

# Policy Concerning the Granting of Prisoners' Rights on Coronavirus Disease 2019 (Covid-19) Pandemic Period in the Indonesian Prison System

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## Abstract

Remission and assimilation are the rights granted to prisoners by the government through laws and regulations. During the Covid-19 pandemic, correctional institutions took steps to secure the inmates by referring to the health protocol in The Instruction of the Director-General of Corrections<sup>1</sup> Number PAS-08.OT.02.02 of 2020, by carrying out prevention and handling in the yellow zone and carrying out control and recovery in the red zone according to WHO recommendations and applicable laws and regulations.

**Keywords:** Prisoners' Rights, Remission, Assimilation, Covid-19

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## 1. Introduction

The Correctional System is an arrangement regarding the direction, boundaries, and methods of guiding the Correctional Assisted Citizens based on Pancasila which is carried out in an integrated manner between the supervisor, those who are fostered, and the community to improve the quality of the Correctional Assisted Citizens to realize mistakes, improving themselves and not repeating the criminal acts so that they can be accepted again by the community.<sup>2</sup> Corrections are the final part of the criminal justice system in which an integral part of the integrated criminal justice system. Thus, correctional, as in terms of the system, institutions, guidance methods, and correctional officers, are an inseparable part of a series of law enforcement processes.<sup>3</sup> The correctional process for prisoners is a series of implementation of the criminal justice process that has a great influence on the survival of a lawbreaker because the success of the guidance given to them will change the direction of their life for the better if they are free from serving a sentence in a Penitentiary. A failure to guide correctional clients is a bad assessment of the system it implements.

*LAPAS* (Penitentiary) as a place for guiding prisoners, in essence, must be able to play a role in the development of the whole human being, as a forum for educating the convicted person to become a qualified human being. Correctional institutions must be able to function as educational institutions and development institutions. This dual role is also contained in The decree of the Minister of Justice of the Republic of Indonesia<sup>4</sup> Number: M. 02-PK.04.10 of 1990 concerning Guidance Patterns for Prisoners / Detainees, in Chapter IV that regulates policy, in paragraph 3 which states that correctional facilities are important not only because they are a means to foster prisoners and detainees as human development to improve the ability to live independently in society in the future, but with the provision of state awareness education, including to know the rights and obligations, the correctional facility is also a means of education and a means of development.<sup>5</sup>

The diversity of crimes committed by violators of the law makes the process of guiding prisoners varied so that the rights of prisoners under existing laws and regulations need to be reviewed so that their implementation is in line with the philosophy and concept of correctional facilities. In the implementation of the social reintegration process, prisoners have the right to receive family visit leave, assimilation, parole, and leaving towards free, as well as remissions. The prisoners' rights are contained in Law<sup>6</sup> Number 12 of 1995 concerning Corrections.

In Indonesia, the granting of the rights of prisoners varies according to the length of the sentence that the prisoner must serve, except for the right to remission which is given annually at the same time as the Independence Day of the Republic of Indonesia on 17 August. In 2020 the policy of granting prisoners' rights is

<sup>1</sup> Instruksi Direktur Jenderal Pemasyarakatan Nomor PAS-08.OT.02.02 Tahun 2020 Tentang Pencegahan, Penanganan, Pengendalian dan Pemulihan Coronavirus Disease (Covid-19) Pada Unit Pelaksana Teknis Pemasyarakatan

<sup>2</sup> Undang-undang Republik Indonesia Nomor 12 Tahun 1995 tentang Pemasyarakatan, Article 1 paragraph (2). Jakarta, Sinar Grafika, 1997, p. 71.

<sup>3</sup> Dwidja Priyatno, Sistem Pelaksanaan Pidana Penjara Di Indonesia, Bandung, Refika Aditama, 2013, p. 109.

<sup>4</sup> Surat Keputusan Menteri Kehakiman RI Nomor: M. 02-PK.04.10 Tahun 1990 tentang Pola Pembinaan Narapidana/Tahanan

<sup>5</sup> Keputusan Menteri Kehakiman Republik Indonesia, Nomor: M. 02-PK.04.10 Tahun 1990 tentang Pola Pembinaan Narapidana/Tahanan, Chapter IV, Policy, paragraph 3.

<sup>6</sup> Undang-Undang Nomor 12 Tahun 1995 tentang Pemasyarakatan

different from previous years; this is because the Indonesian government issued regulations related to integration, assimilation, and remission of prisoners who are given more quickly on the grounds of preventing and overcoming the spread of the global Covid-19 pandemic in the whole world.

Assimilation is the process of coaching prisoners and children carried out by blending prisoners and children with community life.<sup>1</sup> Meanwhile, integration is a prisoner who has met the conditions for parole, conditional leaves, and leaves towards free. Remission is an exemption of sentence for the whole, partial, or from a life sentence to a limited sentence which is given every August 17th.<sup>2</sup>

In March 2020, all countries in the world were faced with an attack of an infectious disease called Covid-19 which originated from China, to be precise from the city of Wuhan. The disease takes many victims, both children, adults, and old people, this virus attacks the respiratory tract through the eyes, nose, and mouth, for anyone who has a vulnerable immune system, it will be easier to catch a virus called Covid-19, and as of this writing, no cure has yet been found to treat this disease. The rapid and widespread spread of the disease requires the government to issue the Decree of the President of the Republic of Indonesia<sup>3</sup> Number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Coronavirus Disease 2019 (Covid-19) as a National Disaster.

As a civilized country that upholds the dignity and health of its citizens, Indonesia has until now made every effort to find solutions to take preventive action by taking precautions so that Covid-19 can be overcome as soon as possible, one of which is appealing to the public to comply with health protocols, maintain and live a healthy lifestyle by always washing hands with soap, avoiding crowds, and always wearing masks.

The efforts made by the Indonesian Government to protect its citizens from the Covid-19 attack certainly not only apply to citizens who live freely because they are not in trouble with the law, but also apply to citizens who are inside prison walls, which are called Penitentiaries whose status as a convict. The policy is taken by the government to protect prisoners from Covid-19 by issuing The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>4</sup> Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19, and the Decree of the Minister of Law and Human Rights of the Republic of Indonesia<sup>5</sup> Number M.HH-19.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Preventing and Combating the Spread of Covid-19, as well as the Instruction of the Director-General of Corrections<sup>6</sup> Number PAS-08.OT.02.02 of 2020 concerning the Prevention, Handling, Control and Recovery of Coronavirus Disease (Covid-19) at the Correctional Technical Implementation Unit.

With the issuance of a decision on the rights of prisoners related to the prevention and control of the spread of Covid-19 in prisons, especially for correctional clients, the Indonesian government hopes that the Covid-19 outbreak will not spread towards the prisoners and others, considering the number of prisoners and the capacity of institutions that are not following the recommended health protocols of the World Health Organization (WHO), that states to prevent contracting the Covid-19 disease, one must maintain a safe distance of at least 2 meters, always wash hands with soap, and use masks, while inmates in the institution correctional living in groups or gathered in one room, who are very likely to contact the Covid-19 either between prisoners or other people from outside the correctional facility who come to visit.

## 2. Formulation of the problem

1. What are the provisions of the law regarding the conditions that must be met by prisoners to get their rights, before and during the Covid-19 pandemic in Indonesia?
2. What is the impact of the enactment of the provisions of the law regarding the policy of accelerating the granting of prisoners' rights during the Covid-19 pandemic in Indonesia?

## 3. Research methods

The research to be carried out is normative juridical research. The main problem in this research will be studied through the normative legal research method which is interpreted as a scientific research procedure to find the

<sup>1</sup> Article 1 point 3 Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 10 Tahun 2020 tentang Syarat Pemberian Asimilasi dan Hak Integrasi Bagi Narapidana dan Anak Dalam Rangka Pencegahan dan Penanggulangan Penyebaran Covid-19

<sup>2</sup> Andi Hamzah dalam Dwidja Priyatno, Sistem Pelaksanaan Pidana Penjara Di Indonesia, Bandung, Refika Aditama, 2013, p. 133.

<sup>3</sup> Surat Keputusan Presiden Republik Indonesia Nomor 12 Tahun 2020 Tentang Penetapan Bencana Nonalam Penyebaran Coronavirus Disease 2019 (Covid-19) Sebagai Bencana Nasional

<sup>4</sup> Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 10 Tahun 2020 tentang Syarat Pemberian Asimilasi dan Hak Integrasi Bagi Narapidana dan Anak Dalam Rangka Pencegahan dan Penanggulangan Penyebaran Covid-19

<sup>5</sup> Keputusan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia 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

<sup>6</sup> Instruksi Direktur Jenderal Pemasyarakatan Nomor PAS-08.OT.02.02 Tahun 2020 Tentang Pencegahan, Penanganan, Pengendalian dan Pemulihan Coronavirus Disease (Covid-19) Pada Unit Pelaksana Teknis Pemasyarakatan

truth based on the logic of legal science from the normative side.<sup>1</sup> The research approaches that will be used in this type of juridical-normative research include the Statute Approach, the Legal-History Approach, the Conceptual Approach, and the Comparative-Law Approach.<sup>2</sup>

While the types of legal materials used in this study include primary legal materials, secondary legal materials, and tertiary legal materials.<sup>3</sup> Analysis of legal materials is carried out by processing all legal materials that have been collected, both primary legal materials, secondary legal materials, and tertiary legal materials by (1) categorization or classification, (2) systematization, and (3) analysis.<sup>4</sup>

#### 4. Research methods

##### 4.1 Conditions for granting prisoners' rights before and during the spread of Covid-19 in Indonesia

One form of training for prisoners in the correctional system is to provide their rights by the prevailing laws and regulations. However, to get their rights as a prisoner, they must meet the requirements that have been determined in the laws and regulations. The granting of the rights of prisoners before the Covid-19 attack is regulated in Law<sup>5</sup> Number 12 of 1995 concerning Corrections.

The rights of prisoners are stated in Article 14 of Law<sup>6</sup> Number 12 of 1995 concerning Corrections, which the prisoner has the right to:

- a. Performing worship according to their religion or belief;
- b. Get treatment, both spiritual and physical care;
- c. Get education and teaching;
- d. Get proper health services and food;
- e. Make a complaint;
- f. Obtain reading material and follow other mass media broadcasts that are not prohibited;
- g. Get a wage or premium for the work performed;
- h. Receive visits from family, legal counsel, or certain other people;
- i. Get a reduced sentence (remission);
- j. get the opportunity to assimilate including leave to visit family;
- k. Get parole;
- l. Get leave before being free; and
- m. Obtain other rights under the prevailing laws and regulations.<sup>7</sup>

In the process of obtaining their rights as stated in Article 14 of Law<sup>8</sup> Number 12 of 1995, prisoners must meet the requirements as regulated in the Government Regulation of the Republic of Indonesia<sup>9</sup> Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assistants, as amended by the Government Regulation<sup>10</sup> Number 99 of 2012, the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>11</sup> Number M.2.PK.04-10 of 2007 concerning Requirements and Procedures for Implementing Assimilation, Parole, Leaving Towards Free, and Conditional Leave, and the Regulation of the Minister of Law and Human Rights<sup>12</sup> Number 21 of 2013 concerning Requirements and Procedures for Granting Remissions, Assimilation, Family Visiting Leave, Parole, Leaving Nearing Free, and Conditional Leave, as amended by the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>13</sup> Number 21 of 2016.

Remission and Assimilation is one of the rights granted to prisoners by the government through laws and regulations. In Article 1 number (3) and (4) at the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>14</sup> Number 21 of 2016 concerning Requirements and Procedures for Granting Remissions,

<sup>1</sup>Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang, Bayumedia, 2007. p. 47

<sup>2</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Prenada Media Group, 2019, p. 136.

<sup>3</sup>Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI-Pers, 2012, p. 96.

<sup>4</sup>Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta, Rajawali Pers, 1985 p. 52.

<sup>5</sup>Undang-Undang Nomor 12 Tahun 1995 tentang Pemasarakatan

<sup>6</sup>Undang-undang nomor 12 Tahun 1995 tentang Pemasarakatan

<sup>7</sup>Rahmatul Hidayati, *Juridical Studies on Remission Award against Convicted Criminal of Drugs in Indonesia Imprisonment System*, Journal Of Law, Policy and Globalization, International Institute for Science, Technology & Education (IISTE) Accelerating Global Knowledge Creation and Sharing, ISSN 2224-3240 (Print), ISSN 2224-3259 (Online), Vol. 55. 2016. p.94-95.

<sup>8</sup>Undang-Undang Nomor 12 Tahun 1995

<sup>9</sup>Peraturan Pemerintah Republik Indonesia Nomor 32 Tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasarakatan

<sup>10</sup>Peraturan Pemerintah Nomor 99 Tahun 2012

<sup>11</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor M.2.PK.04-10 Tahun 2007 Tentang Syarat Dan Tata Cara Pelaksanaan Asimilasi, Pembebasan Bersyarat, Cuti Menjelang Bebas, Dan Cuti Bersyarat

<sup>12</sup>Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 21 Tahun 2013 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat

<sup>13</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2016

<sup>14</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2016 Tentang Syarat Dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, Dan Cuti Bersyarat

Assimilation, Family Visiting Leave, Parole, Leaving Near-Free, and Conditional Leave, it is stated that (3) Remission is a reduction in serving a sentence given to prisoners and children who meet the requirements stipulated in the provisions of the legislation, while (4) Assimilation is the process of fostering prisoners and children carried out by integrating prisoners and children in community life.

*4.1.1. The terms and conditions that must be met by inmates before the Covid-19 pandemic in Indonesia*

The conditions that must be fulfilled by prisoners to get their rights before the issuance of regulations on the prevention and control of Covid-19 in Indonesia are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>1</sup> Number M.2.PK.04-10 of 2007, Chapter II Article 5, Article 6, and Article 7. Article 5 states that prisoners or correctional students can be given assimilation, parole, leave before release, and conditional leaves if they have met the substantive requirements and administrative requirements. The substantive and administrative requirements are contained in Article 6 and Article 7. The substantive conditions in Article 6 state as follows:

- 1) The substantive requirements as referred to in Article 5 that must be fulfilled by prisoners and criminal children are:
  1. Has shown awareness and remorse for the mistake that led to being convicted;
  2. Has shown a physical development of character and morals;
  3. Successfully participate in the coaching activity program diligently and enthusiastically;
  4. The public can receive a program of activities for the development of prisoners and children concerned;
  5. Have good behaviour while serving a sentence and do not receive disciplinary punishment for:
    1. Assimilation for at least the last 6 (six) months;
    2. Parole and leave before release for at least the last 9 (nine) months; and
    3. Conditional leave for at least the last 6 (six) months;
  6. The criminal period that has been served for:
    1. Assimilation of 1/2 (half) of the sentence;
    2. Parole, 2/3 (two thirds) of the sentence, provided that 2/3 (two thirds) of the sentence is not less than 9 (nine) months;
    3. Before Free Leave, 2/3 (two-thirds) of the sentence and the period of leave is the same as the last remission of 6 (six) months;
    4. Conditional leave, 2/3 (two thirds) of the prison term, and a maximum period of leave of 3 (three) months provided that if during the leave period he commits a new criminal offence, while outside *LAPAS* is not counted as a period of serving a sentence;
- 2) The substantive requirements referred to in Article 5 that must be fulfilled by the State Child are:
  - a. Has shown awareness and remorse for the offence committed;
  - b. Has shown positive character and morals;
  - c. Successfully participate in education and training programs diligently and passionately;
  - d. The community can receive a program for the development of the State Child concerned;
  - e. Good behaviour;
  - f. The period of education that has been served at the Child Prison for:
    1. Assimilation, at least 6 (six) months;
    2. Parole, at least 1 (one) year.

The administrative requirements are stated in Article 7 as follows:

Administrative requirements as referred to in Article 5 that must be fulfilled by prisoners or correctional protégé are:

- a. Quotation of Judge's verdict (extract of the verdict);
- b. Community research reports made by the Community Guidance or development reports on the development of prisoners and Correctional Protégés prepared by the Correctional Guardian;
- c. Notification letter to the District Attorney regarding the plan to grant assimilation, parole, leave nearing release, and parole to the prisoners and correctional protégé concerned;
- d. A copy of Register F (a list containing violations of discipline committed by prisoners and correctional students during their criminal period) from the head of *LAPAS* or the head of *RUTAN*;
- e. A copy of the list of changes or deductions in the criminal period, such as clemency, remission, etc. from the head of *LAPAS* or the head of *RUTAN*;
- f. A statement of commitment from the party who will receive prisoners and correctional students, such as families, schools, government agencies, or the private sector knowing by the local government as low as the *lurah* or village head;
- g. For prisoners or children who are criminal citizens of foreign countries, additional requirements are

<sup>1</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor M.2.PK.04-10 Tahun 2007

required:

1. A guarantee letter from the embassy/consulate of the foreign country concerned that prisoners and prison students do not escape or obey the conditions while undergoing assimilation, parole, leave nearing release, or parole;
2. Certificate from the Head of the local Immigration Office regarding the immigration status concerned.

In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>1</sup> Number 21 of 2016 Amendment to *Permenkumham* Number 21 of 2013 concerning terms and procedures for granting remissions, assimilation, leave to visit family, parole, leave nearing free, and parole, Article 23 states that:

- 1) Assimilation can be given to prisoners after paying a fine and/or compensation in full following a court decision;
- 2) If the prisoner as referred to in paragraph (1) is unable to pay the fine and/or replacement money in full, the convict is obliged to undergo imprisonment and/or substitute prison by the provisions of the statutory regulations;
- 3) Prisoners who have been convicted of committing a criminal act of corruption can be given assimilation after paying a fine and/or replacement money in full.

The provisions for parole are contained in Article 49 of *Permenkumham* number 21 of 2016, which states as follows:

- 1) Parole can be given to prisoners who have met the following requirements:
  - a. Has served a sentence of at least 2/3 (two thirds), provided that 2/3 (two thirds) of the sentence is at least 9 (nine) months;
  - b. Having good behaviour while serving a sentence of at least the last 9 (nine) months counted before the 2/3 (two thirds) of the sentence;
  - c. Has followed the coaching program well, diligently, and enthusiastically; and
  - d. The community can receive a prisoner development activity program.
- 2) Parole can be given to children who are currently serving imprisonment in LPKA who have met the following requirements:
  - a. Has served a sentence of at least 1/2 (one half) of the criminal period; and
  - b. Having good behaviour during a criminal period of at least 3 (three) months counted before the date of 1/2 (one half) of the criminal period.

Provisions for Conditional Leave are regulated in Article 68 *Permenkumham* number 21 of 2016, which states as follows:

Conditional leave can be given to prisoners who have met the following requirements:

- a. Sentenced to a maximum imprisonment of 1 (one) year and 6 (six) months;
- b. Has served at least 2/3 (two thirds) of the criminal period; and
- c. Good behaviour in the last 6 (six) months.

Conditional leave for prisoners as referred to in Article 68 can be granted for a maximum period of 6 (six) months (Article 69). Meanwhile, the requirements for convicts who commit certain crimes are regulated in Article 70, which states that:

- 1) Conditional leave can be granted to prisoners who have committed criminal acts of terrorism, corruption, crimes against the state, serious human rights crimes, and other transnational organized crimes who have met the following requirements:
  - a. Sentenced to the imprisonment of 1 (one) year and 6 (six) months;
  - b. Has served at least 2/3 (two thirds) of the criminal period; and
  - c. Good behaviour in the last 9 (nine) months.
- 2) In addition to fulfilling the requirements as referred to in paragraph (1), the provision of conditional leave for prisoners who have committed acts of corruption must also have paid a fine and compensation in full.
- 3) In addition to having to fulfil the requirements as referred to in paragraph (1), the provision of conditional leave for prisoners who have committed a criminal act of terrorism must also have shown awareness and remorse for the wrongdoing that led to being convicted and declared a pledge:
  - a. Loyalty to *Negara Kesatuan Republik Indonesia* in writing for prisoners who are Indonesian citizens; or
  - b. Will not repeat the criminal act of terrorism in writing for prisoners of foreign nationals.

#### 4.1.2. The terms and conditions that must be met by inmates at the time of the Covid-19 pandemic in Indonesia

<sup>1</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2016 Perubahan atas Permenkumham Nomor 21 Tahun 2013 tentang syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, Dan Cuti Bersyarat

The conditions for granting prisoners' rights during the spread of Covid-19 are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>1</sup> Number 10 of 2020 concerning the Terms of Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19. In Chapter II, it is stated that: Assimilation is provided for prisoners who commit crimes other than terrorism, narcotics and narcotics precursors, psychotropic, corruption, crimes against state security, and serious human rights crimes, as well as organized transnational crimes, foreign citizens.<sup>2</sup> In this provision, apart from special crimes, all prisoners have their rights according to the applicable regulations. The conditions that must be met by inmates to get their rights during the Covid-19 pandemic are contained in Article 2 which states:

- 1) The assimilation of Prisoners is carried out at home with the guidance and supervision of *Bapas*.
- 2) Prisoners who can be given assimilation as referred to in paragraph (1) must meet the following requirements:
  - a. Good behaviour is proven by not serving a disciplinary sentence in the last 6 (six) months;
  - b. Actively following the coaching program well; and
  - c. Has served  $\frac{1}{2}$  (one half) of the criminal period.

The terms of the rights of child prisoners are contained in Article 3 which states:

- 1) Child assimilation is carried out at home with the guidance and supervision of *Bapas*.
- 2) Children who can be given assimilation as referred to in paragraph (1) must meet the following requirements:
  - a. Good behaviour as evidenced by not serving a disciplinary sentence within the last 3 (three) months;
  - b. Actively following the coaching program well; and
  - c. Has served a minimum of 3 (three) months in prison.

Requirements for granting assimilation of convicts and children as stated in Article 2 and Article 3 must be proven by attaching the following documents:

- a. Photocopy of the excerpt of the judge's decision and minutes of implementing the court's decision;
- b. Evidence of having paid the fine and compensation in full under a court decision or implementing a subsidiary substitute for fines to be carried out at home under the supervision of the Attorney General's Office and the Correctional Center
- c. Development progress report signed by the Head of the *LAPAS*;
- d. Copy of register F from the Head of *LAPAS*;
- e. A copy of the list of changes from the Head of *LAPAS*; and
- f. A statement letter from the prisoner will not run away and not commit any illegal activity.

Prisoners' rights regarding parole, leave before release, and conditional leaves, are listed in Chapter III of law number 10 of 2020, which states that granting parole, leave towards release, and parental leave for inmates who commit crimes other than criminal acts Terrorism, Narcotics, and Narcotics Precursors, Psychotropic, Corruption, Crimes Against State Security and Serious Human Rights Crimes, as well as Transnational Organized Crime, Foreign Citizens.

In Article 9, it is explained that Parole and Leave towards Free can be given to prisoners who have met the following requirements:

- a. Has served a sentence of at least  $\frac{2}{3}$  (two thirds), provided that  $\frac{2}{3}$  (two thirds) of the sentence is at least 9 (nine) months;
- b. Having good behaviour while serving a sentence of at least the last 9 (nine) months counted before the  $\frac{2}{3}$  (two thirds) of the sentence;
- c. Has followed the coaching program well, diligently, and enthusiastically; and
- d. The community can receive a prisoner development activity program.

Article 10 describes the provision of conditional leave, which states that the provision of conditional leave can be given to inmates who have met the following requirements:

- a. Has served a sentence of at least  $\frac{2}{3}$  (two thirds), provided that  $\frac{2}{3}$  (two thirds) of the sentence is at least 6 (six) months;
- b. Having good behaviour while serving a sentence of at least the last 6 (six) months, counted before the  $\frac{2}{3}$  (two thirds) of the sentence;
- c. Has followed the coaching program well, diligently, and enthusiastically; and
- d. The community can receive a prisoner development activity program.

Parole for a criminal child is regulated in Article 11 which explains that parole can be given to children who are

<sup>1</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 10 Tahun 2020 Tentang Syarat Pemberian Asimilasi dan Hak Integrasi Bagi Narapidana Dan Anak Dalam Rangka Pencegahan Dan Penanggulangan Penyebaran Covid-19

<sup>2</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 10 Tahun 2020 Tentang Syarat Pemberian Asimilasi dan Hak Integrasi Bagi Narapidana Dan Anak Dalam Rangka Pencegahan Dan Penanggulangan Penyebaran Covid-19, Article 4.

currently serving prison terms in LPKA who have met the following requirements:

1. Has served a sentence of at least  $\frac{1}{2}$  (one half) of the criminal period; and
2. Having good behaviour during a criminal period of at least 3 (three) months counted before the date of  $\frac{1}{2}$  (one half) of the criminal period.

Whereas in Article 12 it is stated that:

Conditions for granting parole, leave nearing free and conditional leave as referred to in Article 9, Article 10, Article 11 are proven by the completeness of documents:

- a. Photocopy of the excerpt of the judge's decision and minutes of implementing the court's decision;
- b. Development progress report signed by the Head of *LAPAS/LPKA*;
- c. Copy of register F from the Head of *LAPAS/LPKA*;
- d. Copy of the list of changes from *LAPAS/LPKA*; and
- e. A statement letter from the prisoner/child will not commit an illegal act.

With the issuance of regulations regarding the granting of prisoners' rights both before the spread of the Covid-19 and during the pandemic, the government in taking policy steps to fulfil the rights of prisoners in correctional facilities becomes measurable and has clear parameters, so that it does not conflict with pre-existing regulations. Regarding the granting of the rights of prisoners as regulated in the Government Regulation<sup>1</sup> Number 99 of 2012 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants.

Since the enactment of regulations regarding the granting of prisoners' rights to overcome the spread of Covid-19 in correctional institutions throughout Indonesia, the number of inmates who have been released on assimilation program and integration amid the coronavirus pandemic (Covid-19) has reached 39,876 people. According to the Head of the Public Relations and Protocol Section of the Directorate General of Corrections at the Ministry of Law and Human Rights, Rika Apriyanti, until Wednesday (27/5/2020), his party has collected data from 525 Correctional UPTs throughout Indonesia. As a result, as many as 39,876 prisoners and child prisoners have been released in assimilation and integration programs.<sup>2</sup> In detail, the number of prisoners who participated in the assimilation program totalled 37,473 prisoners. Of these, 934 were child prisoners and the remaining 36,593 were adult prisoners. "2,403 convicts are participating in the integration program. The number consists of 2,360 adult prisoners and 43 child prisoners,"<sup>3</sup> In this provision, convicts who are released are not caught in cases of corruption, narcotics, terrorism, state security crimes, human rights crimes, transnational crimes, and foreign citizens.

In the implementation of granting the rights of prisoners in the form of assimilation and integration, on the anniversary of Indonesia's independence on August 17, 2020, a policy of granting prisoners' rights in the form of remissions was also given. The Minister of Law and Human Rights (Menkumham) Yasonna H Laoly gave general remissions to 119,175 prisoners in celebration of the 75th Independence Day of the Republic of Indonesia. Yasonna said, in celebrating independence, prisoners still have rights that must be respected and fulfilled by the state. "One of them is remission or the right to get a reduced sentence for inmates who meet the requirements as mandated in the laws and regulations,"<sup>4</sup> Of the total inmates who received remissions, 186,673 of them were convicts and 48,925 were prisoners. The length of the withholding period varies from one to six months. As many as 1,438 prisoners were immediately released after receiving remission for the independence anniversary in 2020.

He reminded all prisoners and children who received remission to increase their faith and devotion to God, including obeying the law. "Be a human being who obeys the law, a person with noble and virtuous character, and a person who is useful for national development," As for the provision of remissions cannot be separated from social reintegration as a penal philosophy. This means that every criminal who harms society needs to be allowed to make amends as well as the losses it has caused. Through this remission, it is hoped that it can accelerate the process of returning prisoners and children to social life. "On the other hand, this remission is also an appreciation of the state for the achievements that have been made by the prisoners during their training in prisons, remand centres, as well as special guidance institutions for children."<sup>5</sup>

Particularly for perpetrators of criminal acts of terrorism, remission is granted with certain conditions considering that criminal acts of terrorism are motivated by political motives, which generally believe in certain ideologies so that it is difficult for the state to change them. One of them is deradicalization. Even so,

<sup>1</sup>Peraturan Pemerintah Nomor 99 Tahun 2012 tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan

<sup>2</sup> <https://news.harianjogja.com/read/2020/05/27/500/1040265/pemerintah-bebas-39.876-narapidana-di-tengah-pandemi-corona>. accessed, 7 October 2020.

<sup>3</sup> <https://news.harianjogja.com/read/2020/05/27/500/1040265/pemerintah-bebas-39.876-narapidana-di-tengah-pandemi-corona>. accessed, 7 October 2020.

<sup>4</sup> <https://nasional.kompas.com/read/2020/08/17/16503651/yasonna-laoly-berikan-remisi-17-agustus-kepada-119.175-narapidana>, accessed, 7 October 2020.

<sup>5</sup> <https://nasional.kompas.com/read/2020/08/17/16503651/yasonna-laoly-berikan-remisi-17-agustus-kepada-119.175-narapidana>, accessed, 7 October 2020.

deradicalization efforts have not fully produced results. The law stipulates that they must be given conditions in the form of a pledge stating: loyalty to the Negara Kesatuan Republik Indonesia (NKRI) in writing for Indonesian citizens, and a statement that they will not repeat criminal acts for those who are not Indonesian citizens.<sup>1</sup>

#### *4.2. Impact of the implementation of provisions for the acceleration of granting rights of prisoners during the Covid-19 pandemic in Indonesia*

The establishment of a prison, which is now called a penitentiary, is intended to provide a place for lawbreakers/inmates to receive protection according to their needs during their prison terms. In other words, the Correctional Institution (LP) is a container that serves as a place for convicts to prepare for what the court has decided for them, as the end of the judicial settlement process. The success or failure of the objectives of criminal justice will be seen from the results that have been taken and issued by the correctional institutions in the entire criminal justice process.<sup>2</sup>

The entry of the convicted person into a correctional facility is the starting point for the effort to develop the convict, both physically and mentally. This is done by providing them with school, moral, religious education, and special skills so that the convict will have provisions in facing the new environment around him in society.<sup>3</sup>

The guidance system for prisoners, as has been running so far, is aimed at educating inmates to become repentant persons and not repeat their actions, therefore the guidance given to inmates is adjusted to the length of the criminal period they have to serve until they are allowed to receive their rights are following the provisions of the applicable laws. However, the enactment of the provisions for the acceleration of granting rights of prisoners for reasons of Covid-19 has a profound impact on the process of fostering it, as well as having an impact on the community around prisoners both internally and externally.

Internal impact on correctional institutions. Internally, the acceleration of the provision of prisoners' rights has a positive and negative impact on prisons, the positive impact, where a large number of lawbreakers/prisoners must be accommodated, overcapacity prisons, with the acceleration of the provision of prisoners' rights will reduce the number of prisoners in prison. in prisons, so that prevention and control of the spread of the Covid-19 in prisons can be overcome, according to recommendations from WHO that to prevent the transmission of the Covid-19 one of which must not be in a crowd of people, besides keeping a distance and wearing masks. The negative impact, by accelerating the granting of prisoners' rights, the goals of criminal and development of prisoners will not be achieved.

One of the tools or means to achieve the objectives of criminal law is to convict someone who has committed a criminal act.<sup>4</sup>The purpose of the crime is usually abbreviated as three R and one D. The three R's are Reformation, Restraint, and Retribution, while one D is Deterrence which consists of individual deterrence and general deterrence (special prevention and general deterrence). Reform means fixing or rehabilitating criminals to become good people and useful to society, if criminals become good, then society will benefit. Restraint means alienating the offender from society, by removing the criminals from the community, the community will feel safer. Retribution is retribution against a lawbreaker for committing a crime. Deterrence means deterring or preventing so that both the defendant as an individual or other potential criminal will be deterred or afraid to commit a crime.<sup>5</sup> With the release of prisoners, their guidance is also considered complete, and if the release is carried out prematurely, then the process of training is considered incomplete so that there is no result of what is the goal of improvement for the prisoner.

External impact on society. Externally, the acceleration of the provision of prisoners' rights to society has positive and negative impacts. The positive impact is that prisoners who get their freedom before their time feel lucky because they can get together more quickly with their families, and the family is also happy because one of their families who were originally in a prison cell is now in the midst of their family again. While the negative impact on society, the guarantee of the security of their assets and the safety of their lives is threatened by the release of prisoners prematurely because not all prisoners who are released from prisons are deemed eligible to assimilate with their environment. For example, for relapsing prisoners known as recidivists, the possibility of committing a crime again is a great opportunity for them, especially if they are supported by not having the regular income to support themselves and their families, and during the Covid-19 pandemic, there was very little or even almost no chance work due to unfavourable global economic factors.

The government has made efforts to deal with the spread of Covid-19 in correctional institutions by issuing

<sup>1</sup>M. Ali Zaidan, *Kebijakan Kriminal*, Jakarta, Sinar Grafika, 2016, p. 335.

<sup>2</sup>Kadri Husin and Budi Rizki Husin, *Criminal Justice System in Indonesia*, Jakarta, Sinar Grafika, 2016, p. 125.

<sup>3</sup>Kadri Husin and Budi Rizki Husin, *Criminal Justice System in Indonesia*, Jakarta, Sinar Grafika, 2016, p. 125.

<sup>4</sup>Gede Widhiana Suarda, SH., M.Hum., *Criminal Law: Material for Erasing, Mitigation and Penal Weights*, Malang, Bayumedia Publishing, 2011, p. 12.

<sup>5</sup>Andi Hamzah, *Indonesian Criminal Law*, Jakarta, Sinar Grafika, 2019, pp. 27-28.



the Instruction of the Director-General of Corrections<sup>1</sup> Number PAS-08.OT.02.02 of 2020 concerning the Prevention, Handling, Control, and Recovery of Coronavirus Disease (Covid-19) at the Correctional Technical Implementation Unit. Where the contents of the instruction call for prevention and handling of the spread of Covid-19 in the yellow zone through socialization and education by assigning health workers to proactively provide information about clean and healthy living habits, as well as correct cough/sneezing ethics, providing antiseptic fluids and places. Wash hands with running water and wash hands properly, check body temperature regularly, provide gloves and masks, avoid direct physical contact such as shaking hands. In the red zone, carry out control and recovery through coordination and consultation with the local government, and the health office, as well as government referral hospitals, reporting to the leadership if there are prisoners who are under surveillance/patients under surveillance and confirmed by Covid-19, stopping visiting services from outsiders for 14 days. Even though these efforts have been made, the institution still has to exclude some of the prisoners, due to overcapacity and if forced to stay in a correctional facility, it is impossible to prevent physical contact between prisoners. Stop visiting services from outside parties for 14 days. Even though these efforts have been made, the institution still has to exclude some prisoners, due to overcapacity and if forced to remain in prisons, it is impossible to prevent physical contact between prisoners. Stop visiting services from outside parties for 14 days. Even though these efforts have been made, the institution still has to exclude some prisoners, due to overcapacity and if forced to remain in prisons, it is impossible to prevent physical contact between prisoners.

Regarding the overcapacity of prisons, to avoid the spread of covid-19 within the institution, there are ways that the government can do to optimize prevention, handling, control, and Coronavirus Disease (Covid-19) measures in the Correctional Technical Implementation Unit, namely by using a system Development of prisoners outside the institution, where this has been a system that has long been implemented following applicable laws, but only specifically for prisoners who have already served crimes and want to be released, which is packaged in the form of assimilation, leave before release and release. conditions as regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia<sup>2</sup> Number 21 of 2016 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2013 concerning Terms and Procedures for Granting Remissions, Assimilation, CMK, Parole, CMB, And parole.

Meanwhile, other forms of development of prisoners are regulated in the Decree of the Minister of Justice of the Republic of Indonesia<sup>3</sup> Number: M. 02-PK.04.10 of 1990 concerning the Patterns of Guidance for Prisoners / Detainees of the Minister of Justice of the Republic of Indonesia, mentioned in Chapter VII regarding the Implementation of Guidance, Sub C regarding Forms of Guidance point 2 concerning Guidance of Prisoners and Students, in letter b concerning forms of guidance, in number 4) states the form of guidance for prisoners which is carried out outside the prison building; as follows:

- a) Studying in public schools,
- b) Studying in a prison owned work training place (agriculture, livestock, fisheries, etc.),
- c) Studying at work training sites belonging to other industries/offices (Job Training Centers),
- d) Worship, praying in mosques, churches, and so on,
- e) Exercise with the community,
- f) Granting parole and leave before release,
- g) Reduction of the criminal period/remission.<sup>4</sup>

The form of guidance for inmates outside of prisons as mentioned in letter b and letter c can be applied more quickly to inmates during the Covid-19 pandemic. Forms of coaching with work programs for prisoners can reduce the number of prisoners in prisons, so that there are no crowds in one location, thereby reducing the rate of spread of covid-19 in prisons. By working, prisoners do not feel unemployed which makes them stressed, outside of the institution they can develop their respective abilities in the work training place while still being supervised by prison officials.

It can also be done with work training, guidance is implemented to house prisoners, that is, prisoners undergoing crimes during the Covid-19 pandemic stay in their respective homes and go to work training according to the schedule set by the correctional facilities, reporting to the institution once or twice a week. Correctional or monitored from the correctional institution about its development. Of course, convicts who are housed are not convicts who are classified as perpetrators of criminal acts of corruption, narcotics, and terrorism

<sup>1</sup>Instruksi Direktur Jenderal Pemasyarakatan Nomor PAS-08.OT.02.02 Tahun 2020 Tentang Pencegahan, Penanganan, Pengendalian dan Pemulihan Coronavirus Disease (Covid-19) Pada Unit Pelaksana Teknis Pemasyarakatan

<sup>2</sup>Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2016 Tentang Perubahan atas Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Remisi, Asimilasi, CMK, Pembebasan Bersyarat, CMB, Dan Cuti Besyarat

<sup>3</sup>Keputusan Menteri Kehakiman Republik Indonesia Nomor: M. 02-PK.04.10 Tahun 1990 Tentang Pola Pembinaan Narapidana/Tahanan Menteri Kehakiman Republik Indonesia

<sup>4</sup>Keputusan Menteri Kehakiman Republik Indonesia Nomor: M. 02-PK.04.10 Tahun 1990 Tentang Pola Pembinaan Narapidana/Tahanan. Bab VII, Sub C, Angka 2, Huruf b pada angka 4).

and are not convicted for 5 years or more.

## 5. Conclusion

The conditions that must be met to obtain the rights of prisoners before the Covid-19 pandemic are substantiated and administrative requirements, which include:

1. Has shown awareness and remorse for the mistake that led to being convicted; shows the development of physical character and morals;
2. Successfully participate in the coaching activity program diligently and enthusiastically;
3. The public can receive a program of activities for the development of prisoners and children concerned;
4. Have good behaviour while serving a sentence and do not receive disciplinary punishment. Administratively, there must be a quote from the judge's decision (extract of the verdict);
5. Community research reports made by the Community Guidance or reports on the development of prison inmates and Correctional Protégé made by the Correctional Guardian;
6. Notification letter to the District Attorney regarding the plan to grant assimilation, parole, leave nearing free, and Conditional leave for the prisoner and the correctional protégé concerned;
7. A copy of Register F (a list containing violations of discipline committed by prisoners and correctional students during their criminal period) from the head of *LAPAS* or the head of *RUTAN*;
8. A copy of the list of changes or deductions in the criminal period, such as clemency, remission, etc. from the head of *LAPAS* or the head of *RUTAN*;
9. A statement letter of commitment from the party who will receive prisoners and correctional students, such as families, schools, government agencies, or the private sector knowing by the local government as low as the lurah or village head;
10. A copy of Register F (a list containing violations of discipline committed by prisoners and correctional students during their criminal period) from the head of *LAPAS* or the head of *RUTAN*;
11. A copy of the list of changes or deductions in the criminal period, such as clemency, remission, etc. from the head of *LAPAS* or the head of *RUTAN*;
12. A statement letter of commitment from the party who will receive prisoners and correctional students, such as families, schools, government agencies, or the private sector knowing by the local government as low as the lurah or village head;
13. A copy of Register F (a list containing violations of discipline committed by prisoners and correctional students during their criminal period) from the head of *LAPAS* or the head of *RUTAN*;
14. A copy of the list of changes or deductions in the criminal period, such as clemency, remission, etc. from the head of *LAPAS* or the head of *RUTAN*;
15. A statement letter of commitment from the party who will receive prisoners and correctional students, such as families, schools, government agencies, or the private sector knowing by the local government as low as the lurah or village head;
16. Additional requirements are required for foreign convicts or children who are criminal citizens:
  - a. A letter of guarantee from the Embassy / Consulate of the foreign country concerned that the prisoner and correctional protégé do not escape or obey the conditions while undergoing assimilation, parole, leave nearing free, or Conditional Leave;
  - b. Certificate from the Head of the local Immigration Office regarding the immigration status concerned.

The conditions that must be met to get the rights of prisoners during the Covid-19 pandemic are:

1. Photocopy of the excerpt of the judge's decision and minutes of implementing the court's decision;
2. Evidence of having paid the fine and compensation in full under a court decision or implementing a subsidiary substitute for fines to be carried out at home under the supervision of the Attorney General's Office and the Correctional Center Coaching progress report signed by the Head of *LAPAS/LPKA*;
3. Copy of register F from the Head of *LAPAS/LPKA*;
4. Copy of the list of changes from the Head of *LAPAS/LPKA*; and
5. A statement from the prisoner/child will not run away and not commit any illegal activity.

The internal and external impact of the acceleration of the provision of rights of prisoners during the Covid-19 pandemic for prisons and the community is very pronounced, where the positive impact on prisons has sufficient capacity for prisons to be occupied by some prisoners who have not received their rights, The negative impact of the implementation of coaching for prisoners has not been maximized because prisoners must be released prematurely on the grounds of preventing the spread of the Covid-19. A positive impact on society, for the prisoners themselves, can reunite with their families and all relatives feel happy with the return of prisoners to their homes. The negative impact, it is feared for recurrent prisoners with recidivist status, will be a threat to the security of their property and life, if the prisoners who have been released will commit another crime.

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