

Normative and Islamic theology on the enforcement of COVID-19 health protocol in Indonesia



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This study aims to analyse the pros and cons of imposing penalties or fines in law enforcement regulations for violating health protocols in Indonesia. Some people consider that the norm of the fine sanctions in statutory provisions regulating health protocol violators is unconstitutional, but others say it is constitutional. As a country with the largest Muslim population in the world, a study of the perspective of Islamic law is essential. This article uses a normative legal research methodology using two main approaches: the statutory and conceptual approaches. The results show that fines are found in the criminal law clusters and state administrative law. Penalties in state administrative law in their enforcement do not require intervention from other institutions. Still, they can be carried out directly by government officials whose authority has been determined in the laws and regulations. Meanwhile, from the Islamic perspective, the fine sanctions can be applied, in the context of *hifz Al-Insan*, in *Maslahah Mursalah* as part of the *maqasid al-Syari'ah*. The obligation to obey government regulations is part of a person's obedience to God's commands.

Contribution: This study's findings can support the government in enforcing the law to combat the spread of the coronavirus disease 2019 (COVID-19) in Indonesia and other countries because, constitutionally, the law is legal. Then, the legality of fines for violators of the COVID-19 health protocol, from an Islamic perspective, does not contradict *maqasid al-shari'ah*. So, there should be no doubts for Muslims to obey these regulations.

Keywords: fines; normative law; government's health protocol; COVID-19; Islamic theology.

Introduction

As part of the countries in the world in general, Indonesia cannot be separated from the influence of the outbreak of the coronavirus disease 2019 (COVID-19) pandemic. Based on the data of the COVID-19 Handling Task Force on 31 May 2021, cumulatively 1 816 041 people were confirmed positive, as many as 1 663 998 people were confirmed as cured and 50 404 people died. As a result of the COVID-19 pandemic, various sectors experienced shocks, especially the health and economic sectors.

As a country with the largest Muslim population in the world, Muslims in Indonesia are deeply affected. Some of the most severe impacts include the reduction of the hajj quota and the ban on *Umrah*, resulting in a decline in the *shari'ah* economy (Sumarni 2020:46–58). Risma Yuliani's analysis related to the *shari'ah* economy shows that the COVID-19 pandemic has reduced *halal* food production in Indonesia (Yuliani 2020:190–199). Besides, the government's prohibition on outside activities and gatherings are very burdensome for Muslims, especially when it comes to worship places. Some Muslims weigh the pros and cons regarding the prohibition of gatherings to combat the danger of COVID-19, while they have to go to the mosque to pray five times a day and night. They debate about which should come first between the government's rules and God's rules. The debate continues until today.

To curb the spread of COVID-19 in the country, Indonesia has made various efforts. The country started appealing to the public to maintain distance, use masks, wash hands, and issued different policies on handling COVID-19, and implemented *Pembatasan Sosial Berskala Besar* /Large-Scale Social Restrictions (PSBB) in areas that are the epicentre of the spread of COVID-19. However, the fact is that these efforts have not been able to curb the spread of COVID-19. It is evident from the COVID-19 data as the daily cases are increasing.

Note: Special Indonesian Collection: Philosophy, Culture and Theology, sub-edited by Busro Busro (Islamic State University Sunan Gunung Djati, Bandung).

Following the government's appeal to implement health protocols can minimise the spread of COVID-19. Unfortunately, the socialisation of the importance of health protocols and public awareness to comply with them is still lacking.

Therefore, it is necessary to have strict rules regarding the discipline of health protocols to reduce the spread of COVID-19 immediately. If the government and the people synergize with each other in their efforts to curb the spread of COVID-19, they can handle this crisis well.

According to Article 1 paragraph (3) of the 1945 Constitution, it is appropriate that everything, both the actions of state administrators and citizens, is based on law. As for the COVID-19 problem, the government finally issued a firm policy to improve the discipline of health protocols in preventing and controlling COVID-19, one of which is by imposing fines for health protocol violators.

However, imposing fines on violators of COVID-19 protocols still has its pros and cons. It is because of the sanctions arrangement based on presidential instruction and regional head regulations. At the level of criminal law, fines are a form of criminal punishment. Referring to Article 15 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations, it can be seen that provisions regarding penalties can only be regulated in Laws, Provincial Regulations and Regency or City Regulations. So the question is about the constitutionality of the fine sanctions controlled in the Presidential and Regional Head Instruction in handling COVID-19 at this time.

Before comprehensively analysing the problem mentioned above, the authors will describe several similar studies as material from the literature review. There is a clear distinction between this study and studies that have previously been carried out.

The article titled 'Use of the Criminal Fines in Legislation', written by Syaiful Bakhri, discusses the nature of criminal law, that stipulates punishment for the offenders. This has a deterrent effect on the offenders by discouraging them from repeating the offence. In this article, it is also presented that so far in court proceedings, sanctions in the form of imprisonment are still the usual practice of district court judges. Therefore, the authors present the idea that corporal punishment should be reduced and replaced with a penalty in the form of a fine. The existence of fines has become a norm in law enforcement in several European countries, and it is proven that law enforcement can minimise crime through criminal penalties. (Bakhri 2002:87-96).

The article titled 'Juridical Character of Administrative Law Sanctions: A Comparative Approach', written by Sri Nur Hari Susanto, states that the concept of administrative sanctions is usually not found in Indonesian legislation. Besides, the purpose of regulating administrative sanctions is solely to provide impunity for people who violate statutory

provisions. The characteristics of administrative sanctions, in general, is divided into three, namely, reparatory sanctions (*reparatoir*), punitive sanctions (*condemnatoir*) and mixed sanctions (Herstel & Bestrafen de sancties) (Susanto 2019:126-142).

This is a normative legal research, which makes the basic norms and rules, legal principles, laws and regulations and the object's doctrine (Asikin 2004:24). The approach used in this study is a statutory approach and a conceptual approach. The statutory method is used to classify various binding norms concerning providing fine sanctions for health protocol violators. A conceptual approach is then used to look at concepts from both the criminal and state administrative aspects, which is significantly related to fines. Researchers use the legal concepts related to the COVID-19 health protocol to compare it with Islamic law in general.

Discussion

Sanctions of fines from a normative legal perspective in Indonesia

Fines sanction framework in criminal and administrative law domain

The existence of sanctions is a crucial part of every statutory regulation. The inclusion of sanctions in each of the amendments of statutory regulations is intended to effectively and efficiently implement the formulated norms. The laws and regulations in Indonesia have provided government agencies and/or institutions the ability to enforce sanctions when there is a violation of the applicable law, particularly in this case, administrative law. The enforcement of administrative sanctions is actually in line with governmental powers that are exercised by government agencies and/or institutions.

In government law, it is known as the legality principle, and this principle says that all government actions must be based on the authority that comes from statutory regulations. Indroharto (1994:10) noted that without the legality principle provided by the applicable laws and regulations, all government apparatus steps would not have the authority that could influence or change the situation or legal position of the community. We can interpret that all government actions must have a lawful basis in written statutory regulations.

Before examining the domain of sanctions in the congregation of criminal law and administrative law, it is necessary to explain the terms of sanctions.

Sanctions are rules that determine the consequences of non-compliance with legal norms. Sanctions are often formulated in statutory regulation standards and used by the authorities to fulfil or comply with these norms' provisions. Dupont said that the existence of sanctions is a consequence of not obeying the rules of conduct determined by the state (the sanction as a consequence of not observing a law of conduct prescribed or sanctioned by the state) (Dupont & Raf 1990:72).

Sanctions in the form of fines are a type of criminal sanction that has long been known in Indonesia. Recently, the types of criminal sanctions in the form of penalties have become attractive because many countries prioritise fines instead of imprisonment. Lakollo (1998:5) said that the use of fines is increasingly being used as evidence that fines give a new colour to Indonesia's concept of politics.

If we look at the process of emergence and execution of a fine, we can see at least three stages: *Firstly*, the stipulation of criminal penalties by legislators. *Secondly*, giving or punishing by the court. *Thirdly*, the execution of the crime by the party authorised for implementation.

The legislature's policy concerning the preparation of laws and regulations of criminal law is often linked to the effectiveness of the implementation of fines. If we look at judicial statistics in Indonesia, fines are the least used type of punishment other than imprisonment.

Therefore, it is necessary to look back at the aspects of punishment's objectives in the criminal system in Indonesia. The purpose of crime is still a topic of discussion that reaps the pros and cons. In Indonesia, the criminal justice system requires examining what actions should be criminal acts and what should use witnesses against the perpetrators of criminal acts.

Therefore, the problems that should be made a criminal act, according to Sudarto, are the following:

- Criminal law must take into account the objectives of national development, namely, to make society just and prosperous based on Pancasila and the UUD 1945.
- To combat crimes and to protect the welfare of the community, criminal penalties must be used.
- The actions for which the criminal law intends to punish are activities that the community does not want and incurs losses to them.
- The use of penalties must pay attention to the cost-benefit principle.
- The use of crime must also pay attention to law enforcement resources so that it does not become a burden in its implementation.

If it is related to criminal punishment and the purpose of the punishment, it will appear that the fine can only be related to the crime against property. Therefore, in the case of the crime's execution, it is not allowed to exceed the circumstances that have been limited by law (Sudarto 1997:255).

Unlike the sanctions in administrative law, the purpose of including administrative sanctions in statutory regulations is to ward off impunity feelings by committing certain violations and several activities that can potentially harm the community. These violations are no longer resolved with criminal penalties but with administrative penalties.

Administrative penalties or sanctions in the legal relationship between the government and the community are a form of

government authority in enforcing administrative law. Therefore, we can say that it cannot separate administrative law enforcement from discussing governmental acts. Meanwhile, what is meant by governmental actions are all activities of government agencies and/or institutions in the framework of carrying out government tasks.

The concept of sanctions in administrative law can be defined as any provision or rule that determines the consequences of non-compliance with the norms (*de sanctie wordt gedefiniereerd als: regles die voorschrijven welke govelgen aan de niet naleving of de overtreding van de normen verbonden worden*) (Dupont & Raf 1990).

Roman legal literature says that the existence of sanctions in law or statutory regulation is a consequence of non-compliance with these norms. The sanctions, as intended, are approved and stipulated by the government (*the sanction as a consequence of not observing a rule of conduct prescribed or sanctioned by the state*) (Fodor 2007:1). Then this sanction is monopolised by the state to force its people to obey certain norms.

Henry Campbell Black stated that sanctions are part of a law or statutory regulation designed to ensure enforcement of the law by punishing those who violate laws and/or rewarding those who obey them (*that part of law which is designed to secure enforcement by imposing a penalty for its violation or offering a reward for its observance*) (Black 1979:8).

Next, Bryan A. Garner said that sanctions are penalties or coercive actions resulting from failure to comply with the law and/or statutory regulation. Sanctions aim to find and reduce arbitrariness (*sanction as a penalty or coercive measure that is resulting from failure to comply with a law, rule, or order [a sanction for discovery abuse]*) (Garner 1999:113).

Meanwhile, Utrecht (1992:1) defines that sanctions result from an act incurred by state bodies and/or institutions as a result of human or community actions. Amnesty International says that sanctions are all acts of kindness, like legal and disciplinary sanctions, which respond negatively because of the actions they cause (*sanction zijn alle maatregelen, zoals juridische straffen, disciplinaire straffen, waarmee, negatief wordt gereageerd op ongewenstgedrag*) (Ensie Encyclopedie 2015:1).

Based on the opinions of legal experts stated above, we can conclude that administrative sanctions are legal powers designed as consequences for those who commit violations and non-compliance with norms. Concerning the imposition of sanctions in the form of administrative fines for the COVID-19 health violators, protocol is one of the government's legal instruments to enforce this rule.

In the context of law enforcement of health protocols, the government of the Republic of Indonesia has set rules that all Indonesian citizens must follow. It is decreed in the Presidential Instruction Number 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in Prevention and Control of the Corona Virus Disease 2019.

This Presidential Instruction is the legal basis and legitimacy for state agencies and/or institutions to formulate the Regional Head Regulation with law enforcement for health protocol violators. There are several regulations issued by the Head of Regional Administration in the context of enforcing health protocols that include the following:

- Policies issued by the Governor of DKI Jakarta (Governor Regulation Number 79 of 2020. Regulation on the Implementation of Discipline and Law Enforcement of Health Protocols as Efforts and Control of COVID-19).
- Policy issued by the Regent of Bantul (Regent Regulation (Perbup) Number 79 of 2020 concerning New Adaptation of the 2019 Coronavirus Disease Prevention Health Protocol COVID-19).
- Policies issued by the Regent of Lebak (Perbup Lebak Number 28 of 2020).
- Policies issued by the Regent of Gresik (Perbup Gresik Number 22 of 2020 concerning Guidelines for the Transition Period Towards a New Normal Order).
- Policies issued by the Governor of Bali (Bali Governor Regulation Number 46 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Coronavirus Disease 2019 in a New Life Order).

Apart from these five regulations, there are many regional head regulations that explicitly contain administrative penalties or sanctions.

Some instruments are used for legitimacy by the government to ensure the recommendations and prohibitions are appropriately implemented. In the implementation of the enforcement of administrative sanctions, the court does not involve elements of the court. It is in line with L. Dara Lynott's statement that, 'administrative sanctions are broadly understood as being sanctions imposed by the regulator without intervention by a court or tribunal' (Linott & Cullinane 2000:1–11).

Additionally, the existence of administrative sanctions is intended as an effort to maintain administrative law norms that have been established in the form of statutory regulations. The implication of maintaining administrative sanctions is a logical consequence for administrative officials to ensure the enforcement of administrative law, the implementation of government authority following the mandate of laws and regulations and mechanisms without going through a trial.

Suppose you look at the aspect of legal norms' character. In that case, administrative sanctions are not an obligation (*plicht*) but independent free authority (*vrijebevoegsheid*) without any intervention from other state institutions (Tjandra 2018). Government agencies and institutions have the exclusive right to enforce administrative sanctions without relying on other institutions such as the judiciary.

This free authority is a form of freedom of government or *vrijbestuur*. N. M Spelt and J. B. B. M. ten Bergen, as quoted by Philipus M. Hadjon, distinguish two kinds of governmental freedom, namely, freedom of wisdom and freedom of

judgement. His opinion is expressed in the following sentence: 'de vrij die een wttelijke regeling aan een bestuursorgaan kan laten bij het geven van een beschikking wordt wel ondercheiden in "beleidsvrijheid" en "beoordelingsvrijheid"'. [The freedom permitted by statutory regulations for government organs can be classified into two parts, namely freedom of wisdom and freedom of judgment]. (Hadjon 1992:6–7).

Furthermore, in terms of characteristic aspects, this administrative sanction has benefits for norm compliance. This compliance can be categorised as a positive implication for the provisions of the norm. Therefore, Johan Put said that in contrario terms concerning negative sanctions, the act could cause non-compliance with these norms ('Negatieve sancties' verbinden nadelen aan normschendend gedrag.) (Put 1998/1999:455–495).

As explained above, the term 'sanction' is often associated with criminal law. Therefore, there is a need for a precise classification to distinguish between criminal sanctions and administrative sanctions, especially in terms of handling and enforcing the COVID-19 health protocols. It is no secret that in implementing administrative norms, the government has used administrative fines through its various regulations. The imposition of fines is solely used by the government, so that everyone tries to comply with these norms.

To distinguish these two types of sanctions, we can review the characteristics of administrative sanctions. First of all, it is necessary to note that administrative sanctions do not fall within the scope of judicial institutions' sanctions, be they district courts, civil and state administrations.

In general, the characteristics of administrative sanctions can be classified into the following:

- Administrative sanction considers that an act that causes disturbance to the administrative law norms order is a form of the violation.
- If disturbance is caused by violations of administrative law norms, immediate actions are taken by administrative bodies and/or institutions.
- Actions are taken by administrative bodies and/or institutions to resolve problems with the order of the administrative norm.
- Actions taken by state administrative bodies and/or institutions can be in the form of remedial actions (*reparatoir – herstel*) and/or acts of punishment (*condemnatoir – straf*).

Studies in administrative law do not specify giving administrative sanctions in every norm issued by state administrative officials. However, we can still classify through the following distinctions:

- Repressive function: This function has the aim of causing suffering as a result of deviant actions.
- Preventive function: This function is solely to prevent violations of the law.
- Restitution or repair function: This function aims to repair actions in the form of damage and restore them to their original state.

Table 1, classified by Philipus M. Hadjon (1992:6–7), provides a clear distinction between sanctions in the criminal law family and state administrative law:

Table 1 shows that administrative sanctions are only aimed at the offender's actions to stop the offense by the offender. Meanwhile, criminal sanctions are addressed to offenders by giving punishment in the form of sorrow. The nature of administrative sanctions is 'condemnatoir' (starft = to punish). The procedure for enforcing sanctions on administrative sanctions does not go through judicial mechanisms (*non-contensius*). We can say that administrative bodies and/or institutions, through their powers, can take enforcement action. Whereas, in a criminal case, law enforcement must go through a trial (*contensius*).

In general, the types of sanctions in administrative law can be divided into four parts: (1) government coercion (*bestuurdwang*); (2) payment of penalties or forced money (*dwangsom*); (3) administrative fines (administrative) and (4) withdrawal of a favourable decision (*het intrekken van een begun stigendebeschikking*/withdraw license).

In terms of imposing administrative fines for violators of the COVID-19 health protocol, it is a type of condemnation sanction. These sanctions are intended to punish and provide a deterrent effect. Administrative fines are punitive sanctions that oblige the violator of norms, without any conditions, to pay a sum of money.

The characteristic of administrative fines (*bestuurslijkeboete*) is a type of penal sanction (*bestraffendesancties*) that has no purpose of providing a remedy. Before carrying out this type of penalty, the administrative body and/or agency must fulfil many guarantees. Administrative fines (*bestuurslijkeboete*) must have a legal basis in statutory regulations. The provisions of the fine administrative norms must be predictable, meaning that the public already know the consequences of their actions.

This administrative fine is the most solemn sanction amongst the various types of administrative sanctions. Therefore, before imposing this sentence, the administrative body and/or institution must have a large number of guarantees (*de bestuurlijke boete de meest opgelegde bestraffende sanctie uit het bestuursrecht. Voordat een bestuursorgaan deze straf kan opleggen, moet deze sanctie aan een groot aantal waarborgen voldoen*) (Hadjon 1992:6–7).

In general, various types of sanctions can be distinguished as shown in Table 2.

TABLE 1: Classification of state administration law.

Distinction factors	Fine sanctions	Administrative sanctions
Goals/purposes	Actions	Doer
Traits	<i>Reparatoir</i>	<i>Condemnatoir</i>
Procedures	Without having to go through judicial procedures	Through judicial processes

Source: Hadjon, P.M., 1992, *Pemerintahan Menurut Hukum (Wet En Rechtmating Bestuur)*, Surabaya, Yuridika

If we look specifically at the types of sanctions in administrative law, they consist of reparatory sanctions (*Reparatoir*), condemnation sanctions (*Condemnatoir*) and mixed sanctions (*Herstel & Bestraffendesancties*). As for criminal law, we can see the types of sanctions through Article 10 of the Criminal Code's provisions. In this article's provisions, the types of sanctions are explicitly classified that include, amongst others, imprisonment, the death penalty, fines and additional penalties.

Concept of rule of law and public compliance with legislation

Based on Article 1 paragraph (3) of the UUD 1945, Indonesia is a constitutional state. The rule of law is a state that establishes every state life on a clear and firm legal mechanism (Simamora 2014:552). In general, the concept of the rule of law always refers to two main streams, namely the rule of law in the meaning of *rechtstaat* and *the rule of law* (Siallagan 2016:136).

According to Julius Stahl, the concept of a rule of law *rechtstaat* includes four main elements, namely, (1) protection of human rights; (2) separation or distribution of power; (3) government based on law and (4) an administrative court (Hidayat 2017:197).

Whereas, the rule of law concept according to A.V. Dicey includes three elements. Firstly, it includes absolute supremacy or predominance from common law to oppose the influence of arbitrary power and to eliminate arbitrariness, prerogative or broad discretionary authority from the government. Secondly, it involves equality before the law for everyone and group to ordinary court, which means that no person is above the law and that there is no state administrative court. Thirdly, it involves the fact that the Constitution is the result of the ordinary law of the land, and that constitutional law is not a source but a consequence of individual rights formulated and affirmed by the courts (Hidayat 2017:197).

The UUD 1945 does not clearly explain which legal concept is adopted by Indonesia. The application of the rule of law principle in Indonesia can be said to be carried out without directly adhering to the *rechtsstaat* or the rule of law principles. For general principles, such as the existence of efforts to protect human rights, the separation or distribution of power, the implementation of people's sovereignty, the existence of government administration based on the prevailing laws and regulations and the existence of a state administrative court

TABLE 2: Administrative sanctions.

Sanction types	Recovery sanctions (<i>reparatoir</i>)	Penalty sanctions (<i>condemnatoir</i>)	Mixed sanctions (<i>Herstel & Bestraffendesancties</i>)
Government coercion	√	-	-
Forced money	√	-	-
Administrative fines	-	√	-
Withdrawal of favourable judgement	-	-	√

are still used as the basis in realising the rule of law in Indonesia (Siallagan 2016:136).

With regard to the handling of the COVID-19 pandemic, it is related to the principle of the rule of law, namely the existence of government administration based on applicable laws and regulations. The Indonesian government, in imposing sanctions against violators of health protocols, must be based on statutory regulations. In this case, the imposition of fines for health protocol violators is based on Presidential Instruction No. 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Coronavirus Disease 2019 (COVID-19). The Presidential Instruction stipulates that the president instructs the governor, regent or mayor to compile and stipulate a government, regent or mayor regulation that contains sanctions for violations of health implementation protocols in the context of preventing and controlling COVID-19. These sanctions may take the form of verbal or written warnings, social work, administrative fines and termination or temporary closure of business operations.

Suppose we refer to Article 7 paragraph (1) of Law no. 12 of 2011. In that case, we can see those presidential instructions. Governor, regent or mayor regulations are not included in the hierarchy of statutory rules but are included in types other than the hierarchy of statutory regulations. Based on the provisions of Article 8 paragraph (2) of Law no. 12 of 2011, the existence of a new governor, regent or mayor regulation is recognised. It has binding legal force as long as it is ordered by a higher level of legislation or is established based on authority. What is meant by authority is the administration of specific affairs under the provisions of the statutory regulations.

At the level of criminal law, fines are included in the types of criminal sanctions. Provisions regarding criminal sanctions can only be regulated by laws and regional regulations (province/regency/city). It is based on the provisions of Article 15 of Law no. 12 of 2011. However, when looking at the fines imposed on health protocol violators, the phrase used is administrative fines so that the penalty is different from the fine in the criminal law.

There are differences between administrative sanctions and criminal sanctions. Administrative sanctions are aimed at acts, *reparatoir-comdenatoir*, the procedure is carried out directly by State Administration officials without going through a trial. Whereas criminal sanctions are aimed at the perpetrator, *comdenatoir* and must go through a judicial process (Raharja 2014:125).

Based on this, the provisions of fines for violating health protocols are not included in the realm of criminal law, but are included in state administrative law. It means that the provisions of fines for violating health protocols regulated by the governor, regent or mayor do not contradict the existing norms in Law no. 12 of 2011 concerning the establishment of legislation. The provisions of the *quo fine* are constitutional

and can be used as strict rules to enforce health protocols to deal with the COVID-19 pandemic.

According to the concept of a law state *rechstaat*, which prioritises protection of human rights, the state is obliged to guarantee its citizens' human rights, which in this case is the right to life and the right to health. To ensure that health protocols are being obeyed and to deal with the spread of COVID-19, the government is obliged and entitled to issue strict rules.

The successful rule of law in creating public order can be seen from the practice of law's effectiveness. According to Bustanul Arifin, in a country based on law, the rule of law will be useful if three main pillars support it (See Tobing 2011:92). These include: (1) authoritative and reliable law enforcers or institutions; (2) explicit and systematic legal regulations and (3) high legal awareness.

Considering the previous explanation that before the Presidential Instruction No. 6 of 2020, the Government only provides an appeal and does not have clear and firm sanctions, this is considered ineffective. Likewise, public awareness is still low in obeying the Government's appeal. It is necessary to have clear and healthy rules, including loading sanctions for violators, improving law enforcement's quality and increasing public awareness, to create effective regulations in dealing with the spread of COVID-19.

Therefore, Presidential Instruction No. 6 of 2020 is here to answer this problem by acting as a legal basis to improve the effective handling of the COVID-19 pandemic. With this regulation, it is expected that the Government and the community could work together to curb the spread of COVID-19.

Existence of fines for health protocol violators

As explained above, fines are criminal and administrative sanctions in the national legal framework. Therefore, it must first examine the provisions for granting fines through the judiciary. Unlike the imposition of sanctions in the form of administrative fines, administrative fines do not require a trial mechanism in the judiciary. In terms of imposing administrative, criminal sanctions for violators of health protocols, it is a means of coercion used by the government to obey regulations adequately.

However, in this case, it is necessary to know that criminal sanctions in the form of fines and administrative fines are two different things, both in terms of implementation and even aspects of state acquisition. Law Number 12 can only impose the Year 2011 mandates that criminal provisions violate provisions containing norms of prohibitions and orders. Administrative sanctions are sanctions imposed on administrative violations or regulatory provisions of an administrative nature in the form of license revocation, dismissal of supervision, temporary dismissal, administrative fines and police force.

The term sanction is often analogous to a criminal sanction. The types of sanctions are criminal and administrative sanctions and civil sanctions in the form of compensation. The relation with the constitutionality of giving fines to health protocol violators is not a criminal fine but an administrative sanction in the form of a fine.

The application of administrative sanctions is generally used in compliance and optimising a regulation from legal subjects. Besides, in practice, administrative sanctions in the form of fines are not automatically given when the first violation is carried out. In general, administrative sanctions will be applied in stages starting from an oral warning, a written notice and a fine to the revocation of a license.

Sanctions fines for violators of the COVID-19 protocol from an Islamic perspective

Penalty fines for violation of law in Islam

Islam is a religion that has a very complete, structured and systematic rule of law. Everything has legal consequences that must be obeyed by every adherent. The offender will be punished following the provisions. The Al-Qur'an, as the leading book in Islam, contains between 150 and 1100 verses about the law. Furthermore, what is meant by law is *khitabsyar'i*, which relates to the actions of *Mukallaf* explicitly and implicitly. The number of verses of the Qur'an that regulate a human being's behaviour and actions does not include the problem of *aqidah* (*ahkam i'tiqadiyah*) and the question of norms (*ahkam khuluqiyah*). These law verses are divided into two, namely, law verses concerning matters of worship (human relations with Allah) and law verses relating to *mu'amalah* (human-human relations) (Sulhadi 2017:1–9).

According to Islamic law, punishment is for the benefit of the *ummah* by personally educating the offender and the perpetrator of the crime (*Jarim*). Penalties in the form of fines are alternative laws that can be applied to the offender (Arfa 2014:61–72). The term popular amongst Muslims regarding this law is *Diyat*, which is also known as *Ta'zir bi al-Mal*.

Ta'zir bi al-Mal is a sanction for immoral or criminal acts that are not subject to Sharia's punishment. The form of sanctions is left to the authorised policy (head of state, judge). In contemporary language, it can be called a fine. The fine must be returned if the offender has been declared repentant. Imam Ibn Taymiyyah allowed this kind of punishment (Aziz 2018:313–328).

Ta'zir law is applied in Islamic law into four groups, namely: (1) *Ta'zir*, which is related to the body, such as death penalty and volume (*dera*); (2) *Ta'zir* relating to one's freedom, such as imprisonment and exile; (3) *Ta'zir* about the property, such as fines, confiscation of property and destruction of goods and (4) other punishments determined by *ulil amri* for the benefit of the public (Fadli 2017:219).

Thus, the penalty for violating the health protocol related to COVID-19 is part of the *Ta'zir* related to the punishment determined by *ulil amri* for the public benefit. The goal is clear, namely, to protect the public from the dangers of contracting the virus. This punishment is determined by expecting that those who violate it can realise their mistake, and a deterrent effect occurs. Funds resulting from fines, used for the community's benefit at large, are regulated by the State.

Obligation to obey state law in Islam

Islam has advocated for society's obedience to the law. We can see this through various suggestions for Muslims to always obey a leader's decisions. God instructs Muslims through the Qur'an sura An-Nisa [4]: 59, as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Artinya:

O you who believe! Obey Allah and obey the Messenger (Muhammad صلوات الله عليه وسلم), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (صلوات الله عليه وسلم), if you believe in Allah and in the Last Day. That is better and more suitable for final determination. (Al-Hilālī & Khān 1983:118)

The letter instructs Muslims to always obey a leader. This obedience can be reflected in several things, one of which is complying with the legitimate government's policies. It is no different from the importance of compliance of the Indonesian people in responding to the various regulations issued by each region's leaders to prevent the spread (*mudharat*) of COVID-19. This policy is not a façade or lousy policy but a policy that benefits everyone. Adhering to good policies has also been encouraged in Islam. As the hadith narrated by Imam Muslim states:

وَحَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ وَقُتَيْبَةُ بْنُ سَعِيدٍ وَابْنُ أَبِي عَرِينَةَ عَنْ أَبِي سَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَيْكَ السَّمْعُ وَالطَّاعَةُ فِي عُسْرِكَ وَيُسْرِكَ وَمَنْشَطِكَ وَمَكْرَهِكَ وَأَثَرَةٍ عَلَيْكَ

Saeed bin Mansour and Koutaiba bin Sa'id told us that they got hadith from Yaqub bin Abdurrahman, and it came from Abi Saleh al-Samman. It was narrated that Abū Hurairah said: "The Messenger of Allah, said: "You must hear and obey, at times of hardship and times of ease, whether you like it or not, even if the leaders act in a selfish manner."" (Mujahid (Spv) 2007).

Based on the information of the hadith above, it can be concluded that obedience to a leader is the responsibility of the people towards their respective religions. In a rule of law state, the state's leader or *Ulil Amri* in issuing orders or prohibitions must be based on good and bad considerations. In this case, complying with the government's statutory provisions is part of obedience to the leader and a reflection of being a good citizen. This provision applies to every Muslim, no matter what country they are in.

Conclusion

As the rule of law, strict rules can be used as a tool to discipline society. When people have little awareness of obeying every provision of norms, they appeal without any sanctions, like a body without bones, less intense and weak. To reduce the spread of the COVID-19 virus, the government has finally set policies strictly regulated in statutory regulations, namely through presidential instructions, governor regulations, regents or mayors. The policy contains sanctions, one of which is an administrative fine. It is performed so that the public becomes obedient and aware of the importance of implementing health protocols based on the previous description that the fine is constitutional, meaning that it does not contradict the law's provisions. These provisions have binding legal force and must be enforced.

Meanwhile, from an Islamic perspective, adhering to health protocols for every Muslim/Muslimah is part of obeying Allah SWT's rules. Because every Muslim is obliged to obey Allah and His Messenger, Muslims must also obey the legitimate *Ulil Amri* (leader). In Islam itself, there has often been an example of fines as sanctions from lawbreakers. Such a fine is called *Ta'zir bi al-Mal*. Although there is debate amongst *fiqh* scholars regarding the imposition of sanctions in the form of assets, many also allow punishment in this way, one of which is Imam Ibn Taymiyyah. Thus, adhering to health protocols to prevent the spread of COVID-19 more widely is not in conflict with Islam. So, there should be no doubts about the legal basis for imposing fines against violators of the COVID-19 protocols.

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Authors' contributions

A.F. and P.H. contributed to the design and implementation of the research, to the analysis of the results and to the writing of the manuscript.

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