

Formulation of Criminal Sanctions in the Regional Regulation in Indonesia

Abdul Madjid¹ Sudarsono² Ismail Navianto³ Prija Djatmika³

1. Doctoral Candidate at The Faculty of Law, Brawijaya University, Indonesia
2. Professor of Administrative Law at The Faculty of Law, Brawijaya University, Indonesia
3. Lecturer of Criminal Law at The Faculty of Law, Brawijaya University, Indonesia

Abstract

Local regulations as one of the forms of legislation nearly all impose sanctions on violators. This is understandable because of the sanctions is part of the preventive efforts to enforce local regulations. Especially with regard to sanctions, local regulations can regulate penal and administrative sanctions. Differences in the offense led to uncertainty related to a prohibited act in several regions in Indonesia. The uncertainty will cause people harmed. Indonesian society is high mobility between regions led to the regional community A convicted of acts prohibited in area B when A is not prohibited in the area. Legal certainty should be understood as a condition, in which the law is applied to the clear certainty to the subject and the object clearly. The law gives certainty to every citizen who under legal proceedings and sanctions when violated or they violate the law. Besides the legal certainty should also be accompanied by the legal process that applies equally to anyone who violates the law. Problems encountered in regulating the establishment of criminal sanctions in it is guidance formation is not clear and is very common. The guidelines for the amount of sanctions is regulated in detail but in the guidelines for determining the act / offense is not set. This is exactly what led to inter-regional arrangements regarding the act / offense prohibited different and cause legal uncertainty.

Keywords: Formulation, Criminal Sanction, Regional Regulation

1. Introduction

Indonesia is a unitary state as mentioned in Constitution of The Republic of Indonesia in 1945 article 1 (1): “ *the state of Indonesia is a unitary state in the Republic form* “. Statements as a unitary state has an impact on implementation of the Government in Indonesia. The state is the highest organization of one group or several groups of people who have the aspiration to live together in a certain area, and has a sovereign government¹. State Assignment divide into three category². Firstly the state must provide protection to the population in a specific region. Secondly, the state support or directly providing various services in the social life of society, economy, and culture. Third, the state becomes an impartial referee between the parties to the conflict in the community and provide a judicial system that guarantees basic fairness and public relations. The task of the state according to the current modern ideology (in a Welfare State or Social Service State), is held in the public interest to provide prosperity and welfare profusely for fairness in a State of Law³.

In the implementation, Indonesia divided into provincial, district or city. The distribution of the region, must be accompanied by the distribution of power / authority. It is on a basic view that the authority given to the area then the area can host Government. Prasudi Amosudirdjo argue about the meaning of authority in relation to the following powers:

*"The authority is what is called formal power, the power that comes from the legislative power (given by law) or from the power of the Executive / Administrative. The authority is the authority over a particular class of persons or government authority over a field (or fields of affairs) that particular round, whereas the authority only of a certain auto parts. Inside there is authority-authorized authority. The authority is a power to do acts of public law."*⁴

While Indroharto argued that the authority acquired attribution, delegation and mandates, each of which is as follows:

"The powers obtained" attribution ", ie authorizing the new government by a provision in the legislation. So, here are born / created a new government authority. At the delegation going on a delegation of authority that has existed by which the Agency has obtained an attributive government authority to another agency. Thus, a delegation is always preceded by the attribution of authority something. On the mandate, there have not been any new authorization and delegation of authority

¹ Moh Mahfud MD, Dasar dan Struktur Ketatanegaraan Indonesia (Edisi Revisi), Penerbit Reneka Cipta, Jakarta, 2000, page 64.

² Y. Sri Pudyatmoko, Perizinan, Problem dan Upaya Pembinaan, PT. Gramedia Widiarsana Indonesia, Jakarta, 2009, page 1.

³ Amrah Muslimin, Beberapa Asas dan Pengertian Pokok Tentang Administrasi dan Hukum Administrasi, Alumni, Bandung, 1985, page 110.

⁴ Prasudi Atmosudirdjo, Hukum Administrasi Negara, Ghalia Indonesia, Jakarta, 1981, page. 29.

*from one agency to another.*¹

This is consistent with the opinion of some other scholars who argued attribution as the creation of the authority of the (new) by forming wet (wetgever) given to a state organ, either existing or newly formed for it. Regardless technically the term of authority and authority, Indroharto found in the juridical sense: the sense of authority is given by the ability of legislation to give rise to legal consequences². While the juridical sense is the ability of the authority granted by legislation to give rise to legal consequences³.

Provision authority to the regions in order to organize Government basically aimed so that the Government can immediately advance the welfare of the community. By looking at the geographical condition of Indonesia is an archipelagic country it is fair if the area is given the authority to hold the Government. At least with the authorization given, the public areas can be served⁴ by the government.

Governance in Indonesia that divides territory into Province and Local Government accompanied by provision of authority regulate in regulation about Local Government. Regulation about Local Government regulate in Act no. 23 of 2014 about Local Government⁵. Politics of Law Act. No 23 of 2014 one of which is for the public welfare as soon as possible. It can be seen from the preamble letter b of Act no. 23 of 2014 which states:

that the regional administration is directed to accelerate the realization of public welfare through the improvement of service, empowerment, and community participation, as well as increased competitiveness of the region with regard to principles of democracy, equity, justice, and the peculiarities of an area within the Unitary State of the Republic of Indonesia;

by looking in politics of law from Act no.23 of 2014 one of which is to accelerate the realization of well-being, it can be understood that the arrangement Local Government under Act no. 23 of 2014 aims for the public welfare.

Act. No 23 of 2014 regulate all aspects of governance. In the aspect of the authority that is used as the basis of regional government, Act No. 23 of 2014 regulate the authority possessed by the Government (Central) and the Local Government. Provision authority to determine whether or not the government should act / deed. The follow the rule of law then legal action is divided into public and private legal actions⁶. One authority possessed by the regional government is to establish a regional regulation. In granting the authorization, the real should be formulated with explicit language. The language of a norm has a very important role because of the language buffer to prevent double meaning or interpretation. Clear language means words that are used explicitly to prevent double meaning or understanding⁷.

One authority possessed by the regional government is to establish a regional regulation. Ordinance making authority by the Regional Government as stipulated in Article 65 paragraph (2) letter b of Act No. 23 of 2014. Learn Article 65 paragraph (2) letter b shall read as follows:

In carrying out the tasks referred to in paragraph (1) head of regional authorities:

- a. *Submit the draft local regulation;*
- b. *Establish legislation that has been approved together with parliament;*
- c. *Set local regulation and decisions of regional heads;*
- d. *Take certain actions in urgent circumstances that are needed by region and / or the public;*
- e. *Carry out other authorities in accordance with the provisions of the legislation.*

Local regulation based on art. 1 (25) Act no. 23 of 2014 :

Local Regulation, hereinafter referred to legislation or called by any other name is Provincial Regulations and Regency / City Regulations.

Basically, local regulations are regulations in a specified area that is used as the basis of governance. In Act No. 12 of 2011 on the Establishment of Legislation states in Article 14 that:

Substance of the Provincial and Regency / City Regulation containing the substance in relation to the implementation of regional autonomy and duty of assistance and to accommodate the particular

¹ Indroharto, Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara, Pustaka Harapan, Jakarta, 1993, page. 90.

² Ibid , page 68

³ Indroharto, Asas-asas Umum Pemerintahan yang Baik, dalam Paulus Efendie Lotulung, Himpunan Makalah Asas-asas Umum Pemerintahan yang Baik, Citra Aditya Bakti, Bandung, 1994, page 65.

⁴ The government is basically a public servant. Thus the paradigm that must be built is the government not as a ruler to be feared but are service providers to the public.

⁵ Act No. 23 of 2014 on Regional Government is the Law governing Regional Government is currently in effect. Previous Law governing Regional Government is Act No. 32 of 2014 on Regional Government.

⁶ Sudarsono, Speech Inauguration Position Professor in the field of Law of the State Administration At the Faculty of Law, University of the State with the title "Choice of Law In Dispute Resolution State Administration in the State Administrative Court", delivered at the Senate Open Meeting of UB, dated March 26, 2008, page .5.

⁷ I Dewa Gede Atmadja, SH,MS, Sudarsono, Suko Wiyono, Filsafat Ilmu Dari Pohon Pengetahuan Sampai Karakter Keilmuan Ilmu Hukum, Cita Intrans Publishing: Malang, 2014, page.112.

conditions of the area and / or further elaboration of laws and regulations are higher.

Article 14 of Act No. 12/2011 can be understood if the substance is a Regional Regulation for the implementation of regional autonomy, implementing higher regulation and set specific conditions area. In the context of decentralization, it is understood that the special conditions local shelter is to provide flexibility to the regions to manage their own regions.

Local regulations as one of the forms of legislation nearly all impose sanctions on violators. This is understandable because of the sanctions is part of the preventive efforts to enforce local regulations. Especially with regard to sanctions, local regulations can regulate penal and administrative sanctions. In the setting of the criminal sanctions, the Act No. 12/2011 set in Article 15 as follows:

- (1) The content of the penal provision can only be loaded in:
 - a. Constitution;
 - b. Provincial Regulation; or
 - c. Regulation of the Regency / City.
- (2) The penal provisions referred to in paragraph (1) letter b and c in the form of the threat of imprisonment of 6 (six) months or a maximum fine of Rp 50,000,000.00 (fifty million rupiah).
- (3) Rules and Regulations Provincial District / City can load penalty of imprisonment or criminal penalties other than those referred to in paragraph (2) in accordance with stipulated in other legislation.

More technically related to setting up arrangements to criminal sanctions in the Provincial Regulations Appendix II of Act No. 12/2011 set as follows:

112. The formulation contains criminal provisions stating criminal punishment for violations of the provisions that contain norms of prohibition or command norm.

113. In formulating criminal provisions need to be considered general principles of criminal provisions contained in the First Book of the Code of Penal, because provisions in the First Book also apply to acts that may be liable under other legislation, unless by Act specified otherwise (Article 103 of the Penal Code).

114. In determining the length of the criminal or the amount of fines to be considered regarding the impact of the crime in the community as well as the element of blameworthiness.

115. The penal provisions are placed in a separate chapter, the chapter of penal provisions which is located after the subject matter set forth or before chapter transitional provisions. If the chapter no transitional provisions, it is located before the chapter is closing provisions.

116. If the legislation is not held grouping chapter by chapter, the criminal provisions in article conveniently placed directly before the article or several articles which contain transitional provisions. If there is no article that contains a transitional provision, the criminal provisions were placed before the chapter or several chapters that contains closing provisions.

117. The only criminal provisions contained in the Act, Province Regulations and Regency / City Regulations.

118. The formulation of the criminal provisions must expressly mention the prohibition norms or norms of command was violated and said article or articles containing some of these norms.

Regional regulations are regulations that are used as guidelines in the regional administration. This means that the regulation concerning the criminal can be understood as an effort to realize the objectives of the regional administration. The purpose of local government itself can not be separated from the state's goal for the public welfare. On the other hand is a form of criminal sanction that provides to an individual suffering and reduce human rights. Therefore, The setting of the criminal sanctions in local legislation interesting to study. The writing is done by limiting the issue : First, how implementation arrangements criminal sanction in local regulation? Second, what problems there are arrangements to criminal sanctions in Local Regulation?

2. Research Method

In relation to the writing method, this article is a legal research which uses normative law qualification. The used approaches are the statue approach, the analytical and conceptual approach, and the philosophy approach. The substances are primary, secondary and tertiary. The data collections methods done through literature that examines the (mainly) secondary data such as legislation, court decisions, agreements, contracts, or other legal documents, as well as the results of the study, the results of the assessment, and other references.

3. Result And Discussion

3.1. Implementation regulation of Criminal Sanction in Local Regulation

Jimly Asshiddiqie mentioned that the Regional Regulation as one manifestation of the law as a whole is the institutionalization of values through a long process, and cannot be separated from the general principle the establishment of legislation, because in terms of content as well as the mechanism of formation of local

regulations that are similar to laws¹. The process of formation of local regulations that long used as much as possible to realize the affectivity of the law. To realize the effective law, the establishment of Local Regulation have to go through the planning process up to the ratification. In the Minister Regulation No. 80 of 2015 on the Establishment of Regional Regulation stated that the establishment of the regulations is the making of local legislation that includes the stages of planning, preparation, discussion, establishment, promulgation and dissemination.

Local Regulation in Indonesia as mentioned earlier almost all provide a threat of criminal sanctions in it. An example is the Tulungagung Regional Regulation No. 7 of 2012 on the Implementation of Public Order, Berau Regulation No. 13 of 2012 on Public Order and Peace Society, and Bekasi Local Regulations No. 10 of 2011 on the General Rules of Order, Cleanliness and Beauty with Grace The One Almighty God. Overall regional regulations have mention in governing public order. If observed, then the inter-regional regulation there are different arrangements related to the threat of sanctions. Here is the difference in setting the amount of the criminal sanction:

NO	LOCAL REGULATION	CRIMINAL PROVISION
1	Local Regulation of Tulungagung regency no. 7 year 2012 about implementation of public order	<p style="text-align: center;">Article 45</p> (1) Violation of the provisions of Article 6 to Article 42 shall be imprisonment of 6 (six) months or a maximum fine of Rp. 50.000.000, - (fifty million rupiah). (2) The offenses referred to in paragraph (1) is an offense.
2	Local Regulation of Berau Regency no 13 year 2012 about Public Order and Serenity Society.	<p style="text-align: center;">Article 15</p> (1) The act of violation of the provisions of Article 2, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10 and Article 11 imposed sanctions Criminal Confinement at maximum 3 (three) months or a fine maximum Rp. 50.000.000, - (fifty million rupiah). (2) The act referred to in paragraph (1) is an offense.
3	Local Regulation of Bekasi no. 10 year 2011 about General Rules of Order, Hygiene and beauty of the Grace of God Almighty.	<p style="text-align: center;">Article 43</p> (1) Any person who violates the provisions of Article 6, Article 7, Article 9, Article 13, Article 18, Article 26, Article 30, Article 32 and Article 35 threatened with imprisonment of 3 (three) months and / or a fine Rp. 50,000,000 (fifty million rupiah). (2) an offense referred to in paragraph (1) is a violation

In addition to differences regarding the magnitude of the threat of criminal sanctions, regulations within areas where threats of criminal sanctions there are also differences in offense or prohibited. Here are the differences offense punishable criminal sanctions in some Local Regulation:

¹ Jimly Asshiddiqie, **Perihal Undang-Undang**, Rajawali Pres, Jakarta, 2010, page. 63.

Local Government	Criminal Sanction	offense
Local Government of Gresik 25/2004	<p>Article 9</p> <p>(1) Violation of the provisions referred to in Article 8 punishable by imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 1,000,000 (one million rupiah);</p> <p>(2) Violations that result in damage to public facilities, social facilities and other infrastructure, in addition to the sanctions referred to in paragraph (1) shall also replace all the damage caused;</p> <p>(3) The offenses referred to in paragraph (1) is an offense.</p>	<p>Article 8</p> <p>To maintain peace and order in Gresik anyone prohibited from:</p> <p>a. Selling, singing, using or building on the edge of a public street, sidewalk, street Island, the red light (Traffic Light) and other public facilities that could disrupt traffic security, tranquility and public order;</p> <p>b. Storing or drying items that cause a foul odor, and can interfere with public health and other items above or on the side of public roads and other public facilities facility;</p> <p>c. Dispose of organic waste, chemical waste, sewage and draining latrines, dead animals on the drains / sewer, rivers, oceans or other public facilities;</p> <p>d. Bathing, defecating and urinating in a visible place public;</p> <p>e. Perform acts that violate the norms of morality and public order in public places and on public roads;</p> <p>f. Transport of mineral mining group C without any cover / tarp that will result in dust / dirt on public roads;</p> <p>g. Laying of building materials and excavated soil / demolition of buildings on the edge of the road, sidewalk, street Island, the green line or facilities other public facilities that may disrupt traffic of people and vehicles;</p> <p>h. Using the edge of the public road and public places controlled by the local government to put vehicles, washing vehicles, servicing and loading and unloading merchandise except in areas that have been determined by the Regional Government;</p> <p>i. Installing or placing any form of billboards, banners, headbands, and so forth. across the street, sidewalk, island road, red lights (Traffic Light) and the green line that can interfere with the movement of persons / vehicles;</p> <p>j. Using public places, which is controlled by the local government, to be used as a place to stay, stay, selling and other activities;</p> <p>k. Allowing / release a four-legged pets to roam unattended or tied;</p> <p>l. Keep pets at risk of transmitting animal diseases to humans without vaccinated regularly.</p>
Local Government of Ponorogo 2/2011	<p>Article 38</p> <p>(1) Any person or entity who violates the provisions of Article 9, Article 10, Article 16, Article 17 paragraph (3), Article 18, Article 25 and Article 26, the threat of imprisonment for a maximum of 60 (sixty) days or a fine of Rp , 50,000,000.00 (fifty million rupiah).</p> <p>(2) The offenses referred to in paragraph (1) is an offense.</p>	<p>Article 9</p> <p>(1) Any person or agency do not provide home / place of business as a sacrilegious</p> <p>(2) Any person or agency is prohibited removing livestock markets and public facilities.</p> <p>(3) Any person or agency is prohibited to build baths, garage, residence, place of business on the river, the banks of rivers, lakes, dams.</p> <p>(4) Any person or entity shall seek to change / transfer of functions parks, public places for personal or group interests.</p> <p>(5) Every person is prohibited to defecate / urinate, and trash in parks, public facilities.</p> <p>(6) Any person or entity is allowed to cut / cut / revoke / damage the plants growing along roads, green lanes and parks.</p> <p>Article 10</p> <p>(1) Any person or entity shall seek to build a permanent portal (bumps) on the road.</p> <p>(2) Any person or entity shall seek to dispose of garbage, piling up junk in the streets and public facilities.</p> <p>(3) Any person or entity may assign the function of roads, bridges, sidewalks without permission</p> <p>Article 16</p> <p>(1) Any person or entity shall seek to catch fish with poison, using electricity and materials or tools that could damage the environment in rivers, lakes and dams.</p> <p>(2) Any person or entity shall seek to kill, shoot, destroy and trade of animals protected by the laws and regulations.</p> <p>(3) Any person or entity shall seek to dispose of the waste plant, the company processed into rivers, lakes and dams</p> <p>Article 17 paragraph (3)</p> <p>Each person / entity shall build baths, garage, residence, place of business on the river, the banks of rivers, lakes, dams.</p> <p>Article 18</p> <p>In responding to flood disasters District Government can implement the program of planting, digging and dredging rivers and waterways by involving the community in the Neighborhood environment and Rukun Warga.</p> <p>Article 25</p> <p>(1) Any person or entity shall seek to organize entertainment establishments without permission or an official appointed regent.</p> <p>(2) Every organization of entertainment establishments that have received permission referred to in paragraph (1) shall not carry out other activities that deviate from the permit.</p> <p>Article 26</p> <p>Each implementation of the activities crowds must obtain a permit from the Regent or appointed official along is not a duty, authority and responsibilities of the Central Government or the Provincial Government.</p>

Differences in the offense led to uncertainty related to a prohibited act in several regions in Indonesia. The uncertainty will cause people harmed. Indonesian society is high mobility between regions led to the regional community A convicted of acts prohibited in area B when A is not prohibited in the area. Legal

certainty should be understood as a condition, in which the law is applied to the clear certainty to the subject and the object clearly. The law gives certainty to every citizen who under legal proceedings and sanctions when violated or they violate the law. Besides the legal certainty should also be accompanied by the legal process that applies equally to anyone who violates the law¹.

3.2. The Form of Regulation of Criminal Sanction in Local Government

Arrangements criminal sanctions in Local Regulation of several examples that have been mentioned causes legal uncertainty in the threat of sanctions and prosecutions. Legal uncertainty must be avoided in a state of law². In the context of local regulations, the real problems of both substance and preparation problems can be minimized due to the formation of Regional Regulation through the process of wetting. Discussion on Local Regulation in practice certainly noticed higher regulation and the public interest. Associated with the punishment, then the higher laws are used as guidance in the area of criminal sanctions is Act No. 12 of 2011. Act No. 12 of 2011 regulates the sentencing guidelines that detail is associated with the threat of sanctions. As for the determination of guidelines prohibited act or offense is not set.

In conjunction with the punishment, then the general arrangement avoided wherever possible. Criminal is essentially just a means to an end. Then the concept of granting authority to criminalize the regions should be different. In sentencing, Political criminal law (criminal law policy) as one of the efforts in tackling a crime, manifest in the enforcement of criminal law is rational. Rational criminal law enforcement consists of three stages, namely the formulation stage, the application stage, and the execution phase are:

- a. Formulation Phase, is the stage of a criminal law enforcement agencies *in abstract* by the legislators. In this phase legislators conducting choose the values appropriate to the circumstances and the situation of the present and the future, then puts it in the form of legislation criminal to achieve legislation criminal most good, in the sense of fulfilling terms of fairness and efficiency. This stage can also be called to the stage of legislative policy.
- b. Applications phase, criminal enforcement stage (stage application of criminal law) by law enforcement officers from the police, the prosecutor's office to the courts. In this stage, law enforcement officers enforce and apply criminal legislation that have been made by a body legislature. In carrying out this duty, law enforcement officials must uphold the values of justice and efficiency. This second phase is also called the stage of judicial policy.
- c. Execution Phase, the enforcement stage (implementation) criminal law in concrete terms by the implementing agency criminal. In this stage of the criminal implementing agency tasked with enforcing criminal laws have been made by the legislators through the application of criminal that has been set by the court. perform executive officers in their duties should be guided by the rules of criminal law that has been made by legislators and law-law (legislature) and the values of fairness and efficiency.

The third phase of the criminal law enforcement, be viewed as a business or rational process that deliberately planned to achieve a certain goal, obviously, should be a braided chain uninterrupted activity that comes from values and leads to crime and punishment. Joseph Golstein, criminal law enforcement distinguish into three kinds, namely First, *Total Enforcement*, namely the scope of the criminal law enforcement as it was formulated by the substantive criminal law. The first law enforcement is not possible because law enforcement is severely restricted by the law of criminal procedure. In addition, the substantive criminal law itself has the possibility of providing boundaries. The scope of these restricted called the area of no enforcement. Secondly, *Full Enforcement*, namely Total Enforcement net area of no enforcement, where law enforcement agencies are expected to enforce the law to the fullest, but according to Goldstein, it was difficult to achieve (not a realistic expectation), for any limitations in the form of time, personal, equipment and so that funds can prompt an discretion. Third, *Actual Enforcement*, Enforcement Actual only able to walk when, already there is evidence enough. In other words, should the existing act, the doers, the witness or other evidence, as well as a provision that was violated.

Overall description of the sentencing stage is basically a unity. Called a unity because if one of the stages there are problems it will have an impact on the others. Because crime is a pain that is given to a person, the initial error in formulating a criminal will lead to apostasy in punishing someone.

In drafting local regulations, when applying criminal prosecution by the Regional Government authorities should also be noted that it should include any matters which are prohibited or unlawful acts under criminal law. According Satochid mammal, things that are against the law under criminal law are differentiated as follows:

¹ Yuliandri, expert testimonies in the Session Case Number 21 / PUU-XIII / 2015 regarding Judicial Review of Law Number 20 Year 2011 concerning Flats Against the Constitution of the Republic of Indonesia Year 1945 Events Listening Description Expert / Witness President (VI), Jakarta, May 19, 2015.

² Indonesia is a country of law as stated in Article 1 (3) of the 1945 Constitution.

1. Wederrechtelijk formal, that is, if something works is prohibited and punishable by the law; and
2. Wederrechtelijk material, namely actions that "may" be Wederrechtelijk, though not expressly forbidden and punishable by the law but also the general principles contained in the legal field (algemeen beginsel).

Furthermore, Schaffmeister, as cited by Andi Hamzah, found "unlawful" listed in the formulation of offense be a core part of the offense referred to as "unlawful specifically" (eg Article 372 Penal Code), while the "illegal" as the element which is not mentioned in the formulation of the offense but the basis to convict referred to as "unlawful in general" (eg Article 351 of the criminal Code)¹.

Opinion of Schaffmeister is ever applied in Indonesian positive law, namely in Article 2 and Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 on the Eradication of Corruption in Article 2 there is an element of unlawfully while Article 3 are not included elements against the law. In the explanation of Article 2, they mentioned that the reference to "unlawfully" include acts against the law in the formal and substantive sense, that although such actions are not stipulated in the legislation, however, if such actions are deemed reprehensible because it does not correspond to the sense of justice or norms of social life in the community, then such actions can be imprisoned. Given the context of criminal law as public law, the act is against the law here is not just attacking private interests but also common interests².

4. Conclusion

Based on arrangement for exposure to criminal sanctions in the Local Regulation, it can be concluded:

- 4.1. Formulation arrangement criminal sanction local regulation between different regions in Indonesia. Such differences include differences in sanctions and differences act / offense prohibited. Such differences in the context of state law should be avoided because of the certainty of law state is one of the components that must be met. Non-compliance with legal certainty components cause statement Indonesia as a state law in 1945 did not fully materialize. Thus arrangement the legal uncertainty of criminal sanctions in the area led to the 1945 Constitutions are not implemented, or in other words, arrangement the criminal sanctions in local legislation is contrary to the 1945 Constitution;
- 4.2. Problems encountered in regulating the establishment of criminal sanctions in it is guidance formation is not clear and is very common. The guidelines for the amount of sanctions is regulated in detail but in the guidelines for determining the act / offense is not set. This is exactly what led to inter-regional arrangements regarding the act / offense prohibited different and cause legal uncertainty.

Reference

Books

- Amrah Muslimin, *Beberapa Asas dan Pengertian Pokok Tentang Administrasi dan Hukum Administrasi*, Alumni, Bandung, 1985.
- Andi Hamzah, *Pengantar dalam Hukum Pidana Indonesia*, Sinar Grafika, Jakarta, 2008.
- I Dewa Gede Atmadja, SH.MS, Sudarsono, Suko Wiyono, *Filsafat Ilmu Dari Pohon Pengetahuan Sampai Karakter Keilmuan Ilmu Hukum*, Cita Intrans Publishing: Malang, 2014.
- Indroharto, *Asas-asas Umum Pemerintahan yang Baik*, dalam Paulus Efendie Lotulung, *Himpunan Makalah Asas-asas Umum Pemerintahan yang Baik*, Citra Aditya Bakti, Bandung, 1994.
- Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, Pustaka Harapan, Jakarta, 1993.
- Jimly Asshiddiqie, *Perihal Undang-Undang*, Rajawali Pres, Jakarta, 2010.
- Marwan Effendy, *sebagaimana dikutip dalam Bachtiar, Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*, Raih Asa Sukses, Jakarta, 2015.
- Moh Mahfud MD, *Dasar dan Struktur Ketatanegaraan Indonesia (Edisi Revisi)*, Penerbit Reneka Cipta, Jakarta, 2000.
- Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, Citra Aditya Bakti, Bandung, 2005.
- Prasudi Atmosudirdjo, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, 1981.
- Y. Sri Pudyatmoko, *Perizinan, Problem dan Upaya Pembenahan*, PT. Gramedia Widiarsana Indonesia, Jakarta, 2009.

Article

Sudarsono, *Speech Inauguration Position Professor in the field of Law of the State Administration At the Faculty of Law, University of the State with the title "Choice of Law In Dispute Resolution State Administration in the State Administrative Court"*, delivered at the Senate Open Meeting of UB, dated March 26, 2008,

¹ Andi Hamzah, *Pengantar dalam Hukum Pidana Indonesia*, Sinar Grafika, Jakarta, 2008, page 168

² Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, Citra Aditya Bakti, Bandung, 2005, page 22

Minutes of Hearing

Yuliandri, expert testimonies in the Session Case Number 21 / PUU-XIII / 2015 regarding Judicial Review of Law Number 20 Year 2011 concerning Flats Against the Constitution of the Republic of Indonesia Year 1945 Events Listening Description Expert / Witness President (VI), Jakarta, May 19, 2015./

Legislation

Constitution of the Republic of Indonesia Year 1945
Act Number 12 Year 2011 on the Establishment of Legislation
Act Number 23 Year 2014 on Local Government