



Exiting the Prisoners Policy in Indonesia and Some Countries due to COVID-19 Disclosure

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Abstract

COVID-19 has been declared a national disaster by the Government. More and more people are indicated positive COVID-19, asking the government to make policies. One of them is the release of prisoners to prevent the spread and transmission of the COVID-19 virus in the Penitentiary. The existence of this policy. Many issued this policy as hasty and not wise. There is still community stigmatization of ex-convicts making it difficult for the public to accept this budget. This paper uses the discussion of normative law that is the study of literature or literature and qualitative descriptive analysis of the problem. This study explains the analysis of prisoner release policies by the government. Prisoner release policy made by the government based on the Minister of Law and Human Rights Regulation No. 10 of 2020 concerning policies relating to this policy has caused unrest in the community and will cause new problems.

Keyword: Existing the Prisoner; Policy; COVID-19

INTRODUCTION

Since the emergence of COVID-19 in March, it requires that the Indonesian government which was originally in a comfortable atmosphere must suddenly determine COVID-19 as a national disaster and issue various policies to prevent it from spreading further and stop the COVID-19 pandemic. Some of the policies issued by the government include the implementation of independent quarantine, the suggestion not to leave the house, the prohibition of crowding, the diligence to wash hands, wearing masks and which raises many pros and cons is related to prisoner release policy to prevent the spread of COVID-19 within the Institute Correctional facilities. As we all know with the Penitentiary in Indonesia, it has indeed been over capacity for a long time, with the consideration that the distribution of COVID-19 will be faster if there is a group of people in one location (Penitentiary), so the Government of Indonesia considers this policy the right thing. But in the view of the community, this policy is alarming, and cause public unrest. Because as of April 5, 2020, a total of 31,786 inmates had been released (Egeham, 2020). A total of 31,786 inmates were released and returned to the community. Of course, this will be unsettling and polemic. The existence of

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stigmatization of prisoners in the midst of the community is still something that cannot be changed until now, and of course, fears that the prisoner will again commit a crime (Wulandari, 2012).

The policy does not apply to all prisoners. Not all prisoners can be released, only prisoners who have fulfilled the requirements, one of which is that prisoners have served a criminal sentence for 2/3 of the sentence, which can be released. The initial target of the government is to only release as many as 30,000 inmates, but in fact, many prisoners have fulfilled the requirements and must also be released so as to reach more than 30,000. Conditions for the release of prisoners are in accordance with those written in *Permenkumham* No. 10 of 2020. Prisoners released are adult and child prisoners. In addition to fears of the occurrence of many crimes after the release of prisoners, there are also other things that cause a lot of concern with the condition of release having served a 2/3 sentence meaning that prisoners of corruption cases are also eligible and can be released. The community considers that inmates of corruption cases should not get assimilation and integration because corruption is considered a serious crime and is very detrimental to the community. So that this policy raises its own polemic in the midst of busy handling COVID-19.

The policy that was formed on the grounds of preventing the spread of the COVID-19 virus within the Penitentiary, and by providing several conditions for those who could be released, including one that has served 2/3 of the sentence means that not all prisoners can be released, whereas in terms of transmission and distribution of COVID-19 anyone can be infected or infected. However, questions will arise that whether other prisoners are deemed not in need of protection and preventive treatment by the government. Issues that will be discussed in this paper are: 1). Is the prisoner release policy amid a COVID-19 pandemic a wise policy?; 2). Will corruption convicts be released under the policy?; and 3). How do other countries treat prisoners amid COVID-19 pandemics?

RESEARCH METHOD

The approach used in this paper is a normative juridical. A juridical normative approach is a legal research approach which is carried out by examining library materials or secondary data as a basis for research by searching for the regulations and literature relating to the problem under study (Ningsih & Disemadi, 2019). In this normative study, the data analysis technique used to obtain correct conclusions is a qualitative descriptive analysis technique. The data needed from this research is secondary data obtained from primary materials in the form of legislation, secondary legal materials in the form of books, theses, journals and other literature, and also assisted with tertiary legal materials by searching related news both from the media print or online (Disemadi & Prananingtyas, 2020).

FINDING AND DISCUSSION

Prisoner Release Policy in the Middle of Pandemic COVID--19

Since COVID-19 was declared a national disaster the government began implementing a variety of policies, one of which was the release of prisoners from Penitentiary which was done so that COVID-19 did not spread quickly because the Penitentiary in Indonesia was very crowded and crowded (Susanto, Indradi, Arsyah, Mulyani, & Athilla, 2020). Over capacity in the Penitentiary is considered by the government to trigger the spread of COVID-19 to be very fast. So that the policy appears (Burhanuddin & Abdi, 2020).

Before discussing whether the policy is wise or not, it will be explained in advance about what the policy is. In terminology, the policy comes from the terms "Policy" (English) or "politiek" (Dutch). The terminology can be interpreted as a general principle that functions to direct the government (including law enforcement) in managing, regulating, or resolving public affairs, community problems or fields of drafting legislation and allocating laws or regulations in an objective (general) which leads to efforts to realize the welfare and prosperity of the people (citizens)(Mulyadi, 2008). Or policy is the government's choice to do or not do something (whatever governments choose to do or not to do)(Abidin, 2012).

Starting from this, the policy in criminal law can also be referred to as the politics of criminal law (Rofiq, Disemadi, & Jaya, 2019). The term political criminal law is known by various terms including "penal policy", "criminal law policy", "strafrechtspolitik" (Azahrah, Disemadi, & Jaya, 2020; Wisnubroto, 1999). Understanding the policy or politics of criminal law can be seen from the politics of law and criminal politics. Legal politics are (Arief, 2003; Sudarto, 1983):

- a. Efforts to realize good regulations following the circumstances and the current situation; and
- b. The policy of the state through the authorized bodies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired.

From this understanding Sudarto further stated, that implementing "criminal law politics" means holding elections to achieve the best results of criminal legislation in the sense of meeting the requirements of justice and effectiveness (Sudarto, 1983). On another occasion Sudarto stated, that implementing "criminal law politics" means, "efforts to realize criminal legislation following circumstances and situations at a time and for a future period (Sudarto, 2009).

This prisoner release policy is carried out by the government because the number of prisoners in detention centers and correctional institutions has exceeded its capacity, so that social distancing to prevent COVID-19 is considered ineffective. The government considers that it is necessary to take rapid steps to rescue prisoners and prisoners in prison by liberation through assimilation and integration (Yunus, 2020). Prisoned prisoners must also fulfill the conditions, one of which is serving 2/3 of the sentence. The basis is contained in the Regulation of the Minister of Law and Human Rights No. 10 of 2020, the Minister of Justice and Human Rights Decree No. M.HH-19PK.01.04.04 of 2020, and Director General of Corrections Circular Letter Number: PAS-497.PK.01.04.04 of 2020.

However, the existence of these policies led to polemic and unrest for the community. There is no guarantee that a convict who has been released will not repeat the crime. This issue is of concern to the community. Regarding the issue, Acting Director General of Corrections of the Ministry of Law and Human Rights, Nugroho, said that prisoners would be revoked of their assimilation rights if they violated the specified discipline (Akhmad, 2020).

The existence of this policy is considered to lead to new legal problems, because not a few prisoners are released so it is feared that it can increase the crime rate and increase the burden of law enforcement to conduct surveillance and prosecution, if a crime is repeated by the same prisoner (Burhanuddin & Abdi, 2020; Yunus, 2020). This policy is also seen as looking for opportunities to ease the sentences of prisoners, including prisoners of corruption cases. So according to the authors of this policy is not a wise policy. Other considerations need to be considered. Also, until now after more than 35 thousand prisoners have been released, there is no news about prisoners in Penitentiary who have indicated positive COVID-19. So this step is considered fast but not right. This idea is proven by the large number of prisoners who have been given assimilation and integration, and committed a crime again, and the law enforcer had to work twice with the problem, even though as we know there are still many caseloads in this country of Indonesia. Many cases are waiting to be resolved. But the government provides a policy that if inmates repeat it will be withdrawn and reprocessed of new cases. A policy that does not provide a sense of security and well-being for the general public is not wise.

The government has implemented the prisoner release policy, because it is an effort to prevent the spread of the COVID-19 virus within the Penitentiary Institution due to over capacity (Hanoatubun, 2020). The initial target of the government is 30 thousand inmates. Prisoners who can be released must meet the requirements of having been through the behavioral assessment stage, have behaved well, followed a coaching program and have not committed disciplinary violations within the Penitentiary or in the detention center, and must have served 2/3 of the sentence. With this condition in the end more than 35 thousand inmates were released. Related to these conditions, we cannot just ignore it, regarding inmates who have not yet fulfilled the requirements for release. Prisoners who do not meet the requirements also have the possibility of contracting so that their health conditions cannot be ignored. The implementation of the policy is only to reduce excess capacity, so indeed not all prisoners can be released. However, by assessing behavior while serving detention also cannot guarantee that the prisoners are truly behaving and will not repeat their crimes, those who have not done a good deed in the Correctional Institution also cannot be called unskilled and can repeat his actions.

The conditions provided include one of which has served a sentence of 2/3 is a form of qualification to capture inmates of minor criminal offenses and prisoners who have long served their sentences. Prisoners who have not fulfilled these requirements will remain in the Penitentiary to continue their prison terms by obtaining other protective measures for COVID-19 prevention.

Enforcement of Corruption Prisoner Policy

The United Nations (PBB) has urged governments in each country to release low-risk prisoners. "Authorities must examine ways to free the most vulnerable, among those elderly detainees and those who are sick, as well as low-risk offenders," said PBB Commissioner in the field of human rights Michelle Bachelet, late March (Thertina, 2020).

Because of prisoners and children including vulnerable groups exposed to the COVID-19 virus, especially now prison and remand centers in Indonesia have an overcapacity problem so there is concern that COVID-19 virus transmission will occur, making the government set prisoner release policies. This policy was initially considered by the public to be enforced for all prisoners, which on condition that they have served a criminal period of 2/3 means that prisoners of corruption cases can also participate to be released. However, the Ministry of Law and Human Rights emphasized that prisoners of general cases and children who will be given assimilation and integration are not those who are ensnared in cases of corruption and also cases of terrorism, psychotropic narcotics, gross human rights crimes and transnational crime organized by foreign nationals (Akhmad, 2020).

The Ministry of Law and Human Rights is planning to only free old corrupt prisoners. However, the policy was met with opposition, including from President Joko Widodo, who stressed that he would not release convicted corruption cases even in discourse. Exemption from prisoners of corruption cases will hurt a sense of justice and make legal certainty in the eradication of corruption increasingly damaged.

Based on the results of searches conducted, the treatment of prisoners in general and special criminal cases is different. The overcapacity condition only occurs in general criminal inmate cells. While the conditions of special criminal inmate cells, such as corruptors and terrorists, are spaced out so that physical distancing is automatically carried out. Excess capacity does not apply in detention of corruption cases so that convicted corruption cases do not need to be released with the argument of excess capacity. This discourse of liberation was also considered by some parties not only based on humanitarian reasons but to ease the punishment of corruptors (Prabowo, 2020).

Prisoner Release Policy amid COVID-19 Pandemic in Various Countries

Several countries have implemented the same policies as those carried out in Indonesia, including Brazil, Poland, Tunisia, Afghanistan, Turkey. The Brazilian state has released 24 thousand prisoners until April 2020 after two people were confirmed to have been infected by COVID-19. Same with Indonesia, opposition to this policy also occurs in Brazil. Many people are worried that the released prisoners will act again. The consideration of the release in Brazil was based on the assumption that the disaster also threatened prisoners, thus requiring the state to

implement this measure. While in the State of Poland, up to April 2020, prisoners have been released up to 20 thousand people (Larassaty, 2020). Under a predetermined decision, the prisoners will serve the remainder of their sentences at home. Whereas for prisoners who are classified as old age with a sentence of up to three years in prison can request a suspension of the sentence until the COVID-19 pandemic in the Polish state ends.

Afghanistan also helped to free 10 thousand prisoners, the same as Poland. Prisoners released in Afghanistan are generally women, adolescents, and prisoners who are sick, as well as prisoners who are old. However, the enactment of this policy is excluded from prisoners who commit crimes against the state and internationally. Tunisia gives special forgiveness to 1,420 inmates on the grounds to reduce the population in prisons amid this outbreak. This decision was taken because several human rights groups urged the Tunisian government to make efforts to prevent the spread of COVID-19 in overcapacity prisons. Turkey also issued a policy of release of prisoners, about 45 thousand prisoners have been released to avoid the spread of the COVID-19 virus (Eviana, 2020; Larassaty, 2020). This rule was carried out after 17 prisoners in several Turkish prisons were positive 19, and 3 of them died. However, this policy does not apply to perpetrators of murder, sex and drug crimes.

CONCLUSION

One of the government policies issued to prevent the spread of the COVID-19 virus is the release of prisoners. This was done with the consideration that excess capacity within the Penitentiary could accelerate the spread of COVID-19 so that efforts were needed to reduce the excess capacity. Release of prisoners must meet the conditions one of which has served a criminal period for 2/3. But the policy is reaping the pros and cons, the pros and cons of supporting this policy for the sake of humanity in overcoming COVID-19, only the pros here are not for all prisoners, only prisoners of general criminal cases. While the counter-period considers this policy to be unwise because it will only cause new legal problems with increasing crime rates. Only inmates who have fulfilled the requirements can be released and for prisoners who do not meet the requirements will continue to serve a criminal period in the Penitentiary with the protection of preventing the spread of COVID-19 others.

The requirement to have served two-thirds of the sentence means that convicts on corruption cases can be released, but this is denied by the Ministry of Law and Human Rights, only prisoners of general criminal cases can be acquitted and not corruption or other serious crimes. Likewise with the President stressed that corrupt prisoners will not be released. Not only Indonesia is implementing prisoner release policy to prevent the distribution of COVID-19 in Penitentiary, but many foreign countries also experience the same thing because the factor over the capacity of other countries frees prisoners with various requirements in each country.

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