

Reconfiguring Local Criminalization: Constitutional Implications of The New Indonesian Criminal Code For Regional Autonomy

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Abstract. The enactment of the new Penal Law has removed the authority of local governments to prescribe criminal sanctions in local regulations, raising constitutional concerns regarding the implementation of local autonomy. This study aims, first, to examine how the penal amendments affect the implementation of local autonomy and, second, to formulate short-term and long-term legal policies that local governments should adopt in response to the elimination of this authority. This research employs normative legal research using statutory and conceptual approaches. The findings reveal that Articles 613 and 615 of the Penal Law are inconsistent with the constitutional principle of regional autonomy guaranteed under Article 18 paragraphs (5) and (6) of the Constitution, as well as the Law on the Formation of Legislation and the Local Government Law. These provisions reflect a centralized legislative policy that weakens local autonomy by limiting the authority of local governments to formulate criminal sanctions. In the short term, local governments should strengthen the enforcement of administrative sanctions to ensure compliance with local regulations. In the long term, Articles 613 and 615 should be repealed to restore the constitutional authority of local governments to prescribe criminal sanctions through local regulations. Such restoration should be accompanied by strengthening the institutional capacity of local law enforcement agencies, particularly the Civil Service Police Unit, and improving correctional facilities to support the effective implementation of local criminal law. This study contributes to the discourse on the constitutional balance between criminal law codification and regional autonomy in Indonesia.

Keywords: Criminal Code, Local Regulation, Penal Sanctions, Regional Autonomy.

Abstract. Berlakunya Kitab Undang-Undang Hukum Pidana (KUHP) yang baru telah menghapus kewenangan pemerintah daerah untuk menetapkan sanksi pidana penjara dalam peraturan daerah, sehingga menimbulkan persoalan konstitusional terhadap pelaksanaan otonomi daerah. Penelitian ini bertujuan, pertama, untuk menganalisis pengaruh perubahan pengaturan hukum pidana tersebut terhadap penyelenggaraan otonomi daerah, dan kedua, untuk merumuskan kebijakan hukum jangka pendek dan jangka panjang yang perlu ditempuh oleh pemerintah daerah sebagai respons atas dihapuskannya kewenangan tersebut. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan peraturan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Hasil penelitian menunjukkan bahwa ketentuan Pasal 613 dan Pasal 615 KUHP tidak sejalan dengan prinsip konstitusional otonomi daerah sebagaimana dijamin dalam Pasal 18 ayat (5) dan ayat (6) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, serta bertentangan dengan prinsip yang diatur dalam Undang-Undang tentang Pembentukan Peraturan Perundang-undangan dan Undang-Undang tentang Pemerintahan Daerah. Ketentuan tersebut mencerminkan kebijakan legislasi yang bersifat sentralistik sehingga melemahkan pelaksanaan otonomi daerah melalui pembatasan kewenangan pemerintah daerah dalam merumuskan sanksi pidana di dalam peraturan daerah. Dalam jangka pendek, pemerintah daerah perlu mengoptimalkan penegakan sanksi administratif guna menjamin kepatuhan terhadap peraturan daerah. Adapun dalam jangka panjang, Pasal 613 dan Pasal 615 KUHP perlu dicabut untuk mengembalikan kewenangan konstitusional pemerintah daerah dalam menetapkan sanksi pidana penjara melalui peraturan daerah. Pengembalian kewenangan tersebut harus diikuti dengan penguatan kapasitas kelembagaan aparat penegak peraturan daerah, khususnya Satuan Polisi Pamong Praja, serta peningkatan sarana dan prasarana pemasyarakatan guna mendukung efektivitas penegakan hukum pidana di daerah. Penelitian ini memberikan kontribusi terhadap pengembangan diskursus mengenai keseimbangan konstitusional antara kodifikasi hukum pidana nasional dan pelaksanaan otonomi daerah di Indonesia.

Kata Kunci: Kitab Undang-Undang Hukum Pidana, Peraturan Daerah, Sanksi Pidana, Otonomi Daerah.

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INTRODUCTION

In 2026, Law Number 1 of 2023 concerning the Criminal Code (Penal Law) has provided quite significant updates to the Indonesian legal system,¹ one of which is in the aspect of regional autonomy.² For the first time since the 1998 reform, the authority of the Regional Government to formulate criminal sanctions for imprisonment was abolished through Articles 613 and 615 of the Penal Law. In fact, the authority of the Regional Government to formulate criminal sanctions of imprisonment is regulated by two laws so that it has very strong legitimacy: the Law on the Establishment of Regulations and Local Government Law.

The impact of the elimination of the authority of the regional government in formulating criminal sanctions of imprisonment in local regulations is significant and broad. Each region in Indonesia, Provinces, and Regencies/Cities, totaling approximately 600 regions, is certain to have local regulations. In 2024, Indonesia had 55,017 local regulations.³ Most of these contain provisions governing the criminal sanctions of imprisonment. If 20 percent of the total number of local regulations in Indonesia is taken, then there will be around 10,000 local regulations containing criminal sanctions.

For example, at the provincial level, in West Nusa Tenggara alone, there are at least 15 local regulations that regulate criminal sanctions in the form of imprisonment.⁴ Likewise, at the district level, for example, in the Kulon Progo, there are at least 21 local regulations that regulate criminal sanctions in the form of imprisonment.⁵ Thus, thousands of regional regulations containing confinement sanctions are affected by the new penal regime, which converts those sanctions into criminal fines and prevents

¹ Helmalia Cahyani and others, "Kebijakan Pasal-Pasal Kontroversial Dalam RUU KUHP Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat Indonesia," *Journal of Law, Administration, and Social Science*, Vol. 2 No. 2, 2022, p. 81 as cited in Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 5 No. 1, 2023, p. 837.

² Ni'matul Huda, *Pengawasan Pusat Terhadap Daerah Dalam Penyelenggaraan Pemerintahan Daerah* (FH UII Press 2007).

³ BPK RI, "Jumlah Peraturan Daerah," terdapat dalam <https://peraturan.bpk.go.id/Search?jenis=19>, 2024, accessed 2 November 2024.

⁴ Sofwan, Haeruman Jayadi and AD Basniati, "Penegakan Sanksi Pidana Terhadap Pelanggaran Peraturan Daerah (Kajian Terhadap Pelaksanaan Peraturan Daerah Provinsi Nusa Tenggara Barat)," *Jurnal Kompilasi Hukum*, Vol. 8 No. 2, 2023, p. 44.

⁵ Kulon Progo Government, "Daftar Perda Yang Memuat Sanksi Pidanda Di Kabupaten Kulon Progo," 2020 as cited in https://polpp.kulonprogokab.go.id/files/file_uploads/17da53667ff4e0b87eabf581b78b53j7.pdf, accessed 2 Mei 2026.

local governments from prescribing new custodial sanctions through regional regulations.

The large number of local regulations that contain criminal sanctions in the form of imprisonment is a follow-up to the granting of authority to regions after the 1998 reform to create local regulations. Local regulations are possible in all types of areas of provincial and district/city regional authorities, covering all government authorities other than the excluded authorities. This causes each region to create local regulations that regulate their regions from one region to another; some are the same and some are different.⁶ Therefore this research aims to first, examine how the penal amendments affect the implementation of local autonomy, and second, to formulate short-term and long-term legal policies that local governments need to adopt in response to the elimination of the authority to formulate criminal sanctions.

Several previous studies have been conducted on this topic. Globally, conflicts have often occurred between countries and regions in regulating certain provisions. Jones, Geisel, Heddlestone, Greasley, and Skelcher agree that local regulation should not be interpreted as a conflict between the state and the region, but local regulation should be interpreted as helping the state enforce state law in each region.⁷

In determining criminal sanctions in the form of imprisonment, there are at least three major views from several experts. First, Suharyo, Zairin Harahap, and Chandra Perbawati agree in their research that criminal sanctions in the form of imprisonment can be regulated in local regulations with several because they have strong philosophical and practical foundations.⁸ Second, several other experts such as Wisnu

⁶ Gian Manuahe, "Sinkronisasi Antara Hukum Pidana Lokal Dalam Peraturan Daerah Dengan Hukum Pidana Kodifikasi," *II Lex Crimen*, Vol 2 No. 1, 2023, p. 51.

⁷ A Doig dan C Skelcher, "Ethics in Local Government: Evaluating Self-Regulation in England and Wales," *Local Government Studies*, Vol. 27 No. 1, 2001, p. 87 as cited in Martin S Geisel, "The Effectiveness of State and Local Regulation of Handguns: A Statistical Analysis," *Duke Law Journal*, Vol. 1969 No. 647, 1969, p. 647 as cited in Stephen Greasley, "Maintaining Ethical Cultures: Self-Regulation in English Local Government," *Local Government Studies*, Vol. 33 No. 3, 2007, p. 457 as cited in Thomas Heddlestone, "A Tale of Three Cities: Medical Marijuana, Activism, and Local Regulation in California," *Humboldt Journal of Social Relations*, Vol. 1 No. 35, 2022, p. 123 as cited in Stiles P Jones, "State Versus Local Regulation," *The Annals of the American Academy of Political and Social Science*, Vol. 53 No. 1, 1914, p. 93.

⁸ Zairin Harahap, "Pengaturan Tentang Ketentuan Sanksi Dalam Peraturan Daerah," *Jurnal Hukum Ius Quia Iustum*, Vol. 13 No. 1, 2016, p. 38 as cited in Candra Perbawati, "Penerapan Kebijakan Sanksi Pidana Dalam Peraturan Daerah Sebagai Upaya Penanggulangan Kejahatan," *Fiat Justitia; Jurnal Ilmu Hukum*, Vol. 1 No. 1, 2015, p. 19 as cited in Suharyo Suharyo, "Pembentukan Peraturan Daerah, Dan Penerapan Sanksi Pidana Serta Problematikanya," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 4 No. 3, 2015, p. 431.

Indaryanto, Teguh Prasetyo, and Gian Manuahe note that the regulation of criminal sanctions in the form of imprisonment in local regulations needs to consider several important factors.⁹ Third, experts such as Jesfer Roin Arios, KA Azizi Noviansyah, Muhammad Fauzani, and Sofwan, analyze the application of criminal sanctions in the form of imprisonment regulated in Local regulations that focus on certain regions.¹⁰ Previous studies have not discussed the provisions for the elimination of the authority to formulate criminal sanctions in local regulations as regulated in the Penal Law, and what alternatives can be taken by the Regional Government to resolve this problem.

This study is limited to a normative examination of the constitutional and statutory implications of Articles 613 and 615 of the Penal Law for the authority of regional governments to formulate criminal sanctions in local regulations. The analysis focuses on the relationship between national criminal law codification, regional legislative authority, and the constitutional principle of regional autonomy. Accordingly, this study does not empirically assess the implementation or effectiveness of criminal fines and administrative sanctions in individual regions, nor does it comprehensively examine every sector-specific local regulation affected by the new Penal Law. The practical experiences of regional governments, law enforcement agencies, and affected communities therefore remain beyond the scope of this study and may be explored through future empirical research.

METHODOLOGY

This study employs normative legal research using statutory and conceptual approaches. The statutory approach examines the Constitution of the Republic of

⁹ Wisnu Indaryanto, "Interpretasi Mengenai Ketentuan Pidana Dalam Peraturan Daerah Di Daerah Istimewa Yogyakarta," *Wicarana*, Vol. 1 No. 1, 2022, p. 29 as cited in Manuahe, *Op. Cit.* as cited in Teguh Prasetyo, "Kebijakan Kriminalisasi Dalam Peraturan Daerah Dan Sinkronisasi Dengan Hukum Pidana Kodifikasi," *Jurnal Hukum Ius Quia Iustum*, Vol. 16 No. 1, 2009, p. 18.

¹⁰ Jesfer Robin Arios *et al.*, "Analisis Sanksi Pidana Pada Peraturan Daerah Kota Medan Nomor 9 Tahun 2012 Tentang Penggunaan Retribusi Kekayaan Daerah," *Jurnal Pendidikan Sosial dan Humaniora*, Vol. 3 No. 2, 2024, p. 438 as cited in Fauzan Muhammad, Djumadi, dan Riris Ardhanariswari, "Perumusan Ketentuan Pidana Dalam Pembentukan Peraturan Daerah (Studi Di Kabupaten Purbalingga)," *Jurnal Dinamika Hukum*, Vol. 8 No. 2, 2008, p. 154 as cited in Azizi Noviansyah and Okta Janan Riansyah, "Penerapan Sanksi Terhadap Pelanggaran Peraturan Daerah Kabupaten Lahat Nomor 32 Tahun 2006 Tentang Usaha Pertambangan Bahan Galian Tambang Golongan C," *Jurnal Teknik Patra Akademika*, Vol. 6 No. 02, 2015, p. 14 as cited in Sofwan, Jayadi, and Basniati, *Op. Cit.*

Indonesia, Law Number 1 of 2023 concerning the Criminal Code, Law Number 1 of 2026 concerning Penal Adjustment, Law Number 12 of 2011 concerning the Formation of Legislation as amended, and Law Number 23 of 2014 concerning Local Government as amended. The conceptual approach is used to analyze regional autonomy, delegated criminalization, proportionality, and the principle of *ultimum remedium*. The legal materials consist of primary legal materials in the form of legislation and relevant judicial decisions, and secondary legal materials in the form of books, journal articles, academic manuscripts, and previous studies. The materials were collected through library research and document study. The object of the research is the legal framework governing criminal and administrative sanctions in regional regulations; therefore, this study does not involve human participants, research subjects, or an empirical research location. The legal materials are analyzed qualitatively and prescriptively through grammatical, systematic, and constitutional interpretation, followed by harmonization and evaluation of the consistency between the national penal framework and the principle of regional autonomy.

RESULT AND DISCUSSION

Obstacles in Implementing the Local Autonomy Law

There are two legal provisions that have a major impact on the regulation of criminal sanctions in the local regulation. First, Article 613 of the Penal Law states that when the Penal Law comes into effect, every Law and local regulation containing criminal provisions must comply with the provisions of Book One of this Law. Second, Article 615 of the Penal Law stipulates that when this law comes into effect,¹¹ the imprisonment in other laws outside this Law and local regulations is replaced with a fine with the following provisions:

¹¹ Pumadi Purbacaraka and Soerjono Soekanto, *Perihal Kaidah Hukum*, (PT CitraAditya Bakti 1993) as cited in Jimly Asshiddiqie, *Perihal Undang-Undang*, (PT Rajawali Grafindo Persada 2010) as cited in Emanuela Carbonara and Francesco Parisi, "The Paradox of Legal Harmonization," *Public Choice*, Vol. 132 No. 3, 2007 as cited in Kusnu Goesniadhie Slamet, "Harmonisasi Hukum Dalam Perspektif Perundang-Undangan," *Jurnal Hukum Ius Quia Iustum*, Vol. 11 No. 27, 2004.

- a. imprisonment of less than 6 (six) months is replaced with a maximum fine of category I, and
- b. imprisonment for 6 (six) months or more was replaced with a maximum fine of category II.

In the case of a fine that is threatened alternatively with imprisonment, as referred to in paragraph (1) exceeding category II, the provisions in the statutory regulations still apply.

The constitutional problem arising from Articles 613 and 615 should not be understood merely as a technical conversion of custodial sanctions into criminal fines. More fundamentally, these provisions alter the design of delegated local criminalization by narrowing the range of penal instruments available to local governments. Local regulations have historically operated not only as administrative instruments, but also as normative tools through which regions respond to concrete local harms, such as public order disturbances, environmental violations, and culturally specific forms of social disorder. Therefore, the removal of custodial sanctions from local regulations raises a broader question concerning whether national penal codification may recalibrate the constitutional space of local norm-making without a proportional assessment of regional autonomy.

The legal provisions of Article 613 and Article 615 Penal Law above have at least eliminated 2 laws that regulate the authority of the Regional Government in formulating criminal sanctions of imprisonment and hundreds or even thousands of Provincial/District/City Local regulations that regulate criminal sanctions of imprisonment, the 2 laws are:

First, Article 15 of the Law on the Establishment of Regulations states that material regarding criminal provisions may only be included in the following:

- a. Law;
- b. Local (Provincial) Regulation; or
- c. Local (Regency/City) Regulation.

Criminal provisions in Provincial Local regulations or Regency/City Local regulations include the threat of imprisonment for a maximum of 6 (six) months or a maximum fine of IDR 50,000,000.00 (50 million rupiahs). *Second*, Article 238 paragraph (2) and paragraph (3) of the Local Government Law state that local regulations may contain the threat of imprisonment for a maximum of 6 (six) months or a maximum fine of Rp50,000,000.00 (50 million rupiah). Local regulations may contain the threat of imprisonment or a fine, in addition to the aforementioned criminal penalties, in accordance with the provisions of laws and regulations.

The transition from custodial sanctions to criminal fines also creates a problem of legal certainty for existing local regulations. Many local regulations were enacted under a statutory framework that expressly allowed regional governments to prescribe short-term custodial sanctions. Once the new Penal Code takes effect, these provisions may remain textually present in local regulations but become normatively adjusted by operation of national law. This situation may generate interpretive difficulties for regional enforcement bodies, civil service investigators, prosecutors, and courts, particularly in determining whether a local criminal provision should be directly converted into a fine or whether the regional regulation must first be formally amended. Accordingly, the impact of Articles 613 and 615 is not limited to the validity of local criminal sanctions, but also extends to the coherence of enforcement practice during the transitional period.

Philosophically, the authority of Local Governments to formulate imprisonment sanctions rests on at least three foundational considerations. *First*, this authority is a direct consequence of the post-reformasi constitutional transformation that emphasizes the principle of regional autonomy (decentralisation)¹² The reconfiguration of state power after 1998 shifted Indonesia from a highly centralized model toward a decentralized governance system, granting Provinces and Regencies the right to manage their own governmental “households”. Within this framework, the formulation of criminal sanctions, when delegated by statutory authorization

¹² Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, (PSH FH UII 2002) as cited in Ni'matul Huda, *Hukum Pemerintahan Daerah*, (Nusa Media 2009) as cited in Agus Dwiyanto, *Reformasi; Tata Pemerintah Dan Otonomi Daerah*, (Pusat Studi Kependudukan dan Kebijakan UGM 2003).

serves as an expression of each region's autonomy to regulate public order, community welfare, and specific local problems. In essence, decentralization is not merely administrative but also normative, enabling regions to craft legal instruments responsive to their own socio-political contexts.

Second, this authority is philosophically grounded in the recognition of local wisdom.¹³ Indonesia is a culturally diverse archipelago where customary norms, community values, and social expectations vary significantly between regions. Local wisdom shapes the perception of what behaviors are socially harmful and what forms of punishment are considered appropriate. Therefore, the ability to design criminal norms and sanctions within the boundaries of national law allows local governments to translate their unique cultural understandings into legal form. This variation does not undermine national unity but enriches the legal system by accommodating pluralism, ensuring that regulation is context-sensitive and socially accepted by the local community.

Third, the imposition of criminal sanctions by regional governments is justified by functional and instrumental considerations, namely to support the effectiveness and efficiency of regional governance.¹⁴ Administrative regulations without enforceable sanctions often lack deterrent effect and fail to ensure compliance. Criminal sanctions, including imprisonment where permitted, serve as a last-resort mechanism (*ultimum remedium*) to ensure that regional policies such as public order, environmental protection, or urban management can be implemented effectively. Sanctions function not only as punitive tools but also as preventive and corrective instruments to safeguard the orderly execution of government functions. By incorporating criminal sanctions, regional regulations acquire greater normative force, enhancing public discipline and strengthening policy enforcement at the local level.

Overall, the authority to formulate imprisonment sanctions within regional legislation rests on a philosophical triad: autonomy, as a constitutional mandate of post-reform

¹³ HM Busrizalti, *Hukum Pemda Otonomi Daerah Dan Implikasinya*, (Total Media 2013) as cited in Dwiyanto, *Op. Cit.*, as cited in Yusnani Hasyimzoem, *Hukum Pemerintahan Daerah* (PT Rajagrafindo Persada 2017).

¹⁴ Sri Nur Hari Susanto, "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi," *Administrative Law and Governance Journal*, Vol. 2 No. 1, 2019, p. 126, as cited in Harahap, *Op. Cit.*, and Suharyo, *Op. Cit.*

governance; local wisdom, as recognition of Indonesia's legal pluralism; and instrumental necessity, to guarantee administrative effectiveness. Together, these foundations provide the theoretical justification for normative decentralization in Indonesia's contemporary legal framework.

Practically, the formulation of local regulation is often influenced by a competitive regulatory culture among local government drafters. Many local legislative bodies and executive teams feel compelled to include criminal provisions, especially imprisonment, in the local regulation they draft. This phenomenon stems from a perception that a Regional Regulation without criminal sanctions lacks normative force and fails to function as a genuine regulatory instrument. In the view of many regional policymakers, a local regulation that is devoid of penal provisions resembles nothing more than an administrative "circular letter," serving merely as guidance for officials rather than as a binding rule governing public behavior.¹⁵ This belief drives the tendency to equate the presence of criminal sanctions with the legal seriousness and authoritative weight of a regulation.

In addition, there is a widespread metaphor within regional governance circles that a local regulation without criminal sanctions is akin to a "toothless tiger."¹⁶ This expression reflects the underlying assumption that the regulation will be unable to ensure compliance, deter violations, or effectively address social problems without the supporting threat of penal consequences. Local governments often assume that administrative sanctions, such as warnings, fines, or revocation of permits are insufficient to influence behavior or maintain public order, especially in contexts where community discipline is perceived to be low or regulatory resistance is high. As a result, criminal sanctions are viewed as a necessary "bite," granting the local regulation sufficient coercive power to be enforceable on the ground.

His pragmatic motivation is further reinforced by inter-regional benchmarking practices. When one jurisdiction adopts penal sanctions, neighboring regions often feel compelled to implement similar measures to avoid perceptions of regulatory

¹⁵ Wicipto Setiadi, "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia*, Vol. 6 No. 4, 2009, p. 603.

¹⁶ Indaryanto, *Op. Cit.* as cited in Manuahe, *Op. Cit.* as cited in Suharyo, *Op. Cit.*

weakness or administrative laxity. This phenomenon fosters a form of regulatory competition, in which local governments seek to demonstrate decisiveness and institutional authority through the incorporation of criminal provisions. In certain instances, this competitive dynamic is shaped by political considerations, as regional leaders may advocate for stricter penal clauses to project political resolve, strengthen public credibility, or respond to societal demands for firm action against perceived disorder or moral deterioration.

However, this trend also raises significant legal and policy concerns. Excessive reliance on criminal sanctions can lead to overcriminalization at the regional level, conflicting with higher-level laws, exceeding regional authority, or burdening law enforcement institutions. It may also overlook the principle of *ultimum remedium*, which emphasizes that criminal law should be used only as a last resort when administrative or civil mechanisms are insufficient. Without careful assessment, the insertion of criminal sanctions into local regulation risks transforming local regulations into overly punitive instruments, potentially leading to legal uncertainty, selective enforcement, and unnecessary criminalization of minor community behaviors.¹⁷

In essence, while the inclusion of criminal sanctions in local regulations may be driven by practical concerns about regulatory effectiveness and the desire to project authoritative governance, it must be balanced with legal proportionality, constitutional limits, and sound regulatory policy. The challenge lies in ensuring that local regulation remain effective tools of governance without resorting prematurely or excessively to the coercive force of criminal law.

Criminalization policies in Local regulations can be grouped into four types: ¹⁸

- a. Criminalization policies from delegated laws, for example Local regulations on Retributions and Taxes;
- b. Criminalization policies that have been regulated in codified criminal law, for example, local regulations on liquor and prostitution.

¹⁷ Manuahe, *Op. Cit.* as cited in Suharyo, *Op. Cit.*

¹⁸ Prasetyo, *Op. Cit.*

- c. Criminalization policies from Islamic law, for example, Qanun of Nanggroe Aceh Darussalam Province Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Aqidah, Worship, and Islamic Law.
- d. Criminalization policies from customary law, such as local regulations concerning customary traditions that are still maintained in the area. For example, Regional Regulation Number 12 of 1999 concerns Road Excavation, Changing Sidewalks and Piling in the Badung Regency Area.

To determine the legal policy of eliminating the authority of the Regional Government in formulating criminal sanctions in local regulations, there are two indicators. First, legal ideals are expected from the elimination of criminal sanctions for incarceration. The second is the process of political constellation with the dynamics underlying the elimination of criminal sanctions incarceration.¹⁹

To analyze the two points above, we can look at the Penal Law Academic Manuscript. Unfortunately, the Penal Law Academic Manuscript does not explain why criminal sanctions for incarceration were eliminated.²⁰

The first indicator is the legal ideal expected from the elimination of the incarceration of criminal sanctions. Several views underlie the elimination of criminal sanctions incarceration, as follows.²¹ First, the application of criminal sanctions is ineffective in terms of implementation. Often, convicts sentenced to imprisonment are placed in cells and treated the same as convicts sentenced to prison. This is due to inadequate facilities owned by the Correctional Institution or overcriminalization.²² The lack of these facilities forces the state to put convicts incarcerated in the same cells as convicts sentenced to prison. Second, Book 3 of the Penal Law on violations includes relevant

¹⁹ Mahfud MD, *Politik Hukum Di Indonesia*, (Rajawali Pers 2010) as cited in Mahfud MD, *Membangun Politik Menegakkan Konstitusi*, (Rajawali Pers 2010) as cited in Imam Syaukani and A Ahsin Thohari, *Dasar-Dasar Politik Hukum*, (Raja Grafindo Persada 2006) as cited in Dr Abdul Rasyid Saliman, "Politik Hukum Perburuan Di Indonesia : Sebuah Gerak Perubahan Karakter Produk Hukum Dari 1945 –2021," *Jurnal Legalitas (JLE)*, Vol. 1 No. 1, 2023, p. 109.

²⁰ Enny Nurbaningsih, "Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP)," 2015 https://bphn.go.id/data/documents/naskah_akademik_tentang_kuhp_dengan_lampiran.pdf, accessed 13 November 2024.

²¹ Muhammad Rafi, "Abolisi Pidana Kurungan Dalam RKUHP : Pengaruh Dan Akibatnya," (*Aliansi Nasional Reformasi KUHP*, 16 November 2015) <https://reformasikuhp.org/abolisi-pidana-kurungan-dalam-rkuhp-pengaruh-dan-akibatnya/> accessed 13 November 2024.

²² Mahrus Ali, "Overcriminalization Dalam Perundang-Undangan Di Indonesia," *Jurnal Hukum Ius Quia Iustum*, Vol. 25 No. 23, 2018, p. 405.

criminal acts in Book 2. In other words, in the Penal Law, there will be no more classification of violations or crimes, and the term used will be one, namely Criminal Acts only. However, identifying violations of imprisonment is irrelevant. It must be noted that the understanding of academics and legal practitioners in Indonesia is still closely related to linking criminal violations with imprisonment. The implication is that if a discourse on eliminating violations is carried out, it will indirectly eliminate imprisonment. Third, the elimination of Imprisonment from the Penal Law is the result of the "accusation" of Imprisonment being the cause of the ineffectiveness of fines. Convicts often prefer imprisonment to paying fines, making the government "furious" about imprisonment. The fine that should have entered the state treasury has instead turned into a cost that the state must spend to finance convicts in cells.

The legal ideals above show that the elimination of the authority of the Regional Government in formulating criminal sanctions in local regulations is more closely considered in terms of the criminal law system than in terms of the principles of regional autonomy law.

This is reinforced by the second indicator, the political constellation process, with dynamics underlying the elimination of criminal sanctions in prison. The political constellation at the time of the discussion and ratification of the Penal Law indicated symptoms of the centralization of power. This is evidenced by the birth of several laws that take back the authorities belonging to these regions. Some of these laws include the following. First, Law Number 11 of 2020 concerning Job Creation (currently Law Number 6 of 2023 in effect). This Law regulates the takeover of licensing authorities held by the Regional Government, to be handed over to the Central Government.²³ Second, Law Number 1 of 2022 concerns financial relations between the central and regional governments. This Law regulates the takeover of taxes and levy authorities held by the Regional Government to be handed over to the Central Government.²⁴ Third, 4 Laws governing the expansion of Papua Province. This Law regulates the

²³ Sigit Riyanto, "Ringkasan Eksekutif Kerta Kebijakan Catatan Kritis Terhadap Uu No. 11 Tahun 2020 Tentang Cipta Kerja," 2020, as cited in <https://rispub.law.ugm.ac.id/wp-content/uploads/sites/1049/2020/11/Ringkasan-Eksekutif-Kertas-Kerja-UU-Cipta-Kerja-FH-UGM-5-November-2020-final.pdf> accessed 13 November 2024.

²⁴ Alit Ayu Meinarsari and Harsanto Nursadi, "Arah Baru Hubungan Keuangan Pemerintah Pusat Dan Pemerintahan Daerah: Sentralisasi Atau Desentralisasi," *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 7 No. 8, 2022, p. 10509.

takeover of authority for expansion from the Papuan People's Assembly (Regional Government) to be handed over to the Central Government.²⁵

Several of these laws have indicated the occurrence of a political constellation that requires centralization of power. The Penal Law adds to the series of symptoms of the political constellation of centralization of power due to the elimination of the authority of the Regional Government in formulating criminal sanctions of imprisonment in local regulations. The failure to consider the principle of regional autonomy in the policy of eliminating the authority of the Regional Government in formulating criminal sanctions of imprisonment in local regulations as regulated in the Penal Law has violated several principles, as follows:

First, the principle of regional autonomy was mandated by the 1998 reform and Constitution. Regional autonomy mandates an order related to the division of authority, duties, and responsibilities as well as regulating and managing government affairs between the center and regions. This means that the concept of regional autonomy is the division of authority to regulate and manage the household affairs of its own region while still paying attention to the rules regulated by the central government.²⁶ Articles 18 (5) and (6) of the Constitution state that The Regional Government exercises the broadest possible autonomy, except for government affairs that are determined by law as the affairs of the Central Government. The Regional Government has the right to stipulate local and other regulations to implement autonomy and assistance tasks. Regional autonomy is an effort to realize democratization, where aspects of people's aspirations in this case and the interests in each region are well accommodated. Regional autonomy allows the "local wisdom" of

²⁵ Muhammad Addi Fauzani, "Politik Hukum Pembentukan Undang-Undang Tentang Pemekaran Daerah Provinsi Di Papua," *Jurnal Legislasi Indonesia*, Vol. 20 No. 3, 2023, p. 37 as cited in Muhammad Addi Fauzani, "Alternative Implementation Of Regulations On Taking Over Regional Government Authorities By The Central Government," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol. 9 No. 2, 2024, p. 496.

²⁶ Ni'matul Huda, *Desentralisasi Asimetris Dalam NKRI*, (Nusa Media 2014) as cited in Robert Endi Jaweng, "Kritik Terhadap Desentralisasi Asimetris Di Indonesia," *Jurnal Analisis CSIS*, Vol. 40 No. 2, 2011, p. 162 as cited in Gunawan A Tauda, "Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia," *Jurnal Administrative Law & Governance*, Vol. 1 No. 4, 2018, p. 423 as cited in Ni'matul Huda, *Desentralisasi Secara Umum Dan Desentralisasi Asimetris Di Indonesia*, (Nusamedia 2021) as cited in Muhammad Addi Fauzani, "Urgensi Penataan Ulang Konsep Desentralisasi Asimetris Dalam Negara Kesatuan Republik Indonesia," (Universitas Islam Indonesia 2020), <https://dspace.uui.ac.id/handle/123456789/28884> as cited in Andhika Yudha Pratama, "Pelaksanaan Desentralisasi Asimetris Dalam Tata Kelola Pemerintahan Daerah Di Era Demokrasi," *Jurnal Pendidikan Pancasila dan Kewarganegaraan*, Vol. 28 No. 1, 2015, p. 10

each region to run properly according to the initiative of the community in the region. Consequently, regional autonomy should not be understood as penal sovereignty or an unrestricted authority to determine the type and maximum severity of punishment. The constitutional concern lies in whether a nationally uniform fine-only model is proportionate to the diversity of local regulatory harms and whether local governments retain sufficient enforcement instruments to carry out the governmental functions assigned to them.

Second, the determination of sanctions in a regulation is not merely a matter of technical legislation but an inseparable part of the substance or material of the legislation itself. According to Ali,²⁷ sanctions must be viewed as an essential element if we view law as a rule. Almost all dogmatic jurists view law as a sanctioned rule supported by the highest authority in society.

The provisions of sanctions in a regulation are related to the content and nature of legal rules. Based on their content, legal rules (legal norms) can be divided into:²⁸

- a. legal rules containing orders (gebod);
- b. legal rules containing prohibitions (verbod);
- c. legal rules containing permissibility (mogen)

A mandatory rule is an order to carry out something that is usually stated with the words "obligatory" or "must." "A prohibition rule is also an order not to do something, which is often formulated with the words "prohibited", "must not", or "cannot." Judging from its nature, legal rules can be distinguished into imperative and facultative legal rules. Legal rules containing orders and prohibitions are imperative, while legal rules containing permissibility are facultative. The difference between imperative law and facultative law is based on nature. This means that imperative law is coercive, whereas facultative law allows for choice. Imperative legal rules

²⁷ Achmad Ali, *Mengungkap Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)*, (Chandra Pratama 1996).

²⁸ Harahap, *Op. Cit* as cited in Soerjono Soekanto and Pumadi Purbacaraka, *Aneka Cara Pembedaan Hukum*, (PT Citra Aditya Bakti 1994) as cited in Purbacaraka and Soekanto, *Op.Cit*.

(*dwingenrecht*) or *normatiefrecht* are legal rules that cannot be set aside by parties, either through a certain act or through an agreement.²⁹

The characteristic of positive law according to Hans Kelsen is coercive order or coercive order. Coercion is a form of sanction, namely, the seizure or forcible seizure beyond the will of the affected person of anything owned, such as life, freedom, or property. However, Kelsen said that sanctions are not only in the form of punishment but can also be in the form of rewards. Attamimi also said that sanctions (in this case, criminal sanctions or other coercive sanctions) are one of the characteristics that distinguish legal norms from other norms (customary, religious, and moral). The prominent difference between legal norms and other social norms is sanctions. Sanctions for violations of legal norms can be forced and implemented beyond the will of the person concerned.³⁰

The need to include sanctions in statutory regulations is more firmly stated by Pospisil. According to Pospisil there are 4 (four) legal attributes: the existence of authority; the existence of a purpose to treat the law universally; the existence of rights and obligations; and the existence of sanctions. The existence of sanctions is intended so that the law "has teeth"; "teeth" are what are called sanctions. Legal rules in the form of orders (obligations) or prohibitions are an empty guarantee and tend not to be obeyed at all if they are not attached to sanctions.

Therefore, sanctions on the one hand are an absolute criterion of law, and the other hand sanctions do not always have to be in the form of physical sanctions. In fact, the attributes of sanctions need not be limited to negative sanctions (both physical and psychological). In law, positive sanctions are also found, which are rewards given to those who can be used as examples of the quality of legal compliance. These theories establish the importance of enforceability, but they do not prescribe confinement as the necessary form of sanction. In regional governance, the type of sanction must be selected according to the nature of the regulated obligation, the seriousness of the

²⁹ Harahap, *Op. Cit.* as cited in Bagir Manan, *Hukum Positif Indonesia, (Suatu Kajian Teoritik)* (Fakultas Hukum Ull Press 2004) as cited in Soekanto and Purbacaraka, *Op. Cit.*

³⁰ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Liberty 1999) as cited in Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Kanisius 1998) as cited in Asshiddiqie, *Op. Cit.*

harm, the objective of enforcement, and the principle of proportionality. Administrative sanctions are appropriate where the primary objective is compliance or restoration, criminal fines may be used where a punitive response is necessary, and liberty-restricting sanctions require a substantially stronger justification.

Third, local regulations were formed by referring to the laws and regulations that have been in effect since the 1999 reformation to Law Number 23 of 2014, which contain functions, and are repressive, as a manifestation of The Interaction Model. According to Clarke and Stewart, the model of the relationship between central and regional governments can be divided into the following categories.³¹

- a. The Relative Autonomy Model provides relatively large freedom to local governments while still respecting the existence of the central government. The emphasis is on freedom of action for local governments within the framework of the powers/duties and responsibilities that have been formulated by laws and regulations.
- b. The Agency Model. A model in which local governments do not have sufficient power such that their existence is seen as agents of the central government tasked with implementing the policies of the central government. In this model, various detailed instructions in laws and regulations as control mechanisms are very prominent. In this model, local revenue is not important and the regional financial system is dominated by assistance from the central government.
- c. The Interaction Model. It is a form of model in which the freedom and role of local governments are determined by the interaction between the central and local governments. In terms of the state, the authority of the local government and the DPRD in making local regulations, in addition to being directly represented by the central government, is also represented by its citizens.

Fourth, the importance of expanding the public sphere in supervision and governance, as stated by Jurgen Habermas, is that a state that organizationally has very large authority in making and implementing its policies will be controlled by

³¹ Suharyo, *Op. Cit.* as cited in Huda, *Pengawasan Pusat Terhadap Daerah Dalam Penyelenggaraan Pemerintahan Daerah, Op. Cit.*

elements that are actually legitimate owners of the state.³² Habermas's concept of the public sphere is relevant only to the procedure through which local sanctions are justified. Because sanctions may affect liberty, property, livelihoods, and access to public services, the selection between administrative measures and criminal fines should be supported by transparent evidence, public participation, and reasoned deliberation during the formation of regional regulations. This theory therefore strengthens the requirement of democratic justification and accountability, but it does not independently justify the use of confinement.

In addition to the analysis of the legal text above, there are several case laws in several regions regarding criminal sanctions of imprisonment that are effective in deterring violators. First, in the West Indonesia Region, there are two regions that have successfully used criminal sanctions of imprisonment to reduce the number of violations, namely in the Lampung Region and the City of Yogyakarta. In the Lampung Region, criminal sanctions for imprisonment have succeeded in reducing violations of homeless users and beggars.³³ In the City of Yogyakarta, criminal sanctions for imprisonment are effective in reducing prostitution. Second, in Central Indonesia, there are two examples of regions that are effective in using criminal sanctions, namely Surabaya and West Nusa Tenggara. In Surabaya, criminal sanctions of imprisonment can have a deterrent effect on violators of cleanliness and data falsification.³⁴ In West Nusa Tenggara, criminal sanctions of imprisonment can reduce violations of public order.³⁵ Third, in the Eastern Indonesian region, namely, the city of Pare-Pare, it has succeeded in providing a deterrent effect with criminal sanctions of imprisonment for environmental polluters.³⁶

³² Suharyo, *Op. Cit.*

³³ Raffky Ariansyah, "Efektivitas Penerapan Sanksi Pidana Dalam Peraturan Daerah Kota Bandar Lampung Nomor 3 Tahun 2010 Tentang Pembinaan Anak Jalanan, Gelandangan Dan Pengemis," Universitas Lampung 2014 as cited in <http://digilib.unila.ac.id/3913/>, accessed 13 November 2024.

³⁴ Zandi Ferryansa, "Efektifitas Penerapan Sanksi Pidana Atas Pelanggaran Peraturan Daerah Di Kota Surabaya : Studi Atas Perda No.4 Tahun 2000 Tentang Kebersihan, Perda No.17 Tahun 2003 Tentang PKL, Dan Perda No.3 Tahun 2000 Tentang Pendaftaran Penduduk Dan Catatan Sipil," Universitas Brawijaya 2007, as cited in <https://repository.ub.ac.id/eprint/109843/>, accessed 13 November 2024.

³⁵ Sofwan, Jayadi and Basniati, *Op. Cit.*

³⁶ Asram AT Jadda *et al.*, "Efektivitas Penerapan Sanksi Terhadap Pelaku Pencemaran Lingkungan Hidup Akibat Sampah Di Kota Parepare," *Madani Legal Review*, Vol. 6 No. 2, 2022, p. 47, <https://jurnal.umpar.ac.id/index.php/malrev/article/view/2027>, accessed 13 November 2024.

Adjusting Enforcement Procedures to Increase the Law's Effectiveness in Supporting True Local Administration and Autonomy

This study aims to offer an alternative solution to the policy of eliminating the authority of the Regional Government in formulating criminal sanctions in local regulations, as regulated by the Penal Law. The Regional Government can take two legal steps: short-term legal steps and long-term legal steps. These two steps should be understood as complementary rather than mutually exclusive: administrative sanctions provide an immediate enforcement response, while legislative reform addresses the structural constitutional problem.

Short-term legal steps by the Regional Government using administrative legal sanctions to prosecute violators of local regulations. Administrative sanctions are widely understood as sanctions imposed by the makers of regulations without intervention by courts or tribunals.³⁷ Administrative law is an action by the government, executive, or *bestuurmaatregel* or the measure/action of the government against violations of applicable laws and is reparatory in nature (returning functions and conditions to their original state). This is different from criminal law sanctions, which are condemnatory in nature (causing physical or psychological suffering) in the form of imprisonment, fines, or other disciplinary actions. Administrative sanctions have various forms and are regulated by at least two of these provisions:³⁸

- a. Attachment II Number 66 Law on the Establishment of Regulations: Administrative sanctions may include the revocation of permits, dissolution, supervision, temporary suspension, administrative fines, or government/police coercive power. Government coercive action (*bestuursdwang/politiedwang*) police in the form of:
 - i. termination of activities;
 - ii. sealing;
 - iii. confiscation; and/or
 - iv. demolition.

³⁷ Susanto, *Op. Cit.*

³⁸ Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia*, (Graha Ilmu 2012).

- b. Articles 238 (4) and (5) of the Local Government Law state that, in addition to criminal sanctions, local regulations may contain threats of sanctions that are intended to restore the original state and administrative sanctions. These administrative sanctions include the following.
- i. Verbal warning;
 - ii. Written warning;
 - iii. Temporary suspension of activities;
 - iv. Permanent suspension of activities;
 - v. Temporary revocation of permit;
 - vi. Permanent revocation of permit;
 - vii. Administrative fines; and/or
 - viii. Other administrative sanctions in accordance with the provisions of laws and regulations.

Article 5 Paragraphs (4) and (5) of the Minister of Home Affairs Regulation on the Formation of Regional Legal Products: Local regulations may contain threats to administrative sanctions. Verbal and written warnings, temporary/permanent suspension of activities, temporary/permanent revocation of permits, administrative fines, and other administrative sanctions in accordance with the provisions of the law.

As quoted by Andi Hamzah, H. G. de Bunt explains the guidelines for choosing the application of administrative instruments, criminal instruments, or even both, by considering normative criteria, instrumental criteria, and opportunistic criteria.³⁹

Normative criteria are based on the view that criminal instruments are applied to violations with very high negative ethical values. In addition, if the goal is to restore conditions or repair damage but the administrative apparatus is reluctant to act or even get involved in the violation, then the criminal instrument can back up so that a violation can be resolved legally. The same applies if the application of the administrative instrument goes through a very long procedure, then the criminal

³⁹ Andi Hamzah, *Penegakan Hukum Lingkungan*, (Sinar Grafika 2005).

instrument can back up so that the damage does not drag on. Conversely, if proof in criminal law is very difficult, the administrative instrument can return it.⁴⁰

Opportunistic criteria are applied if administrative sanctions cannot be enforced; for example, if administrative coercion or money coercion (dwangsom) cannot be carried out because the perpetrator is bankrupt or insolvent, then the criminal law instrument will return it up. Criminal law instruments can also support the application of administrative sanctions in the form of the revocation of business licenses, considering that the imposition of such sanctions can have a major impact in the form of unemployment due to termination of employment with the closure of the company. Meanwhile, the imposition of administrative sanctions together with criminal sanctions, or the imposition of sanctions in an external cumulative manner, does not cause a case to become *ne bis in idem*. According to Andreae, the principle of *ne bis in idem* is applied in the criminal law mechanism for the second time, not in the enforcement of different legal fields (administrative law and criminal law). There are differences in the characteristics between administrative sanctions and criminal sanctions in the form of fines, which can be seen in Table 1.

Table 1⁴¹

Differences between Administrative Sanctions and Criminal Fines

Administrative Sanctions	Criminal Fines
Administrative Sanctions are more varied from persuasive (persuading) to repressive (coercive) approaches.	Criminal Sanctions by the Regional Government are only (Criminal Sanctions Fines)
The process: easier and shorter, directly determined and implemented by the authorized Regional Apparatus although still through certain levels and mechanisms.	The process: more difficult (there must be an investigation, inquiry and trial process) and relatively long because it must wait for a court decision.
Not bound by a maximum limit (must still consider the losses caused by the violation and the fines given).	Bound by a maximum limit (a maximum criminal fine of Rp. 50,000,000).

⁴⁰ Siti Ruhama Mardhatillah, "Urgensi Dan Efektifitas Sanksi Administrasi Dalam Pengelolaan Limbah Bahan Berbahaya Dan Beracun," *Jurnal Hukum Ins Quia Iustum*, Vol. 23 No. 3, 2016, p. 486.

⁴¹ Processed by the author from various laws and regulations

However, strengthening administrative sanctions must be accompanied by procedural safeguards. Administrative fines, permit revocation, sealing, suspension of activities, and government coercive measures may directly affect citizens' property, livelihood, and access to public services. Therefore, local regulations should clearly regulate the grounds for imposing sanctions, the competent authority, stages of warning, the right to be heard, objection mechanisms, and access to judicial review. Without these safeguards, the shift from custodial sanctions to administrative sanctions may only transform the form of coercion, rather than improve the quality of local governance and constitutional accountability.

Long-term legal steps, Articles 613 and 615 of the Penal Law, need to be revoked because they contradict the mandate of the 1998 reform, namely the principle of regional autonomy as guaranteed in Articles 18 (5) and (6) of the Constitution. Articles 613 and 615 of the Penal Law were born from politics that require centralization of power so that the products are orthodox and unilaterally repressive from the Central Government without considering the interests of the regional government.⁴² To make the authority of criminal sanctions in local regulations effective, it is necessary to prepare supporting facilities and infrastructure for criminalization needs, such as resources for enforcing local regulations, such as the Civil Service Police and correctional facility facilities. It is necessary to form special cells and differentiate treatment between convicts sentenced to imprisonment and prison. The Regional Government must contribute to correctional institutional facilities.⁴³

In addition, when formulating criminal sanctions in local regulations, it is necessary to pay attention to several important aspects. First, the formation of local regulations by the Regional Government can also implement criminalization policies for local regulations by considering the following matters.⁴⁴

⁴² MD, *Politik Hukum Di Indonesia*, *Op. Cit* as cited in Philippe Nonet, Philip Selznick and Robert A Kagan, *Law and Society in Transition, Toward Responsive Law*, Harper and Row, (Routledge taylor & Francis Group 2001) as cited in Ni'matul Huda, *Politik Ketatanegaraan Indonesia*, (FH UII Press 2003) as cited in Saliman, *Op. Cit.* as cited in Syaukani and Thohari, *Op. Cit.*

⁴³ Sofwan, Jayadi and Basniati, *Op. Cit.*

⁴⁴ Barda Nawawi Arif, *Bunga Rampai Kebijakan Hukum Pidana*, (PT Citra Aditya Bakti 1996).

- a. The use of criminal law must take into account the objectives of national development, namely, to realize a just and prosperous society that is evenly distributed in terms of material and spiritual based on Pancasila.
- b. Acts that are attempted to be prevented or overcome by criminal law must be undesirable acts, namely, acts that cause losses (material and/or spiritual) to members of society.
- c. The use of criminal law must also consider the principle of costs and benefits (cost and benefit principles) as well as social costs.
- d. The use of criminal law must also consider the capacity or ability of the work force of law enforcement agencies, namely that there must be no excess workload.

The use of criminal law must always be grounded in Indonesia's broader national development goals, which seek to create a just, prosperous, and spiritually grounded society based on Pancasila. Criminal sanctions are therefore justified only when aimed at preventing or addressing "undesirable acts," namely behaviors that result in material or spiritual harm to the community. Because criminal law is a powerful and intrusive regulatory tool, its application must be carefully weighed through a cost-benefit assessment that considers both the economic and social consequences of criminalization. At the same time, any decision to introduce criminal provisions must reflect the practical capacity of law enforcement institutions, ensuring that police, prosecutors, and courts are not burdened with obligations they cannot realistically fulfill. Taken together, these principles underscore that criminal law must be used selectively, proportionately, and as a last resort to effectively support societal welfare and maintain public order.

Second, in relation to the legal material regulated by the Regional Regulation, the criminalization process must consider various aspects, as follows:⁴⁵

- a. The use of criminal law in local regulations must pay attention to the objectives of national development, namely to realize a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila. In this

⁴⁵ Manuahe, *Op. Cit.*

regard, the (use of) criminal law aims to combat crime and make improvements to the countermeasures themselves, for the welfare and protection of society.

- b. The formulation of criminal law in local regulations must pay attention to the limitations of authority granted by the law above it, whether the criminal regulation is a delegated law or not a delegated law;
- c. The formulation of Criminal Law in Local regulations must pay attention to the aspirations and potentials of the region/regional characteristics where the regulation was issued.
- d. Acts that are attempted to be prevented or overcome by criminal law in local regulations must be undesirable acts, namely acts that cause losses (material and/or spiritual) to members of the community.
- e. The use of criminal law in local regulations must also consider the principle of costs and benefits (cost and benefit principles), as well as social costs.
- f. The use of criminal law in local regulations must also consider the capacity or ability of the work force of law enforcement agencies, namely that there must be no excess workload.

The formulation and application of criminal law, at both national and regional levels, must be guided by core principles that ensure criminalization remains consistent with Indonesia's constitutional order and developmental objectives. Criminal sanctions should be imposed only in response to conduct that causes tangible social harm and poses a genuine threat to material or moral well-being, in line with the broader national vision articulated in Pancasila. Moreover, decisions to criminalize must carefully consider economic and social implications, adhere to the principle of proportionality, and account for the actual capacity of law enforcement institutions, in order to prevent excessive penalization, institutional strain, and the risks of overcriminalization. These safeguards reinforce the role of criminal law as an *ultimum remedium*, to be employed only when strictly necessary and when its expected benefits outweigh its potential adverse consequences.

In the sphere of local governance, these general principles are further shaped by constitutional and sociological limitations. Criminal provisions within local

regulations must be rooted in a valid delegation of authority from higher legal norms, responsive to regional conditions and local values, and directed at conduct that produces concrete harm within the local community. They should also be subject to cost-benefit analysis and grounded in realistic assessments of enforcement capacity to prevent the emergence of merely symbolic or impracticable rules. Collectively, these standards ensure that regional criminalization is not only legally justified but also socially relevant, administratively feasible, and aligned with the broader goals of national governance, resulting in regulatory frameworks that are both effective and constitutionally robust.

Third, Local regulations are part of the order of legislation, so in formulating a Regional Regulation that is synchronized with national legislation, the theory of legislation must be used. In the theory of legislation, must also be subject to the following principles:⁴⁶

- a. Principles of legal transition;
- b. Principles of increasing legislation (*lex superior derogat legi inferiori*);
- c. The principles of special legal rules override general legal rules (*lex specialis derogat legi generali*).
- d. The principles of new legal rules override or eliminate old legal rules (*lex posterior derogat legi priori*).
- e. Principles of prioritizing or prioritizing written law over unwritten law;
- f. Principles of compliance, justice, public interest, and public order

The development of criminal provisions at the local level must be anchored in Indonesia's constitutional structure, national development agenda, and criminological foundations to ensure that penal measures are applied in a legitimate, proportionate, and Pancasila-oriented manner. Whether embedded in national legislation or regional by-laws, criminal sanctions should be reserved for conduct that produces concrete social harm and poses a real threat to both material and moral interests. Their ultimate purpose must remain aligned with Indonesia's broader

⁴⁶ Manan, Op. Cit as cited in Prasetyo, *Op. Cit.*

developmental mission—namely, the promotion of social justice, public order, and collective prosperity.

Given the far-reaching economic and social consequences of criminal punishment, policymakers must exercise caution by conducting cost-benefit assessments, taking into account the actual capacity of enforcement institutions, and treating criminal law as a measure of last resort (*ultimum remedium*). In practice, although regional authorities may feel pressure to adopt penal provisions to avoid the perception of weak or ineffective regulation, such measures should not be introduced merely to enhance symbolic authority. Instead, criminal clauses must be grounded in genuine local concerns, reflect regional socio-cultural conditions, and remain realistically enforceable in both administrative and operational terms.

Furthermore, local legislative initiatives must conform to Indonesia's hierarchical legal system and remain consistent with national statutory frameworks. As integral components of the broader legislative order, regional regulations are required to adhere to established principles of lawmaking, including constitutional legality, non-retroactivity, transitional legal certainty, *lex superior*, *lex specialis*, *lex posterior*, and the primacy of written law. Criminal provisions at the regional level are therefore valid only when based on explicit delegated authority from higher-level legislation and when formulated in a manner that upholds justice, public interest, and public order. By integrating normative doctrine, practical governance considerations, and theoretical coherence, regional criminalization can remain legally defensible, constitutionally grounded, locally responsive, and effective in advancing principles of good governance.

CONCLUSION

Based on the previous discussion, this study concludes that, first, Articles 613 and 615 of the Penal Law are contrary to the mandate of the 1998 reform, denying the principle of local autonomy as guaranteed in Article 18 paragraph (5) and paragraph (6) of the Constitution and two other laws, the Law on the Establishment of Regulations and Local Government Law. This is because Penal Law was born from a political

constellation that requires centralization of power so that its products are orthodox and repressive, unilaterally from the Central Government, without considering the interests of the local government.

Second, the Local Government, on the one hand, in the short term needs to make use of administrative legal sanctions more effective in prosecuting violators of local regulations; on the other hand, in the long term, Articles 613 and 615 of the Penal Law need to be revoked. To make the authority of criminal sanctions in local regulations more effective, it is necessary to prepare supporting facilities and infrastructure for criminalization needs, such as resources for enforcing local regulations, such as the Civil Service Police and correctional facility facilities. Future research should empirically examine how local governments redesign enforcement mechanisms after the conversion of custodial sanctions into fines under the new Criminal Code.

COMPETING INTEREST

No potential conflict of interest was reported by the author.

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