

## **Reconstruction of Administrative Fine on Population Administration in Regional Regulation**

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### **ABSTRACT**

*Law Number 24 of 2013 Concerning Amendment to Law Number 23 of 2006 on Population Administration provides a burden based on “Active Stelsel” registration principle. This means that the registrar who must proactively record residence document. However, population registration dealing with the provision of administrative fines to residents who are late in registering their population documents. Inconsistency between principle and the norm raises a number of issues in their implications, especially on the regulation of fines as administrative sanctions. Disharmony between principles and norms in the administrative fine of population still regulated in the regional regulations and cause problems in its application both for local government and the population. This research aims to reconstruct regional regulation on administrative fine that should be determined for legal certainty. Based on the principles in the formulation of legislation by synchronizing and harmonizing to achieve orderly system. By Law Number 12 of 2011 Concerning the Drafting of Legislation regulates that the provisions of the higher Law should be guided by the lower regulations. Therefore, a local regulation should not conflict with higher regulations.*

**Keywords:** *disharmony, administrative, registration, population, sanction.*

### **1. INTRODUCTION**

Implementation of population administration ruled by Law Number 23 of 2014 for Local Government is obligatory, especially to manage population administration and civil registration. The purpose of the regulation is to realize the orderly administration of the national population in essence to provide protection and recognition of the establishment of personal status and legal status of any population event and vital event experienced.

The Law of Administration Population states that the Population Administration as a system to provide the fulfillment of the administrative rights. It gives Population protection concerning the issuance of the Population Document without any discriminatory treatment with the principle of “active stelsel” to the population. Report from Gesellschaft für Internationale Zusammenarbeit (GIZ)[1] that Law Number 23 Of 2006 on Population Administration guarantees all Indonesian citizens equal recognition of their citizenship. However, the principle provides the burden of registration of population events conducted by the population. Then with the amendment of rules with Law 24 of 2013, the principle of Active stelsel is in the hands of the organizers or institutions that organize the population administration.

The change of principle because of failure of Law Number 23 Of 2006 on Population Administration as a means of social engineering and ineffectiveness of “Active Stelsel” for the Population resulting in the failure State[2] in implementing administration population. The failure shows in some discretion called “pseudo wetgeving” which deviates from Law Number 23 of 2006 on Population Administration. For example, the Government Recognition cq Minister of Home Affairs of the Republic of Indonesia, with the issuance of

Circular Letter of the Minister of Home Affairs RI. 472.11 / 3444 / SJ dated September 13, 2011, which principally stipulates that "children born after Law Number 23 of 2006 and have not administered birth certificates may be served and issued their deeds without the court's determination. Then Recognition of the Supreme Court [3] with the issuance of Circular Letter Number 06 of 2012 concerning Guidelines for the Stipulation of birth registration over time One, dated September 6, 2012.

The next problem is regulation of fines as administrative sanctions for late population event and vital event. In the Population Administration Law, as amended, provision about administration fine is still regulated from article 89 to 92. Those articles ruling administrative fine in maximum one million rupiah. On the other side, registration for vital event is free of charge as ruled in article 79A. That's ambivalent article which may be made uncertain.

Inconsistency between Principle and norm that exist in the population administration Law has impact to the rules of governing about Implementation of the Population Administration. The formation of local regulations after the issuance of the Law, there are a number of regions that remove the provisions of administrative fines. This is indicated against the rules. Administrative fines as a sanction the administrator stipulated in local legislation mandated by Presidential Decree Number 25 of 2008 About Requirements and Procedure of Population Registration and Civil Registration.

## **1.1 Method**

Law Number 24 of 2013 concerning Population Administration provides a load based on "Active stelsel". This means that the registration fee for the residence document is given to Civil Registration Office who must proactively record. However, the principle of the "Active stelsel" confronts the provision of administrative enforcement to the late staff in registering the population documents. So between these provisions there is disharmony in the arrangement. Terms fines as stipulated in the Law are then re-arranged in the Regional Regulations on Population Administration. Disharmony of the "Active stelsel" stipulation is still regulated in the regional regulations and cause problems in its application.

For the reason above, reconstruction administration fine provision in regional regulation have to solve. With synchronization and grammatical interpretation method to rebuild article administration fine as a concept article for regional regulation.

## **1.2. Result and Discussion**

### **1.2.1. Terminology**

The word reconstruction is a combination of words ie "re" and "construction". The notion of grammatical construction as a noun is defined as an arrangement (model, layout) of a building (bridge, house, etc.). Black law dictionary[4] defines the meaning of reconstruction in law as follows reconstruction as a form of reorganization process, by acts of congress and executive action.

The basis of the regulation on population administration as in the consideration of the Law is to realize the orderly administration of the population nationally. The State is essentially obliged to provide protection and recognition of the determination of the personal status and legal status of any Population Event and Critical Event experienced by Residents and / or Indonesian Citizens located outside the territory of the Unitary State of the Republic of Indonesia.

In order to carry out the philosophical values of population administration arrangement, it is necessary to have professional demographic administration service, to meet the

information technology standard, dynamic, orderly, and non-discriminatory in achieving the minimum service standard toward the excellent service to solve the problem of population,

### **1.2.2. Active Stelsel Principle in Population Administration**

Law Number 23 of 2006 on Population Administration adheres to the principle of "Active stelsel" for the residence. This principle exempt or eliminate state obligation as the responsible party to ensure, protect and fulfill the constitutional right to identity, including the right to citizenship (nationality), name (name) and the relations relatives (family relations).

After the amendment of Law 23 of 2006 which was amended by Law Number 24 Of 2013 on Amendment to Law Number 23 of 2006 on Population Administration, there are fundamental changes. The principle of "Active stelsel" which is charged to the population for registration of residence documents is changed to the Civil registry office which is proactively record.

### **1.2.3. Terms of Sanctions in Population Administration between the Law and the Regional Regulations**

Sanction provisions of administrative fines continue to be governed in Law Number 23 of 2006 on Population Administration. The regulation of administrative penalty sanctions is set forth in Articles 89 to 92. P of 89 stipulates on the matter of exceeding the time limit of the reporting of the Population Event with the administrative fine of at most one million rupiah and Foreigners at most two million rupiah. Then the determination of administrative fines shall be regulated in a Presidential Regulation.

Then Article 90 set the fines beyond the limits of the time of reporting important events with Administrative fines of Rp 1.000.000, 00 (one million rupiah). Further provisions regarding the determination of administrative fines shall be regulated in a Presidential Regulation.

Article 91 stipulates that do not carry ID cards incur administrative fines of Rp 50,000.00 (fifty thousand rupiah). Any Foreigner who has a Limited Stay Permit that travels without a Residence Certificate shall be subject to an administrative fine of not more than Rp 100,000 (one hundred thousand rupiahs). Further provisions regarding administrative fines are stipulated in a Presidential Regulation.

Then as a regulation of the implementation of Law Number 23 of 2006 on Population Administration namely Presidential Regulation Number 25 Of 2008 About Registration and Procedure of Population Registration and Civil Registration l. P there is Article 107 stipulates that the provisions of administrative penalties should be set in local legislation, namely Article 104 paragraph (2), Article 105 (2) and Article 106 on the local regulation. Determining the amount of administrative charges by observing the provisions of the Law and the conditions of the communities in their respective regions.

### **1.2.4. Principle of Legal Certainty in the administration of population and the provision of fines as administrative sanctions**

Philosophical basis of Law Number 23 of 2006 adheres to the principle of state liability on birth registration and the right to child's birth certificate, so the use of the principle of "Active Stelsel" for Residents in Law Number 23 of 2006 is erroneous and contrary to the philosophical basis of Law Number 23 of 2006 itself.

It is also the basis of the applicant on Decision of the Constitutional Court Number 54 / PUU-XI / 2013. The basis of the examination of the petitioners stating the existence of

inconsistencies and contradictions between the Philosophical Basis and the General Elucidation of Law Number 23 of 2006 which applies the principle of "Active Stelsel for Population". This situation resulted in the absence of fair legal certainty guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The principle of legal certainty is certainly as a guideline, so the registration period becomes non-mandatory again due to a change of principle.

Inconsistent of the provision of fines as administrative sanctions for the formation of their legal norms derives from the "Active stelsel" principle imposed on the population as clearly stated in the elucidation of Law 23 of 2006. While in the amendment of Law Number 24 of 2013 concerning the administration of Population, Civil Registry Service Office as registrar. Thus, the provision of fines as administrative sanctions for the population becomes irrelevant or inconsistent with the principle and caused problem for Civil Registry Service Office to implement. The revenue-making potential of civil registration has created a barrier to some district governments implementing the free birth registration plan

#### **1.2.5. Reconstruction Regulation of Administrative Fines in Regional Regulations**

The problem of inconsistencies in administrative fines requires a solution. These efforts can be made through regulatory changes. Nevertheless, these changes still pay attention to the principles in the formulation of legislation by synchronizing and harmonizing so as to achieve orderly legal system.

The word synchronization is grammatically from sync word. If you see the meaning in a large Indonesian dictionary defined as in line (with); parallel; corresponding; aligned. While the word harmonization based on a large dictionary is defined as efforts to find harmony. Understanding synchronization by Peter Mahmud Marzuki [5], in relation to the synchronization of legislation there is the principle of "lex superiori derogat legi inferiori" explaining that if there is a conflict between hierarchical lower and higher legislation, the lower hierarchy of legislation should be set aside. Hence the notion of synchronization is to see the suitability or alignment of legislation vertically based on the systematization of positive law that is between higher laws and regulations with lower legislation. For this reason, higher legislation provides guidelines for lower legislation.

As a legal system, Pancasila occupies the highest position as in the concept of "stufenbau" as a "stufentheorie" introduced by Hans Kelsen. The concept of stufenbau introduce the building on the juridical order and determined levels of legislation. The entire regulatory system has a pyramidal structure ranging from principle to the concrete form of "Grundnorm" such as Law, government regulations, and so forth. According to Kelsen, the way to recognize a legal and illegal rule is to check it through the stufenbau's logic, and grundnorm becomes the main test [6]. The applicable ethics [7] between the degrees of legislation is that lower regulations should be sourced and should not conflict with higher regulations. Departing from this line also, then the supervision of the process and the outcome of the process of formation of legislation is also done according to the line of degree of the rule's position.

Harmonization of law also related with the principle of "lex specialis derogat legi generali". This principle refers to two laws that are hierarchically in the same position, but the scope of the content material between the laws and regulations is not the same, that one is a special arrangement of the other.

Stufenbau theory in Law Number 12 of 2011 Concerning the Establishment of Legislation as a hierarchy of Laws. In Article 7, paragraph 2, regulates the power of hierarchy of legislation which later in the explanation states that "hierarchy" is the imposition of any

type of Laws Regulation based on the principle that the lower Legal Regulation should not be contradictory to the higher Regulations. In Article 14 stipulates that the content of regional Regulations shall contain content in the framework of the implementation of regional autonomy and co-administration tasks and accommodate special regional conditions and / or further elaboration of the Law and Regulations high. That based on Law Number 12 of 2011 Concerning the Drafting of Legislation regulates that the provisions of the higher Law should be guided by the lower regulations. Therefore, a local regulation should not conflict with higher regulations.

Referring to the theory as well as the provisions of the Law, the amendment to the provisions of administrative fines to be regulated in local regulations in a vertical sync should refer back to the higher regulations. Presidential Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration in Article 107 provides that the provisions of fines shall be regulated in regional regulations as a regional revenue.

It is clearly stipulated that the provisions on administrative fines are still stipulated in the Regional Regulations. In the new paragraph 2 is stipulated on the amount of fines by looking at the provisions of the Law which of course refers to the Population Administration Law. If traced in article 89 paragraph 2 and article 90 paragraph 2 of Law Number 23 of 2006 then the amount of the fine shall be expressed with the phrase "at most ..... Rupiah". Then the article can be interpreted grammatically that there is a range between zero Rupiah to the maximum limit set out in the Law. Then for the regulation of the amount of the fine shall be returned to the Regions with see the condition of society.

Efforts to harmonize legislation by not abandoning the legal principle in its formation, the material must be in accordance with the principle of law and order of law. The principle states that contents of Laws must be able to realize order in society through guarantee of legal certainty. If it is based on article 79A of Law Number 24 of 2013 concerning that the Management and the issuance of Population Documents is free of charge, it is consistent with the regulation for the handling of late fines for the processing of residence documents can be set the equivalent of Rp. 0.00 (zero rupiah).

Reconstruction of administrative fine in local regulations such an effort to encourage investment in the region. The reforms can be support of such investments by none discriminative among the population both Indonesian citizens and foreign residents. So as to encourage the orderliness of Population Administration and eliminate discriminatory in the service publication of population documents, but to further encourage the investment climate to Indonesia.

## **2.0 CONCLUSION**

Inconsistency of administrative fine arrangement as a form of administrative sanction as regulated in the provisions of Law Number 24 Of 2013 between law principles and legal norms raises legal uncertainty in the implementation. The change of the Active stelsel principle imposed on the State's organizers confronts the norm of fines imposed on the applicant or the public . In addition, from the formation of Law based on Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations stipulates that it should be in line between legal principles and norms. If there is any inconsistency between the principle of formation and its legal norms , to the detriment of both the population and the administrative institutions of population.

Reconstruction of local regulatory changes on administrative sanctions in vertical synchronization is guided by the Population Administration Law and Presidential Regulation Number 25 of 2008 on Requirements and Procedures for Population Registration and Civil Registration. The Law on the provisions of the provisions of the phrase "at most ..... Rupiah" in Article 89 paragraph 2 and article 90 paragraph 2 . then the fine amount is stated as "adjusted by local regulations". Then the article can be interpreted that there is a range between Rp. 0 , 00 (zero) to the maximum limit set out in the Law. So for setting the amount of the fine is returned to the Region by looking at the condition of the community. If it is based on article 79A of Law Number 24 of 2013 that the Management and the issuance of Population Documents is free of charge, it is consistent with the regulation for the handling of late fines for the processing of residence documents can be set to zero rupiah.

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