

The Effectiveness of Parole for Prisoners during the Covid-19 Pandemic

Margie G. Sopacua*, Elsa R. M. Toule, Leony Lokollo, Yonna B. Salamor, Astuti Nur Fadillah M

Faculty of Law, University of Pattimura, Indonesia

DOI: [10.36348/jaep.2020.v04i11.008](https://doi.org/10.36348/jaep.2020.v04i11.008)

Received: 05.11.2020 | Accepted: 17.11.2020 | Published: 19.11.2020

*Corresponding author: Margie G. Sopacua

Abstract

This paper aims to analyze whether conditional release for prisoners during the Covid-19 pandemic is considered effective so that prisoners do not repeat crimes. This type of research is normative by using a statutory approach and a conceptual approach. The data used is secondary data obtained through library research. All data collected were then analyzed qualitatively. The results showed that parole for prisoners during the Covid-19 pandemic was ineffective. This is because some prisoners who received assimilation and integration rights (parole, pre-release leave, conditional leave) have repeated their actions or committed crimes and have to undergo legal processes. The ineffectiveness of parole during the corona pandemic was influenced by several factors, including the assessment before release by careless officers, as well as weak supervision for prisoners undergoing assimilation and integration rights by the government.

Keywords: Covid-19 pandemic, effectiveness, parole, prisoners.

Copyright © 2020 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Corona virus or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a virus that attacks the respiratory system. This disease due to viral infection is called COVID-19. The Corona virus can cause minor disturbances to the respiratory system, severe lung infections, and death. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), better known as the Corona virus, is a new type of coronavirus that is transmitted to humans. Although it affects the elderly more frequently, this virus can actually affect anyone, from babies to children to adults, including pregnant women and nursing mothers. Corona virus infection is called COVID-19 (Corona Virus Disease 2019) and was first discovered in the city of Wuhan, China at the end of December 2019. This virus is spreading very quickly and has spread to almost all countries, including Indonesia, in just a few months.

In the context of the Covid-19 pandemic, the state's obligations include ensuring that preventive measures, equipment, services and information are available and accessible to everyone. Within the right to health, health equipment, facilities and services must be available in sufficient quantities; accessible to all without discrimination; respect medical ethics; as well as scientifically and medically appropriate and of good quality. Health equipment and services must be accessible to all, especially the most vulnerable or

marginalized groups in society; within safe physical reach for all communities without exception; and affordable for all while taking into account special needs due to gender, age, disability. This right also includes accessibility of health-related information.

One of the preventive efforts made by the Indonesian government, especially the Ministry of Law and Human Rights to suppress the spread of the corona virus is to provide conditional release to prisoners. Conditional release is a prisoner's right that has been determined in law. In the elucidation of Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections, it is stated that the time for release of prisoners after serving at least two-thirds of their sentence provided that the two thirds are not less than 9 (nine) months [1]. In fact, parole is not an easy and fast procedure, it takes a lot more time. This is due to irregularities in the process of granting parole.

Collecting money from prisoners as a form of reward to the prison guards is a form of irregularities in the process of granting parole to prisoners. This of course creates injustice for the prisoners, which impacts if the prisoner has a certain amount of money that can be submitted to the officers, the parole process becomes faster and easier, vice versa.

The conditional release granted by the Ministry of Law and Human Rights as a form of preventing the spread of the corona virus in prisons has created a new polemic in society. There are several prisoners who were recently released, making crimes again. In fact, prisoners who are released in the assimilation process should have gone through the behavioral assessment stage. They must be judged based on good deeds, always follow a coaching program and not commit disciplinary violations.

For the Indonesian state which is based on Pancasila, new ideas regarding the function of punishment which are no longer just a deterrent but also an effort to rehabilitate and social reintegration of the Correctional Assistants have given birth to a system of guidance which since more than thirty years ago has been known and is called the correctional system. Although various improvements have been made regarding the order (system) of punishment such as conditional criminal institutions (Article 14a of the Criminal Code), conditional release (Article 15 of the Criminal Code), and special institutions for prosecuting and punishing children (Articles 45, 46 and 47 of the Criminal Code), however Basically, the nature of punishment still departs from the principles and system of imprisonment, the imprisonment system emphasizes the elements of revenge and imprisonment, so that the institutions used as a place of guidance are prison houses for prisoners and a state education house for children who are guilty. Revenge and imprisonment accompanied by the institution "prison house" are gradually seen as a system and means that are not in line with the concept of social rehabilitation and reintegration, so that prisoners realize their mistakes, no longer desire to commit criminal acts and return to being responsible members of society answer for yourself, to family, and the environment [2]. Based on this explanation, the problem that will be discussed in this paper is whether the conditional release for prisoners during the Covid-19 pandemic is considered effective so that prisoners do not repeat the crime again?

RESEARCH METHOD

This type of research is normative [3] by using a statutory approach and a conceptual approach [4]. The data used is secondary data obtained through library research [5]. All data collected were then analyzed qualitatively.

RESULTS AND DISCUSSION

Rights and Obligations of Prisoners in Indonesia

Since 1964 the system of guidance for Prisoners and Criminal Children has changed fundamentally, namely from a prison system to a prison system. Likewise, the institution which was originally called a prison house and a state education house turned into a Penitentiary based on the Instruction Letter of the Head of the Directorate of Corrections Number

JHG8/506 dated 17 June 1964. The Correctional System is a series of criminal law enforcement units; therefore, its implementation cannot be separated from development of a general conception of punishment. Prisoners are not only objects but also subjects that are no different from other human beings who at any time can make mistakes or mistakes that can be subject to punishment, so they do not have to be eradicated. What must be eradicated are factors that can cause prisoners to do things that are contrary to law, morality, religion, or other social obligations that can be subject to criminal law. Criminalization is an effort to make a prisoner or a child feel sorry for his actions, and return him to be a good citizen, obey the law, uphold moral, social and religious values, so that a safe, orderly and peaceful community life can be achieved. Children who are guilty of coaching are placed in the Child Penitentiary. Placement of children who are guilty in the Child Correctional Institution, are separated according to their respective status, namely Criminal Children, State Children, and Civil Children. The difference in the status of the children is the basis for the differentiation of the guidance that is carried out on them. Penitentiary as the spearhead of the implementation of the principle of protection is the place to achieve the aforementioned goals through education, rehabilitation and reintegration. In line with the role of the correctional institution, it is appropriate that the Correctional Officer who carries out the task of fostering and securing the Correctional Assistance Citizens in this law is designated as a Law Enforcement Functional Officer [6].

Government cooperation in each developing country (without denying developed countries) is needed, because in addition to the empirical conditions or the ability of different countries to fulfill facilities that are the main driving factors for citizens' health, also the government's political will to improve/maintain quality the life of its citizens is very necessary [7]. The Correctional System in addition to aiming to return the Correctional Assisted Citizens as good citizens also aims to protect the community against the possibility of repetition of criminal acts by the Correctional Assistance Citizens, and is an application and an integral part of the values contained in Pancasila. In the correctional system, Prisoners, Correctional Students, or Correctional Clients have the right to receive spiritual and physical guidance and are guaranteed their rights to carry out their worship, deal with external parties, both family and other parties, obtain information both through print and electronic media, receive education decent and so on. To implement the community system, community participation is also needed, either by cooperating in coaching or by being willing to accept back the Correctional Assistance Citizens who have finished serving their sentences. Furthermore, to ensure the implementation of these rights, in addition to a Correctional Technical Implementation Unit which directly carries out

coaching, a Correctional Advisory Center is also held which provides advice and considerations to the Minister regarding the implementation of the correctional system and a Correctional Observer Team which provides advice on the Correctional Assistance Development Program. in each Technical Implementing Unit and various other supporting facilities. To replace the old provisions and laws and regulations that are still based on the prison system and to regulate new things that are considered more in accordance with Pancasila and the 1945 Constitution, this Penalty Law was formed [8].

The correctional system is an order regarding the direction and boundaries and methods of guiding correctional prisoners based on Pancasila which is implemented integrally between the supervisor, who is fostered and the community to improve the quality of prisoners to realize mistakes, improve themselves, and not repeat criminal acts so that they can be accepted back by the community, can play an active role in development, and can live naturally as good citizens.

The development of guidance for prisoners is closely related to the purpose of punishment. The training of prisoners that is currently being carried out initially departs from the fact that the aim of guidance is not in accordance with the development of values and nature that grows in society [9]. The purpose of the treatment of prisoners in Indonesia began in 1964 after Sahardjo stated at a prison conference, so that those with the status of convicts are no longer deterred but are fostered for withdrawal where the goals of the development and the objectives of implementing the prison system can be achieved.

Guidance for prison prisoners is part of the correctional system to enforce criminal law. Based on Article 2 and Article 3 of the Correctional Law, it is known that the purpose of the correctional system is to return the prisoners to become good citizens so that they can be accepted back into society. Article 5 of the Correctional Law explains that the guidance system for prisoners must be implemented based on the principle [10]:

- a. Protection;
- b. Equal treatment and service;
- c. Education and mentoring;
- d. Respect for human dignity;
- e. Losing freedom is the only suffering;
- f. Guaranteed the right to stay in touch with certain families and people.

As a legal state, the rights of prisoners are rights that are protected and recognized by law. Prisoners must be protected by their rights even though they have violated the law. Article 14 of the Correctional Law explicitly states that correctional assisted citizens have the right [11]:

1. Performing worship in accordance with religion or belief;
2. Get care both spiritually and physically;
3. Getting education and teaching;
4. Obtain proper health services and food;
5. File a complaint;
6. Obtain reading material and follow other mass media broadcasts;
7. Get a wage or premium for the work performed;
8. Receiving visits from family, legal counsel, or certain other people;
9. Receive a reduced sentence;
10. Get the opportunity to assimilate including leave to visit family;
11. Get parole;
12. Get time off before being free.

In connection with the conditional release of prisoners as mentioned in Article 14 of the Correctional Law, where the procedure for its implementation is not regulated. Therefore, in Permenkumham Number 3 of 2018 concerning Terms and Procedures for Granting Parole to prisoners is made as a complement to the Correctional Law. The conditions for social release for prisoners, among others:

- a. Has served a sentence of at least 2/3 (two thirds), provided that 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 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.

Conditional Release for Prisoners during the Covid-19 Pandemic

In making the policy of releasing prisoners related to the corona outbreak, the government stipulates 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 provision of parole, pre-release leave and conditional leave for prisoners who commit no crime other than terrorism, narcotics, corruption, crimes against state security, human rights crimes and transnational crimes.

This policy is enforced based on Regulation of the Minister of Law and Human Rights Number 10 of 2020 and Decree of the Minister of Law and Human Rights Number M. HH-19.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Prevention and Control of the Spread of Corona. Conditions for expulsion of prisoners and children through assimilation at home, namely:

- a. Prisoners whose prison terms are 2/3 (two thirds) until 31 December 2020;
- b. Children whose prison term of ½ (one half) falls until 31 December 2020;
- c. Prisoners and children who are not related to PP 99/2012, who do not undergo subsidies and are not foreign citizens;
- d. Assimilation was carried out at home until integration began in the form of parole, pre-release leave and parole.

Meanwhile, the criteria for releasing prisoners and children through integration (parole, pre-release leave and conditional leave) include:

- a. Prisoners who have served 2/3 (two thirds) of the sentence;
- b. Children who have served ½ of the criminal period;
- c. Prisoners and children who are not related to PP 92 of 2012, who do not undergo subsidies and are not foreign citizens;
- d. The proposal is made through the correctional database;
- e. The integration decision letter is issued by the Director General of Corrections.

Not only in Indonesia, other countries have also reviewed and initiated the release of prisoners related to the spread of the corona virus outbreak. In the UK, for example, the British government said it would release prisoners who had low risk offenses and prisoners who had a prison term of less than two months. The prisoner is monitored electronically and will be returned to the prison if he shows anything of concern.

A nurse who runs a nursing profession by taking medical action cannot work alone, because he needs someone who has other disciplines in helping his work [12]. The quality of health services in various fields makes health workers no longer out of the SOP that have been determined, even because of advances in technology and information, a health worker is also required to master the field (technology and information) in order to adapt to existing era standards [13]. If you look at the over capacity that occurs in prisons in Indonesia, it is possible that the spread of the corona virus in prisons has a great opportunity to occur. So far the number of prisoners who have been released due to the assimilation and integration rights program is more than 35,000 [14]. The large number of prisoners on parole certainly creates unrest and concern in society. Many prisoners then repeat the same acts, or commit new crimes during the process of assimilation and integration in society.

Health as part of human rights which at the domestic level of a country becomes a human right for every citizen must be fulfilled by the state, both the right to get good health services, as well as to open the

widest access to existing health facilities or services [15]. Evidence that prisoners repeating the same mistakes or committing new crimes indicates that the assessment of behavior before prisoners were released and returned to society was not properly carried out. When the government cannot guarantee the return of prisoners in society by not repeating the same actions, it is seen that the supervision carried out by the government is very low.

CONCLUSION

Based on the description above, it can be concluded that conditional release for prisoners during the Covid-19 pandemic was ineffective. This is because some prisoners who received assimilation and integration rights (parole, pre-release leave, conditional leave) have repeated their actions or committed crimes and have to undergo legal processes. The ineffectiveness of parole during the corona pandemic was influenced by several factors, including assessment before release by careless officers, as well as weak supervision for prisoners undergoing assimilation and integration rights by the government.

REFERENCES

1. Saifudin, A. (2019). Tinjauan Yuridis Terhadap Efektifitas Prosedur Pemberian Pembebasan Bersyarat Secara Online (System Database Pemasarakatan) Dalam Proses Pembinaan Narapidana. *Jurnal Spektrum Hukum*, 16(2).
2. General Explanation of Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections.
3. Soerjono, S., & Sri Mamudji. (2011). *Penelitian Hukum Normatif*, (Jakarta: Rajawali Pers, 2011), p. 14.
4. Peter, M. M. (2010). *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2010), p. 96.
5. Kadarudin. (2020). *Mengenal Riset dalam Bidang Ilmu Hukum: Tipologi, Metodologi, dan Kerangka*, (Ponorogo: Uwais Inspirasi Indonesia, 2020), p. 171.
6. General Explanation of Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections.
7. Nilawati, A. (2015). Peranan World Health Organization di Negara Maju dan Negara Berkembang, *Jurnal Hukum Justitia*, 3(1), p. 78.
8. General Explanation of Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections
9. Harsono, C. I. (1995). *Sistem Baru Pembinaan Narapidana*, Djambatan, Jakarta, p. 13.
10. Dwidja, P. (2006). *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Refika Aditama, Bandung, p. 102.
11. Diah, G. (2013). *Hukum Penitensia dan Sistem Pemasarakatan di Indonesia*, Unila, Bandar Lampung, p. 61.

12. Nilawati, A. (2015). Korelasi Hukum Antara Tujuan Pengaturan Dengan Asas Praktik dalam Undang-Undang Keperawatan. *Jurnal Hukum Justitia*, 2(2), p. 213.
13. Nilawati, A., & Maria, A. L. (2018). Pelayanan Kesehatan dari Kajian Hukum dan Hak Asasi Manusia, *Jurnal Ilmu Hukum "THE JURIS"*, 2(2), p. 104.
14. BEM Universitas Sanata Dharma, Melawan corona: menilik pembebasan narapidana, see <http://googlesearch.com/php-pembebasan-bersyarat-covid-19>
15. Nilawati, A. (2017). National Health Coverage Sebagai Hak Asasi Setiap Warga Negara, Suatu Kajian Hukum Kesehatan (National Health Coverage as A Human Rights for Every Citizen, A Health Law Study). *Jurnal Hukum Justitia*, 5(1), p. 19.