

Legality of Release of Prisoners During the COVID-19

Pandemic in Positive Law Studies

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ABSTRACT

When COVID-19 has been declared a National disaster, the Government of Indonesia assesses the need for fast action as an effort to save the community, prisoners and prisoners through assimilation and integration of the spread of the COVID-19 virus. Basically every prisoner is entitled to parole. Parole is the process of coaching prisoners outside prisons after serving at least 2/3 of the sentence from a minimum of nine months. So in essence, prisoners who are entitled to parole are those who have served 2/3 of their sentence. According to the Ministry of Law and Human Rights, the Assimilation and Integration program is also considered very helpful. Because in this way it can also help break the chain of spreading the COVID-19 virus. For prisoners who are released through assimilation and integration, they still receive supervision from the government. And for those who violate their assimilation will be revoked and given a harsher punishment. The general public already understands when they hear words such as prison, jail, detention center, and correctional facility and they really know who is the occupant of these places. Crime, murder, theft, robbery, rape, and so on are various types of criminal acts that make the perpetrators languish in them so that they get the title of prisoner at the end of their free period, or possibly get a higher level title, namely "Recidivist". The formulation of the problems contained in this research are: 1. What are the conditions for the release of prisoners during the COVID-19 pandemic in terms of positive law in Indonesia? 2. Is the policy for the release of prisoners during the COVID-19 pandemic accompanied by sanctions for Recidivists? The results of this study are about the policies of the Ministry of Law and Human Rights regarding Assimilation and Integration. How about the terms of policy rules or sanctions for released prisoners to repeat the criminal act.

Keywords: Prisoners, COVID-19, Assimilation and Integration, Crime.

1. INTRODUCTION

Recently in Indonesia, there have been frequent incidents of criminal murder which can be heard or witnessed through television shows or other media which are very disturbing to the public. Not only carried out by adults, the perpetrators often involve minors. This is because a number of Correctional Institutions (LAPAS) in Indonesia are overloaded which will affect the level of supervision, accuracy and vigilance of prison officers due to these conditions. At a time when our country is not doing well because hundreds of thousands and even millions of people are fighting against the suffering of the COVID-19 epidemic, which is not yet known when it will end. The tragedy that claimed thousands of lives, devastated the economy and stopped various work activities made officials and authorities take swift steps to overcome the epidemic to stop various work activities making officials and authorities take quick steps to overcome this outbreak (Ansori, 2020).

Covid-19 has been declared a non-natural national disaster, the Indonesian government considers it necessary to take quick steps as an effort to rescue prisoners and prisoners by means of



expulsion and release through assimilation and integration. Assimilation can be defined as the process of adjusting original characteristics with characteristics The nature of the surrounding environment so as to form social order, habits and integration itself is a process of uniting various social groups, streams and other forces from all regions of the country to create a healthy, dynamic, socially just and democratic life of a nation and state based on Pancasila and the 1945 Constitution (Ansori, 2020).

There are still people who violate certain regulations, for example in the case of theft, which is taking property owned by other people and that are against the law, this person is of course subject to punishment in accordance with his actions which are contrary to the law, all regulations and policies. concerning violations (overtredingen) crimes (misdriften) and so on, regulated by criminal law (strafrecht) and contained in a law book called the Criminal Code (Wetboek van Strafrecht) which is abbreviated as "KUHP"(Yustisia, 2016)

Not only Indonesia, the countries affected by Covid-19 have already taken steps to grant integration rights during this pandemic. For example, the United States released nearly 2000 inmates from Federal prisons to reduce transmission of the Covid-19 outbreak. There is also Iran which frees 95 thousand prisoners, Brazil as many as 34 thousand prisoners, and many other countries.

In this regard, society should begin to change the perception of prisoners, that every prisoner is an ordinary human being who is not free from wrongdoing, therefore it is necessary to participate in society to be able to accept prisoners in the community so that later they do not repeat a criminal act, because a crime has the close relationship between the structure of society and individual behavior deviations (Ansori, 2020) Actually this responsibility is not only borne by the community, the State through the correctional institutions seeks to provide proper guidance to the prisoners while in the Penitentiary whose hope is that the prisoners do not repeat the crime so that they can be accepted by their environment again and can actively play a role in development and can live naturally as good and responsible citizens (Skolnik, 2020).

The principle of equality before the law or an equal position in dealing with the law, the rule of law and human rights is a requirement of the rule of law concept. Based on this concept, policies regarding regulations issued by the government and the implementation of policies and regulations must prioritize human rights aspects. Rules regarding human rights inherent in every human being are regulated through a set of existing legal rules (Aziz et al., n.d.).

The laws and regulations have accommodated parole, but in its implementation it leaves problems related to how the rules actually are and, strangely, one of the prevention of Covid-19 in

Indonesia, the government took steps to free around 30 thousand inmates. The Ministry of Law and Human Rights (hereinafter referred to as Kemenkumham) will release around 30 thousand prisoners and children from Correctional Institutions (LP), State Detention Centers (RUTAN), and Child Special Development Institutions (LPKA).

Through the Directorate General of Corrections still has the responsibility to supervise free prisoners through assimilation and integration rights. Supervision and guidance is carried out by the Correctional Center, with the aim that convicts who have been released will no longer commit criminal acts. Society of course also has a big share in the supervision of prisoners who have been released. The public can make a report to the local police unit if they find former inmates who were released during the Covid-19 period committing criminal acts again and worrying local residents. The attitude of active supervision from the community is also an indicator of the success of this government policy (Nowotny et al., 2020).

The Ministry of Law and Human Rights feels that this apostasy does not violate the law. Because the granting of assimilation and integration rights to prisoners and children are those who have met the requirements for assimilation and integration rights. Besides that, excess capacity in prison is one of the reasons for the issuance of this Regulation of the Ministry of Law and Human Rights. So one of the effective ways to reduce prison occupants is to make conditional release more effective. In general, parole is to give a prisoner the right to serve a sentence outside the prison walls (Barnert, 2020). The conditions are: a sentence that is imposed for more than nine months, has served 2/3 of the sentence plus good behavior during the 'coaching' period. Article 1 number (7) PP No. 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants concluded: conditional release is the process of coaching prisoners outside of prison after serving at least 2/3 of the sentence of a minimum of nine months. So in essence, prisoners who are entitled to parole are those who have served 2/3 of their sentence.

In Law No.12 of 1995 concerning the correctional facility regarding the rights of prisoners, it is stated as follows:

1. The right to perform worship according to their beliefs
2. The right to receive good physical and spiritual care
3. Right to education and teaching
4. The right to adequate health services and food
5. Right to complain
6. The right to obtain reading material and to follow other mass media broadcasts which are not prohibited
7. The right to get premium wages for work performed
8. The right to visit family members, legal counsel or certain other persons

9. Right to get a reduced sentence (remission)

2. RESEARCH METHODS

The research method is a method used to solve and formulate problems that the author examines. "Peter Mahmud Marzuki argues that Legal Research is a process to find legal principles, legal rules and legal doctrines that are useful for answering legal issues and producing a new concept as a prescription in solving problems at hand, in accordance with the character of legal science that is prescriptive in nature. In contrast to descriptive research, which tests whether the facts that occur are true or not.

3. RESULTS AND DISCUSSION

Assimilation and Integration Granting

At a time when our country was not doing well because hundreds of thousands and even millions of people were fighting against the suffering of the Covid-19 corona virus outbreak, which was not yet known when it would end. The tragedy that claimed thousands of lives, devastated the economy and halted various work activities made officials and authorities take swift steps to contain the epidemic. Covid-19 has been declared a non-natural national disaster, the Indonesian government considers it necessary to take quick steps as an effort to rescue prisoners and prisoners by means of expulsion and release through assimilation and integration.

Assimilation can be defined as the process of adjusting original characteristics to the characteristics of the surrounding environment so as to form social order, habits and integration itself is a process of uniting various social groups, streams, and other forces from all parts of the country or it can also be called the process of fostering Prisoners and Children which is carried out by integrating Prisoners and Children in community life. To create a healthy, dynamic, socially just and democratic life of the nation and state based on Pancasila and the 1945 Constitution (COVID & Group, 2020).

Not only Indonesia, the countries affected by Covid-19 have already taken steps to grant integration rights during this pandemic. For example, the United States released nearly 2000 inmates from Federal prisons to reduce transmission of the Covid-19 outbreak. There is also Iran which frees 95 thousand prisoners, Brazil as many as 34 thousand prisoners, and many other countries.

The purpose of parole as stated in article 5 is one of the efforts to restore a prisoner's relationship with the community in a healthy manner. Meanwhile, the intent and purpose of granting parole according to Aruan Sakidjo and Bambang Purnomo is to transition or facilitate the return of convicted people to society and provision of conditional release before the completion of

the criminal period is also intended to encourage the convict to behave well in prison. So that the convicted person does not repeat the crime again, and that the convict who is given conditional release from prison is given help to do good with the help of Reclassification.

Referring to Article 10 of the Criminal Code, the types of punishment or punishment that can be given are in the form of main and additional penalties. The main punishments are death penalty, imprisonment, imprisonment, fines and closure, while additional penalties are revocation of certain rights and announcement of a judge's decision. The punishment or punishment is given and carried out by the State to every citizen who is found guilty according to the judge's decision which has permanent legal force.

Punishment for a convicted person is a social violation caused by:

1. Occurs in connection with a violation of a legal rule
2. Dropped and implemented by people in power in connection with the law order that is violated.
3. Contain suffering or at least other unpleasant consequences
4. State condemnation of the offender.

Juridically, a person who commits a crime is then sentenced to be a criminal as a result of the crime he / she has committed is indeed normal and justified according to law. In this effort, law is needed as a medium, just law is a law that binds people in their consciousness because law is an order. Every perpetrator of a crime certainly has to bear what he has done, because the function of law is to protect the public interest (Hodgkinson & Andresen, 2020).

In this regard, society should begin to change the perception of prisoners, that every prisoner is an ordinary human being who is not free from wrongdoing, therefore community participation is needed to be able to accept prisoners in the midst of society so that later prisoners do not repeat crimes that have been committed before. , because a crime has a close relationship between the structure of society and individual behavior deviations.

Actually this responsibility is not only borne by the community, but the State also takes responsibility through the correctional institutions to strive to provide proper guidance to prisoners while in the correctional institution, whose hope in the future is that these prisoners do not repeat the crime again, so that it can be re-accepted by the environment and society so that it can again be active in playing a role in development and can live naturally as good and responsible citizens.

Sanction Rules for Prisoners Released Through Assimilation for Repetition of the Crime

Recidive In the Law Dictionary it is defined as a crime repeat, the incident that someone who has been convicted of committing a crime again commits a crime.

Recidive is the behavior of a person who repeats a criminal offense after being convicted by a judge's decision which has permanent legal force because of the criminal act he has committed

earlier. A person who often commits a criminal act, and because of his or her actions has been sentenced to a crime, is even more often sentenced to punishment, is called a residivist. If the residive shows the behavior of repeating the criminal act, then the residivist refers to the person who commits the crime again.

Thus, recidive occurs when a person has committed a criminal act and the criminal act has been subject to a judge's decision. The verdict has been carried out but after he has finished serving the sentence and is returned to the community, within a certain period after the release he commits the criminal act again.

If the person who has been convicted of the crime then commits another criminal act, then that person has proven his character is not good. Even though he has been convicted, he has committed another criminal act. Because of this nature, a recidivist needs to be subject to even heavier penalties even though he has been educated in a correctional institution so that after returning to society they can live normally as members of other communities. However, if he commits another criminal act, the article regarding recidive may be subject to a heavier criminal penalty. Regarding the Decree of the Ministry of Law and Human Rights Number 10 of 2020 2.

Not only from the Ministry of Law and Human Rights but from the National Police also emphasized that for prisoners who commit or repeat criminal acts, they will certainly receive a heavier sentence. The National Police and the Attorney General's Office agreed to ensure that those who act up will receive heavier sanctions. Convict.

those who are caught committing crimes again, will later receive a heavier sentence or a double sentence from the remaining sentence plus a new criminal act. An example of the additional penalty is that the sentence can be increased by one third, if the person guilty when committing a crime has not passed five years since serving for all or part of the imprisonment imposed on him. The articles governing Recidive in the Criminal Code.

4. CONCLUSION

The conclusions of this thesis are based on the description of the chapters, namely as follows: That the implementation of the provision of assimilation and integration rights to prisoners as an effort to save prisoners and children in prisons, special development institutions for children, and state detention centers for prevention and control of the spread of COVID-19.

For prisoners who are given assimilation and integration rights if they commit or repeat a criminal act, there are heavier sanctions and a system where the implementation is aimed at giving and imposing sentences by judges in accordance with the applicable laws and regulations.

Suggestion

So that in the implementation of parole through the program of assimilation and the right of integration, so that it can be ensured that it is in accordance with applicable procedures and regulations in order to provide a sense of justice for the community that prisoners who are released actually go through a predetermined process and so that it is more tightened.

The Ministry of Law and Human Rights in order to ensure the public that prisoners who are granted this right will not commit a crime again. And for the supervisory agency it must also continue to supervise released prisoners, in order to minimize the prisoners who are released from committing criminal acts again so that the public does not feel worried and improves coordination between institutions in implementing and monitoring the Assimilation and Integration Rights program so that it is right on target and achieving goals. which is satisfying (Donders et al., 2020). So that prisoners who receive parole understand very well the function and purpose of granting these rights (assimilation and integration rights) so that the purpose of implementation is optimal.

REFERENCES

- Ansori, M. H. (2020). *Asesmen dan Mitigasi Konflik di Tengah Pandemi COVID-19 di Indonesia*. Jakarta: The Habibi Center.
- Aziz, A. H., Watsofi, I., Azhar, N. H. A. F. R., & Nurfakih, S. S. (n.d.). *Pemberdayaan Masyarakat Desa Klampok Pada Masa Pandemi Covid-19 Melalui Kegiatan Edukasi Budidaya Sayuran Pakcoy (Brassica rapa L.) Dengan Teknik Hidroponik Secara Daring*.
- Barnert, E. S. (2020). COVID-19 and youth impacted by juvenile and adult criminal justice systems. *Pediatrics*, 146(2).
- COVID, G. A., & Group, P.-A. C. S. (2020). Post-COVID-19 global health strategies: the need for an interdisciplinary approach. *Aging Clinical and Experimental Research*, 1.
- Donders, F., Lonnée-Hoffmann, R., Tsiakalos, A., Mendling, W., Martinez de Oliveira, J., Judlin, P., Xue, F., Donders, G. G. G., COVID, I., & Workgroup, G. (2020). ISIDOG recommendations concerning COVID-19 and pregnancy. *Diagnostics*, 10(4), 243.
- Hodgkinson, T., & Andresen, M. A. (2020). Show me a man or a woman alone and I'll show you a saint: Changes in the frequency of criminal incidents during the COVID-19 pandemic. *Journal of Criminal Justice*, 69, 101706.
- Nowotny, K., Bailey, Z., Omori, M., & Brinkley-Rubinstein, L. (2020). COVID-19 exposes need for progressive criminal justice reform. In *American Journal of Public Health* (Vol. 110, Issue 7, pp. 967–968). American Public Health Association.
- Skolnik, T. (2020). Criminal law during (and after) COVID-19. *Man. LJ*, 43, 145.
- Yustisia, T. V. (2016). *KUHP: Kitab Undang-Undang Hukum Pidana*. VisiMedia.