

Future Policy Planning of Law Enforcement and Criminal Execution to Face Covid-19 Pandemic

Rosdayana Khairuummah

Magister Hukum Universitas Gadjah Mada 2019

Jl. Sosio Yustisia Bulaksumur No.1, Karang Malang, Caturtunggal, Kec. Depok, Kabupaten Sleman, Daerah Istimewa Yogyakarta 55281
E-mail: Rosdayana@mail.ugm.ac.id

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ABSTRACT

The Covid-19 pandemic is first reported in late December 2019 in Wuhan, Hubei Province of China, Covid-19 has rapidly spread worldwide. In the middle of 2019, by paying attention to the victims affected by covid-19 in the country more and more, the government, through Presidential Decree No. 11 of 2020 on The Determination of Public Health Emergency Corona Virus Disease 2019 (Covid-19), has established a public health emergency, following the event as a non-natural national disaster through the Presidential Decree No. 12 of 2020 on the Determination of Non-natural Disasters The Spread of Corona Virus Disease 2019 (Covid-19) as a national disaster, attempts to prevent the transmission of the Covid-19 virus are also carried out by the government through the Correctional Institution and Detention Center and Child Development Institutions as a closed institution that in actually experienced overcrowding conditions that facilitate the transmission of Covid-19. In the face of overcrowding prison, the Ministry of Law and Human Rights, the Directorate General of Corrections, has implemented several policies on the Correctional Institutions, Detention Center and Child Development Institutions. Considering the number of people affected by the Covid-19 pandemic is increased, it is not yet known exactly when it will decrease in the graph, criminal acts will continue to occur so that it will cause problems for the execution of unlawful deprivation of liberty that will have implications for the enforcement of criminal law in the future.

Keyword: *Overcrowding, Criminal Law, Execution, Covid-19.*

ABSTRAK

Sejak dilaporkan pertama kali akhir Desember 2019 di Wuhan, Provinsi Hubei Cina, Covid-19 dengan cepat menyebar ke seluruh dunia. Sejak Maret 2020, dengan memperhatikan korban terkena covid-19 di tanah air yang semakin banyak, pemerintah melalui Kepres No. 11 Tahun 2020 tentang Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (Covid -19) telah menetapkan kedaruratan kesehatan masyarakat, menyusul peristiwa tersebut sebagai bencana nasional non alam melalui Kepres No. 12 Tahun 2020 tentang Penetapan Bencana Nonalam Penyebaran Corona Virus Disease 2019 (Covid-19) Sebagai Bencana Nasional. Upaya pencegahan penularan virus Covid-19 dilakukan juga oleh pemerintah melalui Lembaga Pemasyarakatan (LAPAS) dan Rumah Tahanan (RUTAN) serta Lembaga Pembinaan Khusus Anak (LPKA) sebagai closed institution yang kenyatannya mengalami kondisi over crowding yang memudahkan transmisi Covid-19, dalam menghadapi problematika over crowding lapas, Kementerian Hukum dan Hak Asasi Manusia melalui Direktorat Jenderal Pemasyarakatan telah mengambil beberapa kebijakan untuk diterapkan di Lapas/Rutan/LPKA, dengan fokus utama yaitu kebijakan pengeluaran Narapidana dan Anak melalui Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 10 tahun 2020 tentang Syarat Pemberian Asimilasi dan Hak Integrasi bagi Narapidana dan Anak dalam rangka Pencegahan dan Penanggulangan Penyebaran Covid-19 dan Keputusan Menteri Hukum dan Hak Asasi Manusia Nomor M.HH-19.PK.01.04.04 tahun 2020 tentang Pengeluaran dan Pembebasan Narapidana dan Anak melalui Asimilasi dan Integrasi dalam rangka Pencegahan dan Penanggulangan Penyebaran Covid-19. Mengingat bahwa angka orang yang terjangkit pandemi Covid-19 terus meningkat dan belum diketahui secara pasti kapan akan menurun grafiknya, seiring dengan berjalannya waktu tindak pidana akan terus terjadi sehingga hal tersebut akan menimbulkan permasalahan bagi eksekusi pidana perampasan kemerdekaan yang akan berimplikasi kepada penegakkan hukum pidana di masa mendatang.

Kata Kunci: *Overcrowding, Eksekusi Pidana, Covid-19.*

Introduction

At the beginning of 2020, the Ministry of Health Of Indonesia report recorded the spread of the first Covid-19, which was previously the first phenomenon in Wuhan, at the end of 2019.¹ According to the World Health Organization (WHO) report, the spread of Covid-19 in Indonesia has reached 1,911,358 people confirmed infected with Covid-19.²

As for the characteristics of the fast and deadly transmission of Covid-19, penal institutions and detention centers are one of the places that are prone to being a means of spreading Covid-19, this is due to overcrowding in correctional institutions or detention centers due to the criminal execution mechanism which further worsens the conditions of overcrowded prisons or detention centers due to the Covid-19 pandemic.³

Methodology

Research using normative legal research methods (*normative legal analysis*) is also called library law research.⁴ And also called library research or document study, and the research concern using secondary data in libraries⁵, such as books and official

documents from the government.⁶ Normative legal research is built on an interpretive rational-consistent conceptual map containing rationalism, legal positivism, *a priori*, analysis, deduction, coherence, interpretation, library research, secondary and qualitative data.⁷

Normative legal research analyzes the reciprocal relationship between legal facts and social facts where the law view as an independent variable and social attributes view as the dependent variable. This type of research starts from new legal norms to social realities.⁸

The researchers used normative legal research methods with a conceptual approach (conceptual approach), namely looking for principles, doctrines, and sources of law in a philosophical sense.⁹ This legal research aims to find written positive legal principles or doctrines or research on legal rules in society. This type of research is commonly called dogmatic studies or doctrinal research.¹⁰ This legal research researcher works analytically inductively, the process starts from the premises in the form of positive legal norms that are known and ends with the discovery of legal principles or doctrines.¹¹

Discussion

A. Enforcement of Criminal Execution Law

The culmination of a case in the trial process is the judge's decision itself, therefore, before deciding on the matters that the judge currently handled, the judge must consider thoroughly and

¹ Hisyam Ikhtiar, *Analisis Kebijakan Asimilasi dan Integrasi Narapidana di Masa Pandemi Covid-19* (Jakarta: Lembaga Bantuan Hukum Masyarakat, 2020). P. 1.

² World Health Organization, "Covid-19 Report in Indonesia," 2021.

³ Ikhtiar, *Analisis Kebijakan Asimilasi dan Integrasi Narapidana di Masa Pandemi Covid-19*. P.3.

⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Perss, 2009). P. 13-14.

⁵ Palmawati Tahir., Muhamad Muslih., dan Rani Sri Agustina, "MUI HALAL CERTIFICATION ON MILKFISH SATAY AS AN EFFORT TO SUPPORT NATIONAL FOOD SECURITY," *LEGAL STANDING JURNAL ILMU HUKUM* 4, no. 1 (2020): 233-46, <https://doi.org/http://dx.doi.org/10.24269/ls.v4.i1.2670>.

⁶ Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis serta Disertasi* (Bandung: Alfabeta Press, 2007). P. 27.

⁷ Ishaq.

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*.

⁹ Soerjono Soekanto and Sri Mamudji.

¹⁰ Soerjono Soekanto and Sri Mamudji.

¹¹ Soerjono Soekanto and Sri Mamudji.

explicitly the details and all aspects of the case.¹² In every outcome of the possibility that the judge has tried and decided, a legal consequence must be carried out by the party deemed to be proven guilty by the court decision.¹³ In the criminal decision, legal matters must be implemented by the party who has been proven guilty are in the form of conviction, acquittal, and acquittal of all lawsuits.¹⁴

The decree in the form of punishment,¹⁵ punishment means "The Infliction of pain by the State on someone who convicted of an offense."¹⁶ This case, consists of the main punishment, included in the main punishment, namely the death penalty, imprisonment, fines, additional penalties, confiscation of revoking certain rights, confiscating certain goods, and announcing court decisions.¹⁷

In this case, the punishment is imposed solely because the person has committed a crime or criminal act (*quia peccatum est*), crime is an absolute implication or consequence that exists as retaliation in the form of suffering or punishment for people who commit crimes.¹⁸ According to Hegel, Criminal law is a logical perspective and a consequence of crime because the crime itself is a manifestation of the denial of the order or state law.¹⁹

Somebody can view the realization of material criminal law enforcement from

an indicator of whether the decision that has been handed down by the judge and has permanent legal force can be immediately executed following the rules that should be, the execution process of court decisions in criminal cases should be carried out quickly and efficiently, considering that the criminal execution process, this is the authority of a court decision as to the end of the law enforcement process.²⁰ The judge's decision in a criminal case for the law enforcement process is formally carried out by the prosecutor as the executor who has the authority to regulate the law to carry out the judge's decision, the judge's decision that can be executed is a judge's decision that has obtained permanent legal force (*inkracht van gewijsde*).²¹

In court decisions for criminal cases, the several types of crimes, imprisonment is one of the leading crimes that judges most handed down by judges to people who are found guilty of committing a crime.²² Implementation of court decisions (execution) which has permanent legal force (*in kracht van gewijsde*) In criminal cases, it is part of criminal law enforcement, one form of law enforcement from criminal executions is the provision of imprisonment for criminals.²³

B. The history of Imprisonment in Indonesia

Imprisonment is one type of sentencing contained in the criminal law system in Indonesia, as stated in Article 10 of the Criminal Code, according to Jan Rummelink, an imprisonment is an

¹² Ahmad Rifai, *Penemuan Hukum Dalam Perspektif Hukum Progresif* (Jakarta: Sinar Grafika, 2011). P. 94.

¹³ Rifai.

¹⁴ Rifai.

¹⁵ Rifai.

¹⁶ Muladi and Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana* (Bandung: Alumni Bandung, 1984). P. 2.

¹⁷ "Article 10 of the Criminal Code" (n.d.).

¹⁸ Muladi and Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*. P. 10-11.

¹⁹ Muladi and Barda Nawawi Arief. P. 12-13.

²⁰ Mungki Hadipratikto, "Eksekusi Putusan Pidana Uang Pengganti dalam Perkara Tindak Pidana Korupsi," *Jurnal Nestor Magister Hukum Untan* 2, no. 2 (2012): 1.

²¹ Hadipratikto.

²² Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara* (Semarang: CV. Ananta, 1996). P. 43.

²³ Arief.

essential form of unlawful deprivation of liberty (corporal punishment).²⁴ Meanwhile, PAF Lamintang, Imprisonment is a deprivation of freedom from a convict, which is carried out by entering the convict into a correctional institution and forcing the convict to comply with all applicable regulations within the institution.²⁵

Imprisonment is one type of sentencing widely used as a preventive or repressive effort in tackling crime.²⁶ The application of prison sanctions is known started at the end of the 18th century.²⁷ Historically, the imposition of imprisonment is known in the codification of the French law made in 1670, known as taking hostage in exchange for money.²⁸ While in England around the 12th century, there was known church confinement in the 16th century, was a very ancient form of imprisonment located in Bridwell castle known as "Thriftless Poor" located in the former residence of King Edward VI.²⁹

Imprisonment is known in Indonesia after the Dutch colonized Indonesia in the 16th century, precisely in the 18th century when Raffles led the government.³⁰ Raffles efforts to improve judicial bodies for indigenous people by establishing prisons in each judicial body.³¹

Imprisonment has become one of the most common types of criminal sanctions imposed on convicts in criminal cases in Indonesia, such as since 1995, the implementation in prison, which was initially a punishment, has turned into a coaching concept.³² This theory is in line with the politics of criminal law in Indonesia, which initially tended towards absolute punishment and then turned into the type of sentencing in development mechanism for prisoners.³³ Saharjo also stated that development was needed to provide provisions for criminals to return to their activities in society.³⁴ Meanwhile, Muladi emphasized that the penitentiary system was built to prepare prisoners mentally also their skills to return to the community.³⁵

Regarding the current policy of implementing prison sentences, the provisions are contained in Law no. 12 of 1995, which can provide the basis for the formulation of the correctional system policy in the law.³⁶ The penitentiary system is an order regarding the direction and boundaries as well as the method of fostering correctional inmates based on Pancasila, those who are encouraged and the community to improve the quality of Correctional Inmates so that they are aware of their mistakes, improve themselves and do not repeat criminal acts so they could return to the society as before.³⁷

As for the execution of imprisonment with the correctional system, is carried out by the Ministry of

²⁴ Jan Rummelink, *Hukum Pidana, Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-undang Hukum Pidana Belanda dan Paparannya dalam Undang-undang Hukum Pidana Indonesia* (Jakarta: Gramedia Pustaka Utama, 2003). P. 465.

²⁵ P.A.F Lamintang, *Hukum Penintensier Indonesia* (Bandung: Amico, 1984). P. 69.

²⁶ P.A.F Lamintang.

²⁷ Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. P. 42.

²⁸ Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia* (Bandung: Refika Aditama, 2006). P. 72.

²⁹ Priyatno. P. 76.

³⁰ Priyatno. P. 83.

³¹ Priyatno.

³² Bambang Purnomo, *Pelaksanaan Pidana Penjara dengan Sistem Pemasyarakatan* (Yogyakarta: Liberty, 1999). P. 1.

³³ Purnomo.

³⁴ Saharjo, "Pohon Beringin Pengayoman Pancasila," 1963.

³⁵ Muladi, *Lembaga Pidana Bersyarat* (Bandung: Alumni Bandung, 1995). P. 1.

³⁶ Adhe Adhari, *Pembaharuan Sistem Pelaksanaan Pidana* (Sleman: Deep Publisher, 2020). P. 78.

³⁷ Adhari.

Law and Human Rights as the agency that has the authority to carry out the criminal execution through the Correctional Institutions (LAPAS).³⁸

C. Overcrowded Correctional Institution during the Covid-19 Pandemic

On March 2020, the Decree of the Minister of Law and Human Rights was issued the regulation Number M.HH-19.PK.01.04.04 of 2020 regarding the Release of Prisoners and Children Through Assimilation and Integration in the Context of Prevention and Control of the Spread of Covid-19, on the same date, the Minister of Law and Human Rights Regulation Number 10 of 2020 concerning Conditions for Granting Assimilation and Integration Rights for Prisoners and Children was also stipulated.³⁹

Indonesian government policy is to anticipate the transmission of COVID-19 and reduce excess capacity amid data from the Directorate General of Corrections, a total of 270,386 prisoners in prisons and prisons in Indonesia.⁴⁰ While the breadth of prisons and remand centers in Indonesia can accommodate only 131.931 people, overcrowding in correctional facilities during the Covid-19 pandemic is related to the limitations experienced in prisons.⁴¹

The limitations include the limitations of detention room facilities,

increasing number of prisoners without being matched by the availability of these facilities has triggered the overcrowded Correctional Institution.⁴² Based on data on the correctional database system as of April 14, 2020, it shows that 260,281 inmates inhabit 524 prisons and detention centers spread throughout Indonesia.⁴³

Overcrowded causes non-fulfillment of the fundamental rights of prison residents because prisons are less able to provide proper places and facilities due to the increasing number of prisoners living in prisons, the overcrowded impact will increase the state budget in every aspects along with the increase in the number of prison residents.⁴⁴ Likewise, with the increasingly minimal facilities, considering that funds are increasingly being absorbed for the inmates' food budget, the further impact of the overcrowded condition is the lack of maximum security and supervision of prisoners.⁴⁵ The emergence of other problems such as riots and massive health problems due to the overcrowding of prisons, the issue of being overcrowded in prisons has triggered concerns during a pandemic and will have fatal consequences for inmates or apparatus serving in the correctional institution.⁴⁶

Seeing these conditions, prisoners and detainees have the potential to be exposed to COVID-19, this is because inmates and detainees are crowded and cannot keep their distance in prisons and detention centers. In addition to reducing the number of inmates in

³⁸ Adhari.

³⁹ Iqram Sulhin, "Covid-19, Pemenuhan Berlebihan, dan Potensi Katastrofe Kemanusiaan," *Jurnal Hukum dan Pembangunan* 50, no. 2 (2020): 400, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol50.no2.2588>.

⁴⁰ Sulhin.

⁴¹ Terry Ichwal Nurrohman, "Upaya Mengurangi Overcrowded Lembaga Pemasyarakatan pada Masa Pandemi Covid-19 dan Optimalisasi Pembinaan di Masa Mendatang," *Jurnal Ilmu Hukum dan Humaniora* 7, no. 4 (2020): 786.

⁴² Nurrohman.

⁴³ Nurrohman.

⁴⁴ Nurrohman. P. 787.

⁴⁵ Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, 2006. P. 73.

⁴⁶ Nurrohman, "Upaya Mengurangi Overcrowded Lembaga Pemasyarakatan pada Masa Pandemi Covid-19 dan Optimalisasi Pembinaan di Masa Mendatang." P. 787.

prisons whose capacity is indeed limited, inmates are a group that is vulnerable to COVID-19.⁴⁷

Concerns about the spread of the Covid-19 virus in prisons where inmates share the same cell, bath, and dining room every day, this activity that can accelerate the spread of the Covid-19 virus in prisons and is expected to have a negative impact on inmates. Who is serving a period of detention in the Correctional Institution (LAPAS).⁴⁸

This policy accelerates the granting of assimilation rights and parole to prisoners who have served 1/2 prison term for assimilation or who have served 2/3 of the time for parole (integration rights), the primary consideration being overcrowding conditions in prisons and detention centers (Detention Center) which makes it challenging to implement Physical Distancing as one of the prior efforts in preventing the transmission of Covid-19.⁴⁹ Minister of Law and Human Rights Yasonna Laoly said granting assimilation and integration to tens of thousands of prisoners was based on humanitarian reasons given the overcrowding capacity of prisons and detention centers.⁵⁰ The prisoners who have been released under the Minister of Law and Human Rights Regulation Number 10 of 2020 until August 2020 have reached 39,628 prisoners and child prisoners.⁵¹

In the process of law enforcement and criminal execution of the Right of Integration and Assimilation policy

⁴⁷ Irsal, "Menyoal Over Kapasitas Penjara di Tengah Pandemi Covid-19," <https://sulsel.kemenkumham.go.id/>, 2020.

⁴⁸ Irsal.

⁴⁹ Irsal.

⁵⁰ Sulhin, "Covid-19, Pemenjaraan Berlebihan, dan Potensi Katastrofee Kemanusiaan."

⁵¹ Ariesta Wibisono Anditya, "The Understanding the Restorative Idea of The Correctional Institution in Indonesia, *Journal Advances In Social Science*," *Journal Education and Humanities Research* 499 (2020): 536.

carried out by the government in the face of the Covid-19 pandemic, this raises pros and cons as well as problems in its implementation, civil society groups consisting of the Mega Bintang Foundation, the Independent Anti Injustice Society (MAKI) and the Law Enforcement Supervision and Oversight Institute (LP3H) sued the Surakarta District Court, Jawa Tengah. This policy is considered to have caused unrest in the community because of the released actions to commit crimes.⁵²

However, support for this policy also emerged from civil society, the Institute for Criminal Justice Reform (ICJR), through a release dated March 31, 2020, appreciates and considers that this step has not been able to reduce the number of inmates of the Penitentiary significantly so that there is still a vulnerability to Covid-19 transmission ICJR also suggested that the Ministry of Law and Human Rights release prisoners who have a high risk of being exposed to Covid-19, namely elderly prisoners, pregnant women or with children, children, prisoners with congenital diseases or who are in a critical/serious condition, prisoners with severe mental disorders, and drug addict.⁵³

The implications after the issuance of the Minister of Law and Human Rights Regulation Number 10 of 2020 policy, in addition to preventing the transmission of Covid-19 in prisons because the number of inmates exceeds capacity, this policy further has various positive impacts on the sustainability of disciplinary activities, as for the decrease in the number of overcrowded in Indonesia, on the other hand, it can save the state budget due to the decline in the number of prisoners, while the amount

⁵² Anditya.

⁵³ Anditya.

of the state budget that can be saved is 341.000.000.000,- IDR.⁵⁴

Then, due to the overcrowded factor, many inmates are unable to experience the entire coaching program, This policy of reducing the number of prisoners during the Covid-19 period is undoubtedly a good opportunity for prisons to maximize the application of the principle of restorative justice as the basis for the philosophy of correctional in Indonesia and to realize intramural and extramural guidance for prisoners so that the productivity and creativity of prisoners increases, maximum coaching can make prisoners get sufficient ability to return to society after undergoing correctional in prison.

D. Future Policy Planning Solutions for Law Enforcement and Criminal Execution in Facing the Covid-19 Pandemic.

The development of correctional institutions, new problems have arisen regarding the density of prisoners in every prison in Indonesia and the presence of the Covid-19 pandemic amid overcrowding in prisons, which poses challenges for the implementation of law enforcement for criminal executions in Indonesia, Correctional Institutions experiencing the overcrowding, which indicates that the amount of prisoners inhabiting correctional institutions is more than the capacity that the Correctional Institution itself can accommodate.⁵⁵

As for the factors that cause overcrowded prisons to occur due to the criminal system itself, this is undoubtedly contrary to the purpose of

the penitentiary system itself, coaching and mentoring inmates is increasingly difficult because the number of prisoners entering prisons is not proportional to the number of free prisoners.⁵⁶

The Indonesian government implements the policy by issuing a policy of assimilation and integration rights for prisoners is the government's effort in responding to current conditions for the overcrowded state of Correctional Institutions and the Covid-19 pandemic situation, which requires restrictions on daily social activities to break the chain. According to Barda Nawawi Arief, the spread of the virus formulates policies following aspects of the criminal application, namely in the form of legislative approaches in the reformulation of imprisonment sanctions in criminal legislation as material for efforts to improve legislative policies related to criminal law.⁵⁷

The imposition of imprisonment in Indonesia, a legacy of colonial law, is punitive and repressive, the teachings of punishment only influence this nature.⁵⁸ According to Sudarto, the word punishment is synonymous with the word punishment. He said that punishment comes from the bare mention of law, so it can be interpreted as setting the law or deciding on the punishment (*berechten*). Punishment, in this case, has the same meaning as a sentence or *veroordeling*.⁵⁹

According to the penal theory, the punishment was given because the perpetrators of the crime had to accept the penalty for the sake of guilt, the sentence being the fairest retribution for

⁵⁴ Bayu Rizky, "Dampak Positif Kebijakan Asimilasi dan Integrasi bagi Narapidana dalam Pencegahan dan Penanggulangan Covid-19," *Jurnal Justitia* 7, no. 3 (2020): 132.

⁵⁵ Nugraha, "Konsep Community Based Correctional pada Sistem Pemasyarakatan Dalam Menghadapi Dampak Pemenjaraan," *Jurnal Sains Sosio Humaniora* 4, no. 1 (2020): 142.

⁵⁶ Nugraha.

⁵⁷ Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia* (Bandung: Refika Aditama, 2008). P. 23.

⁵⁸ Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni Bandung, 2006). P. 71.

⁵⁹ Sudarto.

the losses caused by their actions.⁶⁰ Along with the development of sentencing, the perspective on punishment shifts to a paradigm of punishment that has the value of restorative justice, with the paradigm shift from retributive view to the restorative justice view, this creates several significant changes to the pattern of retributive punishment with prison institutions that have been adopted so far.⁶¹

Reconnoiter from several countries, even retributive punishments no longer prioritize imprisonment as a punishment for criminals but have started to have various punishment innovations that have restorative justice patterns such as social work sentencing, supervision, and fines sentencing.⁶² The changing of the sentencing concept is partly due to the consequences that prisons have more significant adverse effects and do not prove successful in reducing crime rates.⁶³

The development of criminal theory and punishment from the retributive paradigm to restorative justice, in resolving criminal cases according to restorative justice, through deliberation for consensus where each party has the same position, and no one dominates.⁶⁴ The focus of settlement in the restorative justice model lies in mediating and restoring the relationship between the perpetrator and the victim, it aims to produce success in law

enforcement by involving all parties involved in a crime, settlement of criminal cases can be fairer and more effective because all parties are actively engaged.⁶⁵

With this restorative justice model, the perpetrator of the crime must repair what was caused by the crime he committed, the victim physically and psychologically gets recovery in the form of compensation and reduces psychological healing, and the community takes part in recovering from negative consequences by accepting back criminals and teaching other members of the community not to commit crimes.⁶⁶ In the restorative justice model, if it is correlated with the purpose of punishment in the KHIP Bill in article 54 paragraph (1) letter c, namely to "resolve conflicts that arise from criminal acts, restore balance and bring a sense of peace in society", following the theory of the restorative justice model that focuses on restoring balance and a sense of peace in society.

Then, based on the Institute for Criminal Justice Reform (ICJR) report in 2012, which raised the issue of pre-trial detention in Indonesia explicitly, it saw that arrest was one of the sources of abuse of the authority of law enforcement officers, obligations, but the detention mechanism outside the detention center had not been developed at all.⁶⁷

Considerations for detaining, as explained in the Criminal Procedure Code, are entirely subjective judgments from investigators that cannot be tested or criticized, most of the detentions are

⁶⁰ Ibnu Artadi, "Menggugat Efektivitas Penerapan Pidana Penjara Pendek Menuju Suatu Proses Peradilan yang Humanis," *Jurnal Hukum Pro Justitia* 8 (2012): 224.

⁶¹ Samuel C Daren, "Restorative Justice Prison and the Native Sense Of Justice," *Journal Of Legal Pluralism* 47 (2002): 83.

⁶² Daren. P. 84.

⁶³ Alison Liebling, "Prison in Transition," *International Journal Of Law and Psychiatri* 29 (2006): 422.

⁶⁴ John Braithwaite, "Setting Standards for Restorative Justice," *Britania Journal Criminal* 42 (2002): 565.

⁶⁵ Okwendi Joseph Solomon, "The Role Of Retorative Jiustice in Complementing the Justice System and Restoring Community Values in Nigeria," *South Asian Journal of Humanities and Social Science (AJHSS)* 2 (2014): 128.

⁶⁶ Dede Kania, "Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Yustisia* 3, no. 2 (2014): 22.

⁶⁷ Kania.

then determined in the form of custody in correctional institutions, *Human Rights Watch* (HRW) helped explain that globally there have been developing harsh laws (rude laws) that criminalize essentially non-criminal behavior and has a policy of prioritizing imprisonment and detention before trial.⁶⁸ This development has led to an increase in population and resistance to an estimated 11 million people.⁶⁹

Narcotics abuse cases are one of the crimes that should not end in detention and imprisonment. However, a large number of narcotics convicts, reaching 23% of the total number of prisoners in Indonesia, indicates that the over-criminalization policy is still happening. The mandate of Law Number 35 of 2009 concerning Narcotics has emphasized that the appropriate treatment, especially for cases of narcotics abuse, is rehabilitation.⁷⁰

In this case, the author proposes a model of restorative justice as one of the policy ideas that can be a solution regarding prisons whose capacity is overflowing in the face of the Covid-19 pandemic, the problems faced by jails and detention centers or correctional institutions are motivated by the excessive use of detention and imprisonment.⁷¹

Suppose the capacity of the correctional institution/remand center is too total. In that case, it cannot be separated from the criminal system, which still makes imprisonment one of the crimes used as punishment for perpetrators of criminal acts, the development of criminal reform, which tends not to keep up with changing

⁶⁸ Solomon, "The Role Of Retorative Justice in Complementing the Justice System and Restoring Community Values in Nigeria." P. 129.

⁶⁹ Solomon.

⁷⁰ Sulhin, "Covid-19, Pemenuhan Berlebihan, dan Potensi Katastrofee Kemanusiaan." P. 404.

⁷¹ Sulhin.

conditions of the times, is one of the things that cause overcrowded prisoners in correctional institutions which ultimately raises concerns about the potential for the spread of the Covid-19 virus in correctional facilities as a result of the crowded.⁷²

Furthermore, the planning of future criminal execution law enforcement policies in the context of dealing with the Covid-19 pandemic is to reformulate policies regarding punishments imposed for certain crimes such as narcotics abuse crimes which are included in criminal acts with a particular criminal category contributing to the number of prisoners with a percentage 17.7% in the period from 2015 to 2020 this can be reviewed in table 1 below :

Table 1

*Percentage of the Number of Convicts of Narcotics Abuse for the 2015-2020 Period.*⁷³

Years	Amount of Narcotics Cases	Percentage of Convicts of Narcotics Abuse
2015	28514	17,2%
2016	25949	14,4%
2017	32339	15,4%
2018	38163	16,2%
2019	47054	18,2%
2020	47695	17,7%

Imprisonment carried out especially for narcotics abuse cases, should be reconsidered so that the imposition of sanctions on prisoners for narcotics abuse cases is following the mandate of Law Number 35 of 2009 concerning Narcotics which has mandated rehabilitation as an effort that must be done for narcotics users, and not a form of imprisonment. ⁷⁴Suppose there is a reformulation policy for imposing

⁷² Sulhin.

⁷³ "Data from <https://smlap.ditjenpas.go.id>," n.d.

⁷⁴ Sulhin, "Covid-19, Pemenuhan Berlebihan, dan Potensi Katastrofee Kemanusiaan." P. 404.

imprisonment for perpetrators of narcotics abuse so that the sanctions are changed to rehabilitation. In that case, this can overcome overcrowded inmates in prisons/remand centers in the future. Furthermore, for the detention of defendants who are in the trial process, which is also a consequence of being overcrowded in prisons/remand centers in Indonesia, considering that detention is a subjective assessment for investigators, during this pandemic period, detention before the court should also be reviewed in terms of mechanisms and policies in dealing with overcrowded prisons during the current Covid-19 pandemic.⁷⁵

Based on various reports, the criminal deprivation of liberty is not always possible, here is the legal basis regarding detention during the Covid-19 period from the investigation and investigation stage by the police, during the investigation of criminal acts, it is necessary to consider wisely to make efforts to detain suspects due to the condition of the detention center which is over capacity considering the Covid-19 pandemic which must implement health protocols in the form of physical distancing.⁷⁶

The second, according to the Attorney General's Letter Number B-049/A/SUJA/03/2020, it requires the prosecutor to immediately complete the trial period for the defendant who is in detention in the detention center with a detention period that cannot be extended, and consider giving the transfer/suspension of detention by referring to the provisions of Article 21 and Article 22 of the Criminal Procedure Code (KUHAP) and taking into account

the considerations of the Instruction of the Attorney General of the Republic of Indonesia Number 5 of 2020 concerning Policies for the Implementation of Duties and Handling of Cases During the Prevention of the Spread of COVID -19 Within the Prosecutor's Office of the Republic of Indonesia and Circular Letter of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning Adjustment of the Employee Work System in Efforts to Prevent the Spread of Coronavirus Disease (COVID-19) within the Prosecutor's Office of the Republic of Indonesia.

Third, in the judicial stage, there is Perma Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Courts Electronically on September 25, 2020, and officially promulgated on September 29, 2020, which contains provisions if the trial process and distribution of documents related to the trial process is changed to The online method, in this case, the reform, was also carried out considering the conditions of the Covid-19 pandemic. Thus, ready or not, Indonesia already has a mechanism in criminal justice and criminal execution that is slowly reforming to adapt to the conditions of the Covid-19 pandemic.

Conclusion

During the Covid-19 pandemic, the Indonesian government's policy to overcome Covid-19 was to issue the Minister of Law and Human Rights Regulation Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children. Covid-19 numbers that are prone to transmission if the prison conditions are overcrowded, then this policy will not only have a positive impact on the decrease in the number of prisoners to prevent massive Covid-19 transmission, but on the other hand, this policy has a positive side in terms of saving money. The state budget

⁷⁵ Rizky, "Dampak Positif Kebijakan Asimilasi dan Integrasi bagi Narapidana dalam Pencegahan dan Penanggulangan Covid-19." P. 133.

⁷⁶ Shohalludin Al Ayubi, "Cegah Corona Kapolri Perintahkan Tersangka Pidana tidak Ditahan," <https://kabar24.bisnis.com>, 2020.

provides opportunities for correctional institutions to maximize internal and extramural guidance for prisoners. Following the principles of restorative justice, prisoners will be better prepared to return to society.

Planning for law enforcement policies and future criminal executions in overcrowded prisons/remand centers includes reformulating the criminal system in which imprisonment is retributive or retaliatory, making imprisonment one of the crimes still often imposed in various types. Crimes to date, so it is necessary to review the punishment imposed on prisoners. Sentencing with a restorative justice model can be an idea during the covid-19 period so that not all criminal acts are punished with imprisonment, punishment in the future one of them can use ideas with the concept of a restorative justice model to overcome overcrowded prisons/detention centers in the future, especially in the face of a pandemic Covid-19.

Then the review of imprisonment for convicts of narcotics abuse cases which accounted for 23% of the number of prisoners in Correctional Institutions that caused overcrowded should be reconsidered considering Law no. 35/2009 mandates the method of rehabilitation for convicts of narcotics abuse cases so that this can also be a solution in overcoming overcrowded in Correctional Institutions. In addition, currently, the criminal justice system apparatus is also working together to create policies to overcome overcrowded correctional facilities during the pandemic, including the issuance of the Attorney General's Letter Number B-049/A/SUJA/03/2020, which instructs the prosecutor to speed up the trial process for the accused. Who is in detention, then an appeal from the Head of the Indonesian National Police, which is intended for Polri investigators not to detain the accused with the

consideration that there are overcrowded in prisons and remand centers until Perma No. 4 of 2020, which requires that the trial process and administrative trial method be changed to online, while these things are the government's efforts to reformulate policies in law enforcement of criminal executions to deal with overcrowded prisons and remand centers in the future.

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