

CRITICAL ANALYSIS OF THE INDONESIAN POLICY OF RELAXING CHILD INMATES DURING THE PANDEMIC

Yahya Ahmad Zein¹, Universitas Borneo Tarakan

ABSTRACT

This study aims to find out the Indonesian Government's Policy in the Providing Assimilation and Integration Rights for Children During the Covid-19 Pandemic in the context of prevention and control of Covid-19 in the Perspective of Human Rights. The method used is the normative research method, where the primary legal material used by grouping several laws and regulations related to the research. This primary legal material is authoritative, meaning that it has the authority or results of actions or activities carried out by the competent authority.

The results show that the Indonesia Government's policy to release child inmates through the assimilation and integration rights mechanism was an effort to prevent and control the spread of Covid-19. This policy regulates the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 10 the Year 2020 regarding the requirements for the assimilation and integration right for prisoners and child inmates. This policy considers high occupancy rates of Correctional Institutions; hence, they are very vulnerable to the spread and transmission of Covid-19. Granting assimilation and the right of integration for prisoners and child inmates during this challenging time in the human rights perspective should be based on the fulfillment of the right to health and the dissemination of information about the right to health. This policy is significant in carrying out effective remedies and optimal monitoring procedures.

Keywords: Indonesian Government Policy, Exemption of Child Inmates, Covid-19

INTRODUCTION

The Constitution of the Republic of Indonesia 1945 explicitly states that Indonesia, based on the rule of Law,² implies that all implementation of state government must be based on Law and not based on power alone. The state wants the Law to uphold, meaning that everyone includes citizens and state officials, must respect and obey the Law, specifically state officials where all of their actions must be based on Law (Mashood, 2003).

Indonesia, as a state of Law, seeks to create justice, order, security, and prosperity in the life of society, nation, and country. The rule of law state guarantees the protection of human rights, followed by other essential obligations. The community can embrace not all law enforcement officers' decisions. There is community dissatisfaction with the deprivation of movement freedom, which some people see as still being unfair, both for those convicted of crimes and those who are disadvantaged. Besides the criminal issue of deprivation of movement freedom (Prison),³ another thing that became public discussion and polemic during this Covid-19 pandemic also was related to the problem of Child Inmates release policy in the context of preventing the rate of transmission of the COVID-19. The strategy considers child inmates' release can cause concern to the public order and peace. Policy releasing child inmates also regarded as one of the factors causing the recent increase in crime, including the issue of the existence of Indonesia as the rule of law (Brohi, 1978).

The policy to further accelerate the release of child inmates is through an assimilation program and the right of integration, which based on several provisions namely: Regulation of the Minister of Law and Human Rights Republic of Indonesia Number 10 of 2020, Decree of the

Minister of Law and Human Rights of Republic of Indonesia No.M.HH-19 PK.01.04.04 of 2020, and Circular of the Director-General of Corrections Number: PAS-497 .PK.01.04.04 of 2020 (Miriam, 1999).

The main background of this child inmates' release policy is that it expected to be able to prevent and cope with the spread of the coronavirus, which is spread so quickly and is very dangerous at the Penitentiary. This policy will also be closely related to the principles of Protection of Human Rights, especially child inmates' rights amid the 19th Pandemic outbreak (Effendi, 1980).

Human rights protection in all aspects is an integral part of a country. At the philosophy of the founding of a country then the protection of human rights is part of the purpose in establishing a country, this is following the view of John Locke in his theory which states that the security of natural rights (human rights) is the basis in the establishment of a country.⁴

Based on the above, one of the perspectives concerning child release policies is human rights, where there is a state obligation to respect, protect, and fulfill human rights. Especially not everyone has equal access and the ability to achieve their rights. No exception for those who get imprisonment sanctions so that in this context, the life and freedom of everyone should be able to obtain proper human rights, so this will have implications for the development of the integrity of everyone to live better and dignified (Affendi, 2001).

The idea of the importance of respect, the importance of respect for fellow human beings, and the importance of human rights emerged with the awareness of the importance of placing humans as the focal point, especially during this difficult time.⁵ Based on this background, this study explores How "Critical Analysis Of The Indonesian Policy Of Relaxing Child Inmates During The Pandemic" (Friedrich, 1969).

RESEARCH METHODOLOGY

The method used in this research is normative legal research, where the Primary Legal Material used is from library studies by collecting and grouping several laws and regulations related to research. This primary legal material is authoritative, meaning that it has the authority that is the result of actions or activities carried out by the authorized institution for that (Hans, 1990).

Secondary Legal Material is legal material that can explain primary legal material. In this study, the secondary legal materials used include: First, reading books (textbooks), Results of previous studies, scientific Journals, magazines/newspapers, and internet news that is relevant to the problem. Second, seminar reports, papers, dissertations, and other reading materials related to the challenges of the Indonesian Government's Policy in the Release of Child Inmates during the Covid-19 Pandemic in the Perspective of Human Rights. Third, according to Soerjono Soekanto, Tertiary Legal Material is licensed material in the form of a dictionary, encyclopaedia and bibliography (Douglas, 1942).⁶

DISCUSSION

A. Indonesian Government's Policy in the Release of Child Inmates During the Covid-19 Pandemic

The background of policy release of prisoners and children as stipulated in the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 10 the Year 2020 Regarding the Conditions for Granting Assimilation and Integration Rights for Prisoners and Child Inmates in the Context of Preventing and Combating the Distribution of Covid-19 based on several considerations namely:

1. The existence of Correctional Institutions, Special Guidance Institutions for Children, and State Detention Houses that have high occupancy rates and are in a closed area so that this, of course, will be very vulnerable to the spread and transmission of Covid-19;
2. The decision to designate Covid-19 as a non-natural national disaster therefore certainly requires a response as a form of rescue measures, in particular for prisoners at the Correctional Institution, Special Child Development Institutions, and State Detention Centres;
3. Referring to the above, the Government shall make a policy of making efforts to rescue prisoners and children in Penitentiaries, Children's Special Guidance Institutions and State Detention Houses, expenditure and release through assimilation and integration to prevent and control the spread of Covid-19;

On the basis of these considerations, the problem of overcrowding in the correctional facility is the main background to the political release of prisoners and child inmates as an effort to prevent and rescue prisoners and child inmates, given that it is challenging to implement health protocols⁷ with prison conditions of overcapacity (Elizabeth, 1991).

The Government's policy on the release of child inmates is based on a mechanism for granting assimilation⁸ to prisoners who commit criminal acts. Except those who commit terrorism, narcotics and precursor narcotics, psychotropics, corruption, crimes against state security and gross human rights crimes, and organized transnational crime, as well as foreign nationals. The Health Protocol is an effort to prevent the spread of the virus by keeping distance, wearing masks and including travel restrictions, quarantine, curfew enforcement, delays, and event cancellations (Musdah, 2010).

NO	Assimilation of Prisoners	Assimilation of Child Inmates
1	Conducted at Home with Guidance and Supervision of Correctional Centers.	Conducted at Home with Guidance and Supervision of Correctional Centers.
2	Actively Joining the Coaching Program Well;	Ethical behavior is proven by not serving a disciplinary sentence in the last 3 (three) months; Actively Joining the Coaching Program Well;
3	Has served half the criminal term.	Has undergone the shortest criminal term of 3 (three) months.

Source: Research from PERMENKUMHAM No.10/2020

Besides, Child Inmates must meet the requirements and procedures available in the table below to get into assimilation:

NO	ASSIMILATION TERMS	ASSIMILATION PROCEDURES
1	<ul style="list-style-type: none"> • A Copy of Judge's Decision and Minutes of the Implementation of Court's Decision; • evidence of paying the fine and compensation under the court's decision or carrying out a substitute for the punishment carried out at home under supervision by the Prosecutor's Office and Penitentiary; • Development progress report signed by the Head of Penal Institution; • a copy of the Head of Prison F registry; 	<ul style="list-style-type: none"> • The provision of Assimilation is carried out through a penal information system. • The correctional information system is an integrated system between the penal technical implementation unit, the Regional Office, and the Directorate General. If it is not possible with the information system, the prison head /LPKA can provide assimilation manually. • The official public records the Child inmates who are proposing to get into Assimilation. Data collection was carried

	<ul style="list-style-type: none"> • a copy of the amendment list from the prison head; and • A statement from the prisoner will not run away and will not commit any unlawful acts. [SEP] 	<ul style="list-style-type: none"> • out on the terms of granting assimilation and completeness of documents. • Completeness of documents must be requested after 7 (seven) days Prisoners and Child inmates are in Correctional Institutions/LPKA.
<p>Inmates convicted for committing narcotics and narcotics precursors, psychotropics only apply to prisoners sentenced with imprisonment under 5 (five) years.</p>		

Source: Research from PERMENKUMHAM No.10/2020

In addition to using the assimilation mechanism of the Government's policy to release prisoners and children during the Covid-19 pandemic, it also uses a mechanism for granting parole, free leave, and conditional leave for prisoners who commit crimes other than criminal acts of terrorism, narcotics and precursor narcotics, psychotropic drugs, corruption, crimes against state security and gross human rights crimes, and organized transnational crime, foreign nationals (Nickel, 1971).

The conditions for parole and leave ahead of time and granting conditional leave can be given to prisoners who have fulfilled the requirements as in the table below:

<p align="center">Table 3 CONDITIONS FOR PAROLE</p>		
<p align="center">NO</p>	<p align="center">REQUIREMENTS FOR EXEMPTION AND LEAVE EXPRESS FREE</p>	<p align="center">REQUIREMENTS FOR PROVIDING LEAVE</p>
<p align="center">1</p>	<ul style="list-style-type: none"> • Has served the shortest possible criminal term of 2/3, with the provisions of 2/3 of the illegal period at least nine months; • Conduct good behavior while serving the quickest time of the last nine months calculated before the 2/3 (two thirds) of the criminal period; • Has Followed the Coaching Program Well, Diligently, Enthusiastically; • Communities can Receive Prisoner Assistance Activity Programs. 	<ul style="list-style-type: none"> • Has served the shortest possible criminal period of 2/3, with the provisions of 2/3 of the illegal period for at least six months; • Conduct good behavior during the shortest possible criminal period in the last six months calculated before the 2/3 (two-thirds) of the illegal period; • Has Followed the Coaching Program Well, Diligently, Enthusiastically; • Communities can Receive Prisoner Assistance Activity Programs.

Source: Research from PERMENKUMHAM No.10/2020

In connection with the conditions for the child who will get parole, there are differences with the Prisoners as stipulated above, for parole given to child inmates, namely:⁹

- a) Have served a criminal period of at least 1/2 (half) of the illegal period;
- b) Good behavior during serving a criminal period for at least the last 3 (three) months calculated before the 1/2 (half) of the irregular period (Yasir, 1999).

Prisoner and child inmate release mechanisms stipulated in PERMENKUMHAM with Assimilation and Integration Rights for Prisoners and Child Inmates in the prevention and control of Covid-19 spread have a period validity set to expire until an emergency period of Covid-19, determined by Government.

B. Indonesian Government's Policy in the Release of Child Inmates During the Covid-19 Pandemic in the Human Rights Perspective

In Principle, the various policies and efforts that have been made by the Indonesian Government during the Covid-19 pandemic are one of the ways in carrying out its functions to protect the rights of citizens to live healthily and avoid Covid-19 Pandemics to exercise the constitutional rights of citizens based on the 1945 Constitution. On the other hand, in the context of efforts to minimize the spread of the Covid-19 virus, the Government also limits citizens' rights through PSBB policies, regional quarantine, quarantine/isolation of hospitals or independent quarantine. In this matter, public concern is the Indonesian Government's policy in releasing prisoners and children who will be very closely related to Human Rights (HAM) (Yahya, 2012).

Human rights in any condition, including the current COVID-19 pandemic condition, must still be maintained. If based on the perspective of human rights, then as stated in human rights documents that emerged in the twentieth century, such as the Universal Declaration, has several main features, namely:¹⁰

First, the Principle so as not to cause us to lose the idea that human rights are rights has clearly been stated, which will lead to the consequence that rights are strict norms and have high priority whose enforcement is mandatory.

Second, the Universal Principle becomes an essential part of rights because humans are solely owned because they are humans. This view implies that characteristics such as race, sex, religion, social standing, and citizenship are not relevant to question whether a person has or does not have human rights. This also implies that these rights can be applied throughout the world. One unique feature of human rights in force today is that it is an international right. Compliance with such rights has been seen as an object of attention and legitimate global action.

Third, the Principle in which human rights are considered to exist by themselves and do not depend on the recognition and application in the adat system or legal system in certain countries. This right may indeed not be a useful right before being implemented under the Law, but that right exists as a standard of argument and criticism that does not depend on the application of the Law.

Fourth, human rights are seen as essential norms. Although not entirely absolute and without exception, human rights are strong enough as normative considerations to be enforced in conflict with conflicting national standards and to justify international actions carried out for human rights. The rights set out in the Declaration are not arranged according to priority; their relative weights are not mentioned. It is not stated that some of them are absolute. Thus, human rights are something that philosophers call *prima facie* rights.¹¹

Fifth, the Principle by which human rights will lead to the implications of obligations for individuals and governments. The existence of these obligations, as well as the rights associated with them, is considered not to depend on acceptance, recognition, or application of them. The Government and people everywhere are obliged not to violate a person's rights, even though the Government of that person may, at the same time, have the primary responsibility to take positive steps to protect and enforce the rights of that person.

Hence, there must be a minimum standard of human rights in state practice and the Indonesian Government's policy in releasing Children during the Covid-19 pandemic based on these principles. In general, human rights are much related to that is individual rights or rights that are owned by everyone. Individual rights, in the context Covid-19 pandemic, refer to the right to a high standard of health for each individual. Also, in the context of the release of Children in the context of preventing and controlling the spread of the COVID-19 policy is based on the primary consideration of conditions in Corrections Institutions, Special Guidance Institutions Children and the State Detention Centre. These institutions are closed institutions with high occupancy rates, so if

these policies ignored, inmates will be very vulnerable to the spread and transmission of COVID-19.

The basic Principle of fulfilling the right to health has firmly regulated in the Indonesian National legal system. The right to health is the fundamental right of citizens to be achieved by the state. This recognition can be seen from the policies carried out by ratifying the International Covenant on Economic Rights, Social and Culture (KIHESB) through Law No.11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). In consideration of recognition of the KIHESB, it is not in conflict with the Pancasila and the 1945 Constitution of the Republic of Indonesia. Following the nature of the Republic of Indonesia as a state of Law that upholds human dignity and that guarantees the equality of all citizens in the Law. The desire of the Indonesian people to continue advancing and protect human rights in national and state life.

Regulations on the right to health in Indonesia contains in the Constitution of the Republic of Indonesia, the 1945 Constitution to several laws and regulations under it. Article 28 H Paragraph 1 of the Second Amendment of the 1945 Constitution states that "Every person has the right to live in prosperity physically and mentally, live, and have a good and healthy living environment and the right to obtain health services." The right to health based on the provisions of Article 28 H paragraph 1. Basically, the 1945 Constitution as the highest legal instrument in the hierarchy of Indonesian laws and regulations,¹² has given a mandate to the state to be responsible and obliged to fulfill the right to excellent health services for all citizens in the context of realizing the Indonesian people who live healthily and physically and mentally prosperous. Thus, the right to health services as stipulated in Article 28 H paragraph 1 gives birth to an obligation for the Government to provide health services to the people/citizens who need it and it is part of the tasks of taking care of the state/government mandated by the 1945 Constitution. The right to health protection requires the state/government to make arrangements so that the health of everyone as the right holder is safe from problems that threaten health, this obligation itself is part of the tasks of regulating the Government that cannot be denied again. This is in line with the concept of state/government obligations formulated by Toebes as follows: "*These government undertakings usually include commitments regarding healthcare and also mention a number of underlying preconditions for health, such as occupational health, environmental health, clean drinking water, and adequate sanitation.*"¹³

The right to protect health for each individual is fundamentally different; this will be significantly influenced or conditioned by many factors, not only internal, for example, genetic, but also external factors outside of human beings. Therefore, human health needs to be protected from the dangers that threaten the factors that condition their health externally. According to Martha Minow "*healthy depends upon human interdependence: the quality of air, water, and sanitation, which Government maintains for the public good.*"¹⁴ Considering that health is not only influenced by an individual internally but is also influenced by various external factors. There is an inevitable link between human rights to health and other types of human rights that intersect. Such as rights for a decent standard of living, education, not torture, even the right to life, are types of human rights related to human rights to health. For example, the Child Release Policy in the context of preventing and controlling the spread of COVID-19 is in addition to ensuring health so as not to be infected with the COVID-19. Thus, the interrelationship confirms the link between human rights over health and other types of human rights, especially in this case, the right to life.

Fulfillment of the right to health and the dissemination of information on the right to health, primarily related to the policy in handling Covid-19, is vital to carry out effective remedies and optimal monitoring procedures when violations of the right to health, especially inmates and children who are inside the Penitentiary. Protection of the right to health as a human right in Law No 39/1999 concerning Human Rights will have a strong just because of its association with the

right to life. The right to life includes as part of '*non-derogable rights*' as stipulated in Article 4 of Law No 39/1999 concerning human rights, which states that: "*The right to life, the right not to be tortured, the right to personal freedom, mind, and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted based on retroactive laws are human rights that cannot be reduced under any circumstances and by anyone.*"

The provisions of article 4 of Law No 39/1999 provide a strong justification for stating that the right to life may not be enjoyed ideally if the right-holder is not in good health. A person cannot obtain the right to life if his health is not a primary concern, so there is no right to live without the right to optimal health.¹⁵

Thus the right to life is equivalent to being entitled to an optimal degree of health.¹⁶ So that fulfilment is also absolute (although the attainment of the benchmarks is still debatable). However, the Prisoner and Child Inmates Release Policy should refer to this Principle and not solely due to the overcrowding capacity of the Penitentiary. Besides, that the policy of releasing Children through the mechanism of Prisoners and Children through the mechanism The granting of Assimilation and Integration Rights must also be subject to strict conditions and strict supervision so that the existence of the Prisoners and Child Inmates does not cause unrest in the community.

CONCLUSION

1. The Indonesian Government's policy in the form of the release of child inmates through the mechanism of the granting of assimilation and the right of integration is an effort during the Covid-19 pandemic in the context of Preventing and Controlling the Distribution of Covid-19.
2. The Indonesian Government's policy in the release of child inmates regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 the Year 2020 Regarding the Conditions for Granting Assimilation and Integration Rights for Prisoners and Children which based on high occupational institutions, so it is very vulnerable to the spread and transmission of Covid-19;
3. The Policy on the Provision of Assimilation and Integration Rights for Child Inmates during the pandemic of COVID-19 in Human Rights should be based on the fulfillment of the right to health and the dissemination of information on the right to health, which is very important for the implementation of effective remedies and best monitoring procedures.

ENDNOTES

1. Dosen Fakultas Hukum Universitas Borneo Tarakan, email: yahyazein@borneo.ac.id
2. See Third Amendment Article 1 (3) The Constitution of Republic of Indonesia 1945
3. See Article 10 Kitab Undang-Undang Hukum Pidana (KUHP): Pidana terdiri atas: pidana pokok: pidana mati; pidana penjara; pidana kurungan; pidana denda; pidana tutupan.
4. Carl J. Friedrich, *The Philosophy of Law in Historical Perspective*, 101 (Chicago University, Chicago & London, 1969)
5. The COVID-19 pandemic is the event of the spread of coronavirus 2019 throughout the world, this disease caused by a new type of coronavirus named SARS-CoV-2. COVID-19 was first detected in Wuhan City, Hubei Province, China in December 2019, and was declared a pandemic by the World Health Organization (WHO) on March 11, 2020.
6. Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (suatu tinjauan singkat)*, Jakarta: CV. Rajawali, 1990, p. 14-15
7. Health protocol is an effort to prevent the spread of the virus by maintaining distance, wearing masks and including travel restrictions, quarantine, curfew enforcement, delays, and cancellations of events. This will be very difficult in the overcapacity conditions of Correctional Institutions.
8. Under the provisions of Article 1 paragraph 3, PERMINKUMHAM No. 10/2020 stated that assimilation is a process of support for prisoners and children by mixing prisoners and child inmates in community life.

9. See the provisions of Article 11 of PERMENKUMHAM No.10 of 2020 concerning the provision of assimilation and integration rights for prisoners and child inmates in the context of preventing and controlling the spread of Covid-19.
10. James W. Nickel, *Hak Asasi Manusia: Making Sense of Human Rights, Refleksi. Filosofis atas Deklarasi Universal Hak Asasi Manusia*, (Gramedia Pustaka Utama, Jakarta, 1996)
11. Most rights are prima facie rights, which means that rights apply until other more substantial rights defeat them. For example, Freedom is a fundamental right, but this right cannot be said to be an absolute right because other reasons can also overcome this right. A person who has a mental disorder and endangers the surrounding community has to be admitted to a psychiatric hospital even though he refuses. This person's freedom is his, but this right is ultimately inferior to people who feel threatened by their lives. Rights are not always absolute because power will be defeated by specific other reasons or circumstances that could invalidate the position of that right.
12. In Article 7, paragraph 1 Law 12/2011 concerning the Formation of Regulations and Regulations, it is stated that the Types and hierarchy of Regulations and Regulations consist of: a. The 1945 Constitution of Republic of Indonesia; b. Decree of the People's Consultative Assembly; c. Government Act/Regulation in place of Law d. Government regulations; e. Presidential decree; f. Provincial Regional Regulations; and g. Regency/City Regulations. The legal force of these laws and regulations is following the existing hierarchy.
13. Peter J. Van Kriken, *Health, Migration And Return*, The Hague: T.M.C. Asser Press, 2001, p.23.
14. Harvard Law School Human Rights Program, *Economic And Sosial Rights Ang The Rights To Health*, An Interdisciplinary Discussion Held At Harvard Law School In September, Cambridge-Mass : Harvard Law School Human Rights Program, 1995, p.3.
15. James W Nickel stated that: "The right to optimal health is even stronger if the claim is justified by linking it with the right to life." (See James W Nickel, *Hak Asasi Manusia: Refleksi Filosofis atas Deklarasi Universal HAM*, Jakarta: Gramedia, 1996, p. 254-255.
16. Such justification technique by Nickel (Ibid. p. 147-154) is called to derive rights from other rights that have been received. This right derives additional rights. However, without linking it to the right to life, the status of the right to health is already non-derogable under the ICESCR.

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