



Validity of Sanctions for Imposing Vaccination Fines Covid-19

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Abstract

*This study aims to determine how the legal position of Presidential Decree No. 14 of 2021 as the basis for setting up the sanctions for the Covid-19 vaccination fine and also to find out how effective the law is in setting the sanctions for the Covid-19 vaccination fine. This research is normative legal research (doctrinal law), namely legal research that examines written law in laws and regulations (law in books) or laws that are conceptualized as rules or norms that guide behavior. With data collection techniques through library research, namely reviewing relevant laws and regulations that support arguments in research and conducting observations through direct interviews with the Head of the Management and Development of the Covid-19 Vaccination Implementation and Functional Coordinator of Legal Counsel for the Mayor of Makassar. In addition to using a conceptual approach, the author also conducts library research through data and books related to the research topic. Furthermore, the data obtained were analyzed qualitatively which was then presented descriptively. The results of this study are: 1) In an emergency, the Government (President) is given the authority to make a statutory regulation to overcome the problems being faced. However, the government must still pay attention to the limits of this authority and continue to pay attention to the rules for the formation of laws and regulations. When this Presidential Regulation is considered as part of binding statutory regulations in general, not as *beleidregels*, this regulation should have a basis in the form of a law that regulates or PP in advance as the contents of the contents of the Presidential Regulation are material ordered by law or material to implement PP. The Birth of the Supreme Court Number 31 P/HUM/2022 which states that the provisions of Article 2 of Presidential Regulation No. 99 of 2020 does not have binding force because it is contrary to the Halal Product Guarantee Act, then immediately the provisions governing vaccine obligations also do not have binding force. 2. Provisions for regulated fines in Presidential Decree No. 14 of 2021 in fact is not implemented or enforced so that the effectiveness of this regulation also participates questionable because effective law in general can make what is designed can be realized.*

Keywords: Sanctions; Vaccination; Covid-19.

A. Pendahuluan

The end of 2019 was a shocking year for the world and all its contents. The world was shocked by the emergence of a new virus called *Coronavirus Disease 19* or (*Covid-19*). Corona viruses are a large family of viruses that cause disease in humans and animals. In humans it usually causes respiratory tract infections, ranging from the common cold to serious diseases such as *Middle East Respiratory Syndrome (MERS)* and *Severe Acute Respiratory Syndrome (SARS)*, later named *Severe Acute Respiratory Syndrome Coronavirus 2 (SARSCOV2)*, and causes the disease *Coronavirus Disease-2019 (COVID-19)*. This virus was first discovered in Wuhan City, China at the end of 2019.¹

¹ Ministry of Health of the Republic of Indonesia. Questions and Answers Regarding Covid-19. March 1, 2020. Source: <https://www.kemkes.go.id/article/view/20031600011/question-and-answer-terkait-covid-19.html>. Accessed 02 August

Corona virus Disease 19 or *Covid-19* is one of the legal phenomena relating to human health that occurs globally. This pandemic has spread to various countries including Indonesia. Recorded data on cases of *COVID-19* as of April 1 2021, worldwide reached 129.5 million cases, around 104 million cases recovered, and 2.8 million people died. Meanwhile, in Indonesia, there have been 1.5 million cases, around 1.3 million cases have recovered, and around 40.8,000 cases have died.² *Corona virus* first entered Indonesia on March 2, 2020 which infected two residents of Depok, West Java.³ How fast is the spread of this virus until now Indonesia has experienced *COVID-19*. Latest data from the Indonesian government as of August 4, 2021, the addition of new cases of *Covid-19* reached 35,867 cases. With this addition, the number of *Covid-19* in Indonesia has now reached 3,532,567 cases since the announcement of the first patient infected with the corona virus on March 2, 2020. Meanwhile, recovered patients increased by 34,251 person. Thus, the total number of recovered patients is 2,907,920 people. Meanwhile, 1,747 patients died. In total, there were 100,636 deaths due to Covid-19.⁴

As the responsibility of the State, the Government responds quickly and responsively to these problems. Various steps have been taken by the government to suppress the spread of *Covid-19* including the 3M appeal and campaign, namely using masks, maintaining *physical distancing*, and washing hands, 3T namely *testing, tracing, and treatment*, Large-Scale Social Restrictions, hereinafter abbreviated as PSBB through Government Regulation Number 21 In 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of *Coronavirus Disease 2019 (Covid-19)*, the Implementation of Restrictions on Community Activities, hereinafter abbreviated as PPKM, from large to micro-scale and until now the government has issued a regulation in the form of Presidential Regulation No. 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the *Covid-19*, because if this is not handled quickly and appropriately it will destabilize the country and will cause huge economic losses for the country. Because we are aware of the importance of health for the people of Indonesia, that it saves all people Indonesia is the highest mandate in accordance with the principle of *salus populi suprema lex esto*, the safety of the people is the highest law.⁵ The next effort that is considered the most effective to fight Covid-19 is through a vaccination program⁷. Vaccination is the procedure of administering a disease antigen, usually in the form of a vaccine weakened or dead virus or bacteria, it could also be just part of the virus or bacteria (a procedure of introducing a vaccine into the body to stimulate the body's immune system to produce immunity against a disease). With words On the other hand,

2021.

²Ministry of Health of the Republic of Indonesia, 2021. <https://www.kemkes.go.id/>, and <https://www.kompas.com/tren/read/2020/03/31/213418865/rekap-prediksi-covid-19-during-march-and-predictions-in-april?page=all>, Accessed on August 04, 2021, 23.40 WITA.

³Ihsanuddin, 03 March 2021, "*Complete Facts on the First Case of the Corona Virus in Indonesia*", Source: <https://nasional.kompas.com/read/2020/03/03/06314981/cepat-pertama-virus-corona-di-indonesia?page=all>, Accessed on 04 August 21, 22:40 WITA.

⁴Dewi Nurita, 04 August 2021, *Covid-19 Cases as of 4 August: Increased by 35,867, Patients Recovered 34,251*. Source: <https://nasional.tempo.co/read/1490857/case-covid-19-per-4-agustus-berikut-35-867-patient-sem-buh-34-251>.

⁵CNN Indonesia. "Jimly: 'Salus Populi Suprema Lex Esto' Can Not Be Used". 19 March 2021. Accessed 05 September 2021. <https://www.cnnindonesia.com/nasional/20210319061501-20-619425/jimly-salus-populi-suprema-lex-esto-belum-bisa-digunakan>.

vaccination is the process of its activities with the aim of making a system.⁶

The immune system recognizes and is able to fight when exposed to the disease. The various brands of vaccines used in Indonesia are Sinovac vaccine, Bio Farma, Astra Zeneca, Sinopharm, Moderna, Pfizer, Sputnik V, Jansse, and Convidecia.⁷ Through the vaccine, it is hoped that it can form community immunity or *herd immunity* against the SARS-CoV-2 virus in Indonesia. However, in practice, there are pros and cons among the community that not a few Indonesian people refuse to vaccinate even though the results of a survey from the Ministry of Health together with the Indonesian Technical Advisory Group on Immunization (ITAGI) with the support of UNICEF and WHO, stated that the majority of Indonesian people are willing to receive the vaccine. Covid-19. However, from the results of the national survey, there are still many Indonesians who refuse vaccination on the grounds of the safety aspect of the *Covid-19 vaccine*.⁸ From the survey results, it is also known that the most common reasons for rejection of the COVID-19 vaccine are related to vaccine safety (30%); doubts about the effectiveness of the vaccine (22%); distrust of vaccines (13%); concern about side effects such as fever and pain (12%); and religious reasons (8%).⁹ In addition, reports from the Populi Center Institute in mid-December 2020 revealed the results of the *Covid-19*, in which 40% of residents said they were not willing to be given a vaccine by the government. The survey was conducted on 1,000 respondents in 100 regencies/cities spread proportionally in 34 provinces. because they do not believe vaccines cure and are related to halal.¹⁰

So that the implementation of the vaccination program is not hampered, the government swiftly issues a regulation in the form of Presidential Regulation (Perpres) Number 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the *Covid-19* which will take effect on February 10, 2021. The regulation regulates sanctions for people who refuse vaccination. In more detail, sanctions for those who refuse vaccines are contained in Article 13A paragraph (4) and Article 13B.

Article 13A paragraph (4) states that:

"Every person who has been designated as the target recipient of the COVID-19 Vaccine who does not participate in the COVID-19 Vaccination as referred to in paragraph (2) may be subject to administrative sanctions, in the form of:

a. postponement or termination of the provision of social security or

⁶Vaccines are biological products containing antigens in the form of dead or alive microorganisms that are attenuated, intact or so on, or in the form of microorganism toxins that have been processed into toxoids or recombinant proteins added with other substances, which when given to a person will cause immunity. actively specific for certain diseases (see Article 1 number (1) Regulation of the Minister of Health of the Republic of Indonesia No. 10 of 2021 concerning the Implementation of Vaccination in the Context of Overcoming the *Corona Virus Disease 19 (Covid-19)* Pandemic).

⁷Barratut Taqiyyah Rafie, "There are 9 types of Covid-19 vaccines used in Indonesia, what are the effects? side?", Source: <https://newssetup.kontan.co.id/news/ada-9-tipe-vaccin-covid-19-yang-digunakan-di-Indonesia-apa-saja-hasil-sampingnya?page=all>.

⁸Rina Ayu Panca Rini, *Reasons for Rejecting the Covid-19 Vaccine in the Community Concerning Security*, Source: <https://www.tribunnews.com/corona/2020/11/18/alasan-penolakan-vaksin-covid-19-di-community-security-matters>.

⁹Rina Ayu Panca Rini, 2020, *Reasons for Rejection of the Covid-19 Vaccine in the Community Concerning Security*, Source: <https://www.tribunnews.com/corona/2020/11/18/alasan-penolakan-vaksin-covid-19-di-security-society>. Accessed December 2021.

¹⁰*Covid-19 vaccine refusal is sanctioned, epidemiologist: 'Coercion will not work'*, 15 February 2021, Source: <https://www.bbc.com/indonesia/indonesia-56061572/>.

- social assistance;
- b. postponement or termination of government administration services;
and/or
- c. fine.

In addition, Article 13B also states that in addition to being subject to sanctions as referred to in Article 13A paragraph (4), any person who has been designated as the target recipient of the *Covid-19*, who does not participate in the vaccination may be subject to sanctions in accordance with the provisions of the law on disease outbreaks. infectious.

The law is formed in such a way as to cope with the existing epidemic, but technical problems in law enforcement often occur in ambiguity in a regulation, making it difficult to implement the sanctions stipulated in the regulation. The public assumes that there will be many provisions that are contrary to the Presidential Regulation. Starting from Law No. 36 of 2009 on Health. In Article 5 paragraph (30) which states firmly that everyone has the right to be independent and responsible for determining the health services needed by him. That there are sanctions against someone who refuses to be vaccinated, especially fines which are translated as criminal sanctions indicate the existence of coercion by the state which of course this has violated human rights. As for Article 41 paragraph (1) of Law Number 39 of 1999 concerning Human Rights Man states "Every citizen has the right to the necessary social security" for a decent life and for his full personal development. Even the constitution of the Republic of Indonesia has arranged and guaranteed its citizens to get health services.

Apart from various conflicts with the provisions stipulated in the Presidential Regulation, In this case, the author in this case will focus on examining the legal position of the Presidential Regulation as the basis for setting up the implementation of vaccination. Will look at the legal aspect the law or the validity of the fines stipulated in the Presidential Regulation by looking at the logical ratio of the formation of the Presidential Regulation, namely how? delegation or referral that instructs this Presidential Regulation specifically to regulates fines, both in the provisions of Presidential Decree No. 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the *Covid-19* as well as existing provisions in Law No. 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability. Apart from that, the author considers that the Presidential Regulation which contains provisions for these fines, it is necessary to study further regarding the material of the cargo which is regulated in it because usually the regulation of fines requires a law higher level that regulates and further related to its implementation can delegated to a lower order. Based on this description, the author interested in studying further which will then be poured in writing scientific research entitled "**Validity of Sanctions for Imposing Vaccination Fines Covid-19**"

Based on the description of the background of the problem above, the writer draws the formulation of the problem as follows:

1. What is the legal position of Presidential Regulation Number 14 of 2021 as the basis for setting sanctions?

2. How is the effectiveness of the law in enforcing the Covid 19 Pandemic Covid-2019?

B. Research Methods

This study uses a juridical empirical legal research method, namely examining a rule or legal provision that applies and seeing the actual implementation of the legal provision in people's lives. Empirical legal research is a legal research method by looking at empirical facts taken from human behavior, both verbal behavior obtained from interviews or behavior that is seen in real through direct observation.¹¹ The Statute Approach is carried out by examining all laws and regulations related to the legal issue being researched. The Conceptual Approach is by studying the views, doctrines, and jurisprudence in science. In law, researchers will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues at hand and as a basis for building a legal argument in solving the issues at hand,¹² The theoretical approach is by analyzing a legal problem by using legal theories.

In this study, the authors use several sources, namely:¹³ Primary legal materials, namely laws and regulations that apply in accordance with the hierarchy of laws and regulations in Indonesia, as well as other legal norms. Secondary legal materials, namely legal materials that provide further explanations regarding primary legal materials include, the results of research conducted at the Makassar Mayor's office and the South Sulawesi Provincial Health Office, readings from books, research results published in the form of papers, journals and articles that have relevance to the object of study and the opinions of related experts.

As for the data collection techniques used in this study, interview and *literature research*, the research was carried out by directly interviewing the Head of the Management and Development of the Covid-19 Vaccination Implementation and the Functional Coordinator of Legal Counsel for the Mayor of Makassar. Furthermore, the author collects, reads, and browses a number of books, documents, laws and regulations, scientific works, literature from the internet and others, which are related and supported in this writing.

After all legal materials are obtained, both primary and secondary, then they are identified and inventoried. Then the legal material is analyzed using legal interpretation in order to find compatibility between legislation and related theories, so as to solve legal issues. Furthermore, from the results of the study, analysis and interpretation, it is hoped that the results of the discussion will be produced systematic, holistic, and comprehensive in order to be able to solve legal problems that occur.

C. Results And Discussion

1. The position of Presidential Regulation Number 14 of 2021 as the basis for setting sanctions in the implementation of the *Coronavirus Disease 2019 (Covid-19)*

What is to be achieved is that the system of government of the Indonesian state is established to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying

¹¹ Mukti Fajar and Yulianto, 2010, *Dualism of Empirical and Normative Legal Research*, Raja Pustaka Pelajar, Yogyakarta, P.280.

¹² Peter Mahmud Marzuki, 2010, *Legal Research*, Kencana Prenada Media Group, Jakarta, Pg. 133-134.

¹³ *Ibid.*

out world order based on independence, eternal peace and social justice for all Indonesian people as formulated in the preamble of the Law. The 1945 Constitution of the Republic of Indonesia.

Every country that declares itself as a state of law cannot be separated from the laws and regulations. It has become basic and general knowledge that the rule of law is a country that places laws and regulations as a guide in preparing the state structure and running the wheels of government in everyday life.¹⁴ All activities that will and must be carried out in the life of the state can only be carried out if there are rules that regulate. In this regard, the law becomes a filter for these concepts and systems in order to realize the desired goals.

The existence of a disease outbreak that attacks the country of Indonesia and even this disease has a global scale requires the government to move quickly to overcome the existing problems. Based on the regulations issued by the government, Vaccination is considered a government program that cannot be denied. One of the things that underlies the program is the existence of Presidential Regulation Number 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Overcoming the Covid-19 Pandemic. In Article 13A paragraph (4) it is stated that:

“Every person who has been designated as the target recipient of the COVID-19 Vaccine who does not participate in the COVID-19 Vaccination as referred to in paragraph (2) may be subject to administrative sanctions, in the form of:

- a. postponement or termination of the provision of social security or social assistance;
- b. postponement or termination of government administration services; and/or
- c. fine.

Through this rule, the public cannot avoid being vaccinated because if this is done, the government will impose sanctions, one of which is in the form of fines.

The birth of a statutory regulation cannot be separated from the process of forming statutory regulations or commonly called *Legal Drafting* which means that the method of drafting or forming regulations must be in accordance with the demands of theory, principles and rules of drafting laws and regulations in which there are matters that must be considered so that the rules made can be in accordance with the rules of the law itself. One thing that is very important and must be considered in the formation of legislation is that it must be in accordance with the principles of the formation of laws and regulations. The principle of law is something that is very basic in law that must be guided. Legislation must not conflict with legal principles, Satjipto Rahardjo calls it the "heart" of legal regulations".¹⁵

One of the principles for the formation of laws and regulations is to pay attention to the legal content material, namely the compatibility between the type and the content material, namely the formulation of the content material in each Legislative Regulation must have compatibility between the types of legislation and the regulated content material. This is clearly regulated in Article 5 of Law no. 12 of 2011 concerning the Establishment of Legislation which has now been changed to Law no. 15 Year

¹⁴ Abdul Mukhtie Fadjar, 2016, *History, Elements and Types of Rule of Law*, Equivalent Press, Malang, Pg. 6.

¹⁵ Satjipto Rahardjo, 2012, *Legal Studies*, Citra Aditya Bakti, Bandung, Pg. 45.

2019.¹⁶

Each regulation made has different content according to the type or hierarchy of the regulation. As in Indonesia, the chain of legal norms is actualized into the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning the Establishment of Legislations.

One type of regulation regulated in the Hierarchy of Legislative Regulations is a Presidential Regulation. Based on Article 1 point 6 of Law no. 12 of 2011 is defined that Presidential Regulation is a statutory regulation stipulated by the President to carry out orders of higher laws and regulations or in carrying out government powers. Regarding the content of the Presidential Regulation, this has been clearly regulated in Article 13 of Law no. 12 of 2011 which states that: "The material for the Presidential Regulation contains material ordered by law, material for implementing a Government Regulation, or material for carrying out the administration of government power", and in the explanation of Article 13 of Law no. 12 of 2011 it is explained that: "Presidential regulations are formed to carry out further regulations ordered by laws or government regulations that are expressly or indirectly ordered to be formed". Presidential Regulation is a regulation made by the President in carrying out the power of the government of the Republic of Indonesia as an attribution of Article 4 Paragraph (1) of the 1945 Constitution where the purpose of the establishment of the Presidential Regulation is to carry out further regulations on orders of Law or Government Regulations, expressly or indirectly. ordered to form.

If we look and digest carefully the provisions contained in Article 13A of Presidential Regulation No. 14 of 2021 which directly includes provisions for sanctions in the form of administrative sanctions, one of the points of which regulates fines which, if explored further, there is currently no law or government regulation that regulates the provisions of sanctions regulated in the Presidential Regulation which should be the basis or the juridical basis of the formation of the presidential regulation. We can examine this by looking at the preamble to the Presidential Regulation, where Presidential Decree No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of Prevention, considering that the basis for the formation of this Presidential Regulation only refers to Article 4 paragraph 9(1) of the 1945 Constitution of the Republic of Indonesia, which further refers to Law Number 2 of 2020 concerning Stipulation of Government Regulations. In lieu of Law Number 1 of 2020 concerning Policy on State Finances and Financial System Stability for Handling the Pandemic Coronavirus Disease 2019 (COVID-19) and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability into Law (State Gazette Republic of Indonesia Year 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516). Where in the regulation there is no clause or article that regulates the provision of fines for people who refuse vaccination.

Furthermore, Presidential Decree No. 99 of 2020 was changed to Presidential Decree No. 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the *2019 Coronavirus Disease (Covid-19)* which the basis for its

¹⁶ See Article 5 of Law no. 12 of 2011 concerning the Establishment of Legislation which has been amended into Law Number 15 of 2019.

formation is also the same as that of Presidential Decree No. 99 of 2020, which in fact none of these rules can explain or provide an overview regarding what and how to implement the administrative sanctions regulated in the provisions of Article 13A of Presidential Regulation No. 14 of 2021. This is considered a formally flawed rule because it does not have a clear juridical basis so that the validity or validity of this regulation is questioned which will lead to legal certainty of the regulation.

In terms of material content, Presidential Regulations (Perpres) can be divided into Presidential Regulations which are regulatory (*regeling*) and Presidential Regulations which are stipulations or determinations (*beschikking*). Presidential regulations that regulate are laws and regulations relating to the regulation (*regeling*) of the public interest and concerning legal relations or the relationship of rights and obligations between fellow citizens and between citizens and the state and government.¹⁷ When Presidential Decree No. 14 of 2021 is considered a statutory regulation, not a policy regulation or *beleidsregels*, so of course this Presidential Regulation must also follow the procedures for establishing laws and regulations as regulated in Law no. 12 of 2011 which has now been changed to Law number 15 of 2019. Even when *a quo* this considered as implementing regulations, the problem that arises is the word mandatory contained in Article 13A paragraph 4 which instructs that everyone is obliged to take vaccinations otherwise they will be subject to administrative sanctions in the form of fines, in which this provision does not provide any further explanation as to what is meant by "not following the vaccine". Does this still apply and there are no exceptions for people who have been designated as vaccine targets but have certain reasons beyond their control or will not participate in vaccination.

According to Article 13 of Law no. 12 of 2011 "affirms" in three main points, namely:

- 1) the material ordered by law;
- 2) materials for implementing Government Regulations, or
- 3) materials for implementing the administration of government powers.

The substance or material regulated in the provisions of this Presidential Regulation is in accordance with the rules of the legislation where one of the things that must be considered is the compatibility between the content of the material and the type of legislation. When we agree with Presidential Decree No. 14 of 2021 as part of the laws and regulations regulated in Law no. 12 of 2011 Regarding the Formation of Legislations, what should be regulated in this Presidential Regulation must be in accordance with the rules for the formation of laws and regulations, one of which is to pay attention to the principles of forming laws and regulations.

In more detail, A. Hamid S Attamimi argues that in the formation of laws and regulations, apart from being guided by the principles of establishing good laws and regulations (*beginnselen van behoorlijke wetgeving*), they also need to be based on general legal principles (*algemene rechtsbeginselen*), which consists of the principle of a state based on law (*rechtsstaat*), a government based on a constitutional system, and a state based on people's sovereignty.¹⁸ Furthermore, A. Hamid S Attamimi also introduced that in the formation of laws and regulations, there are at least some

¹⁷ ¹⁸ http://www.dpr.go.id/complorgans/adhoc/49_risalah_Risalah_Raker_8.pdf, Accessed on 22 February 2022, 20:20 WITA.

¹⁸ Maria Farida Indrati Soeprapto, 2010, *Science of Legislation: Types, Functions, and Content*, Kanisius, Yogyakarta, Pg. 228.

guidelines that can be developed in order to understand the principles of establishing good laws and regulations correctly, namely: first the juridical basis, secondly the legal basis sociological and philosophical foundations. Regarding the juridical basis Every legal product must have a juridical basis (*jurische gelding*). This juridical basis is very important in making laws and regulations (including Presidential Regulations), because it will show:¹⁹

- a) There must be authority from the maker of legal products. Every legal product must be made by an authorized official. Otherwise, the legal products are null and void (*van rechtswege nietig*) or are considered to have never existed and all consequences are null and void;
- b) There must be conformity of the form or type of legal products with the materials regulated, especially if ordered by laws and regulations of a higher or equivalent level. Mismatch of form or type can be a reason to cancel or can be canceled (*vernietigbaar*) the legal product;
- c) Must follow certain procedures, if certain procedures that are required are not followed, then the legal products do not yet have binding legal force and can be canceled by law;
- d) Must not conflict with the legislation at a higher level;
- e) Legal products made for the public can be accepted by the public fairly and even spontaneously.

Based on the description above, the author considers that the Presidential Decree no. 14 of 2021 has not been in accordance with the rules for the formation of laws and regulations so that the binding power of the *a quo* regulation is still being questioned to force and impose sanctions on people who refuse or do not want to vaccinate because even this Presidential Regulation does not meet the standards or rules for establishing laws and regulations. invitation.

Juridically, a legal norm is said to be valid if the legal norm itself has met the predetermined criteria, including:²⁰

- 1) Stipulated as a legal norm based on a higher legal norm;
- 2) Stipulated as a legal norm according to the applicable legal formation procedure; and
- 3) Stipulated as a legal norm by an institution that is authorized to do so.

If the three criteria have been properly met, then the legal norms in question can be said to be legally valid.

The presence of this Presidential Regulation is also considered to be contrary to higher regulations or not based on higher norms as the theory of the hierarchy of laws and regulations in which many contradict the health law and the rights of everyone, that "Everyone has the right to independently and responsibly determine health services that are needed for himself, that everyone has the right to give "approval" or "rejection" before the treatment that will be carried out by health workers against him. According to Kelsen, in the hierarchy of laws and regulations means that legal norms gain validity, where legal norms receive delegation from norms that are considered to exist (or are valid) which have a higher hierarchy. The legal norm that gives the delegation also obtains its validity in the same way from a higher legal norm and so on

¹⁹ Hestu Cipto Handoyo, 2008, "Prinsip-Prinsip Legal Drafting & Desain Naskah Akademik", Atma Jaya, Yogyakarta, Hlm. 70.

²⁰ *Ibid.*

until it reaches a *basic norm* whose validity is no longer derived from norm-based delegation, but a transcendental presupposition (possibly also cultural) that must be made in order to determine the validity of other legal norms.²¹

The validity of a statutory regulation is based on the formal validity of the statutory regulation. This validity is also known as "Ability" (validity). This behavioral power exists when the norm is formed by a higher norm or the institution authorized to form it.²²

Not long ago the Supreme Court (MA) issued Decision Number 31 P/HUM/2022 which states that the provisions of Article 2 of Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and the Implementation of Vaccinations in the Context of the Covid-19 Pandemic is contrary to higher laws and regulations, namely the provisions of Article 4 No. 33 of 2014 concerning Halal Product Guarantee. This means that Article 2 of Presidential Regulation No. 99 of 2020 no longer has binding force since the Supreme Court Decision was issued on April 22, 2020, thus the provisions governing vaccine obligations contained in Presidential Regulation No. 14 of 2021 also do not have binding force to be enforced on the public. The Supreme Court requires that the formulation of Article 2 is required to provide additional protection and guarantees regarding the halalness of the type of Covid-19 vaccine specified for the implementation of the Covid-19 vaccination for regions in Indonesia.²³

2. How is the Effectiveness of the Law on Enforcement of Penalties for Covid-19 Vaccination in the Context of Handling the Covid-2019 Pandemic

The imposition of administrative sanctions is never separated from the authority of government action as it is understood that government actions include all actions carried out by administrative organs in the context of carrying out government duties. One of the things regulated in state administrative law is related to punitive sanctions, namely administrative fines. In the imposition of these sanctions, the government must continue to pay attention to the principles of administrative law, both written and unwritten.

The purpose of including (regulated) sanctions in administrative law laws and regulations is to prevent feelings of impunity (omission) by committing certain violations and some serious behavior (which however is considered a nuisance) and is no longer resolved through criminal sanctions, but with administrative sanctions. The application of administrative sanctions in a legal relationship between the government and the community is one form of government action carried out in the context of enforcing administrative law.

Philipus M. Hadjon, et al quoted by WF Prins said that almost every regulation based on administrative law ends "*in cauda venenum*" with a number of criminal provisions ("*in cauda venenum*" which means that poison is in the tail / tail). This term means that in the applicable rules there are sanctions that are applied at the end, to guarantee that the legal rules are actually enforced.²⁴

²¹ A'an Efendi, Problems with Structuring Types and Hierarchies of Legislation, Faculty of Law, University of Jember, VeJ Volume 5 Number 1, p. 33, Source: <https://journal.unpar.ac.id>.

²² Maria Farida Indriati, S, 2007, Ilmu Perundang-undangan; Dasar-dasar Dan Pembentukannya, Kanisius, Yogyakarta, Hlm. 39

²³ <https://www.hukumonline.com/stories/article/lt6279c2db36d1d/perpres-vaksin-covid-kalah-uji-materiil-government-bisa-dijuang-warga-muslim/>, Accessed on 22 May 2020, 23.15 Wita.

²⁴ Ridwan HR, 2006, *State Administrative Law, Cet. 3*, Raja Grafindo Persada, Jakarta, Pg. 313.

Fines as regulated in Presidential Regulation No. 14 of 2021 is seen as not paying attention to the principle of justice for the people of Indonesia. *rule a quo* it is not explained explicitly regarding people who are determined to receive vaccines without exception. Because it is possible for people who refuse vaccination not without certain reasons. In addition, people think that it is possible without vaccination but still maintaining the body's immunity and health protocols, it can avoid contracting the Covid-19 virus. The author also argues that this Presidential Regulation which contains provisions for fines is not an adequate legal instrument or facility to enforce the imposition of administrative fines on the public. The fine sanctions are not through technical policy material whose degree is under the law, that in essence administrative arrangements are the stipulation of administrative regulations, in the form of Government Regulations, Presidential Regulations, Ministerial Regulations and so on which are administrative in nature, meaning in the form of interpretations of translations, instructions or instructions for implementing the law.

In essence, the efforts made by the government in maintaining the safety of its people and the stability of the country from various threats that threaten it including the pandemic, which has not yet ended, we really should support it because the government has shown its responsibility by adhering to *Salus populi suprema lex exto* which means "people's safety is the highest law". This responsibility is absolutely carried out by the government because it is a direct order or mandate from the Indonesian constitution, namely to protect the entire Indonesian nation and all of Indonesia's homeland, as stated in the preamble to the 1945 Constitution of the Republic of Indonesia and is a mandate from Article 28H of the 1945 Constitution of the Republic of Indonesia so that in certain circumstances the government has the authority to make a rule that can handle existing problems as long as it is in accordance with what is ordered by applicable law in Indonesia. It should be remembered that policies that are made but are not mature enough to consider the consequences or in other words are not well targeted will actually create confusion and will cause disorder in running the government system. Therefore, the community must participate in guarding the steps taken by the government so that they are in accordance with applicable law.

Regarding the enforcement of fines given to people who refuse the vaccine, the authors take samples and focus their research on Makassar City. The results of the author's interview with the Functional Coordinator of Legal Counsel for the Mayor of Makassar, stated that until now there are no further rules that can be the basis for implementing fines for people who have not vaccinated, because fines cannot be enforced only through Perwali or Circulars. . It is common knowledge that fines must be regulated in advance through a law or local regulation, while in the city of Makassar there is no local regulation that regulates the sanctions for such fines.

Based on the results of these studies, the authors assume that the application of fines as regulated in Presidential Decree no. 14 of 2021 has not been implemented or implemented in the field, so we have not been able to measure the legal implications it will have on community compliance in vaccinating. The norms contained in article 13A paragraph (4) have absolutely no usability because these norms have no influence or are not implemented in regulating people's lives so that the validity or existence of the norms of the presidential regulation can be questioned. A norm is said to be valid if the

norm has binding force on the person whose behavior is regulated.

The law demands legality, which means that what is required is merely the implementation or arrangement of the rules. Bagir Manan argues that there are three very important elements so that the law that is formed has *legal validity*, and is able to be effective because it can or will be accepted by the community fairly, and is valid for a long time. first, the juridical basis (*juridische gelding*); second, the sociological basis (*sociologische gelding*); and third, the philosophical foundation.²⁵

Furthermore, Lon F. Fuller also stated that there are 8 things that a regulation is said to be valid or the statutory regulation does not fail, in this case the author takes two things that are in accordance with this study, namely the rules must not conflict with each other both physically and mentally. vertically or horizontally, and the Law must have consistency between the rules as announced and their actual implementation.²⁶

Effective law in general can make what is designed can be realized. When talking about the extent of the effectiveness of the law, we must first be able to measure the extent to which the rule of law is understood or not understood and obeyed or not obeyed. If a rule of law is understood and obeyed by most of the targets for which it is obeyed, it will be said that the law in question is effective.²⁷ Achmad Ali stated that, when you want to know the extent of the effectiveness of the law, you must first be able to measure "the extent to which the rule of law is obeyed or not."²⁸ A rule or policy made by the government or an act or event will have no meaning or benefit if it is not implemented.

One of the things that affect the effectiveness of the law in law enforcement is how the substance of a rule is made. Talking about legal substance means talking about the actualization of legal values and rules that live in society (*living law*), both in the sense of written law and unwritten law. If these values can be properly accommodated into a statutory regulation, then of course the legal product that is born will become a legal product. Furthermore, Jimly Asshiddiqie once stated that the enforcement of the law or a rule means the actual functioning of legal norms as behavioral guidelines in traffic or legal relations in the life of society and the state.²⁹

D. Conclusions

1. When this Presidential Regulation is considered as part of the legislation, not as *beleidregels*/policy regulations that do not impose a burden on the community, it is appropriate to follow the rules of legislation in which the principles of the formation of laws and regulations must be considered. In an emergency, the government has the authority to make rules that can handle existing problems, but all these actions must still pay attention to the applicable law. Presidential regulations must still pay attention to the content of the regulated content. The provisions on sanctions regulated in the *a quo* should first have a law that

²⁵ Jimly Asshiddiqie quoted by Ali Safa"at, *Op.Cit.*

²⁶ Ahmad Redi, 2019, *Op.Cit.*

²⁷ Damang, Legal Effectiveness, <http://www.negara Hukum.com/ Hukum/ Effectiveness- Hukum-2> accessed on February 24, 2022 at 16.00 WITA.

²⁸ Achmad Ali, *Revealing Legal Theory and Judicial Theory Vol.1*, Kencana, Jakarta, 2010, page 375.

²⁹ Accessed via http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf on Monday, May 14 2018 at 22.09 WITA.

regulates or a government regulation as the contents of the contents of a presidential regulation are material ordered by law or material to implement government regulations. The Birth Supreme Court Decision Number 31 P/HUM/2022 which states that the provisions of Article 2 of Presidential Regulation No. 99 of 2020 does not have binding force because it is contrary to the Halal Product Guarantee Act, then immediately the provisions governing vaccine obligations also do not have binding force.

2. Provisions for fines as stipulated in Presidential Regulation No. 14 Year 2021 in fact is not implemented or enforced so that the effectiveness of this regulation also participates questionable because effective law in general can make what is designed can be realized.

E. Suggestion

1. It is better if this Presidential Regulation is revoked because the provisions contained in the Presidential Regulation are not in accordance with the legal form and its content, so that this regulation is not in accordance with the rules for establishing laws and regulations. In the invitation, the validity or validity of the regulation is questioned so that it can be used as the basis for imposing fines on the public, apart from the fact that the juridical basis of the formation of this Presidential Regulation has been declared to be contrary to higher provisions so that this Presidential Regulation is also contrary to higher regulations.
2. The government should take a persuasive approach to the community and build good communication and ensure accurate sources of information so that the public can receive information in one direction regarding the importance of vaccination without being suppressed through sanctions imposed by the government, the community can be vaccinated according to the government's target.

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