

## **Analysis Of Norma Law Without Disclaimer Sanctions In Law Of Number 25 Of 2009 On Public Services**

<sup>1</sup>st. Dwi Adiyah Pratiwi, <sup>2</sup>la Ode Husen, <sup>3</sup>hamzah Baharuddin  
<sup>1</sup>student Master Of Legal Studies Program Paascasarjana Universitas Muslim Indonesia  
<sup>2,3,4</sup>, Lecturer In Law Faculty Of Muslim University Of Indonesia, Student Advisor  
Corresponding auther; Dwi Adiyah Pratiwi

---

**Abstract:** This Study Was Conducted With The Aim To Know And Analyze The Regulation Of Sanctions In The Principles Of Formulation Of Legislation. And To Know And Analyze The Norm (Order Or Prohibition) Without Accompanied By Sanction In Law Number 25 Year 2009 About Public Service. This Research Is A Normative Research, With Approach Of Law (Statute Approach), And Conceptual Approach (Conceptual Approach). By Using Primary Legal Resource Ie All Kinds Of Laws And Regulations That Are Related To The Formulation Of Legislation Namely The 1945 Constitution Of The State Of The Republic Of Indonesia, Laws / Government Regulations In Lieu Of Laws, Government Regulations, And Legal Materials Secondary Theory Ie, The Opinions Of Experts, And All The Legal Literature Related To The Formulation Of Legislation, Especially The Regulation Of Sanctions In The Rule Of Law Norms.

**Keyword:** Legal Norms, Without Sanctions, Public Service

Date of Submission: 09-04-2018

Date of acceptance: 23-04-2018

---

### **I. INTRODUCTION**

Indonesia As A Constitutional State As Set Forth In Article (3) Of The 1945 Constitution Of The Republic Of Indonesia States That "The State Of Indonesia Is A State Of Law" Shall Mean Any Form Of The Exercise Of Stateless Activities Subject To The Applicable Law.

In The Elucidation Section Of Law Number 37 Year 2008 Regarding The Ombudsman Of The Republic Of Indonesia Article 4 Letter A, It States That "The State Constitutes A State Which In All Aspects Of Social Life, Nation And State, Including In The Administration Of Government Shall Be Based On Law And Principles Good Governance That Aims To Promote A Prosperous, Just And Responsible Democratic Life.

As Above, The State Of Law In The Understanding Embraced By Indonesia Is The Administration Of Government Aimed At One Of Them For A Prosperous Life, This Means That In The Context Of The Legal State, Indonesia Is Included In The Category Of Material Law States.

The Legal State Of This Material According To Prof. Moh. Mahfud Md Is A Shift From A Formal Legal State That Prohibits The Government To Interfere In Community Activities, Toward A New Understanding Of The Legal State Of The Material That The Government Must Be Responsible For The Welfare Of The Community So That Should Interfere In Community Activities And Should Not Be Passive<sup>1</sup>.

The Purpose Of A Material Law State To Achieve Welfare Is Stipulated In The Form Of Services, Public Services In Which The State Is Present To Meet The Needs Of Its Citizens Services Include The Service Sector Of Goods, Services, And Administrative Services. In Carrying Out These Services, Indonesia As A Legal State In This Case The Law Has The Character Of Such Lex Scripta Contained In A Form Of Written Norms Known As Legislation, Then To Ensure The Implementation Of Public Service By The State Established The Provisions / Legal Norms In A Law Number 25 Year 2009 On Public Services.

So As A Legal Norm, The Provisions Of The Public Service Act Certainly Have The Force Of Force As A Differentiator From Other Social Norms. According To Kelsen "Norm" Is The Meaning Of An Action That Commands, Permits, Or Authorizes Certain Behaviors. Norma As The Special Meaning Of An Action Directed To The Behavior Of Others, Must Be Carefully Distinguished From The Act Of Will Which Means That The Norm Exists: The Norm Is Something That Should Be, While The Act Of Will Is Something That Exists<sup>2</sup>.

---

<sup>1</sup> Moh. Mahfud MD, *Hukum dan Pilar-Pilar Demokrasi*, Yogyakarta : Gama Media, 1999, Hal. 130

<sup>2</sup> Hans Kelsen, *Teori Hukum Murni*, Bandung : Nusa Media, 2014, Hal. 6

From The Description Above Can Be Underlined That The Norm Contains The Meaning Of "What Should Be, So That What Is Intended To Be Done By Humans Is Subject To The Rules Of Norm To Further Determine The Act Is Legal Or Illegal. Kelsen Further States That In This Norm A Number Of Human Behaviors Are Governed, Ordered, Encouraged, Prohibited, Or Permitted, Allowed, And Authorized.

Law As A Coercive Order Means That Legal Norms Impose Forced Actions Attributable To The Legal Community, This Does Not Mean That The Implementation Of Sanctions Always Requires The Application Of Physical Violence; This Is Only Necessary If The Implementation Gets A Resistance, Which Usually Does Not Happen. The Modern Legal Order Sometimes Contains Norms That Provide Rewards Or Rewards, Such As Titles Or Merits, To Specific, Devoted Acts. But Reward Is Not A Common Element In All The Social Orders Called Law; Rewards Are Not An Important Function Of This Order. In This Coercive Order The Rewards Only Play A Small Role. In Addition, Norms That Authorize Certain Organs To Give Titles Or Marks To Prominent Individuals Among Others Have A Fundamental Relationship To The Norms That Set Sanctions; Because The Use Of Titles Or Embedding Of Service Marks Is Not Legally Prohibited, Which Is Allowed Negatively, Or Positively Permitted, Which Means It Is Prohibited If There Is No Official Permission. Thus The Legal Circumstance Can Only Be Explained As A Normative Restriction On The Validity Of Norms Of Abandonment; Namely By Referring To A Norm Of Coercion<sup>3</sup>.

Then It Becomes Clear That The Difference Between The Legal Norm And The Other Social Order, The Law Has The Main Criterion Dnegan The Element Of "Coercion" - This Means That Every Act Established By The Legal Norm Has Been Accompanied By The Consequences, Which Is Called The Instinct Of The Instinct Is Sanction.

The Difference Between Legal Norms And Other Norms Lies In The Nature Of The Coercion Equipped With The Coercive Instrument Itself Referred To As Sanctions, Then As Part Of The Legal Norms, Legislation Should Have Been Followed By Sanctions As A Consequence Of The Action Otherwise Of The Stipulated Rule In The Legal Norm.

The Law As The Coercive Order For Human Behavior Contains The Command To Apply A Particular Behavior As Well As To Impose Forced Action On The Opposite Treatment. Further, According To Kelsen, The Sanctions Imposed By The Legal Order Are Socially Immanent Sanctions (Which Are Different From The Transcendental Ones); In Addition, They Are Socially Organized (Not Expressly Agreed Or Disagreed).

Formulation Of The Problem

1. What Is The Regulation Of Sanctions In The Principles Of The Formulation Of Legislation?
2. What Is The Norm (Order Or Prohibition) Without The Imposition Of Sanctions In Law Number 25 Year 2009 Regarding Public Service?

## **II. THEORETICAL FRAMEWORK**

### **1. The Rule Of Law**

Some Of The Definitions Of The Legal State Put Forward By Scholars Who Are Certainly Influenced By The Schools Of Thought, As Well As Their Respective Theoretical Concepts Can Be Both Reflective And Enriching Our Knowledge In Understanding The Meaning Behind The Word Law. There Are Also Some Expert Views Are As Follows<sup>4</sup> :

Aristoteles (384-322 Sm) Laws Are Something Different From What Regulates And Expresses The Form If The Conctitutions; It Is Their Function To Direct The Conduct Of The Magistrate In The Execution Of His Office And The Punishment Of Offenders.

Thomas Aquinas (1225-1274), Law Is A Rule And Measures Of Act, Wherebu Man Is Induced To Act Or Is Restained From Acting; For Lex (Law) Is Derived From Ligare (Ro Bind), Because It Binds One To Act...Law Is Nothing Else Than A Rational Ordering Of Things Which Concern The Common Good, Promulgated By Whoever Is Charged With The Care Of Community.

Thomas Hobbes (1588-1679), The Civil Laws Are The Command Of Him Who Is Endued With Supreme Power In The City Concerning The Future Actions Of His Subjects.

The State Is A Translation Of The Foreign Word Staat (Dutch And German), State (English), And Etat (French). The Term Of This Country Also Began To Arise In The Zaqma Renaissance (Re-Birth) In Europe, The Term La Stato Is Also Known In The Book Il Principe By Niccolo Machiaveli. Prof. Mr. L.J. Van

---

<sup>3</sup> Ibid, Hal 38

<sup>4</sup> Prof. Dr. Achmad Ali,SH.,MH., Menguak Teori Hukum dan Teori Peradilan, Jakarta : Prenada Media Group, 2009, Hal. 418

Apeldoorn In His Book *Inleiding Tot De Studie Van Het Nederlandse Recht* Gives A Definition Of The State As Follows<sup>5</sup> :

The State Of Law (The Rule Of Law) Arises In Reaction To The Concept Of A Police State (Polizie Staat). By Following Hans Nawiasky, Polizie Consists Of Two Things, Namely Sicherheit Polizie And Verwaltung (Wohlfart) Polizie. Sicherheit Polizie That Serves As A Guardian Of Order And Security, Verwaltung (Wohlfart) Polizie That Serves As The Organizer Of The Economy Or The Organizer Of All The Life Needs Of Citizens. Therefore, The State Police (Polizie Staat) Means The State That Organizes Order And Security And Holds The Necessities Of Life Of Its Citizens. If The Words Of The Two Functions Are Well-Organized, Meaning They Are Really Concerned About The Needs Of Their Citizens, Then It Will Not Cause Problems, As Mentioned By R. Von Mohl As A Good Police Officer And Performs Its Functions Based On Law And Concerns The Public Interest<sup>6</sup>.

## **2. Legal Norm**

Law As A Norm "Is A Statement We Commonly Hear, In Law Schools Taught Some Kinds Of Norms Such As Religious Norms, Moral Norms, And So On Including Legal Norms. In General The Norm Contains Principles Regarding How Humans Should Behave Or Act In Their Lives.

According To Kelsen Which Makes An Act Legal And Illegal Is Not His Physical Existence, Which Is Determined By The Law Of Causation That Exists In Nature, But The Objective Meaning Arising From The Interpretation Of It. The Typical Legal Meaning Of This Action Comes From The "Norm" Whose Content Refers To It; This Norm Gives A Legal Meaning To The Action, So That It Can Be Interpreted According To This Norm. The Norm Serves As An Interpretive Scheme. In Other Words: Consideration That An Action Of Human Behavior, Done In Time And Place, That Is "Legal" (Or "Illegal") Is The Result Of The Interpretation Of A Special Norm. And Even The View That This Action Has The Character Of Natural Phenomena Is Merely A Particular Interpretation, Which Differs From The Normative Interpretation, Ie, The Interpretation Of Cause And Effect. The Norm Which Gives The Meaning Of Legality Or Illegality To An Act Itself Is Created By A Act, Which In Turn Receives Its Legal Character From Another Norm. For Example The Assertion That A Group Of People Is A Parliament, And That Their Actions Mean The Law, Is Based On The Conformity Of All These Facts To The Norms Set Out In The Law. That Means That The Form Of The Actual Event Corresponds To The Legitimate Norm.

Thus, Those Norms, Which Have The Character Of Legal Norms And Which Make Certain Acts Legal Or Illegal, Are The Object Of The Jurisprudence. The Legal Order Which Is The Object Of This Knowledge Is The Order Of Human Behavior - A System Of Norms That Governs Human Behavior. What We Mean By "Norm" Is Something That Should Or Should Happen, Especially That Humans Should Behave In A Certain Way. This Is The Meaning Of One Human Action That Is Directed Toward Another Human Behavior. The Act Is Directed In This Way If, By Its Contents, It Commands Such Behavior, As Well As If It Permits It, And - Especially - If It Authorizes It. "Empower" Means To Grant Certain Powers Or Powers To Others, Especially The Authority To Apply The Norm Itself. In This Sense An Act Whose Meaning Is A Norm Is An Act Of Will. If An Individual By His Actions Expresses A Will Directed Towards A Particular Behavior Of Another Person, In Other Words, If He Orders, Permits, Or Carries Out The Behavior - Then The Meaning Of His Actions Can Not Be Explained By The Assertion That Another Individual Will Behave That Way, Should Behave That Way. The Individual Who Commands, Authorizes, Or Carries On The Will Is The One Who Should Order, Authorize, Or Authorize. Here The Word "Should" Is Used More Broadly Than Its General Sense. According To Common Usage: The Word "Should" Resembles Only An Order, Whereas The Word "May" Resembles A Grant Of Permission; And The Word "Can" Resembles Authorization Or Authority (Authorization). But In This Paper The Word "Should" Be Used To Express The Normative Meaning Of An Action Directed To The Behavior Of Others; The Word "Should" Includes "May" And "Can". If You Behave In A Certain Way To Ask The Reason For Orders, Permissions, Or Authority, It Can Only Be Done By Saying: Why Should "I" Behave Like This? Or, In A General Sense: Why Should I Or Can Behave Like This?

Norm Is The Meaning Of An Action That Commands, Permits, Or Authorizes Certain Behaviors. Norma As The Special Meaning Of An Action Directed To The Behavior Of Others, Must Be Carefully Distinguished From The Act Of Will Which Means That The Norm Exists: The Norm Is Something That Should Be, While The Act Of Will Is Something That Exists. Thus, The Situation Arising From Such An Action Should Be Spelled Out By The Following Statement: The One Individual Wants That The Other Individual Should Behave In A Certain Way. The First Part Of This Phrase Refers To Something That Exists, Namely The Fact That There Is The Act Of Will From The First Individual; The Second Part Refers To The Supposed, Ie To

---

<sup>5</sup>C.S.T. Kansil, SH, dan Christine S.T.Kansil,SH.MH, Latihan Ujian Hukum Tata Negara di Indonesia, Jakarta : Sinar Grafika, 2009, Hal 2

<sup>6</sup>Romi Librayanto, Ilmu Negara, Makassar : Refleksi, 2010, Hal 153

A Norm As The Meaning Of The Action. Therefore, It Is Not True That We Affirm - As Is Often Done - That The Statement "An Individual Should ..." Just Means That Another Individual Wants Something; That It Should Be Reduced To Existing.

Thus It Can Be Underscored That The Norm Contains The Meaning Of "What Should Be, So That What A Person Wants To Do Is Subject To The Rules Of The Norm To Further Determine The Act Is Legal Or Illegal. Kelsen Further States That In This Norm A Number Of Human Behaviors Are Governed, Ordered, Encouraged, Prohibited, Or Allowed, Permitted, And Authorized.

If We Use The Word Supposed To Encompass All These Meanings, As Advised, We Can Justify The Validity Of A Norm By Saying: Something Should Be, Or Should Not Be, Done. If We Explain The Particular Existence Of A Norm As "Legitimacy," Then We Reveal Specifically How That Norm - Contrary To The Natural Fact - Is. The "Existence" Of A Positive Norm - That Is, Its "Validity Or Validity" - Is Not The Same As The Whim Of The Act Of Will, Whose Objective Meaning Is That The Norm Exists. A Norm May Apply Even If There Is No Further Act Of Will Whose Objective Meaning Is That The Norm Exists. Actually, The Norm Does Not Apply, Nor Does It Exist, Prior To The Act Of Will That Denotes The Existence Of The Norm. Individuals Who Create Legal Norms With An Action Directed Against The Behavior Of Others, Do Not Need To Continue To Carry Out This Behavior So That The Norm Can Apply. When A Person Acting As The Legislator Has Passed A Law Regulating Certain Matters And Making This Law "Applicable," They Then Direct Their Decisions To Another Regulatory Effort; And The Enacted Laws May Take Some Time After These People Die And Can No Longer Want Anything. Therefore, It Is Wrong To Characterize Norms In General, And The Norm Of Law In Particular, As "Will" Or "Command" Is A Psychological Act Of Will. Norma Is The Meaning Of An Act Of Will, Rather Than An Act Of Its Own Accord.

Hans Kelsen Further Explains That Because The Validity Or Validity Of A Norm Is Something That Should Not Be Something That Exists, It Is Necessary To Distinguish Between The Validity Of A Norm With Its Effectiveness. Effectiveness Is A "Fact-Exist" -That Is The Fact That The Norm Is Actually Applied And Obeyed, The Fact That Society Actually Behaves According To That Norm. However, The Statement That A Norm Is "Legitimate" Has A Meaning Other Than The Fact That It Is Actually Applied And Obeyed; This Statement Implies That The Norm Should Be Obeyed And Applied, Although It Is True That There May Be Some Connection Between Validity And Effectiveness. New Common Law Norms Are Considered Legitimate If The Human Behavior He Or She Meets Is Appropriate, At Least To Some Extent. A Norm That Is Not Obeyed By Anyone And Anywhere, Or An Ineffective Norm, At Least To Some Extent, Is Not Considered A Legitimate Legal Norm. The Minimum Level Of Effectiveness Is The Condition Of Validity. But The "Legality" Of A Legal Norm Implies That It Is Not Impossible To Behave In A Way Contrary To The Norm: A Norm That Requires Something To Be Done, When Everyone Knows That Something Must Be In Accordance With The Laws Of Nature Is A Vain Norm, As Is The Norm Which Necessitates Doing Something That Everyone Already Knows That Something According To The Laws Of Nature Is Impossible.

Validity And Effectiveness Are Also Impossible At The Same Time. The Legal Norm Becomes Valid Before It Becomes Effective, Ie, Before It Is Applied And Obeyed; A Court Of Law That Implements A Law As Soon As It Is Announced - And Thus Before The Law Has The Opportunity To Become "Effective" - Implies Valid Legal Norms. But A Legal Norm Is No Longer Considered Legitimate If It Remains Ineffective. Effectiveness Is A Requirement Of Validity In The Sense That Effectiveness Must Accompany The Establishment Of Legal Norms So That The Norm Does Not Lose Its Validity.

So Talking About The Effectiveness Of Legal Norms As An Order To Force Can Not Be Separated From The Existence Of Sanctions As The Instrument Of Force. Against Such Sanctions Kelsen Provides 2 (Two) Understandable Facts: (1) That This Norm Is Applied By Legal Organs (Especially The Court Of Law), Which Means That Sanctions Are Ordered And Executed In Concrete Cases; And (2) That This Norm Is Obeyed By Individuals Who Are Obedient To The Legal Order, Which Means That They Behave In A Certain Way To Avoid Sanctions. This Explanation Asserts That The Existence Of Legal Norms Is A Complete Package With The Provision Of Sanctions As A Coercive Effort.

### **3. Sanksi**

If The Law Is Understood As A Coercive Order, Ie As An Order That Imposed Sanctions In The Form Of Forced Action, Then The Provisions Explaining The Law In The Law Would Appear To Be A Statement That Under Certain Conditions, Established By That Order, Should Be Done. "Forced Action" Is An Act That Is Not Done On Behalf Of The Individual Being Targeted, And In The Event Of A Fight, Will Be Used By The Physical Force.

Hans Kelsen Unravels The Type Of Forced Action That Must Be Divided Into Two Namely: First, A Forced Action That Is A Sanction, In Other Words This Action Is In Reaction To An Action Or Also Against The Non-Action Of An Action Established By Law. Secondly, The Forced Act Of Civil Execution, This Act Is Done As A Common Attempt To Hear "Fixing Up" Mistakes, Continued Kelsen 'By Means Of Fixing The Mistakes Is The End Of The Situation Caused By Unlawful Acts And The Presentation Of The Situation In

Accordance With The Provisions Of The Law. This Ending Situation May Be The Same As The Situation Caused By Aberrant Legal Behavior; But If It Is Impossible To Bring Up Such A Situation, Then Another Situation May Serve As A Substitute.

According To Kelsen, The First Characteristic That Is Commonly Found In All Social Orders Termed "Law" Is That All The Order Is The Ordinance Of Human Behavior, Then The Second Is That All The Order Is A Coercive Order. This Means, All Of The Order Reacts To Certain Events, Which Are Regarded As Undesirable For Harming The Public.

### **III. DISCUSSION**

#### **1. Sanctions In The Formation Of Legislation**

The Law As The Coercive Order For Human Behavior Contains The Command To Apply A Particular Behavior As Well As To Impose Forced Action On The Opposite Treatment. Further, According To Kelsen, The Sanctions Imposed By The Legal Order Are Socially Immanent Sanctions (Which Are Different From The Transcendental Ones); In Addition, They Are Socially Organized (Not Expressly Agreed Or Disagreed).

Law As A Coercive Order Means That Legal Norms Impose Forced Actions Attributable To The Legal Community, This Does Not Mean That The Implementation Of Sanctions Always Requires The Application Of Physical Violence; This Is Only Necessary If The Implementation Gets A Resistance, Which Usually Does Not Happen. The Modern Legal Order Sometimes Contains Norms That Provide Rewards Or Rewards, Such As Titles Or Merits, To Specific, Devoted Acts. But Reward Is Not A Common Element In All The Social Orders Called Law; Rewards Are Not An Important Function Of This Order. In This Coercive Order The Rewards Only Play A Small Role. In Addition, Norms That Authorize Certain Organs To Give Titles Or Marks To Prominent Individuals Among Others Have A Fundamental Relationship To The Norms That Set Sanctions; Because The Use Of Titles Or Embedding Of Service Marks Is Not Legally Prohibited, Which Is Allowed Negatively, Or Positively Permitted, Which Means It Is Prohibited If There Is No Official Permission. Thus The Legal Circumstance Can Only Be Explained As A Normative Restriction On The Validity Of The Norms Of Prohibition; Namely By Referring To A Norm Of Coercion<sup>7</sup>.

Then It Becomes Clear That The Difference Between The Legal Norm And The Other Social Order, The Law Has The Main Criterion Dnegan The Element Of "Coercion" - This Means That Every Act Established By The Legal Norm Has Been Accompanied By The Consequences, Which Is Called The Instinct Of The Instinct Is Sanction. If Forced Acts Governed By A Legal Order That Serves As A Reaction To A Human's Behavior Are Established By The Legal Order, Then This Forced Act Has The Character Of Sanctions. The Human Behavior That Is Subjected To Forced Action Should Be Regarded As Illegal Or Illegal - As A Offense. The Opposite Of That Behavior Is Regarded As A Command Or Legal Behavior, A Behavior That Avoids Imposition Of Sanctions. The Calling Of The Law As A "Coercive Order" Does Not Mean - As It Is Sometimes Stated - That It "Imposes" The Conduct Of The Ordered Or Legal Conduct. This Behavior Is Not Enjoined By Forced Measures, Since Forced Measures Must Be Exercised When Individuals Act In Forbidden, Or Not Ordered Ways. For This Purpose The Forced Forcibly Is Set As Sanction. However, Perhaps This Statement Should Not Mean That The Law, By Setting Sanctions, Attempts To Force People To Behave In Accordance With What They Command, Because The Motive That Elicits The Behavior Is The Desire To Avoid Sanctions Themselves. However, Such Motivation Is Not Always A Legal Function: Legal Behavior - That Is, Ordered - Can Also Be Generated By Other Motives, Especially By Religious Or Moral Motives. And This Happens Quite Often. The Coercion Contained In That Motivation Is Psychic Coercion Which Is An Effect That May Arise From The Individual's Understanding Of The Law, And Which Takes Place Within This Individual. And This Psycho-Coercion Should Not Be Confused With The Enforcement Of The Forced Act, Which Takes Place In The Legal Order Of The Etrsebut. Every Effective Social Order Establishes A Kind Of Psychic Coercion, And Some Other Orders - Such As The Religious Order - Establish Psychic Coercion At A Higher Level Than The Legal Order. Thus, This Psychic Coercion Is Not A Distinguishing Characteristic Of The Law Of The Other Social Order. The Law Is Not A Coercive Order In The Sense That It Establishes Psychological Sanctions, But In The Sense That It Implements Forced Action, Namely The Actual Deprivation, Liberty, Economy, And Other Values By Force As A Consequence Of Certain Conditions. This Condition Is Primarily - But Not Always - The Form Of Certain Human Behaviors, Which Gain Illegal Behavior - Such As Violations - As A Condition Of Sanctions.

In The Formation Of Material Legislation In The Content Of Legislation May Also Contain Other Principles In Accordance With The Field Of Law Of The Relevant Legislation As Regulated In Article 6 Paragraph (2) Of Law Number 10 Year 2004 On The Establishment Of Laws And Regulations. As For Other Principles Which Are In Accordance With The Field Of Law, Among Others, In Criminal Law For Example There Are Principles Of Legality, Non-Retroactive Principle, The Principle Of Presumption Of Innocence, And

---

<sup>7</sup> Ibid, Hal 38

Others. As Well As For Civil Law There Are Principles Of Freedom Of Contract, The Principle Of Agreement And So On. Then In 2011 The Provision Is Replaced By Law Number 12 Year 2011 On The Establishment Of Legislation Which Stipulates The Principles In The Formulation Of Laws And Regulations As Well As Principles In The Content Of Legislation Regulated In Article 5 And Article 6. Indeed This Provision Is Not So Much Different With The Principles Set In The Previous Law. Principles Of Establishment Of Good Legislation In Accordance With Article 5 Of Law Number 12 Year 2011 Concerning The Establishment Of Laws And Regulations As Follows:

- A. Clarity Of Purpose;
- B. The Appropriate Institutional Or Forming Authority;
- C. Suitability Between Species, Hierarchy, And Content Material;
- D. Can Be Implemented;
- E. Usefulness And Usability;
- F. Clarity Of Formulation; And
- G. Openness.

As For The Material Content Of Legislation Should Reflect The Principles Set Forth In Article 6 Of Law Number 12 Year 2011 Regarding The Formation Of Legislation As Follows: A. Pengayoman; B. Humanity; C. Nationality; D. Kinship; E. Kenusantaraan; F. Unity In Diversity; G. Justice; H. Equality Of Positions In Law And Government; I. Order And Legal Certainty; And / Orj. Balance, Harmony, And Harmony.

From The Whole Set Of Principles Above, If We Appeal To The Principle Of Justice And Be Associated With The Opinion Of Rudolf Stammler Explaining That Justice Is The Effort Or Act Of Directing The Positive Law As An Attempt To Force The Sanction Into Something Just (Zwangversuch Zum Richtigen). Therefore, According To Stammler, Justice Is The Effort Or Action To Direct The Positive Law To The Ideals Of Law. Thus The Law Of Justice (Richtigen Recht) Is A Positive Law That Has The Nature Directed By The Ideals Of Law To Achieve The Goals Of Society.

Related To This Sanction Itself In Relation To The Legislation Further Explained By Maria Farida That Criminal Provision Is A Provision That Is Not Absolutely Exist In The Legislation, So The Formulation Of Criminal Provision Depends On Each Of The Legislation. However, Legislation That Can Include Criminal Provisions Is Only The Laws And Regional

## **2. Norma Tanpa Sanksi Dalam Undang-Undang Pelayanan Publik**

Norms Defined As Rules, Measures, Guidelines Or Standards For A Person To Behave Or Behave In Relation To Others As Well As To The Environment. Thus The Norm Is Used As A Benchmark To Assess A Person's Attitude Or Action. In General, The Legal Norm Of The State According To Its Contents Consists Of Three Kinds, Namely:

1. The Legal Norms Containing The Order (Mandatory)
2. Legal Norms Containing Prohibitions (Haram)
3. Legal Norms That Contain Permissibility (Sunnah)

Law Number 25 Year 2009 Regarding Public Service As A Legal Norm In The Form Of Law Also Contains The Obligations In The Form Of Orders, As Well As Prohibitions, As Well As The Permissibility That Governs Each Person So That It Is Subject To The Provision. According To Purnadi Purbacaraka And Soerjono Soekanto That There Are Two Properties Of Legal Principles, Namely Imperative Legal Principles And Legal Principles That Are Facultative. The Rule Of Law That Is Imperative Is The Law That Must Be Obeyed. While The Legal Principles That Are Facultatif Not A Priori Binding Means To Be Obeyed Or Not. In Other Words Norms In The Form Of Orders (Mandatory) And Prohibitions Include Imperative, While Norms That Contain Skill Is A Norm That Is Facultatif.

According To Hans Kelsen There Are Two Systems Of Norms, Namely The System Of Static Norms (Nomostatic) Is A System That Sees The Side Of A Norm So That A Common Norm Can Be Drawn Into A Specific Norm In The Sense Of General Norm Is Detailed Into Norms More Specifically In Terms Of Its Contents. The Second Norm System According To Kelsen Is The Dynamic Norm (Nomodynamic) Is A Norm System That Sees Norms Based On Their Validity And The Way They Are Formed And The Abolition Of Norms.

Regarding Legal Forms (Juridisch Voermen), Which In Essence According To Kelsen Norms Are Tiered And Layered In The Order Of Hierarchy, This Theory Is Also Called The Stufenbau Theory, So That The Lower Norms Are Based On And Derived From The Above Higher Norms, High Norms Derive From Higher Norms, And So On Until It Stops At The Highest Norm Known As The Basic Norm Or Grundnorm, Basic Norm, Or Fundamental Norm.

Thus The Legal Norm Is Included In The System Of Dynamic Norms Because The Law Itself Is Formed And Removed By The Institution Or Authority That Has The Authority To Form It. It Is Formed By The Authorized Institution Then The Law Has Its Validity Or Legality. In Indonesia Itself, In Its Legal System, The Legislation Is Set In Law No. 12 Of 2011 Concerning The Establishment Of Laws And Regulations, Which

In Article 7 Paragraph (1) Establish Hierarchy In Stages Starting From The Constitution Of The Republic Of Indonesia Indonesia 1945, Decree Of The People's Consultative Assembly, Law / Government Regulation In Lieu Of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, And Regency / City Regulations.

Against The Provisions Of The Above Legislation, Not All Must Include Sanctions As Stated By Maria Farida That The Criminal Provisions Are Provisions That Are Not Absolute In The Legislation, So The Presence Or Absence Of Such Criminal Provision Is Highly Dependent On The Type Of Each Regulation Legislation. Invitation. Legislation That Can Include Criminal Provisions Only The Laws And Regional Regulations.

Among These Are Law 25 Of 2009 On Public Service As One Form Of Legislation In Which Contains Good Terms That Are Commands With Mandatory Or Must, Banagan, And Permissibility. And With Some Sanctions Defined As A Coercive Instrument So That Norms That Have Been Established Can Be Implemented With A Guarantee Of Legal Certainty.

### **3. Norm's Provisions In Law 25 Year 2009 On Public Service**

In General, The Provisions In The Public Service Act Are Divided Into Several Forms Of Norms, Namely Command, Prohibition And Permissibility. And The Provisions Related To Sanctions Against Violations Of The Norms Of The Order And The Prohibition That Has Been Set. For More Details Can Be Seen The Provisions Set Out In The Law On Public Services Is Accompanied By An Analysis Whether The Provision Is Accompanied By Sanctions.

The Provision Of Norms In The Form Of Orders With The Phrase "Mandatory" To The Public Service Providers There Are 1 Article And 3 Verses, For Public Service Providers There Are 22 Articles And 43 Paragraphs, For The Implementer Of Public Service Consists Of 4 Articles And 3 Verses, And For The Community As The User Public Services There Is Only 1 Article Only, While For The Supervisor Of Public Service There Are 2 Articles And 6 Verses.

The Provisions Of The Norm In The Form Of Prohibition In The Public Service Act Are Divided Into Prohibitions For The Public Service Provider Consisting Of 4 Articles And 4 Paragraphs, While For The Executive Service Of Public There Is Only 1 Article Only.

As For The Provisions Of The Norm In The Form Of Permissibility With The Phrase "Can" Set The Four Parties In The Provision Of Public Services. Each Is Divided Into The Providers Of Public Services 7 Articles And 8 Paragraphs, Public Service Operators Arranged In 1 Article Only, The Permissibility Noma For The Community There Are 7 Articles, And For The Supervisor Of Public Services There Are 2 Articles.

For The Provisions Of The Norm In The Form Of A Command With The Phrase "Must" Or "Necessity" Is Set Out In 4 Articles And 3 Paragraphs With The Divisions, 3 Articles And 3 Paragraphs Governing The Requirement For The Providers Of Public Services And 1 Article Governing The Requirement For The Public Service. Of The Total Norms In The Form Of Orders With The Phrase "Compulsory" In The Law Of Public Services Which Amounted To 50 Terdaot 11 Of Which Are Not Accompanied By Sanctions, While For The Norm In The Form Of The Overall Ban Amounted To 6 All Accompanied By Sanctions. For Norms In The Form Of Permissibility With The Phrase "May" Which Amounts To 18 There Is 1 Which Has Sanctions And 17 Of Which Are Not Accompanied By Sanctions, While For Orders With The Phrase "Must" Which Amounts To 4 Norms As A Whole Is Not Accompanied By Sanctions.

Public Service In Its Origin Is The Right Of Society So That In Its Implications In Formulating Norms Related To Public Obligations It Will Lead To The Emergence Of Other Rights, Such As Complaints Against Poor Public Services. As For The Organizers Or Implementers Of Public Services On The Origin Is The Obligation Then Of Course Any Norms That Are Formulated And Impose Obligations Must Be Accompanied By Sanctions. This Is Binding In An Effort To Encourage The Quality Of Public Services That Is Still Strongly Influenced By The Compliance Level Of The Organizers Only Based On The Presence Or Absence Of Sanctions.

The Difference Between Legal Norms With Other Norms, One Of Which Lies In The Existence Of Sanctions As An Instrument Of Coercion, One Of Which Is Supported By Hans Kelsen, Who Is Known As A Legal Positivist. According To Fuller Most Of The Legal Theories State Either Expedititally Or Implicitly That What Distinguishes The Norms Of Law And Other Norms Is The Legal Norms Attached To A Coercion Or Sanction. According To Positivists, The Element Of Coercion Is Associated With A Formal Understanding Of The Hierarchy Of Command. Since The Existence Of A National State, Throughout The History Of Jurists From Thomas Hobbes Through Austin To Hans Kelsen And Somlo Sees The Legal Essence In The Pyramidal Structure Of State Power. Even Hart, Too, Views Law As Command And Places Sanctions As Something That Is Inherent In Law<sup>8</sup>.

---

<sup>8</sup> Ibid, hal. 68

In His Book *The Concept Of Law*, H.L.A. Hart Outlines The Character Of The Law Into Three Forms Of Legal Control, Standing Orders, And The Command Is Made By A Power Which Has Supremacy And That Power Is Independent. Hart's Opinion In Relation To This Sanction That The Law With A Standing Orders Character Indicates That The Law Is A Command Over Time, Thus Hart Sees That The Law Is A Command Supported By Threats. So It Can Be Thought That There Is A General Opinion That The General Commands Apply To Them So That Disobedience Will Be Subject To Sanctions And Not Only Take Place At The Time Of Promulgation But Continually Until That Provision Is Revoked.

In The Third Legal Character, Hart Mentions That Law Is A Command Made By A Supremacy Of Power And That Power Is Independent, It Is Further Said That Wherever There Is A Legal System, There Are Certain People Or Institutions Issuing Orders Which Is Supported By Threats. Kendari Hart Also Acknowledges That His Legal Understanding Is Close To The Definition Of Criminal Law. He Also Understands The Existence Of Other Kinds Of Laws, But He Argues That Other Forms Of Law Are Just The Same Versions That Are Subtly Threatening. It Can Not Even Be Denied That Threats Are A Factor Supporting Obedience To Law Or Order.

### **Norm Without Sanction**

In Contrast To The Above Opinion, L.J. Van Apeldoorn Expressly States That Sanctions Are Not Essential Elements In Law But As An Additional Element. According To Van Apeldoorn That The Doctrine That Characterizes Law Lies In Sanctions Is Precisely Something Contradictory To The Law Itself. Furthermore, Van Apeldoorn Argues That The Law Of A State Is In Many Respects The Pouring Of Religious, Moral, And Social Principles And Norms Supported By Public Consciousness. And The View That Only Sees Lawful Order As A Coercive Organization As Well As Equating The Law With The Rules Created By A Herd Of Gangsters. Thus, According To Fuller, The View That Sanctions As A Distinction Between Legal Norms And Other Norms Means Not Acknowledging The Moral Significance Of Society, Where It Rests On Social Interaction, And Also Excludes The Fact That The Law Is Voluntarily Set Forth In The Rules Without The Use Of Physical Coercion,

Furthermore, Van Apeldoorn Describes That In The Recht Has Seen A Moral Emphasis, The Word *Rechtvaardig* (Just) As In The Old Anglo-Saxon Law, The Word *Right* Is Not Merely A *Recht* (Right) But *Rechtvaardig* (Fair).

Van Apeldoorn, However, Does Not Deny The Necessity Of Coercion Which In Certain Circumstances Can Be Presented, But Nevertheless It Can Not Be A Justification For The View That Sanctions Are The Distinction Between Legal Norms And Other Social Norms, And Most Closely Related To Forced Coercion Physical Is A Criminal Law. Thus If Following The View Of Experts Who Declare Sanctions As A Distinction Between Legal Norms With Other Social Norms Then The Branch Of Law Other Than Criminal Law That Does Not Contain The Element Of Coercion If Then Referred To As Non-Legal.

## **IV. CONCLUSION**

1. The Existence Of Sanctions If Associated With The Principles Of The Establishment Of Legislation Is Not Explicitly Mentioned, But It Is Implicitly Contained In The Principle Of Justice And The Principle Of Legal Certainty As Embraced By The Indonesian Legal System As Reflected In Law Number 10 Year 2004 On The Establishment Of The Following Laws And Regulations With The Successor Of Law Number 12 Year 2011 On The Establishment Of Laws And Regulations.
2. In Law Number 25 Year 2009 On Public Service There Are 50 Provisions Of Norms With The Form Of Orders 11 Of Which Are Not Accompanied By Sanctions, While For The Norm In The Form Of Prohibition Amounted To 6 Entirely Accompanied By Sanctions. For Norms In The Form Of Permissibility With The Phrase "Can" Which Amounts To 18 There Is 1 Which Has Sanctions And 17 Of Which Are Not Accompanied By Sanctions, While For Norms In The Form Of Orders With The Phrase "Must" Amount To 4 Norms That Are Entirely Not Accompanied By Sanctions. Against This Phenomenon There Is A Difference Of Opinion Of Experts Where Adherents Positivisme Law View That Sanction Is A Differentiator Between Legal Norms With Other Norms, Norms Without Accompanied By Sanctions Is Nothing But Moral Norms. However, According To Van Apeldoorn, Sanctions Are Only Additional Because The Law Itself Is Inseparable From The Moral Importance Of Society.

## **REFERENCES**

- [1]. Abdullah, Marlang. Irwansyah. Kaisaruddin Kamaruddin. 2011. *Pengantar Hukum Indonesia*. Makassar: As Publishing
- [2]. Achmad, Ali. 2009. *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana

- [3]. Achmad, Ali, Dan Heryani, Wiwie. 2012. Sisiologi Hukum Kajian Empiris Terhadap Pengadilan. Jakarta : Kencana Prenada Media Group
- [4]. Ag Subarsono, M.Si., Ma. 2011. Analisis Kebijakan Publik Konsep, Teori, Dan Aplikasi. Yogyakarta : Pustaka Pelajar
- [5]. Ali Taher, Parasong. 2014. Mencegah Runtuhnya Negara Hukum. Jakarta Selatan : Grafindo Books Media
- [6]. Arief, Sidharta. 2011. Refleksi Tentang Hukum Pengertian-Pengertian Dasar Dalam Teori Hukum. Bandung : Pt Citra Aditya Bakti
- [7]. Budi, Winarno. 2011. Kebijakan Publik Teori, Proses, Dan Studi Kasus. Jakarta : Pt. Buku Seru
- [8]. Darji, Darmonodiharjo Dan Shidarta. 2008. Pokok-Pokok Filsafat Hukum : Apa Dan Bagaimana Filsafat Hukum Di Indonesia. Jakarta : Pt Sun
- [9]. Frank, Jerome. 2013. Hukum Dan Pemikiran Modern. Bandung : Nuansa Cendekia
- [10]. Hart, H.L.A. 2013. Konsep Hukum ( The Concept Of Law). Bandung : Nusa Media
- [11]. Herman, Bakir. 2005. Kastil Teori Hukum. Klaten : Pt Intan Sejati Klaten
- [12]. I Nyoman, Sumaryadi. 2016. Reformasi Birokrasi Pemerintahan Menuju Tata Kelola Pemerintahan Yang Baik. Bogor : Ghalia Indonesia
- [13]. Janedjri M, Gaffar. 2013. Demokrasi Dan Pemilu Di Indonesia. Jakarta: Konstitusi Press
- [14]. Jimly, Asshiddiqie. 2007. Pokok-Pokok Hukum Tata Negara Pasca Reformasi. Jakarta: Pt. Bhuna Ilmu Populer
- [15]. -----, 2015. Gagasan Konstitusi Sosial. Jakarta: Lp3es
- [16]. K.C. Wheare. 2011. Konstitusi-Konstitusi Modern. Bandung: Nusa Media
- [17]. Kelsen, Hans. 2010. Teori Hukum Murni (Dasar-Dasar Ilmu Hukum Normatif). Bandung: Nusa Media
- [18]. -----, 2013. Teori Umum Tentang Hukum Dan Negara. Bandung: Nusa Media
- [19]. La Ode, Husen. 2009. Negara Hukum, Demokrasi, Dan Pemisahan Kekuasaan. Makassar : Pt Umitoha Ukhuwah Grafika
- [20]. Leyh, Gregory. 2014. Hermeneutika Hukum Sejarah, Teori, Dan Praktik. Bandung : Nusa Media
- [21]. Maria, Farida Indrati. 2007. Ilmu Perundang-Undangan 1. Yogyakarta : Pt Kanisius
- [22]. -----, 2007. Ilmu Perundang-Undangan 2. Yogyakarta: Pt Kanisius
- [23]. Moh Mahfud, Md. 2011. Membangun Politik Hukum Menegakkan Konstitusi. Jakarta: Pt. Raja Grafindo Persada
- [24]. Munir, Fuady. 2013. Teori Besar Dalam Hukum (Grand Theory). Jakarta : Prenadamedia Group
- [25]. Nonet, Philippe, Dan Selznick, Philip. 2015. Hukum Responsif. Bandung : Nusa Media

Dwi Adiyah Pratiwi "Analysis Of Norma Law Without Disclaimer Sanctions In Law Of Number 25 Of 2009 On Public Services "IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 04, 2018, pp. 18-26.