

# **Granting assimilation and integration rights to prisoners (adults and children) in the center of the pandemic Covid-19**

**Muhammad Nuh\*, Evi Retno Wulan**

Faculty of Law, Narotama University Surabaya

**E-mail:** \*nuhez79@gmail.com and evi.retno@narotama.ac.id

## **ABSTRACT**

Nowadays the community is not only researched by the spread of Corona viruses, but the public must also be introof from crime action. Crime phenomenon amid pandemic conditions, the culprit is mostly an inmate who get an assimilation program. The assimilation Program itself is issued by the Government through the Ministry of Justice and Human rights. How not worried, the policy precisely raises the middle of the community, in the current conditions that are panicked with social insecurity. This is due to lack of supervision from the manager of the prison in the assimilation program so that many inmates who are not well qualified can get assimilation program, then the current economic conditions that carut-marut amid the pandemic Corona virus or Covid-19, unemployment is a lot, life is difficult so that the potential criminologinya very large. Then no wonder a number of prisoners are revisit. Based on the background above, this proposal can be formulated as follows: 1. is the granting of assimilation and integration rights to the convicts (adult and child) in the middle of the Covid-19 pandemic already in accordance with the legislation? 2. Is it necessary to add new rules governing assimilation and integration rights in the middle of the Covid-19 pandemic? A) This research aims to know and analyze from the side of regulation, especially Permenkumham No. 10 year 2020 on the release of convicts and children in the middle of the Covid-19 pandemic, in order to prevent the transmission of Covid-19 in correctional institution. B) The second purpose of the study is to know and analyze the government needs to issue specific regulations related to assimilation and integration rights in the midst of pandemic Covid-19.

**Keywords:** Criminality, Pandemic, Assimilation

## **1. INTRODUCTION**

Pandemi Coronavirus Disease (COVID-19) has invaded the world. Almost all countries are not separated from Covid-19 including Indonesia. In Indonesia, Covid-19 was first entered in early March 2020 with the announced 2 Indonesians positive Corona by the President of the Republic of Indonesia. Since then day by day cases Corona has always increased more and until mid-May the case of Corona in Indonesia has penetrated the figure above 20,000 positive covid-19. Various policies to prevent the transmission of Covid-19 have been issued by the government ranging from health protocols to large-scale social restrictions (PSBB). Prevention in the prison environment (prison) through the Ministry of Justice and Human Rights has issued policies by freeing up a number of convicts and children in correctional institutions. The policy is governed by the Decree of

the Minister of Law and Human Rights (Kepmenkumham) number M. HH-19. PK. 01.04.04 years 2020. Kepmenkumham number M. HH-19. 01.04.04 year 2020 governs the implementation of the production and release of prisoners and children through assimilation and integration. In making prisoners' liberation policies related to corona outbreaks, the government established it through assimilation programs and integration rights. Assimilation Program is the process of coaching prisoners and children that are implemented by blending prisoners and children in society. Based on article 14 of Law No. 12 of 1995 on correctional mention that assimilation is one of the rights that prisoners can obtain. Assimilation is given to convicts if it meets the requirements, which are well-qualified, can follow the coaching program well, and have undergone 1/2 (half) of its pidanage. This process of coaching is done by blending inmates with the community. The intent and purpose of assimilation is to prepare prisoners to return to live good community life.

The right of integration is the granting of parole, free leave and conditional leave for inmates who commit criminal acts in addition to criminal acts of terrorism, narcotics and psychotropic drug precursors, corruption, crimes against State security and severe human rights crimes, as well as organized transnational crimes, or foreign nationals. The prisoner does policy in order to suppress the rate of spread of corona viruses is the authority of the Indonesian Government through the Ministry of Justice and Human rights. It is based on the governance's concern for the spread of Corona viruses in the prison. Excess capacity in prison (Overcrowded) is one of the reasons of government concerns. The number of prison and Rutan in Indonesia reached 528 with a capacity of 130.512 people. While the number of prison occupants reaches 269.846 people, it results in overcrowded% to 107% (Prayitno et al., 2020). The phenomenon of excess number of prison occupants is due to the rate of increase in occupants not comparable to that of outgoing (Muhammad, 2015).

Decree of the Minister of Law and HAM number M. HH-19. PK. 01.04.04 The year 2020 is equipped with the Minister of Justice and Human Rights Regulation Number 10 year 2020 about terms of provision of assimilation and integration rights for prisoners and children in the framework of prevention and Countermeasures spread Covid-19, it is said that correctional institutions, children's special development institutions, and state detention houses are closed institutions that have high occupancy, are highly vulnerable to

the spread and transmission of the Covid-19. Covid-19 has been designated as a non-natural national disaster, it is necessary to do quick steps as a rescue effort against prisoners and prison-building residents in correctional institutions, child special development institutes, and state detention houses. The rescue efforts of prisoners and children in correctional institutions, children's special development institutions, and state detention houses, need to be carried out through assimilation and integration for the prevention and Countermeasures of Covid-19 deployments.

The implementation of inmates and children through assimilation is carried out under the following provisions:

1. The convicts whose 2/3 period of criminal fell to 31 December 2020.
2. A child whose period 1/2 period of criminal falls to the date of 31 December 2020.
3. Inmates and children unrelated to PP 99 year 2012, who are not currently undergoing a subsidiary and are not foreign nationals.
4. Assimilation carried out at home.
5. A decree of assimilation is published by Head of prison, LPKA, and detention house. Terms of granting assimilation and integration rights for prisoners and children in order to prevent and countermeasure the dissemination of Covid-19, governed in regulation of the Minister of Law and Human Rights Number 10 year 2020 (hereinafter called Permenkum HAM No. 10 year 2020). The requirements of inmates who can run assimilation programs and integration rights are those who have good deeds evidenced by not being subjected to disciplinary punishment within the last 6 months, actively following the program well and have undergone half the criminal period, as the provisions of article 2 paragraph (2) Permenkum HAM No. 10 year 2020.

The government Program to prevent the spread of Covid-19 by freeing more than 30,000 inmates vulnerable to contracting due to overloaded the amount of the prison available, felt good and precise. But the liberation turned out to cause public concern. People worried about the release of inmates from the various crimes that ever committed, will do various crimes again. The worries of society are actually happening in various areas. Head of Criminal Investigation Agency (Kabareskrim) POLRI General Listyo Sigit Prabowo said "from the amount of data that was released by 38,822 prisoner, there are 27 napis that again commit crimes, (Ansori, 2020). Crimes committed by the former men

were mostly criminal acts of theft, but there were also criminal acts of sexual harassment and so on. Crimes committed by the former men were mostly criminal acts of theft, but there were also criminal acts of sexual harassment and so on.

## **2. METHOD RESEARCH**

The type of research used in this thesis is normative research so that the method used is a method of legal research conducted to seek problem solving for legal issues and legal issues that exist, so the result of this legal research is to give a prescription about what should be applied to the legal issues that are proposed and applicable in the practice of government law. Peter Mahmud Marzuki stated that legal research is a process to find the rule of law, principles of law, and legal doctrines to answer the legal issues faced (Ansori, 2020).

## **3. RESULTS AND DISCUSSION**

### **Correctional Institution in Indonesia**

Correctional is an activity to undertake the construction of correctional Community (WBP) based on the system, institutional and way of coaching which is the final part of the scanning system in the criminal Justice (Article 1 Act No. 12 year 1995 on correctional). Correctional is a therapeutic process, where prisoners at the time of correctional Institution feel in a state of disharmony with the surrounding community. The prisoner coaching pattern is a way of treatment of inmates who are required by the correctional system in order to achieve the goal, namely that the return of convicts can behave as a good and useful community member for himself, society and the country. The construction of prisoners also has the meaning of treating a person with convict status to be built to rise to be a good person. Thus, the need to be built is the person and the character of the inmates to revive his confidence and can develop his social function with a sense of responsibility to conform in society.

### **Construction system in Correctional Institution**

#### **A) correctional system**

Inhumane treatment of inmates has long gained the attention of the countries of the world. Various prison renewal efforts in order to improve inmates ' treatment have been conducted. Early imprisonment of prison was conducted by countries in Europe and the

United States thanks to 22 influences of Beccaria and John Howard's mind on humanity and the principle of proper treatment of inmates (Widjojanto, 2004).

In order to realize the goals of the criminal renewal universally, United Nation Organized (UNO-PBB) in 1955 held a Congress I on "The prevention of crimes and the construction of the perpetrators of criminals". The final result of the Congress receives and approves THE Standard Minimum Rules for The Treatment of Prisoners (ECOSOC Resolution 663 C XXXIV) (Purnomo, 1986).

The renewal began in 1964 based on the views and Dr. Saharjdo, the change began by converting the prison system into a correctional system. With this correctional system developed the humanitarian principle that formulated in 10 correctional principles as the principle used in treating prisoners (Purnomo, 1986).

#### B) Construction system

The correctional institution as well as a place of EAS also serves to implement a coaching program against the prisoners, which through the program is expected the prisoners in question after returning to the community can be a useful citizen in the community. Coaching is an activity to improve the quality of steadness to the Almighty God, intellectuals, attitudes and behaviors, professionals, physical and spiritual health prisoners and prisons. As a program, the construction carried out through several phases. Construction conducted under circular letter No. KP. 10.13/3/1 dated February 8, 1965 about the correctional as the process, then the construction is carried out through four (4) phases as a unified process of integrated processes, namely (Bisri, 2007).

Correctional is a continuous process, so the process is materialize through the following stages:

##### 1. The first stage

Against inmates who entered the penitentiary conducted research to know the symptoms of matters concerning themselves including: the reasons for which he was committing offense and all information about him that can be obtained from his family, former employer or superiors, work mates, the victim of his actions, and other agencies who have handled the matter. The construction of this stage is called early stage development, where the activities of observation period, research and development of personality and independence that time from the time of the concerned status as convicts up to 1/3 period

of Pidananya. The construction of this stage is still done in the Lapas and maximum surveillance (maximum security).

#### 2. The second stage

If the construction of inmates has lasted 1/3 from the actual criminal period according to the Correctional observer team has achieved considerable progress, such as showing improvement, discipline, and adherence to the rules of conduct that apply in the institution. Therefore, the prisoners are given more freedom to be placed in prison through the supervision (medium security).

#### 3. Third Stage

If the construction of prisoners has been spent half of the actual criminal period according to the Correctional Observer Team (TPP). Having achieved considerable progress, both physically and mentally and also in terms of skills, the container of the construction process is expanded by assimilation which the implementation consists of two parts, which is the first time started since the end of the initial stage up to 1/2 (half) of the Pidananya. At this stage the construction is still carried out in the prison and its supervision has entered the level (medium security). The second phase begins from the end of the first extended period up to 2/3 (two-thirds) of its pidanera. In this advanced stage inmates have entered the assimilation stage and can subsequently be given conditional liberation or free time leave with minimum security supervision.

#### 4. Fourth stage

After the construction process has undergone 2/3 from the actual criminal period or at least 9 months, then this construction has entered the final stage, namely the activities of the planning and implementation of the integration program which began since the end of the advanced stage until the end with the effect of the criminal period of the inmates concerned. The construction at this stage against eligible prisoners is given a free-time leave or parole and its construction is carried out outside the prison by the Correctional Hall (BAPAS) which is then called the Correctional client. Coaching is the granting of guidance to improve the quality of fear of the almighty godhead, intellectuals, attitudes and behaviors of the professional physical and spiritual healthcare client. It is then called Correctional Client mentoring. In conducting construction, there is a reference program that must be followed (Kusworini, 2018).

### **Correctional Institution functions**

In 1963, Sahardjo in his speech to the inaugural doctorate of honoris causa at the University of Indonesia made a new history in the world of Indonesian prison. It is said that the convict was a lost person who had the time and opportunity to repent, which in his existence needed to get coaching. Furthermore, the penance cannot be reached by punishment and torments, but with the guidance of a happy world hereafter. Understanding the function of Correctional Institution presented Sahardjo since it used the correctional system as a method of coaching prisoners, there is clearly a change in the function of correctional institution that occurs where the retaliation to change as a construction site. In its journey, the form of construction applied to prisoners (the construction pattern of convicts/prisoners 1990 judicial management) includes:

1. The development of direct interaction is a family between the builder and the built.
2. Persuasive guidance is to try to change the conduct through the
3. Coaching plan, continuous and systematic
4. Coaching personalities covering consciousness based, nation and state, intellectual, intelligence, legal awareness, skill, mental spiritual. The aim of coaching prisoners offered is consciousness (consciousness). To gain consciousness in one's self, then one must know oneself. The self-turning person turns someone to Manso better, more advanced, more positive. Without knowing yourself, it is too difficult and even impossible someone will change oneself (Harsono, 1995).

### **The duties of Correctional Institution**

The duties of Correctional Institution include:

- 1). Conducting convicts or protégé
- 2). Perform guidance, prepare the means and manage the work of
- 3). To conduct social or spiritual inmates/students
- 4). To perform security maintenance and correctional order.

### **Prisoners ' Rights and obligations**

The correctional system in addition to the purpose of returning the prison community as a good citizen also aims to protect the public against the possibility of a criminal offence by the prison community, and is an application and an integral part of the indigo-value contained in Pancasila. According to the principles for the protection of any person who is in any form or imprisonment (body of principle for the protection of all

persons under any form detention of imprisonment) issued by the United Nations General Assembly on 9 December 1988 with resolution 43/173, no restriction or breach of any human rights of persons under the form of Detention or imprisonment, arrest, detention or imprisonment shall be made in a humane manner and in respect of the inherent dignity of the human being. No one under Any form of detention or imprisonment can be subjected to abuse or abuse, inhumane or punishment of humiliating.

### **Legal basis for assimilation while pandemic Covid-19**

The government imposed a number of special policies for the prevention of the Covid-19 deployments, including the handling of prisoners or correctional people (WBP). Addressing this government through the Ministry of Law and HAM issued regulation of the Minister of Law and Human right No. 10 of 2020 about the terms of assimilation and integration rights for prisoners and children in the framework of prevention and countermeasures the spread of Covid-19 as well as the decree of the Minister of Law and HAM number M. HH-19. PK. 01.04.04 year 2020 about the expenditure and release of prisoners and children through assimilation and integration in order to prevent and countermeasure the spread of Covid-19. Regulation and Decree of the Minister followed by the issuance of circular letter of the Director General of Correctional Letter No. PAS-497. PK. 01.04.04 year 2020 about the expenditure and release of prisoners and children through the assimilation and integration in order to prevent and countermeasure the distribution of Covid-19 and also circular letter of the Director general of correctional Number: PAS-516. PK. 01.04.06 years 2020 on the mechanism of implementation of regulation of the Minister of Law and Human Rights Number 10 year 2020 about terms of provision of assimilation and integration rights for prisoners and children in the framework of prevention and Countermeasures spread Covid-19.

Government policy through Kepmenkumham No. M. HH-19. PK. 01.04.04 years 2020 on the expenditure and release of prisoners and children through the assimilation and integration in order to prevent and countermeasure the distribution of Covid-19, and circular letter Ditjenpas No. PAS-497. PK. 01.04.04 about the same thing is motivated by the recommendation of the World Health Organization (WHO), United Nations Office on Drugs and Crime (UNODC) and several other institutions, which the recommendation is not only addressed to Indonesia only, but to all countries in the world (Ansori, 2020)



## **Due to assimilation and integration rights of convicts and children while pandemic Covid-19**

According to article 1 Figure 7 LAW No. 12 of 1995 on correctional, the definition of prisoners is the convicted who undergo criminal loss of independence in prison. A person who is undergoing imprisonment or confinement means the right to his freedom is being taken. In the implementation of prisoners not only undergo punishment, but also undergo rehabilitation, which is one of the purposes of pipetting. This is the case in the consideration of the letter C LAW No. 12 of 1995 on the correctional that the purpose of the correctional system is to be the correctional citizen to realize the mistake, improve, and not repeat the criminal act so that it can be received back by the community, can actively play a role in development, and can live reasonably as a good citizen and responsible. The prisoner's liberation is not without consequences (Roesli et al., 2017). The freed prisoners will repeat the actions even though they are not yet completed through the sentence. A full period of unguided punishment resulted in the unachievement of the purpose of Pemidanaan, namely rehabilitation and deterrent effects, and not fully implemented. It is potentially a former convict that is not ready to integrate and assimilate back into society. The unpreparedness can be a trigger for ex-convicts to re-commit crimes for their survival. More in the time of the Covid-19 pandemic The government is implementing large-scale social restriction (PSBB) that restricts human movements for activities and also for work. Because PSBB is increasing the unemployment rate because of the many workers in the LAYOFFS, many employees who are hosted or at least the hours are reduced to reduce revenues. This makes the economy paralyzed. The implementation of PSBB aims to prevent the transmission of more viruses, not only the health crisis, but also the economic crisis.

### **Prisoner and child exemption reviewed from Indonesia's positive legal perspective**

Provision of assimilation and integration rights to prisoners and children in the middle of the Covid-19 pandemic are taken on the grounds that the condition of the prisoner cell is crowded, narrow, and very unworthy. In one cell is filled with dozens of people and its position is equal to one another. At the time of the interview of the Covid-19 pandemic, it is considered very risky for the missionaries, because the chances of transmission between each fellow prisoner becomes very easy and widespread. Prisoner exemption policy in the middle of the Covid-19 pandemic through the granting of

assimilation and integration rights contained in Permenkumham No. 10 year 2020 about the prevention and countermeasures in the middle of the Covid-19 outbreak According to the authors is a less precise step. Normatively, assimilation is set forth in article 1 paragraph (7) of Law No. 12 of 1995 concerning correctional, i.e. a process of coaching convicts and correctional students that are carried out by blending convicts and prisons in community life. Soerjono Soekanto interprets assimilation as a social process characterized by the efforts to reduce the differences between individuals or human groups and also include efforts to enhance the unity of follow-up, attitudes and mental processes with regard to interests, common goals (Soekanto, 2002).

#### **4. CONCLUSION**

Based on the explanation in the previous chapter, in this chapter can be given the conclusion related to the discussion of prisoners ' exemption through assimilation program and integration rights in the middle of pandemic Covid-19 concluded as follows: In issuing a regulation should be adjusted to the development and legal needs in the community, when the purpose of the establishment of the policy is to ensure prisoners are spared from the exposure of Covid-19 due to the overcrowded prison condition, precisely if it is applied will be the opposite, because it can be said to be less likely the spread of Covid- Another effort that can be done in addressing that is to implement a restorative justice system, to circumscribe the area around the prison, to limit the current schedule and the strict examination of the convict condition, especially the Covid-19 test to all prison residents.

The implementation of prisoners ' liberation policy in the middle of the Covid-19 was not yet effective to be implemented in Indonesia, nor was it necessary to issue new regulations related to convicts. The policy of freeing convicts amid the Covid-19 is a less precise step and is a policy that is only a temporary solution. Instead of being a way out of a problem instead of backfires that hurt society even the government itself. Seeing from the conditions that may occur due to prisoners ' release may pose a concern to the community in the event of a resistance phenomenon and also does not provide a guarantee on inmates who are free not to be exposed to the Covid-19 virus.

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