

# THE PAID CRIMINAL LEGAL POLICY AS A NEW PARADIGM OF CRIMINALIZATION DURING THE GLOBAL PANDEMIC

Timbo Mangaranap Sirait, University of 17 August 1945

## ABSTRACT

*There is no guarantee that Covid-19 is the last global pandemic. Therefore, Criminal Justice need to look for breakthroughs in law enforcement patterns during pandemics. This study aims to determine the right idea to be applied as a new paradigm during pandemics using Normative Juridical method through library research. Concluded the "Paid Criminal" policy can be used as a New Paradigm during pandemics is because this method acts as a source of state revenue and prevents the virus from spreading in clusters in prisons, protecting inmates, and fair because laws be enforced and criminals be punished even during a pandemic.*

**Keywords:** Legal Policy, Criminalization, Paid Criminal, Paradigm

## INTRODUCTION

On 31 December 2019, the World Health Organization (WHO, 2020) was formally notified of a cluster of pneumonia cases in Wuhan, China, in the form of an acute respiratory infection that attacks the lungs. The virus was declared a global pandemic by WHO on 11 March 2020, due to its rapid spread to over 200 countries and territories worldwide. WHO (2020) regularly pronounces various health-related strategies to prevent the spread of Covid-19, such as maintaining physical distancing, washing hands, wearing masks, and identifying, isolating, and providing optimal care for infected patients from an early age.

Irrespective of the global Covid-19 Pandemic, the phenomenon of criminality in society continues to increase. This is similar to the popular adage that says "*evil tends to exist where there is a society,*" and increases development. Therefore, various legal policies are implemented to overcome these criminal problems.

During the global Covid-19 pandemic, various countries experienced an increase in crime rate, thereby leading to a rise in the number of imprisoned criminals. Therefore, to overcome this problem, various countries have made impromptu legal policies as Pre (candidates) for Criminal Law Enforcement Paradigm. These legal policies are to comply with the WHO health protocols in preventing the spread of Covid-19 by reducing prisoners' population in prisons and not carrying out convictions for non-serious crimes, such as terrorism, corruption, murder, sadistic, rape, and inhumane crimes.

Imprisonment is indeed an old paradigm of law enforcement that was not properly applied during the pandemic. Therefore, due to the prisoners' inability to keep their distance, there was a rapid spread of the virus. According to Muladi & Arief (1984), the act of overcoming crime using implemented policies is as old as human civilization.

Due to the emergence of the Covid-19 pandemic, Criminal Law Enforcement Agencies in various parts of the world, ranging from the Police, Attorney General's Office, and Courts to Correctional Institutions, are looking for the right law enforcement strategy to be applied as candidates for the New Paradigm. For instance, in a bid to adhere to WHO's advice, the Los Angeles Sheriff's Department has reduced the number of imprisoned inmates by 600 in the last two weeks. The LA County prison system, which is the largest in the world with an average population of around 22,000 prisoners, has also decreased its arrests rate, from an average of 300 people per week to 60 in mid-March. Similarly, Cuyahoga County in the city of Cleveland, Ohio State, has released hundreds of prisoners due to the pandemic. Judges held emergency hearings over the weekend to allow the prisoners to be released early. In addition, several federal agencies in the United States of America postponed most arrests and deportations. The US is the country with approximately 2.3 million people behind bars in federal, state, and local prisons, thereby making it a nation with the most incarcerated number of citizens (BBC News Indonesia, 2020). Meanwhile, in Iran, 85,000 people, including political prisoners, were released to combat the pandemic (BBC News Indonesia, 2020).

Countries in Europe have also decided to release some prisoners to reduce the spread of the virus. Furthermore, concerns regarding the risk of spreading the virus in prisons were discussed in a video conference of EU justice ministers. France also joined the race by reducing the number of prisoners by up to 10 percent, while UK announced the early release of 4,000 prisoners whose convictions were less than two months (CNN Indonesia, 2020). For humanitarian reasons, Indonesia has reduced the number of prisoners by releasing more than 30 thousand, through the issuance of two legal policies, namely 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. 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in Prevention and Control of the Spread of Covid-19, as recommended by WHO.

Although the government's legal policy on prisoners' release is based on humanitarian and health reasons, it is still controversial and criticized by society.

Various parties have expressed their objections with fears of an increase in the crime rate. For example, in Indonesia, Kurnianingrum (2020) stated that in the Kompas opinion poll, 24.6% and 71.2% of the respondents agreed and disagreed with prisoners' release. Meanwhile, 10% and 86.8% believed and disbelieved that the release of prisoners prevented Covid-19 transmission in prisons. In addition, 91.5% and 6% were worried and not worried that the release of prisoners has the possibility to lead to new crimes. Society considers crime as an act that disrupts the environment; therefore, as the legal adage that says "*Fiat Justitia Ruat Caelum*," which means "*Even if the sky fall, the law must be upheld*," they demand that criminals must be punished accordingly despite the pandemic.

There is no guarantee that Covid-19 is the last of all viruses due to the rise in global changes, immigration, tourism, urbanization, and the natural environment's exploitation. Over the decades, various viruses have metamorphosized into monsters that attack humans and undermine the economy. Humans are left in a state of panic and worry with the emergence of recession and the urge to carry out numerous laboratory tests to look for drugs and vaccines as antidotes. However, as the highest in the food chain, humans cannot lose and always find a way out of these problems. Therefore, stakeholders of the Criminal Justice System need to identify

ideas for a New Paradigm of law enforcement appropriate and applicable during pandemics. This is in accordance with the Scientific Revolution Theory by Thomas S. Khun, which stated that changing the Old Paradigm of "*science*" is a necessity capable of producing a New Paradigm that can be adopted, followed, and applied by the scientific community. Therefore, it is necessary to look for a new law enforcement policy as a New Paradigm capable of dealing with the situations. Conversely, society feels that the law is still carried out in a fair manner because the perpetrator of the crime is still rewarded accordingly, while humanitarian communities protect health and human values irrespective of their crimes.

This study is important because it acts as a new idea to construct a New Paradigm during crises and pandemics. The embryonic criminal law of various countries imposes sanctions against criminals such as imprisonment, paying fines, participating in social work with wages, etc. However, imprisonment is still the primary sanction that creates a deterrent effect on society.

This is a normative juridical research and legal philosophy, with data obtained through primary, secondary, and tertiary legal materials. This research aims to determine revolutionary ideas that can be applied as a New Paradigm in the Criminal Justice System during the pandemic. Revolutionary means that there is a non-cumulative paradigm shift, which starts from a new chapter, as in the Thomas S. Khun theory. Furthermore, this is a descriptive-analytic study that provides an overview of the problems associated with the inception of Covid-19. The research method is adapted to the problem formulation, which focuses on the strategies used to implement the "*Paid Criminal*" Legal Policy used as a New Paradigm for Criminals. This is a theoretical study that provides useful knowledge for the development of legal science in general and criminal law. It also contributes adequate knowledge to practical law bearers in the Criminal Justice System. Furthermore, it is applied as a new paradigm in addressing the gap between the Criminal Justice System policies that are deemed unfair because criminals are freed during the pandemic.

### **The Scientific Paradigm Change of Law Enforcement in the Revolutionary Pandemic Era**

The old paradigm of law enforcement and crime prevention policies during the pandemic need to be revolutionized to follow the demands of legal, scientific developments. This means that there needs to be significant changes in part or as a whole in handling and punishing criminals during the pandemic. Furthermore, this paradigm shift needs to be carried out according to legal, scientific theories, the substance of material law, the current enforcement procedures made and intended for normal order, and during a crisis such as the current pandemic.

According to Muladi (2002), the complexity of the community and law enforcement officials' complexity in overcoming crime needs to be balanced with reforming and building the criminal law system as a whole, which includes building the culture, structure, and substance. The Penal Policy occupies a very strategic position in the development of modern criminal law. Therefore, the development of culture, structure, and substance of criminal law applied during the pandemic needs to determine a scientific solution as a revolution in legal science applied to overcome extraordinary events or crises that presently occur and those likely to occur in the future.

Kunt & Surjaman, (2008) defined and stated the Scientific Revolution's functions in the development of increasingly complex laws in his book "*The Structure of Scientific Revolutions.*" The Science Revolution is considered an episode of non-cumulative development in which the Old Paradigm is completely or partially replaced by a contradicting New Paradigm.

Revolutionary means that law enforcement's paradigm is reversed, while non-cumulative means re-starting from a new phase. The new paradigm of law enforcement remains by upholding the sense of justice in society, which benefits humanity in accordance with law. Currently, there is no theory or empirical experience that can be applied to overcome the societal and economic problems associated with the Covid-19 pandemic because it is a new phenomenon. Therefore, almost all established systems collapse, and nothing can be applied to overcome this problem, including law enforcement and punishment types.

Several efforts have emerged to explore the right candidates suitable for the enforcement of the New Paradigm to be used as a substitute for the Old Paradigm, which is no longer effective in a crisis. According to Kunt & Surjaman (2008), the scientific revolution keeps growing because the associated community is often confined to a narrow subdivision of the existing paradigm, which fails to function adequately in exploring an aspect of nature.

The exploration of a new Paradigm Candidate has long been predicted. For instance, Dünkel (2017) stated that the international consensus that imprisonment needs to be used as a last resort has never been questioned in Europe, with few exceptions and crime policy periods. Meanwhile, incapacitation and deterrence flourished in the USA from the mid-1970s until recently. Since the 1965 Council of Europe Resolution (65) 1 on suspended sentences, probation, and other alternatives to imprisonment, the principle of imprisonment as a last resort and for the shortest possible period has repeatedly been emphasized in many international recommendations and resolutions.

The most common claim made by supporters of the New Paradigm is that they can solve the problems that turned the Old Paradigm into a crisis. Kunt & Surjaman (2008) stated that when this paradigm is made valid, it becomes very effective. Therefore, the ideas of the New Paradigm of law enforcement policies born during the pandemic, are expected to be able to solve the problem of social phenomena where crimes continue to exist and grow amid the pandemic. According to a legal adage, "*fiat justitia ruat caelum*" which means "*even if the sky falls, the law must still be enforced,*" therefore, despite the occurrence of a pandemic, perpetrators of a crime are prosecuted are going to receive the appropriate punishment.

Therefore, whatever happens, perpetrators of a crime need to be upheld, however for humanitarian reasons, the perpetrators are not allowed to become victims of the virus and die in prison. Hence, the old policy related to imposing criminal sanctions in the form of imprisonment is no longer mandated.

This legal policy is also in line with Arief's (1994) research, which stated that criminal law policy regulates citizens and law enforcement officers' actions. Therefore, by reflecting on this opinion, the legal powers that need to be implemented by law enforcement officials during the Covid-19 pandemic is a New Paradigm with a revolutionary legal breakthrough.

Prescot (2015) opinion that typical criminal sanctions in modern countries include fines, incarceration, and supervision (including probation and parole). The death penalty (or capital punishment) is a historically important criminal sanction, but it is employed rarely in practice in Western countries these days and is treated elsewhere in this collection. Therefore scientifically,

the pattern of imposing sanctions in the form of fines is a global criminalization standard during pandemics.

### **Legal Policy Paid Criminal as a New Paradigm of Global Pandemic Criminalization**

There is no guarantee that Covid-19 is the last of all viruses due to the rise in global changes and exploitation of the natural environment. However, irrespective of the virus's ability to metamorphose into a monster that attacks humans, the global economy, and the urgent need for vaccines antidotes, a New Paradigm of criminal law enforcement policies (strafrechtspolitik/Penal Policy) need to be properly implemented.

Criminal law policy can also be referred to as "*criminal law politics*," "*penal policy*," "*criminal law policy*" or "*strafrechtspolitik*" in foreign literature (Wisnubroto, 1999). Therefore, in this case, the criminal policy can be defined as "an attempt to realize criminal legislation in accordance with the present and future circumstances. The word "*in accordance*" means "*good*" with the ability to fulfill the justice and effectiveness requirements (Wisnubroto, 1999).

Marc Ancel defined criminal policy as the rational effort of society in dealing with crime, while Hoefnagels (1969) defined it as a science and part of a larger policy.

Thomas S. Khun defined criminal policy as a change in the Old Paradigm of a "*science*," which is a necessity in an anomalous era, due to the increase in Scientific Revolution, thereby leading to a New Paradigm. Based on this theory, the Criminal Justice System's Stakeholders need to determine new law enforcement policies as a New Paradigm in dealing with criminals in these pandemic situations. On the one hand, the law continues to be implemented because the crime perpetrators were held accountable and rewarded accordingly for their actions. However, due to humanitarian reasons, human beings' health protection as prisoners needs to be put forward.

A correctional institution, also known as a prison, is used to coach and guide prisoners to become good citizens. Therefore, based on the guidance methods as the final part of the criminal justice system, revolutionary legal policies need to be carried out to address this virus. The high crime rate in various countries has increased the annual amount of State Expenditure budget to provide Fast Food and various other facilities. For example, Indonesia in the State Budget of 2020 proposes Rp. 3 trillion for correctional institutions. Furthermore, Rp. 2.6 trillion was for prisons and Rp. 300 billion for construction completion (Mashabi, 2020). However, state costs used to tackle the pandemic has also been eroded, and various countries have experienced economic crises.

Therefore, in response to the Covid-19 Pandemic, various countries made legal policies. For instance, Brazil released 24 thousand prisoners after two people were confirmed to have died from contracting the virus. Similarly, Poland, Afghanistan, Tunisia, Turkey, Myanmar, Colombia and Chile released up to 10,000, 10,000, 1,420, 45,000, 25,000, 4,000, and 1,300 prisoners (Larassary, 2020). In Venezuela, human rights groups are concerned on the spread of Covid-19 among a prison population of 110,000 prisoners already in extremely unsanitary conditions (Rafie, 2020).

However, these policies became controversial in society, with some supporting the act, while others blasphemed it because they believe that the perpetrators of crimes are released from their responsibility instead of being punished. People questioned the existence of the legal adage

"*Fiat Justitia Ruat Caelum*" because law enforcement has become a paradox with the law enforced without any certainty. Moreover, assuming there is a more severe disaster, law enforcement tends to inevitably collapse and unable to fulfill the sense of justice in society.

Therefore, it is necessary to determine policy solutions implemented as a New Paradigm of law enforcement during the pandemic. This policy needs to be able to accommodate a sense of justice in society and also human values. On the one hand, the community feels that the law is still implemented in a fair manner because the perpetrators of crimes are still rewarded according to the law. Conversely, the protection of the health and values of prisoners is needed as a solution to human rights.

### **Justice and Humane Policy through Paid Criminal**

The provisions of criminal law capable of imposing sanctions against perpetrators in various countries by paying fines have been widely regulated. However, the implementation of these provisions is often a secondary sanction, while imprisonment is primary because it creates a deterrent effect in the society. For example, in Article 10 of the Indonesian Criminal Code, fines are regulated though they are still in the fourth position as Secondary Sanctions. The article consists of A. principal penalties, namely 1) death penalty, 2) imprisonment, 3) confinement, 4) paid criminal, 5) closure, and B. additional penalties, such as 1) revocation of certain rights and 2) confiscation of certain goods. In the Indonesian Criminal Code, 32% of Book II crimes are paid and formulated in an alternative way. Meanwhile, for violations, fines are generally used as a threat and are formulated singly, such as Article 495 of the Criminal Code and alternatively, namely Article 493 of the Criminal Code. In Book III, 4 articles did not include criminal sanctions, namely Articles 504, 505, 506, and 520 of the Criminal Code, which means that 97% of criminal offenses are punishable by fines (Aryaputra et al., 2017).

Meanwhile, in America, fines are usually imposed on perpetrators of minor crimes convicted for the first time and corporate-related crimes. In more serious cases, judges combine fines with detention or other forms of punishment, therefore, when the perpetrators fail to pay, they are imprisoned. Therefore, the imposition of sanctions in the form of fines is no longer a foreign matter to be applied in punishment.

Rommelink stated that the imposition of fines on convicts has several advantages. Firstly, it does not stigmatize, secondly, the perpetrators can remain with their families and social environment. Thirdly, a fine does not cause the perpetrators to lose their jobs. Fourthly, it can easily be executed, and fifthly, the state does not suffer losses due to its imposition (Hiariej, 2014).

Therefore, during the Covid-19 Pandemic, imprisonment in correctional facilities was not an appropriate policy; this is because prisons became a potential place for rapid transmission. As a new paradigm of legal politics, imprisonment should only be used as a last option. Prison is only for prisoners not willing to pay, despite being in possession of the money. Meanwhile, for convicted prisoners, without the ability to pay "*Paid Penalty*," can become volunteered Social Worker in Covid-19 Clusters areas, Ambulance assistants, hospitals that handle pandemic diseases, or as workers in burial places for dead victims.

According to Sudarto, Politics of Law is defined as follows a). Attempts to create good regulations according to the circumstances and situation at a time, and b). Policies from the state

through the authorized institutions to establish the desired regulations used to express societal contents and to achieve their aspirations (Arief, 1996). Therefore, in line with this opinion, it is necessary to make a new paradigm of criminal law policy (*strafrechtspolitik*) in the form of "*Paid Criminal*" as the optimization of fines that have been regulated in the law, during the pandemic and for the future. The word "*appropriate*" implies "*good*" because it fulfills the requirements of justice and effectiveness in accordance with the objectives of the law.

As expected by local and international law, prisoners need to be treated properly and humanely using an integrated coaching system. This is because the penitentiary system acts as a series of law enforcement to make prisoners realize their mistakes, improve themselves, and fail to repeat criminal acts. Therefore, one day they can be accepted back by the community, play a role in development activities, and live naturally as good and responsible citizens.

The public policy of "*Paid Criminal*" economically benefits humanity for 3 (three) reasons. The first is associated with the purchase of ready-to-eat food and other prisoners' facilities to decrease cases of infected patients. Secondly, the policy is included as non-budgetary state income, and finally, the spread of the Covid-19 in prison clusters is suppressed.

Carl J. Federick stated that public policy is a series of actions proposed by a person, group, or government in a certain environment. It indicates the obstacles or opportunities to implement a proposed policy to achieve certain goals (Wibowo, 2004). Therefore, based on this opinion, it can be stated that public policy is a guide that is always related to the management of the public interest.

### **Law Enforcement Procedures with Paid Criminal**

Criminal law policies are born from public protection related to handling criminal acts at every level. It starts from Investigation, Indictment, to prosecution by judges in court. The process for offering "*Paid Criminal*" takes precedence over cooperative criminals admitting the guilt. At the investigation level, the value offered is lower, assuming the suspects admit to being guilty of their crimes.

Likewise, at the indictment stage, the prosecutor offers the Paid Criminal policy to the alleged crime perpetrator; however the value is usually higher than during the investigation stage.

At the Court stage, the Judge offers Paid Criminal to the defendant to admit the guilt before the trial starts and follows the policy; however the value is usually high. Furthermore, assuming the trial process continues and a decision is made in which the actions are found guilty, the Judge imposes the sentence in accordance with the policy as the main sanction. However, the second option, which is imprisonment, is implemented when the defendant fails to pay the assigned fine.

This is specially implemented for criminals that are economically incapable of making payment, with a motion or voting rights applied by exchanging the payment from their wages as a volunteer in places needed such as hospitals, burial places for the dead due to the pandemic, ambulances, and works in public kitchens.

For perpetrators and prisoners, this "*Paid Criminal*" policy is the best means of atoning for their guilt to society. They prefer to commit "*Paid Criminal*" rather than the stigma of being imprisoned for a certain time and dying due to the virus. Non-Custodial paid criminals can be

used as a new paradigm to replace imprisonment and serve as the main sanction or not be used as a secondary crime without stigmatization. Furthermore, economically the state receives routine non-budgetary financial income and reduces the state budget to finance Prisons.

Furthermore, through this new paradigm of criminal law policy, the public also feels that their demands for a sense of justice are fulfilled. This policy makes it safe and peaceful because it continues its function and works even during a pandemic. Furthermore, the state's finances are no longer undermined to purchase ready-to-eat food and other prisoners' facilities. The state has received an additional budget through the "*Paid Criminal*" policy to buy vaccines and donate back to justice-seeking people.

## CONCLUSION

Based on the descriptions above, it can be concluded that there is no guarantee that Covid-19 is the last of all viruses because pandemics occur at any time. Therefore, the Criminal Justice System's Stake Holders have to seek revolutionary breakthroughs of law enforcement in the present and future. Therefore, the idea of implementing the Paid Criminal legal policy can be used as the primary criminal policy during the pandemic. This legal policy is theoretically a demand for the application of the scientific revolution as a New Paradigm in dealing with the virus. Furthermore, it ensures that communities feel safe and peaceful due to the demands and need to fulfill the law despite the pandemic's occurrence. In this case, the criminals are held accountable to the law through Paid Criminal. On the other hand, prisoners' health and safety can also be protected, with economic benefits by decreasing their population, thereby decreasing the spread of the virus. Conversely, Paid Crimes contributes to continuous non-cultural income that can be used to finance the pandemic's response.

## REFERENCES

- Arief, B.N. (1994). *Some aspects of criminal law development (commemorate the new generation of Indonesian criminal law)*. Semarang: Paper on the Inauguration of Professors in Legal Studies at the Faculty of Law, Diponegoro University.
- Arief, B.N. (1996). *Legislative policy in combating crimes with imprisonment*. Semarang: Balai Penerbitan UNDIP.
- Aryaputra, M.I., Triwati, A., & Juita, S.R. (2017). *The applicative policy for imposing fines after the issuance of perma no. 2 year 2012*. *Jurnal Dinamika Sosial Budaya*, 19(1), 56-71.
- BBC News Indonesia. (2020). *Corona virus: US prisons release hundreds of inmates to prevent Covid-19 from spreading*. Retrieved from <https://www.bbc.com/indonesia/dunia-51970002>
- CNN Indonesia. (2020). *Europe frees thousands of prisoners amid corona pandemic*. Retrieved from <https://www.cnnindonesia.com/internasional/20200407005513-134-490991/eropa-bebaskan-ribuan-napi-di-tengah-pandemi-corona>
- Düinkel, F. (2017). European penology: The rise and fall of prison population rates in Europe in times of migrant crises and terrorism. *European Journal of Criminology*, 14(6) 629–653.
- Hiariej, E.O.S. (2014). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka.
- Hoefnagels, G.P. (1969). *The other side of criminology-an inversion of the concept of crime*. Holland: Kluwer-Deventer.
- Kunt, T.S., & Surjaman, T. (2008). *The structure of scientific revolutions*. Bandung: Remaja Rosda Karya.
- Kurnianingrum, T.P. (2020). Controversy on the release of prisoners amid the covid-19 pandemic. *Info Singkat*, 12(8), 1-6.
- Larassary, L. (2020). *Release of prisoners due to pandemic blasphemed here are 8 countries that are doing the same thing with Indonesia, including Turkey*. Jakarta: Health.Grid.



- Mashabi, S. (2020). *The ministry of law and human rights asks for an additional 2020 budget of Rp. 3 Trillion*. Retrieved from <https://www.liputan6.com/news/read/3989242/kemenkumham-minta-tambahan-anggaran-2020-rp-3-triliun>
- Muladi, B.N. (1984). *Criminal theories and policies*. Bandung: Alumni.
- Muladi. (2002). *Democratization, human rights and legal reform in Indonesia*. Jakarta: The Habibie Center.
- Prescott, J.J. (2015). Criminal saction and deterrence. *Encyclopedia of Law and Economics*, 19(1), 1-9.
- Rafie, B. T. (2020). *Corona virus pushes release and global convicts cruel prisoners not to be released*. Jakarta: Kontan.Co. Id.
- Wibowo, E. D.K.K. (2004). *Law and public policy*. Yogyakarta: YPAPI.
- Wisnubroto, A. (1999). *Criminal law policy in combating computer abuse*. Yogyakarta: Universitas Atma Jaya.
- World Health Organization. (2020). *Novel coronavirus (2019 –nCov) situation report, -16- erratum*. Retrieved from [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200205-sitrep-16-ncov.pdf?sfvrsn=23af287f\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200205-sitrep-16-ncov.pdf?sfvrsn=23af287f_4)