

The Paradox of Punishment: Between Assimilation and Indonesian Public Health During the Covid-19 Pandemic

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ABSTRACT

Since the beginning of 2020, Indonesia has been hit by a deadly virus outbreak known as Corona Virus Disease or Covid-19. Covid-19, which is claimed to be a pandemic, has changed the foundations of all sectors of life, including the legal and criminal system in Indonesia. Various gaps have been created between *das sein* and *das sollen* related to the regulations issued by the government to reduce the number of Covid-19 cases. On the one hand, the Ministry of Law and Human Rights in its mandate has established a policy of releasing prisoners through the assimilation and integration rights program as one of the steps to suppress the spread of Covid-19. Contrary to this, on the other hand, a regulation has emerged that threatens the public for those who violate the rules regarding the prevention of this epidemic, especially for violators of Law Number 6 of 2018 concerning Quarantine. These two law enforcement policies will certainly be a punishment paradox where if prisoners are given assimilation, it will have the potential to cause a Covid-19 cluster from prisons to the general public and also has the potential to cause other problems such as committing crimes again. Likewise, if a prokes violator is put in prison, it is possible that he will contract Covid-19 and spread it to prisoners in prison, so this will become very vulnerable considering that the number of prisoners in prison is very large and even over capacity.

Keywords: *Assimilation, Prisoners, and Covid-19*

1. INTRODUCTION

The Covid-19 pandemic is a non-natural disaster that entered Indonesia at the beginning of 2020. This non-natural disaster certainly forced the government and all Indonesian people to bear a heavy burden due to the impact of a number of sectors of life. Not only does it affect the health sector and the public economy, the legal sector is also experiencing various problems related to handling the pandemic. Various policies and regulations were issued by the government as a preventive measure to reduce the increase in the number of Covid-19 cases. President Jokowi, at a press conference on March 31 2020, made an announcement regarding the policies that he and his cabinet would choose in order to deal with Covid-19 as a global pandemic to all Indonesian people. In his mandate, the President said that the policy he would choose was the Large-Scale Social Restrictions (PSBB) policy which was used to respond to health emergencies. The legal basis used in this regard is Law Number 6 of 2018 concerning Health Quarantine [1].

These policies were then implemented in the form of social distancing, work from home, online learning, and limiting activities outside the home. However, all forms of government policy above are only specifically for ordinary people, while the policies relating to the legal and criminal system in Indonesia for those who are in prison, namely the release of prisoners through assimilation programs and integration rights. Providing assimilation to prisoners is regulated in Minister of Law and Human Rights Regulation Number 10 of 2020 and Minister of Law and Human Rights Regulation No. M.HH-19.PK.01.04.04 of 2020. The Ministry of Law and Human Rights in its mandate issued this regulation to handle the prevention and control of the spread of the Covid19 virus in prisons. This decision was considered rationally because the spread of Covid-19 is very fast, but the

condition of correctional institutions has actually reached over capacity, so these conditions make it difficult for prisoners to carry out social distancing. Excessive capacity in prisons encourages the state to release prisoners because after all the state has a responsibility to guarantee and ensure that the right to life of every citizen is fulfilled and protected during this pandemic. Excessive capacity in prisons is proven based on data obtained from the Directorate General of Corrections which shows that the number of prisoners in Indonesia has reached 270,386 people, while prison capacity is only able to accommodate 131,931 people [2].

As of April 8 2020, 36,554 prisoners, both children and adults, had been released through the assimilation and integration rights program, and this number will continue to increase[3]. However, the release of prisoners, which was originally intended to break the chain of spread of Covid-19, has resulted in various controversies. The reason is, since mid-2020, Covid-19 clusters in prisons have occurred. According to data submitted by the Ministry of Law and Human Rights, overcrowding conditions in prisons caused 4,343 inmates exposed to Covid-19 in February 2020 [4]. This is of course a concern that if the assimilation program for prisoners is not carried out with a correct and strict selection system, it will have the potential to spread Covid-19 to the wider community after the prisoner is released. Not only that, providing assimilation also caused controversy from another side, namely there was talk that expelling prisoners would not only apply to general prisoners, but also planned to provide assimilation for special prisoners. This discourse certainly contradicts the Minister of Law and Human Rights Decree no. M. HH-19. PK.01.04.04/2020 which has explicitly stated that the release of prisoners and children only applies to those who are not related to PP No.99 of 2012. So, based on the regulations that have been stated, the release of prisoners does not apply to those who are trapped cases of narcotics, psychotropic substances, corruption, terrorism, transnational crime, as well as for foreigners.

The next problem can be seen from the security and social aspects of society which also become issues in providing assimilation. This takes the form of criminal acts being committed again by prisoners who have been released. As of May 19 2020, it was recorded that 125 former convicts who were freed through assimilation and integration had committed crimes again. Criminal acts committed again by 125 former convicts spread across 19 Regional Police include motor vehicle theft, violent theft, fraud, murder, drug abuse, sexual violence, and other criminal cases [5]. In reality, the release of prisoners through assimilation and integration rights programs has experienced various problems and controversies. On the one hand, the government issued this policy with the aim of fighting the spread of the Covid-19 virus, but on the other hand, there are rules for those who violate the PSBB and will be threatened with going to prison as regulated in Article 93 of Law Number 6 of 2018 concerning Quarantine. Health.

The government then followed up on this law through the issuance of Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). With this regulation, every violator will be enforced by the police as mandated by the President. In accordance with the regulations regarding PSBB, the government initiated the prevention of the Covid-19 outbreak by imposing criminal sanctions on people who violate it. Meanwhile, data and facts show that prisons are entering a condition of exceeding capacity. If a health protocol violator during the PSBB period is threatened with going to prison, there is the potential to spread Covid-19 to other prison inmates and the Covid-19 cluster in prisons for exposed inmates will allegedly increase. This

may happen because a prokes violator could be positive for Covid 19 due to breaking the rules and not complying with recommendations for maintaining health during the pandemic.

2. LITERATURE REVIEW

The correctional system has the meaning of a therapeutic process which is carried out according to the principles of protection, Pancasila, humanity, and Tut Wuri Handayani [6]. The correctional system aims for guidance and no longer for prisons, where guidance is focused on preparing a new life for prisoners who return to society in a reasonable and responsible manner. This correctional system does not cause suffering for prisoners because it does not take away their freedom, and can encourage prisoners to regret their actions and educate prisoners to become useful individuals.

The definition related to convicts is as a convicted individual (someone who is undergoing criminal sanctions because they have committed a criminal act). Meanwhile, if you look at Law Number 12 of 1995 concerning Corrections, convicts are defined as convicts who are serving a sentence of loss of liberty in prison. The definition of a convict is a person who has received criminal sanctions through a court decision that has permanent legal force. Even though a convict loses his freedom, in the Indonesian penitentiary system the rights of convicts are still guaranteed and protected.

Assimilation is the implementation of guaranteed human rights for prisoners in prison. Law Number 12 of 1995 concerning Corrections Article 14 contains the meaning that prisoners are entitled to other rights in accordance with applicable regulatory provisions. The rights in question are assimilation and integration as regulated in the Minister of Law and Human Rights Regulation Number: M.01.PK.04.10 of 2007 concerning Assimilation, Conditional Release, Leave Before Release, and Conditional Leave. Assimilation is the process of developing inmates into society where inmates are assimilated into the environment in society. The aim of the assimilation policy is to prepare inmates to return to living a better life in society. Meanwhile, integration rights include conditional release, pre-release leave and conditional leave given to prisoners on the condition that the prisoner does not fall into special criminal categories such as corruption, terrorism, transnational organized crime, narcotics, and so on.

3. METHODS

This research uses normative juridical research methods. According to Soerjono Seokanto and Sri Mamudji, normative juridical research is legal research carried out by examining library materials and statutory regulatory documents. Meanwhile, the type of approach in this research uses the Law approach (*statue approach*) and analysis approach (*analytical approach*). The statutory approach was carried out to see how assimilation regulations and regulations related to quarantine were regulated during the Covid-19 pandemic, while the analytical approach was carried out to examine and analyze how there was disharmony or conflict of regulatory norms in the articles contained in the assimilation regulations for prisoners and health quarantine. during the pandemic.

Based on legal material sources, namely primary and secondary legal materials, such as statutory regulations, court decisions, legal theory, and can be the opinions of scholars related to existing problems. The next technique for collecting legal materials is carried out using document study techniques through literature studies that are relevant to the problem. The results of this study were then analyzed qualitatively with a descriptive-prescriptive presentation.

4. RESULTS AND DISCUSSION

Covid-19, which emerged at the end of 2019 in Wuhan, has spread to 182 countries, including Indonesia. In this situation, the Indonesian government has issued various policies related to the Covid-19 pandemic. Covid-19, which later became a pandemic, showed that the virus infection increased very significantly, causing almost all countries or regions to be infected. Therefore, the Central Government issued a policy to deal with Covid-19 in Indonesia, both through presidential regulations and ministerial regulations. One of the regulations used to deal with Covid-19 is the implementation of Law Number 6 of 2018 concerning Health Quarantine which was born as a response to technological developments in the transportation sector and increasing interconnectedness between nations through various activities, such as trade, tourism and migration. international residents. Apart from that, along with the increasingly advanced development of globalization, it has raised concerns about the dangers of infectious diseases which have the potential to endanger public health emergencies. So, the Law on Health Quarantine was formed as an appropriate policy to prevent and overcome the dangers of infectious diseases [7].

Before the enactment of Law no. 6 of 2018 concerning health quarantine, there are several related regulations such as Law Number 1 of 1962 concerning Marine Quarantine; Law Number 2 of 1962 concerning Air Quarantine; and Law Number 16 of 1992 concerning Animal, Fish and Plant Quarantine. Meanwhile, statutory regulations regarding disease and health outbreaks are regulated in Law Number 4 of 1984 concerning Infectious Disease Outbreaks; as well as Law Number 36 of 2009 concerning Health. Regulations regarding health quarantine at that time were considered to have weaknesses, namely the existence of overlapping policies that conflicted with each other. Based on this, Law Number 6 of 2018 concerning health quarantine was issued with the aim of anticipating infectious diseases that could cause health emergencies. The substance of the Health Quarantine Law clearly states that the imposition of restrictions on the entry and exit of individuals to an area that has been declared a source of disease outbreaks, including regulations regarding orders to carry out isolation, regional quarantine, and vaccination to overcome the spread of the epidemic in Indonesia [8].

The health emergency resulting from the Covid-19 pandemic caused the government to take steps by implementing a health quarantine with the option of establishing PSBB (Large-Scale Social Restrictions). The provisions in Article 15 paragraph (2) of the Health Quarantine Law state that health quarantine measures include: a) Quarantine, isolation, vaccination, decontamination; b) PSBB; c) Disinfection; and d) Sanitation, security and control of environmental media. Apart from choosing to implement PSBB, the government also took steps to release prisoners through assimilation with the aim of minimizing the spread of Covid-19 in prisons. This policy was taken on the basis of the decision of the Minister of Law and Human Rights, namely Minister of Law and Human Rights Regulation No. 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Controlling the Spread of Covid-19. The formation of this regulation was carried out because of the problems that occur in prisons and detention centers due to dense population followed by inadequate facilities such as low sanitation, low access to health facilities, including prisoners who have congenital diseases which can be an ideal location for the spread of the Covid-19 virus [9].

Assimilation is the process of developing inmates into society where inmates are assimilated into the community environment. This is based on the provisions of Article 14 letter j of Law of the Republic of Indonesia no. 12 of 1995 concerning Corrections where prisoners are entitled to assimilation including leave to visit family. These provisions are nothing but a reflection of the protection of human rights for prisoners or correctional students, so that they are given assimilation, conditional release, leave before release, and conditional leave, if they have fulfilled the substantive and administrative requirements. The Assimilation Policy is only given to convicts who commit general crimes and does not apply to specific crimes such as international crimes, terrorism, narcotics, corruption, or crimes against human rights. Even though it has been regulated in such a way, it turns out that in practice and in facts on the ground this assimilation policy has actually

caused controversy because release is not only given to general prisoners, but the government plans to give assimilation to special prisoners[8], [10]. such as narcotics convicts with a sentence of 5 to 10 years and have served 2/3 of their prison term, corruption convicts aged 60 years or over and have served 2/3 of their sentence, special crime convicts with chronic illnesses and have served 2/3 of their sentence. prisoners, as well as foreign national prisoners (WNA).

Of course, this practice is seen as contrary to Minister of Law and Human Rights Decree no. M.HH-19.PK.01.04.04/2020, which states that release only applies to prisoners and children in accordance with PP No. 99 of 2012 concerning the Second Amendment to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Prisoners. In the author's opinion, the above regulatory provisions are experiencing disharmonization. In making policies, it is necessary to harmonize laws and regulations, that is, harmony between one regulation and another, both vertically and horizontally[11]. Harmony implies that there is no conflict between laws and regulations but has the aim of mutually strengthening, emphasizing and clarifying the substance of these regulations. Making a regulation must pay attention to three foundations or bases for making legal regulations, namely philosophical, juridical, and sociological [12]

The incompatibility between substance and implementation in the assimilation policy also gives rise to a conflict of norms between Minister of Law and Human Rights Regulation No. 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Controlling the Spread of Covid-19 with Law no. 6 of 2018 concerning Health Quarantine. The aim of enacting the health quarantine law is to stop the spread of the virus by limiting individual activities or restricting an area affected by an outbreak, in this case Covid-19. Meanwhile, the assimilation policy for prisoners to prevent and overcome the spread of Covid-19 by releasing prisoners into the community can actually increase the rate of spread of Covid-19 due to the increasing number of people in the community and seeing the fact that in prisons there have been clusters of Covid spread. -19, apart from that, what is worrying about this assimilation policy is that it does not rule out the possibility that the crime rate will increase due to the actions of released convicts committing criminal acts again. Another crucial problem with the regulations above is that people who violate the Quarantine Law actually receive criminal sanctions, not only fines but also prison sentences. Not a few people who violate health protocols actually receive heavier sentences than other general crimes. For example, in the case of Rizieq Shihab, who was sentenced to 6 years in prison for holding his daughter's wedding party which caused a large crowd. This is of course contrary to the assimilation policy where prisoners are released to prevent the spread of Covid-19 in prisons, while people in the community are actually punished and imprisoned for violating health protocols. The topic of discussion that is urgent here is not the government's steps to prevent the spread of Covid-19 but must emphasize how these health protocols can be implemented correctly.

CONCLUSION

The Indonesian government's policy in suppressing the spread of Covid-19 is not only carried out in the community through implementing health protocols based on the Quarantine Law, but also preventing the spread of the virus to prisoners in prisons through policies providing assimilation and integration rights. Disharmonization of the two regulations occurred because the objectives of implementing these regulations were not balanced. The aim of the Quarantine Law is to limit the number of people who can create crowds and punish someone if they violate the prescribed health protocols. Meanwhile, in the assimilation policy, inmates were released on the grounds that the spread of Covid-19 would spread more quickly in prisons. This has implications for inconsistencies between one rule and another.



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