



JURIDICAL ANALYSIS OF THE REGULATION MINISTRY OF LAW AND HUMAN RIGHTS NO 10 OF 2020 CONCERNING THE RELEASE OF CRIMINANTS IN THE COVID 19 PANDEMIC

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Abstract

The solution to preventing the spread of Covid-19 is not to gather in crowded and crowded places. This solution can work with people who are free, but not with prisoners and prisoners. Prisoners who are serving sentences in correctional institutions can be said that their space is very limited because prisons in Indonesia can be said to be overcapacity. To overcome this problem, a policy was issued in the form of a regulation, namely the Minister of Law and Human Rights Regulation Number 10 of 2020, but this regulation is considered ineffective if it is implemented in Indonesia because prisoners who are released in the Covid-19 pandemic situation make the situation even more tense, because the inmates confess with new crimes for his survival. This research uses normative legal research methods. Normative legal research is literature-based research, the focus of which is to analyze primary and secondary legal materials. This research uses the method of collecting data by means of library research (Library Research). The policy of releasing prisoners in the midst of a pandemic as it is today is one of giving prisoners rights in the form of humanity. The policy of providing assimilation and integration to inmates in prisons and remand centers is also carried out on the recommendation of the United Nations for the whole world. the implementation of this, and resulted in the inmates committing new crimes for their survival as humans.

Keywords: *Prisoners Release, Covid-19 Prevention*

1. INTRODUCTION

The Covid-19 (Corona Viruse Disease) pandemic in Indonesia begins with the discovery of the first case, namely a 31-year-old Indonesian citizen who contracted the corona virus (Covid-19) after direct contact with a Japanese national at an event at the Paloma & Amigos dance club in the Jakarta area which declared positive for Covid-19 through examination and laboratory data results on March 2, 2020. The spread of Covid-19 as of April 7, 2020 in Indonesia was tested positive as many as 2,738 people and victims who died were 221 people.

The Indonesian state has made various efforts in preventing and overcoming the spread of Covid-19, Jokowi as President of Indonesia has appealed to all Indonesian citizens through various regulations, circular letters and other policies so that Indonesian citizens remain disciplined in obeying all recommendations the government in order to break the chain of spreading Covid-19, one of which is implementing Social Distancing to all Indonesian people.

The solution to preventing the spread of Covid-19 is not to gather in crowded and crowded places. This solution can work with people who are free, but not with prisoners and prisoners. Prisoners who are serving sentences in the correctional institutions can be said that their space is very limited. The Directorate General of Corrections noted that the total number of prisoners and prisoners in Indonesia has reached 271,209 people, or 106 percent of the capacity of the detention room, it can be said that the condition of correctional institutions in Indonesia is overcapacity. To solve this problem, a policy was issued in the form of a Ministerial Regulation issued by the Ministry of Law and Human Rights on March 30, 2020, namely the Minister of Law and Human Rights Regulation Number 10 of 2020 (hereinafter referred to as Permenkumham No.10 of 2020) concerning Terms Providing



Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Controlling the Spread of Covid-19.

The birth of Permenkumham No. 10 of 2020 which was ratified by Yasonna H Laoly with the consideration that Prisons, Special Guidance Institutions for Children, and State Detention Centers are closed institutions that have a high occupancy rate, are very vulnerable to the spread and transmission of Covid-19, this is stated in Permenkumham No. 10 of 2020 on the Consideration letter (a), which shows that the Assimilation Program is the most urgent thing that must be done in the context of preventing and overcoming Covid-19. Assimilation is the process of fostering prisoners and correctional students carried out by integrating prisoners and correctional students in community life.

The assimilation program for Prisoners has been classified only for Prisoners who have committed crimes other than terrorism, narcotics and narcotics precursors, psychotropic drugs, corruption, crimes against state security and serious human rights crimes, as well as organized transnational crimes, foreign nationals. Permenkumham No. 10 of 2020 stipulates several prerequisites that must be passed by every prisoner who will receive the assimilation program.

Assimilation Program and Integration Rights Program issued by the Ministry of Law and Human Rights through Permenkumham No. 10 of 2020 reaping many pros and cons among the community, due to the emergence of a discourse issued by the Minister of Law and Human Rights Yasonna H Laoly, saying that he would revise Government Regulation No. 99 of 2012 concerning the Moratorium on granting remissions to convicts for special crimes, one of which is corruption convict for the sake of preventing the spread of covid-19, Mahfud MD as the Minister of Politics, Law and Security was one of those who said statements that were counter to the discourse and then emphasized "that there is no government plan to revise the PP Number 99 of 2012, Mahfud emphasized that it would not provide remissions and conditional release for corruption convicts and drug dealers, Mahfud added, the government would stick to the stance of President Joko Widodo (Jokowi) in 2015 regarding PP Number 99 of 2012 ", Mahfud said. A firm statement was also delivered by Najwa Shihab who said "The release of corrupt convicts with the aim of inhibiting the spread of Covid 19 in prisons is irrelevant. people who have a dull sense of humanity and do not live up to the second principle of Pancasila, who do not accept the release of prisoners in overcapacity prisons, "

The assimilation program and the right to integration program which were ratified since March 30, 2020 have been carried out in all correctional institutions throughout Indonesia, and recently, many recent cases have been reported in various media that there have been many criminal cases committed by inmates who have just been released. because of getting the assimilation program. It is known that the phenomenon of prisoners who have just been released but have started to act again has occurred in several locations. Like in Bali, a man named Ikhlas alias Iqbal (29) who was released on April 2. He was arrested again on April 7 for receiving a package of cannabis weighing 2 kilograms. Then in South Sulawesi, a man named Rudi Hartono had to go back to a prison for stealing at a resident's house. Furthermore, in Blitar, a man with the initials MS was arrested and battered by the mob after he was caught stealing a resident's motorbike. MS was released on April 3 and arrested three days later. This incident is a big question for all Indonesian people, whether the assimilation program and the right to integration program issued through Permenkumham No. 10 of 2020 has fulfilled the elements of legal objectives, and is the right solution in overcoming the spread of Covid-19 or is an opportunity for political elites to take advantage of this situation to make policies that benefit special criminal convicts.

2. LITERATURE REVIEW

2.1 Convict

In the language of the Big Indonesian Dictionary (KBBI), the meaning of prisoner is a person who is serving a sentence because he has committed a criminal act¹⁰, while according to the main dictionary the scientific term states that a prisoner is a convict or foreigner¹¹. In the Criminal Procedure Code (KUHAP) as stated in Article 1 point 32, the convict is someone who is convicted based on a court decision that has obtained permanent legal force.



According to Article 1 paragraph (7) of Law Number 12 of 1995 concerning Corrections, it is clear that the convict is a convict who is currently serving a criminal loss of independence in a correctional institution, according to Article 1 paragraph (6) of Law Number 12 of 1995 Concerning Corrections, the convict is a person who is convicted based on a court decision that has obtained permanent legal force.

The above statement can be concluded that a convict is a person or convict who has temporarily lost part of his independence and is currently serving a sentence at the Penitentiary. Before the term convict was used, what was commonly used was prisoner or convicted person. In Article 4 paragraph (1) Gestichtenreglement (Prison Reglemen) Stbl. 1917 No. 708 states that people imprisoned are:

- a. A convicted person serving a prison sentence (Gevengenis Straff) or a status / situation where the person concerned is in a Gevangen state or is caught;
- b. Temporary detained persons;
- c. The person in the cell;
- d. All the people who did not serve the sentence of the disappeared people of independence (Vrijheidsstraf) but were legally put in prison.

2.2 Covid 19

Corona viruses are a large family of viruses that cause disease in humans and animals. In humans, it usually causes respiratory infections, from the common cold to serious illnesses such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). A new type of Coronavirus that was discovered in humans since the outbreak occurred in Wuhan China, in December 2019, was later named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-COV2), and causes Coronavirus Disease-2019 (COVID-19).

According to the World Health Organization Corona virus is a group of viruses that can cause disease in animals or humans. Several types of corona viruses are known to cause respiratory tract infections in humans ranging from cold coughs to more serious ones such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).

COVID-19 is an infectious disease caused by a newly discovered type of corona virus. The new virus and the disease it causes were unknown before the outbreak in Wuhan, China began in December 2019.

People can catch COVID-19 from other people who are infected with the virus. COVID-19 can be spread primarily from person to person through droplets from the nose or mouth that come out when an infected person coughs, sneezes or talks. These splashes are relatively heavy, they do not travel far and fall to the ground quickly. People can become infected with COVID-19 if they breathe in the splashes of an infected person. Therefore, it is important for us to maintain a minimum distance of 1 meter from other people. These splashes can stick to objects and other surfaces around people such as tables, door handles, and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth. This is why it's important to wash your hands regularly with soap and clean running water, or clean them with an alcohol-based hand rub. WHO is continuing to review research developments on how COVID-19 is spreading and will share the latest findings.

The COVID-19 virus is a new type of coronavirus, MERS and SARS. Has not found a vaccine for this virus, The rapid spread of the virus from humans to other humans results in the need for good and appropriate handling both by government regulations and with self-protection. This requires the government to issue the right policies.

2.3 Parole

The meaning of parole is contained in Article 43 of Government Regulation Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assistants, namely, parole is the process of coaching prisoners outside the correctional facility after undergoing at least a minimum



of 1 2/3 (two thirds) of the 40 sentences provided that 2/3 (two thirds) of the sentence is a minimum of 9 (nine) months.

The provisions regarding conditional provisions in Indonesian laws and regulations, for the first time are termed with the term conditional release in the Criminal Code (KUHP), where the drafting of the Criminal Code is made based on Wetboek van strafrecht voor Nederlandsch-Indie, which is the Criminal Law itself.

The existence of conditional release provisions in Wetboek van strafrecht voor Nederlandsch-Indie. By the prison penal system in England (progressive system), where the framework can convict well into society.

3. RESEARCH METHODS

This research uses normative legal research methods. Normative legal research is literature-based research, the focus of which is to analyze primary and secondary legal materials. This research uses the method of collecting data by means of library research (Library Research), namely by examining secondary data in the form of primary legal materials such as laws and regulations, scientific books, journals, papers, articles, etc. The nature of this research is descriptive analytical research. This research conducts analysis only up to the level of description, namely analyzing and presenting facts systematically

The approach method used in this research is the statute approach. Approach to Laws and Regulations, namely a research approach to legal products. The data obtained in this study were analyzed based on qualitative methods, by explaining and describing the relationship between various categories or laws and regulations, then analyzed descriptively qualitatively, so as to reveal the expected results and conclusions on the problem. so that it is easier to understand and conclude.

4. RESULTS AND DISCUSSION

The prisoner release policy related to the corona pandemic, the government established it through the assimilation program and integration rights. The assimilation program is a process of coaching prisoners and children carried out by integrating prisoners and children in society. Furthermore, the right to integration is the granting of parole, pre-release leave and conditional leave for prisoners who commit crimes other than terrorism, narcotics and psychotropic narcotics precursors, corruption, crimes against state security and serious human rights crimes, as well as transnational organized crimes. or foreign nationals.

With the issuance of Permenkumham No. 10 of 2020 concerning the Requirements for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19, Kepmenkumham No. M.HH-19.PK.01.04.04 Year 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Preventing and Combating the Spread of Covid-19, and Ditjenpas Circular No. PAS-497.PK.01.04.04 regarding the same matter, then as of May 1, 2020, nearly 40,000 prisoners have been returned to their families and communities through this policy.

This policy is a common thing, because according to Article 14 of Law Number 12 of 1995, in essence prisoners have several rights, and 2 (two) of which are the right to obtain assimilation and integration which is further regulated in Permenkumham No. M.HH-02.PK.05.06 of 2010 concerning Terms and Procedures for the Implementation of Assimilation, Parole, Leaving Towards Free and Conditional Leave. Therefore, the prisoners are certainly not only released, but must meet several conditions (substantive and administrative) and provisions that do not conflict with the public interest and the sense of community justice.

The requirements regarding the release of prisoners through assimilation at home are based on Article 2 Permenkumham No. 10 of 2020:

1. Assimilation of Prisoners is carried out at home under the guidance and supervision of Bapas.



2. Prisoners who can be given assimilation as referred to in paragraph (1) must meet the following requirements:
 - a. having good behavior is proven by not serving a disciplinary sentence within the last 6 (six) months;
 - b. actively participate in coaching programs well; and
 - c. has served $\frac{1}{2}$ (one half) of the criminal period.

The requirements regarding the release of children through assimilation at home are based on Article 3 Permenkumham No. 10 of 2020, as follows:

1. Child assimilation is carried out at home with guidance and supervision of Bapas.
2. Children who can be given assimilation as referred to in paragraph (1) must meet the following requirements:
 - a. of good behavior as evidenced by not serving a disciplinary sentence within the last 3 (three) months;
 - b. actively participate in coaching programs well; and
 - c. has served a minimum of 3 (three) months in prison.

The requirements regarding the provision of parole and leave before release can be given to prisoners, are:

- a. Has served a sentence of at least $\frac{2}{3}$ (two thirds), provided that $\frac{2}{3}$ (two thirds) of the sentence is at least 9 (nine) months;
- b. Have good behavior during the criminal period of at least 9 (nine) months counted before the date of $\frac{2}{3}$ (two thirds) of the sentence;
- c. Has followed the coaching program well, diligently, and enthusiastically;
- d. The community can receive a prisoner development activity program.

Parole can be given to children who are currently serving imprisonment in LPKA who have met the following requirements:

- a. has served a criminal period of at least $\frac{1}{2}$ (one half) of the criminal period; and
- b. Have good behavior during the criminal period of at least 3 (three) months counted before the date $\frac{1}{2}$ (one half) of the sentence.

Minister of Law and Human Rights policy issued Permenkumham No. 10 of 2020 concerning the Terms of Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19 which was published on March 30, 2020, this raises questions from all Indonesian people.

The policy of releasing prisoners through the assimilation program and the right to integration is a policy that raises big issues and question marks from the whole society, there are pros and cons that arise from the policy. On the one hand, the release of prisoners is an urgent matter that must be implemented considering the conditions of LAPAS in Indonesia, including LAPAS which has the highest occupancy rate of several countries in the world. On the other hand, this policy is considered to be a situation that can be exploited by several interests of the parties, for example the issue that says convicts of criminal acts of corruption also receive parole through the assimilation program and the right to integration.

The basic considerations set out in the Ministerial Decree No. 10/2020 concerning the Terms of Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19 are:

- a. that Penitentiaries, Child Special Guidance Institutions, and State Detention Centers are closed institutions that have a high occupancy rate, are very vulnerable to the spread and transmission of Covid-19
- b. that Covid-19 has been declared a non-natural national disaster, it is necessary to take quick steps as an effort to rescue prisoners and prisoners in prisons in prisons, special development institutions for children, and state detention centers
- c. that in order to make efforts to rescue prisoners and children who are in correctional institutions, Special Guidance Institutions for Children, and State Detention Centers, it is necessary to release and release through assimilation and integration to prevent and control the spread of Covid-19.



In addition, the policy of providing assimilation and integration of inmates in prisons and over-capacity detention centers is also carried out on the recommendation of the United Nations for the whole world. Apart from Indonesia, other countries have also released prisoners to prevent the spread of Covid-19 in prisons. United Nations commissioner for human rights Michelle Bachelet said governments around the world should explore ways to release the most vulnerable prisoners, including those who are elderly and those who are sick, as well as low-risk offenders. He said that overcapacity in many places of detention in various countries made detainees and staff vulnerable to the coronavirus. Moreover, detainees were often placed in dirty environmental conditions and inadequate or even non-existent health facilities. He also asked the governments of countries to pay attention to other people who are in mental health centers, nursing homes, and orphanages. He also said that the consequences of abandoning them could potentially lead to disaster.

With the issuance of Regulation of the Minister of Law and Human Rights Number 10 of 2020 in the context of preventing and overcoming the spread of Covid-19 and also Kepmenkumham No. M.HH-19.PK.01.04.04 Year 2020 which regulates the implementation of the release and release of prisoners and children through assimilation and integration, so at this point the guidance program is expected to be carried out by inmates who receive an assimilation and re-integration program after going through the procedure. -the procedure that has been defined. The supervisory mechanism is also carried out intensively by community counselors using current surveillance methods through online media.

The coaching and mentoring program will not run optimally without the support of all parties, including the local government and the community. The local government can participate in supervising the officials closest to the community, namely the RT and encourage prisoners who are undergoing assimilation programs and correctional clients who are undergoing re-integration can contribute in advancing regional development. The community is also expected to provide confidence and moral support so that they can return to society

However, carrying out assimilation in the conditions of the Covid-19 pandemic is not an appropriate policy, this is based on unstable social and economic conditions to support the implementation of this, because as long as prisoners are still under the guidance of the state, it should be the state's obligation to fulfill the rights of prisoners as regulated in Article 14 of Law Number 12 Year 1995. Which in the first paragraph contains several state obligations to fulfill health services and physical and spiritual care for the inmates; contained in points (b) and (d). This cannot be guaranteed by the state if the assisted citizens are assimilated in the midst of this pandemic.

Apart from the realm of health, even assimilated prisoners do not have a clear mechanism other than guidance from prisons regarding how they start their business, even though they are faced with a difficult situation to find work in the midst of this pandemic. Especially in the pre-employment assistance policy package scheme that has been rolled out by the government, it does not mention pre-employment assistance for ex-convicts who have been released. This condition is not impossible, it will backfire in itself for the government, this is indicated by the occurrence of criminal cases that have been committed again by assimilated convicts because of their demands to fulfill their daily needs.

Permenkumham No. 10 of 2020 published by the Ministry of Law and Human Rights in this case as an effort to prevent the spread of Covid-19 in Indonesia, if it is connected to Gustav Radbruch's theory regarding the theory of legal objectives including Justice, certainty and benefit, the regulation has not fulfilled the objectives of the law. There is no sense of justice, certainty and benefit that is felt directly by the community for the issuance of this regulation, but it brings great concern seeing the number of crimes committed by recidivists increasing after the issuance of the regulation. The correctional facility should be an appropriate place of guidance for a prisoner so that the goal of the correctional facility itself can be realized, among others, is to make the prisoner a complete human who can admit his mistakes and will return the prisoner to be able to return to life in the community with a sense of security and peace.



5. CONCLUSIONS AND SUGGESTIONS

The requirements for the release of prisoners through assimilation at home are based on Article 2 Permenkumham No. 10 of 2020:

a. having good behavior is proven by not serving a disciplinary sentence within the last 6 (six) months; b. actively participate in coaching programs well; and c. has served ½ (one half) of the criminal period. The requirements regarding the release of children through assimilation at home are based on Article 3 Permenkumham No. 10 of 2020, as follows:

a. of good behavior as evidenced by not serving a disciplinary sentence within the last 3 (three) months; b. actively participate in coaching programs well; and c. has served a minimum of 3 (three) months in prison. 2.

Carrying out assimilation in the conditions of the Covid-19 pandemic is not an appropriate policy, this is based on unstable social and economic conditions to support the implementation of this, and results in prisoners committing new crimes for the sake of their survival as humans. Permenkumham No. 10 of 2020 has not fulfilled the objectives of the law, namely there is no sense of justice, certainty and benefit that is felt directly by the community for the issuance of this regulation but it brings great concern for the security of the community.

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