "2 Mafia Karantina Di Bandara Gunakan Pas Dinas Pariwisata DKI, Disparekraf: Bukan Pegawai Kami", *KOMPAS Online* (April, 2021). Retrieved from <https://megapolitan.kompas.com/read/2021/04/29/19000851/disparkraf-dki-pastikan-2-mafia-karantina-bandara-bukan-pegawainya>

regulated in Article 49 paragraph (1) of Criminal Code; implementing the laws and regulations as regulated in Article 50 of Criminal Code; carry out a valid office order as regulated in Article 51 of Criminal Code. However, their actions were done solely for profit. Thus, there was no reason to justify their actions.

The analysis shows that the three suspects fulfilled the principle of legality and the principle of criminal responsibility. They charged with criminal sanctions with the provisions Article 93 of Quarantine Law, Article 14 paragraph (1) of Law Number 4 of 1984, and Article 378 of Criminal Code to account for their actions. Meanwhile, GC may be subject to additional criminal sanctions through Article 263 paragraph (1) of Criminal Code.

## 2. Legal Instruments

The instrument of law/norm is an essential thing in every society because it regulates human behavior to the direction which desired.<sup>14</sup> Such regulation is necessary considering that humans have natural characteristics which mutually counter-productive, namely the need to socialize with others, as well as the tendency to destroy their own species (*homo homini lupus*). Thus, the existence of norms allows humans to develop their social abilities optimally, so they could reach more developed level of civilization in the future.

The development of human social interaction to international level creates a new problem, namely the social relations between two or more entities where each of them is subject to different regulations. This causes legal changes in society which encourages the need to adopt foreign laws into their own national legal system.<sup>15</sup> In other words, interaction between nations encourages the absorption of international norms into the country's national legal system. However, the binding forces of any international norms only apply if the concerned country ratifies it. This is because the effect of state ownership principle (jurisdiction) where each independent and sovereign state has no authority over other independent and sovereign countries.<sup>16</sup>

As a fundamental thing for humans, health sector cannot be separated from international discussions. This causes several international regulations in health sector which intended to improve human health quality were

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<sup>14</sup> Sony Maulana Sikumbang, Fitriani Ahlan and M. Yahdi Salampessy, *Ilmu Perundang-Undangan*. (Tangerang Selatan, Universitas Terbuka, 2015).

<sup>15</sup> Winardi & Sirajuddin, *Politik Hukum* (Malang, Setara Press, 2019).

<sup>16</sup> Ahmad M. Ramli, Tasya Safiranita Ramli, and Ferry Gunawan, *Hukum Telematika* (Tangerang Selatan, Universitas Terbuka, 2020).

formed. The globalization era which affects Indonesia means that Indonesia's becomes a place where various foreign legal system meets.<sup>17</sup> In this case, Indonesia has adopted international health law, which means that Indonesia has international and national regulations in health sector as explained below.

***a. International Scope***

One of the legal instruments applies international or binding on countries in the world is the International Health Regulation 2005 (IHR 2005). IHR 2005 basically aims to assist the international community in tackling diseases that threaten the health of the world's people, including the problem of tackling the Covid-19 virus. The relief assistance provided by the 2005 IHR has the form of normative provisions. These provisions show as an effort to reduce the level of disease spread across countries through the provisions of Article 2 of IHR 2005 which allows each member state to limit the right of each individual to move (right to move). This was determined the spread of the virus through the movement of infected objects. However, the last phrase of *a quo* provision implies that restrictions on the right to move and restrictions on cross-border trade activities should not be use as far as possible. This is a form of mitigation for the country concerned so as not to be complacent and the issue policies that violate human rights under the pretext of preventing the spread of disease across countries. Furthermore, the prohibition is a "reminder" for a country that trading activities are essential to the life of a country.

The existence of a prohibition against the imposition of restrictions on the right to move acts as a warnin or is not absolute. Article 43 IHR 2005 opens the opportunity for WHO member countries to limit cross-country movement through additional measures which casuistic in nature. This means that member countries still allowed to restrict the movement of any individual who enters their country as long as the reasons used are in accordance with the parameters set out in Article 43.

The parameters set by Article 43 are: 1) the availability of scientific evidence that the policy can reduce the spread of disease across countries; 2) availability of scientific evidence relevant to efforts to reduce the spread of disease issued by WHO or other relevant international organizations; 3) availability of specific guidelines and advice issued by WHO.

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<sup>17</sup> Winardi & Sirajuddin.

### ***b. National Scope***

Until now there are 194 WHO member countries which bound with the rules of IHR 2005 by *mutatis mutandis*, so it is mandatory for obey it. Indonesia is one of the member countries that ratified the 2005 IHR. Law Number 6 of 2018 on Health Quarantine is one of the national legal instruments as a follow-up effort to the ratification of IHR 2005. Indonesia also interpreted the pandemic as a *health emergency* which was stipulated through a Decree President (Keppres) No. 11 of 2020 on the Determination of the Corona Virus Disease 2019 Public Health Emergency on March 31, 2020.

However, the legal instruments in health sector are not only limited to these two national regulations. The stipulation of Indonesia legal state regulated in Article 1 paragraph (3) of the Indonesia Constitution (UUD 1945) indicated Indonesia considers law as an instrument of *licensing* when it wants to do a thing or activity. Meanwhile, it occurred in daily life certainly countless. Thus, it is possible that various kinds of legal instruments need only to regulate one field of state activity. The constitution contains norms of a general nature which can then be interpreted in various legal policies under it.<sup>18</sup>

Furthermore, Hans Kelsen in his book entitled *General Theory of Law and State* (1973) explains the hierarchical structure of legal norms in a country. According to it, legal norms were tiered and layered in a hierarchy, so that every norm of a lower position applies, originates, and based on norms of a higher position. This principle continues to apply until it reaches a norm that can no longer be traced further which hypothetical and fictitious, it called the Basic Norm (*Grundnorm*).<sup>19</sup>

#### 1) Indonesia Constitution (UUD 1945) After Amendment

It contained a number of articles related to health, Article 28A on the right to life; Article 28E paragraph (1) on the right to choose a place of residence (also relates to the freedom to move places, both at home and abroad); Article 28H paragraph (1) on the right to live, to have a good place, to live and a good environment, and to obtain health services.

#### 2) Law Number 6 of 2018 on Health Quarantine

The section on letter C of Law no. 6 of 2018 stated a quo Law was formed as a follow-up to the ratification of international regulations in health sector (IHR 2005), as well as Indonesia's commitment to prevent and at the same time abolish the health emergency status. This

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<sup>18</sup> Aziz Syamsudin Tarmizi, *Proses & Teknik Penyusunan Undang-Undang* (Jakarta, Sinar Grafika, 2013).

<sup>19</sup> Hans Kelsen, *General Theory of Law and State* (London, Routledge, 2005).

commitment takes the form of a normative provision that outlines the restrictions on social activities.

Furthermore, the a quo Law provides a different definition related to the issue of regional quarantine and large-scale social restrictions (PSBB) which were discussed at the beginning of 2020. Regional quarantine (Article 1 point 10) defined as population restrictions in a certain area. The area including the entrance area and its contents suspected of being infected with a disease or contaminated in such a way as to prevent the possibility of spreading the disease. Meanwhile, large-scale social restrictions (Article 1 point 11) defined as a limitation of certain activities of residents in an area suspected infected with a disease as to prevent the possibility of spreading the contamination. Regional quarantine aims to close access in and exit from an area which massive infected with the virus to the outside world. Meanwhile, PSBB only limits the intensity of community activities in areas suspected of being infected with the virus, while access to the outside world is still allowed.

- 3) Regulation of the Minister of Law and Human Rights Number 27 of 2021 on Restrictions of Foreigners Entering Indonesian Territory during the Enforcement Period of Restrictions on Emergency Community Activities

Article 2 paragraph (1) and paragraph (2) Permenkumham Number 27 of 2021 confirms that the substance of the regulation. This form of a temporary ban on any foreigner who wants to enter or transit in Indonesian territory during the period of the Emergency Community Activity Restrictions (PPKM). The limitation doesn't apply absolutely because there are several exceptions as stipulated in Article 2 paragraph (3): a) foreigners holding Diplomatic Visa and Service Visa; b) foreigners holding diplomatic residence permits and official residence permits; c) foreigners holding Limited Stay Permits and Permanent Stay Permits ; d) foreigners for health and humanitarian purposes ; e) the crew of the conveyance that comes with the conveyance.

Although there are concessions for foreigners who want to enter Indonesian territory, foreigners can only obtain this concession only if they have complied with the health protocol in accordance with the provisions of the legislation (Article 2 paragraph (4)), and have received a recommendation from the ministry or institution that carries out the Covid-19 handling function (Article 2 paragraph (5)).

- 4) Circular of the Task Force for Handling Covid-19 Number 8 of 2021 on International Travel Health Protocols during the Corona Virus Disease 2019 Pandemic

This regulation is a health protocol that applied to parties who have international traveled in Indonesia in the midst of the Covid-19 pandemic. Through this regulation, Indonesian citizens from abroad are only allowed to enter Indonesia if they are willing to follow the health protocol as stipulated.

This regulation still imposes a ban on foreigners who wish to enter the territory of Indonesia either directly or in transit. This provision doesn't apply absolutely because it must take into account several related matters: a) adjusted to the provisions in Permenkumham Number 27 of 2021 on Restrictions on Foreigners Entering the Territory of Indonesia during the Enforcement Period of Restrictions on Emergency Community Activities; b) adapted to the scheme of bilateral Travel Corridor Arrangement (TCA) agreements; c) obtain special consideration or permission in writing from the ministry or institution.

Various legal instruments in Indonesia were born before and during the Covid-19 outbreak must be seen as a unified effort by the government in fulfilling human rights to obtain health services. It is undeniable that these regulations will not be effective in suppressing the spread of the virus if they are not followed by strict law enforcement, as well as public legal awareness to comply with every regulation that has been established .

### **3. Legality of Criminal Provisions for Health Quarantine Act Trespasser**

The application and enforcement of the law are elements of the legal system that need to be addressed continuously to realize laws which beneficial to the interests of the community, nation, and the state in the rule of law.<sup>20</sup> Discussions on law enforcement (especially criminal law) cannot be separated from the application of the legality principle, *nulla poena sine lege* and *nulla poena sine crimine*. These two principles defined sequentially, it will result in an understanding that there is no a criminal process without being preceded by the provisions of the law that regulates it, and there is no criminal process without being preceded by a criminal act.

These principles indirectly guarantee each individual to not to be convicted without the existence of a written criminal regulation. It can also

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<sup>20</sup> Faisal Santiago, "Penegakan Hukum Tindak Pidana Korupsi oleh Penegak Hukum untuk Terciptanya Ketertiban Hukum", *Pagaruyuang Law Journal* 1, No. 1 (July, 2017): 23-43 <https://doi.org/10.31869/plj.v1i1.268>



be interpreted that these principles protect individuals against arbitrary treatment by the judiciary as state's instrument.<sup>21</sup>

This issue is important to be discussed considering the amount of information regarding the arbitrariness of law enforcement officials in carrying out their duties lately. In fact, Lord Acton stated that *power tends to corrupt, and absolute power corrupts absolutely*.<sup>22</sup> The deep understanding of the elements of action criminal as regulated in laws and regulations become important because it relates to the accuracy of the imposition of sanctions criminal.

**a. Article 9 paragraph (1) juncto Article 93**

Health quarantine regulations regulated by Law Number 6 of 2018 as a research topic which implemented the principle of legality. Article 9 of the *a quo* Law as a material provision requires each party to participate in organizing health quarantine. Meanwhile, Article 93 as a criminal provision containing criminal threats against parties who do not comply with the provisions of Article 9. Through these provisions, Article 93 of the Quarantine Law can normatively be viewed as a regulation that has binding power.

The practice of Article 93 of the *a quo* Law also influenced by the existence of Presidential Decree Number 11 of 2020 on the Determination of Public Health Emergency. The Presidential Decree is a mandate from Article 10 paragraph (1) and paragraph (2) of Quarantine Law which the basis of authority for the central government to determine and revoke the status of a public health emergency, as well as determine the entrance or areas which affected by a health emergency. The establishment and revocation of the public health emergency status must be preceded by determination of the type of disease that strikes, as well as the risks arising from the presence of the disease.<sup>23</sup>

**b. Article 10 paragraph (1) to paragraph (3)**

Determining the status of a public health emergency is the foundation for establish various policies related to the prevention of the disease outbreak. Article 4 of Quarantine Law stipulates that, "*The Central Government and Regional Governments are responsible for protecting public health from diseases or Public Health Risk Factors that have the potential to cause Public Health Emergency through the implementation of Health Quarantine.*" This

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<sup>21</sup> Edward Omar Sjarief Hiariej, *Hukum Pidana* (Tangerang Selatan, Universitas Terbuka, 2014).

<sup>22</sup> Ermansjah Djaja, *Memberantas Korupsi Bersama KPK* (Jakarta, Sinar Grafika, 2010).

<sup>23</sup> See Article 10 paragraphs (1) and (2) of the Quarantine Act Health.

provision shows that the implementation of health quarantine (as a form of controlling disease outbreaks to protect public health) only carried out if a disease causes a public health emergency existence. If we look closely, the central government must determine the status of a public health emergency. This is accordance with the provisions of Article 10 paragraph (3) of Quarantine Law.

This concept implies that the control of an epidemic must coordinated with and approved by the central government. The complexity of such a procedure is certainly not without reason. The aim is to maintain a unified view and method that will be taken by the central government and the regions in tackling an outbreak.

Local governments (through this procedure) asked not to act rashly in tackling an epidemic through the establishment of regional policies. This is because hastily adopted policies (without coordination with the central government) have the potential to make pre-existing precarious conditions even more complicated. Furthermore, unity of view also needed in order to strengthen regional preparedness in dealing with and suppressing the potential for Covid-19 transmission, so the increase in infected cases can be minimized.<sup>24</sup>

Therefore, the provisions of Article 10 paragraphs (1) to (3) regulate the central government to determine and revoke the status of public health emergencies.

### ***c. Article 11 paragraph (1)***

The establishment of a public health emergency status normatively allows the government to implement a health quarantine policy as regulated in Article 11 paragraph (1) of Quarantine Law. Health quarantine in public health emergencies carried out by the central government quickly and accurately based on the magnitude of the threat, effectiveness, resource support, and operational techniques taking into account state sovereignty, security, social economy and culture. The establishment of a health quarantine policy shows that the central and local governments have sought to protect the public from exposure to disease or public health risk factors that potential to cause public health emergencies as mandated by Article 4 of the *a quo* Law.

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<sup>24</sup> Novrizaldi, "Pemerintah Perkuat Koordinasi dengan Pemda dalam Penanganan Covid-19" *KEMENKO PMK* (March, 2010). Retrieved from <https://www.kemendikbud.go.id/pemerintah-perkuat-koordinasi-dengan-pemda-dalam-penanganan-covid-19>

Furthermore, the provision also emphasizes that the process of implementing health quarantine in the field must be carried out quickly and accurately. Such arrangements are largely based on consideration of the availability of funding costs to carry out the quarantine of the area itself. As is known, the budgeted cost to deal with Covid-19 and the 2021 National Economic Recovery (PEN) (including implementing a regional quarantine) is Rp.744.77 trillion. (*Anggaran PEN 2021 Tidak Terealisasi 100 Persen, Ini Penjelasan Sri Mulyani - Ekonomi Bisnis.Com*, n.d.) This fantastic amount will be very useful for advancing the country's development and improving social welfare if the Covid-19 pandemic doesn't occur.

The basic considerations mandated by the *a quo* article also serve as a reminder for the government not to take excessive actions in implementing health quarantine. This needs to be regulate on the government's authority (to take actions that harm its citizens under the pretext of saving the nation) has the potential to be misused. The government obliged to continue to act, preceded by careful considerations relating to the implementation of health quarantine, so as not to give rise to the term *digging a hole and closing a hole*.

**d. Article 15 paragraph (1) and paragraph (2)**

Article 5 of Quarantine Law stipulates the central government is responsible for implementing health quarantine at the entrance and in the region in an integrated manner. The central government allowed to involve local governments in implementing the health quarantine.<sup>25</sup> The issue of health quarantine at the entrance and in the area regulated through Article 15 paragraph (1) of *a quo* law, "Health quarantine at the entrance and in the area is carried out through monitoring activities for disease and public health risk factors for transportation means, people, goods and/or the environment, as well as responses to public health emergencies in the form of health quarantine measures." In paragraph (2) of the article it is stated that:

The health quarantine measures as referred in paragraph (1) are in the form of: quarantine, isolation, vaccination or prophylaxis, referral, disinfection and or decontamination of people as indicated; large Scale Social Restrictions; disinfection, decontamination, disinsection, or deratization of transportation means and goods; health, safety and control of environmental media.

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<sup>25</sup> See Article 4 and Article 5 of the Quarantine Act Health.

By Large-Scale Social Restrictions, the government issued Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (PSBB).

Article 1 *a quo* stipulates that, "in this government regulation, what is meant by large-scale social restrictions are restrictions on certain activities of residents in an area suspected of being infected with Corona Virus Disease 2019 in such a way as to prevent the possible spread of Covid-19." This accordance with Article 59 paragraph (1) and paragraph (2) of Quarantine Law which states that Large-Scale Social Restrictions are part of the public health emergency response.<sup>26</sup>

Based on the explanation above, the policies related to the implementation of health quarantine actually originate from a number of separate provisions. Article 10 paragraph (1) to paragraph (3) of Quarantine Law gives the government the authority to determine public health emergency situations. This stipulated through Presidential Decree (KepPres) Number 11 of 2020 which states that the status of a public health emergency applies throughout Indonesia.

The Presidential Decree became a signal for the government to implement a health quarantine at the entrance to Indonesian territory as stipulated in Article 5 paragraph (1) *jo*. Article 15 paragraph (1) and paragraph (2) of the Quarantine Law. Health quarantine in public health emergency situations must be carry out with the guidelines regulated through the provisions of Article 11 paragraph (1) of Quarantine Law, quickly and accurately based on the magnitude of the threat, effectiveness, resource support, and operational techniques taking into account state sovereignty, security, economy, social and culture. The arrangements can't be separated from the provisions of Article 4 of the Quarantine Law. The government imposed a health quarantine policy at the entrance and in the area as regulated through the provisions of Article 15 paragraph (1) and paragraph (2) and issued Government Regulation Number 21 of 2020.

These various provisions need to support by a positive response from the community in order to be effective. The positive response is none other than the community's compliance with the provisions of the implementation of health quarantine which is the key in tackling the health problems. Therefore, the makers of the quarantine law include Article 9 paragraph (1) which contains an order for each party to comply with the implementation of health quarantine. The order equipped with criminal threats for those who violate it as stated in Article 93. The legality of punishment for quarantine

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<sup>26</sup> See Article 59 paragraphs (1) and (2) of the Quarantine Act Health.

law trespasser actually lies in Article 93 of *a quo* Law which contains criminal threats to parties within Indonesian jurisdiction to comply with the implementation of health quarantine, PSBB, and various other policies related to with health quarantine.

The provisions of Article 93 have limitations which can be see through the phrase “*implementing Health Quarantine*”. The implementation of health quarantine determined by the central government and local governments with the mandate of Article 4. Meanwhile, each regional government only has the authority to regulate the area within the scope of its administration, including stipulating various regulations that only binding on each party in the area of the local government concerned. This also applies to any national-scale regulations set by the central government. As a result, the implementation of health quarantine policies set by the central government can only be enforce, or only have binding power to every legal subject within the jurisdiction Republic of Indonesia. If interpreted *a contrario*, this article cannot be applied to legal subjects who do not enter or are in the territory of Indonesia.

This is in line with the territorial principle in criminal law which istated in Article 2 of Criminal Code, “*Criminal provisions in Indonesian legislation applied to everyone who commits a criminal act in Indonesia.*” Through these provisions, it becomes clear that the national criminal law (*in casu* the Quarantine Law) basically only binds every legal subject within the jurisdiction of Republic of Indonesia.

#### **4. Construction of Article 93 of Quarantine Law as a Criminal Provision for Trespasser**

Norm is a proposition (normative) which composed with a series of concepts.<sup>27</sup> These concepts contain the ideal conditions in a society's life that the norm makers want to realize. This is in line with Jimly Asshiddiqie's opinion that norms are the institutionalization of good and bad values contained in human's social life.<sup>28</sup> This means that the elaboration of criminal norm's construction is an important thing to be analyzed because of its relation with the norm's implementation accuracy in real life. The inaccuracy of imposing criminal provision on a legal event is a fatal error because it is corresponded to the freedom or independence right that every individual has.

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<sup>27</sup> Philipus M Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta, Gadjah Mada University Press, 2005).

<sup>28</sup> Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta, Raja Grafindo Persada, 2010).

### ***a. Material Offenses and Consequences***

Based on Lamintang's opinion, a material offense is an offense that considered to complete with the prohibited consequences and threatened with punishment of law.<sup>29</sup> Meanwhile, Adami Chazawi explained that the main prohibition of criminal acts in the formulation of material is the occurrence of certain prohibited consequences (constitutive consequences). Based on these two opinions, the emphasis of a material offense formulation lies in the consequences of an act, while the form of the act committed not a problem. The completion of a criminal act doesn't depend on the completion of the form of the act but depends on the form of the prohibited act result has arisen or not.<sup>30</sup> Material offense can't be separated from the level of danger that arise from the offense. The legislators have imagined and thought the criminal act could pose a direct danger, formulating it into a material offense.<sup>31</sup> The formulation of the offense materially gives an important meaning, in order to achieve legal certainty, while at the same time realizing the principle of *lex certa*: "There is no criminal act without clear rules." Thus, a consequence arises that a formulation of a criminal act must be clear or not have multiple interpretations that can jeopardize legal certainty.<sup>32</sup>

Article 93 classified as a material offense provision. The phrase "causing a Public Health Emergency" is a consequence that has the potential to happen if the implementation of Health Quarantine is not complied with or hindered. The consequences stated in *expressive verbis* happen when they want to impose criminal sanctions in accordance with what stipulated in Article 93. The formulation of the offense in the article is correct and constitutes the formulation of a material offense.

Furthermore, the formulation of the offense will formally hinder the achievement of legal certainty. This is because there is no solid reference that can be used to state that the implementation of health quarantine was indeed necessary. The formulation of the offense in a formal manner can lead to arbitrariness because one of the conditions that must be met to be able to carry out health quarantine, the implementation aims to prevent public health emergencies happen (see Article 3 of a quo Law).

The formulation of the offense as a material offense forced the public prosecutor to prove the elements of the consequences that were being prevented as public health emergency situations. If the public prosecutor

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<sup>29</sup> P.A.F Lamintang, *Dasar Dasar Hukum Pidana Indonesia* (Bandung, Citra Aditya Bakti, 2011).

<sup>30</sup> Adami Chazawi, *Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana* (Jakarta, Raja Grafindo Persada, 2010).

<sup>31</sup> Edward Omar Sjarief Hiariej, 2016.

<sup>32</sup> Adami Chazami, p. 79.



can't prove the elements charge, then of course the defendant should be acquitted with the principle of *actori incumbit onus probandi, actore non probante, reus absolvitur*.<sup>33</sup>

***b. Combination Offenses (Delict Commissionis and Delict Omissionem) and Consequences***

An opinion emerged said the formulation of Article 93 was a combination between commission offense and an omission offense. *Delict* commissioner or offense commission is an offense form of a violation of the prohibition.<sup>34</sup> Meanwhile, *delict omissionis* or delik omission is an offense form of a violation of an order.<sup>35</sup> Offense omission based on adage "*qui potest et debet vetara, tacens jubet*" which means somebody which silence, or not prevent, or do not do something what it should be done, it's the same with him who ordered.<sup>36</sup>

Clause "*not complying with the implementation of Health Quarantine*" in the provisions of Article 93 shows it contains a prohibition, so the parties do not comply with the implementation of the health quarantine. So, the clause the provisions of Article 93 classified as an omission offense. However, the clause "obstructing the implementation of Health Quarantine" shows that this provision classified as a commission offense. The clause instructs the parties to be cooperative in responding to the health quarantine policy. The formulation of Article 93 as a whole consists of the type of *delict omissionis* combined with *delict commissionis*.

The formulation of offense in Article 93 is a formulation of offense that rarely used. Eddy O.S. Hiariej explained that when it linked, the commission offense can be the form of either offense formal nor offense material, while the offense omission always formulated by formal because it focuses on action. This becomes a problem if it related with formula Article 93 which omission offense formulated by material. This relates to the issue of determining criminal liability or theory causality (*de leer van de causaliteit*) which is the *soul* of criminal law.

Hiariej and Schepper as quoted by Moeljatno argues that no do something negative can't be the cause of an effect. The arguments of the statement: first, there can't be a causal relationship that has been concluded in nature behavior alone because in behavior which negative (*nalaten*), there is no action, so it is impossible for a result to arise. Second, *nalaten* is a

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<sup>33</sup> Adami Chazami, pp. 248-249.

<sup>34</sup> Ismu Gunadi and Jonaedi Efendi, *Cepat & Mudah Memahami Hukum Pidana* (Jakarta, Kencana, 2014).

<sup>35</sup> Adami Chazami, pp. 248-249.

<sup>36</sup> Edward Omar Sjarief Hiariej, *Prinsip-Prinsip Hukum Pidana*, 2016, p. 137.

juridical understanding not based on experience with the five senses.<sup>37</sup> Similarly, Simons stated firmly that, *Of course the occurrence of an effect which is a offense is caused by a behavior or state which is not a negative state.* If what is considered to be a causal relationship is only caused by causality, then of course a causal relationship with something behavior negative hard to accept. Therefore, it is not possible to do negative or *latent actions* (not complying with the implementation of health quarantine) is the cause of the occurrence of an effect of an emergency public health.

## **5. A Study of Criminal Procedure Code Application in Cases of the Health Quarantine Law Trespasser related to Legal Certainty Elements**

Justice given in a case means to decide a law *in concreto*. This is an attempt to ensure compliance with material law using the procedural methods established by formal law.<sup>38</sup> On this basis, concrete law enforcement can be interpreted as the application of positive law in practice that must be obeyed or shows a link between material criminal law and formal criminal law.

Moeljatno indicated that criminal law is a set of rules that regulates three elements, the rules regarding criminal acts, criminal liability, and the verbal process of law enforcement. Through these arguments, it shows that the link between material criminal law and formal criminal law were exist. It because material criminal law will be meaningless without the enforcement of formal criminal law (criminal procedural law), as well otherwise.<sup>39</sup>

Based on this, the rules relating to Health Quarantine Act Trespasser cases are Article 93 jo. Article 9 paragraph (1) of the Quarantine Law, as well as Article 14 paragraph (1) of Law Number 4 of 1984 on Outbreaks of Infectious Diseases. However, the low term of the criminal sanctions of the two articles which is less than 5 years in prison, causes suspects for violating these articles to not be detained. This based on Article 21 paragraph (4) of Criminal Procedure Code which states that essentially detention can only be apply to a suspect or defendant who commits a criminal act and attempts or provides assistance for a criminal act if : The crime is punishable by imprisonment of five years or more; Criminal acts as referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph

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<sup>37</sup> Edward Omar Sjarief Hiariej, *Prinsip-Prinsip Hukum Pidana*, 2016, p. 209.

<sup>38</sup> Dellyana Shant, *Konsep Penegakan Hukum* (Jakarta, Penerbit Sinar Grafika, 1998).

<sup>39</sup> Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif dan Hukum Pidana Islam", *University of Bengkulu Law Journal* 4, No. 1 (2019): 35–58. <https://doi.org/10.33369/ubelaj.v4i1.7303>

(1), Article 353 paragraph (1), Article 372, Article 378, Article 379 A, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of Criminal Code, Article 25 and Article 26 of Rechtenordonnantie (violation of the Customs and Excise Ordinance, last amended by Staatsblad of 1931 Number 471), Article 1, Article 2 and Article 4 of the Immigration Crime Act (Emergency Law Number 8 of 1955, State Gazette of 1955 Number 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47 and Article 48 of Law Number 9 of 1976 on Narcotics, State Gazette of 1976 Number 37, Supplement to the State Gazette Number 3086).

Nevertheless, Article 21 paragraph (1) of Criminal Procedure Code allows for a detention to take place even though the period of the alleged criminal sanction is under 5 years, if (based on sufficient evidence): There are circumstances that give rise to fears the suspect will flee self; raise concerns the suspect will damage or destroy evidence; and raise concerns the suspect will repeat the crime criminal.

Based on the description above, a suspect will not be detained if the crime did not commit the fulfillment of provision in chapter 21 paragraph (4) of Criminal Procedure Code, and not accompanied by conditions as formulated in Article 21 paragraph (1) of the Criminal Procedure Code.

The detention requirements regulated by the Criminal Procedure Code also affect the detention process for suspects charged with Article 93. Article a quo as a criminal provision aimed at legal subjects' people (*natuurlijke persoon*) contains a maximum imprisonment of 1 year and/or a maximum fine of 100 million rupiah. As a result, suspects who are ensnare using this article normatively cannot be detained with the detention requirements as regulated in Article 21 paragraph (4) of Criminal Procedure Code.

The implementation of these provisions regulated normatively. This can be seen from the treatment of the Indonesian police in handling cases of indisipliner health quarantine obligations. The suspect in this case was not detained by the Indonesian police because he was constrained by the maximum criminal threats threatened by Article 93. The same problem also occurs in the case of the Covid-19 quarantine mafia. The three suspects in this case were not detained by the Indonesian police because the prison sentences were punishable by less than 5 years.<sup>40</sup>

Meanwhile, the researchers believes that the detention process in the quarantine mafia case is still necessary because there is a possibility that the suspects will escape or lose evidence considering that the suspects have access

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<sup>40</sup> Yogi Ernes, "Mafia Karantina Kesehatan di Bandara Soetta Tak Ditahan Polisi", *DETIK NEWS* (April, 2021). Retrieved from <https://news.detik.com/berita/d-5548906/mafia-karantina-kesehatan-di-bandara-soetta-tak-ditahan-polisi>

cards to enter and exit Soekarno-Hatta Airport. The perpetrators of the Covid-19 quarantine mafia can be charged with Article 263 paragraph (1) of Criminal Code related to falsification of letters containing a maximum penalty of 6 years in prison. Therefore, the suspects should still be detained with the provisions of Article 21 paragraph (4) of Criminal Procedure Code.

## D. Conclusion

Law No. 6 of 2018 regulated the legality of punishment for individual legal subjects (*rechtelijke persoon*) who violate the health quarantine obligations through the provisions of Article 93. The existence of this article gives the state authority to impose criminal sanctions as well as to hold trespasser accountable for their actions. It also a stimulus for efforts to realize the principle of legal enforcement system in Indonesia. However, this provision can only be applied if the trespasser has committed an act that meets the elements in Article 9 paragraph (1) of Quarantine Law as a material provision. The application must be adjusted to the principle of *ultimum remedium* as a result of the criminal nature contained in it. The deconstruction of Article 93 shows the formulation of the offense can be classified as a material offense or a combined offense (*Delict Commissionis* and *Delict Omissionem*). The consequences stated in expressive verbis in the provisions of Article 93 are indicators that the formulation of the offense in *a quo* article is a material offense. The provisions of Article 93 are indirectly able to prevent the occurrence of arbitrary prosecution. The provisions of Article 93 have the potential to cause problems related to the theory of criminal responsibility, as well as the theory of causality (*de leer van de causaliteit*).

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## **ABOUT AUTHOR(S)**

**Rina Elsa Rizkiana** is an undergraduate student at Department of Law, Social Science, and Political Science of Universitas Terbuka. Some of her recent publications such as *The Future of Online Dispute Resolution: Building a Framework for E-commerce Dispute Resolution in Indonesia* (Lawpreneurship Journal Volume, 2021), *Transformation of Law Paradigm: Representation of “Salus Populi Suprema Lex” in the Implementation of Virtual Civil Court* (3rd Open Society Conference Proceeding, 2021) and *Potensi Penerapan Pidana Mati Bagi Pelaku Tindak Pidana Korupsi* (*Book Chapter Tindak Pidana Hukuman Mati Universitas Muhammadiyah Surabaya, 2021*).

**Michael Gerry** is an undergraduate student at Department of Law, Social Science, and Political Science of Universitas Terbuka. Some of his recent achievements such as a grantee of 2021 Kaltim Tuntas Scholarship, a fully-funded scholarship held by East Kalimantan Government, the second winner of Taman Hukum’s 2021 National Essay Competition, a law essay competition with the topic of Hoax Amongst Covid-19 Pandemic.