

Polemic on the Release of Prisoners by Beniharmoni Harefa, Lecturer at the UPNVJ Faculty of Law

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HumasUPNVJ - The following is an article resulting from the thoughts of a criminal law lecturer at the UPNVJ Faculty of Law regarding the polemic on the release of convicts during the Covid 19 period.

Reporting from the thecolumnist.id page, through the *Salus populi supreme lex*, people's safety is the highest law. This postulate has a deep meaning, that the safety of the people is the most important thing, so that the law (policy) that is taken must be based on the interests of the people.

This becomes an important reflection, when the polemic about the release of convicts (prisoners) occurs as an effort to tackle coronavirus diseases (covid 19). The government through the Ministry of Law and Human Rights (Kemenkumham) carried out assimilation and parole for more than thirty thousand inmates.

A polemic ensued, some felt that the release of these convicts would not solve the problem during the Covid 19 pandemic, in fact, this release would add new problems. Not infrequently also convicts who have been released, even act again by committing a crime. Even the release of convicts was hit by unpleasant issues, a few unscrupulous members of the Correctional Institution (Lapas) carried out illegal fees (*pungli*) in the process of releasing the convicts. Is it true that the release of prisoners is for the prevention of Covid 19?

Preventive Efforts

The situation of overcrowding and even overcapacity has become a classic problem in prisons in Indonesia. Even though it is acknowledged that the Ministry of Law and Human Rights is currently improving and fixing this problem, this is the main reason that the public must understand, in order to prevent the spread of Covid 19.

Even though prisons are closed so that access for the entry of the virus is very unlikely, it must be remembered that the virus enters from various doors. For example, a prison employee who returns home may be exposed to it and become an intermediary for infecting others.

Maintaining distance in prison is impossible, given the density of the inmates. So that if one person tests positive for Covid, it is certain that all the inmates will be infected. This can be proven by several cases of the spread of Covid 19, in a closed institution.

The spread of covid at the STBBI Bethel Petamburan hostel, for example, started with one positive person, then transmitted it to other students. This is also the case at the Educational Institution (Lemdik) School for the Formation of Officers (Setukpa) of the National Police in Sukabumi. More than 300 Lemdik students tested positive for corona, which initially started from one person and then infected hundreds of other students.

So it is a rational reason when convicts are released to prevent the spread of covid 19. Although this release still has conditions, namely for assimilation the convicts have served half of their sentence. For parole, have served the minimum 2/3 of their sentence.

This is regulated through Regulation of the Minister of Law and Human Rights Number 10 of 2020. Assimilation and parole are granted to convicts who commit general crimes other than crimes of terrorism, narcotics and narcotics precursors, psychotropics, corruption, crimes against state security and serious human rights crimes. transnational organized crime as well as foreign nationals.

Recovering Criminal

At present it is undeniable that the paradigm of criminal law has shifted from being retributive or emphasizing retaliation, to now emphasizing more on corrective, rehabilitative and restorative approaches. Corrective means giving correction to the perpetrator so that he realizes the mistake he made, apologizes and repeats the crime. Rehabilitative is more about repairing the perpetrator and restorative means restoring to its original state (*restitutio in integrum*), where the situation was disrupted due to a crime.

Assimilation and parole for the prevention of Covid 19, are actually in line with the new criminal law paradigm, which places more emphasis on corrective, rehabilitative and restorative approaches. We can see this affirmation in the Draft Law on the Criminal Code (RUU KUHP). Imprisonment is the last resort and prioritizes supervision punishment, social work punishment and fines as the main punishment for anyone who commits a crime.

Recovery is the main key in the paradigm of modern criminal law. This is one of the reasons that prison is no longer a place that should be the first choice when someone commits a crime. Unfortunately, the Criminal Code Bill is still in the process of being ratified by the People's Representative Council (DPR), so that currently imprisonment will remain the primary choice of law enforcement officials, in imposing sentences on people found guilty of committing a crime. This assimilation and parole can be considered as a punishment that recovers, apart from a humanitarian point of view preventing inmates from contracting the deadly corona virus.

Supervision Optimization

Although it is undeniable that the policy of releasing convicts has several weaknesses, including the weak supervision of convicts undergoing assimilation and parole. However, this supervision can be assisted by establishing cooperation with village heads, village heads and police officers in the regions. Kemenkumham through regional offices (Kanwil) should optimize cooperation with stakeholders in the regions, so as to minimize released convicts from repeating their crimes.

This assimilation and parole will also have an impact on budget savings where the financing of prisoners' needs while in prison can be reduced. This acquittal is also in line with the paradigm of modern criminal law which is more towards a criminal recovery approach. So that it can be emphasized that the policy of releasing prisoners is carried out for the sake of prevention and breaking the chain of the spread of covid 19, because people's safety is the highest law.

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