

Consequences of Assimilation Policy During a Pandemic in Indonesia: Overview in Human Rights Perspective

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ABSTRACT

Guarantees and protection of human rights are the responsibility of the government, both in normal state situations and in emergencies such as the Covid-19 pandemic. In suppressing the spread of Covid-19 in prisons, a policy of granting assimilation is issued to prisoners who meet the requirements. Therefore, it is important to see whether the policy has consequences for the penal system in Indonesia and whether it is in line with the conception of human rights guaranteed in the Indonesia Constitution. The problem posed in this study is to what extent the assimilation policy during the Covid-19 pandemic reflects the guarantee and protection of human rights as a constitutional mandate of the Indonesia Constitution? The problem will be analyzed normatively using a statutory approach, a theoretical approach, and an analytical approach. The results of the study show that the consequences of the policy of granting assimilation during the Covid-19 pandemic are felt directly by inmates who meet the requirements for assimilation and indirectly felt by inmates who do not meet the requirements that have been set. Therefore, the provision of assimilation during the Covid-19 pandemic in the conception of guarantees and protection of human rights is a policy of limited human rights protection.

Keywords: Assimilation, Covid-19 Pandemic, Human Rights.

1. INTRODUCTION

The characteristics of a rule of law state are marked by the principle of protecting human rights, the principle of separation or division of power, the principle of government based on the law, and the principle of the existence of administrative justice.[1] Specifically, regarding the protection of human rights, it is also carried out in abnormal situations or emergencies, such as the Covid-19 pandemic. In abnormal conditions, special norms must apply and also need to be regulated separately.[2]

Responding to the spread of Covid-19 in Indonesia, the Minister of Law and Human Rights issued Permenkumham Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Prevention and Control of the Spread of Covid-19, and Decree of the Minister of Law and Human Rights Number.M.HH-19.PK/01.04.04 concerning the Release and Release of Prisoners and Children Through Assimilation and Integration.

The massive spread of Covid-19 in Indonesia and the excess capacity of prisons are the two reasons for the birth of this policy. This effort is a form of protection for the rights of the inmates as citizens, especially the rights

to health and security that must be accepted. However, providing assimilation is not a solution and guarantees that the inmates who are running the program are not exposed to Covid-19. Such a position becomes a dilemma when examined from the perspective of protecting citizens' human rights.

Not all inmates can take advantage of this policy. In addition, public safety, in general, is worthy of attention because not a few prisoners receiving assimilation again commit crimes. The creation of a safe and conducive environment is the constitutional right of every citizen as well as the responsibility of the government which must be carried out as a constitutional mandate of the 1945 Constitution. Therefore, it is important to examine the extent to which the Assimilation policy during the Covid-19 Pandemic reflects the guarantee and protection of human rights as a constitutional mandate of the 1945 Constitution?

In ensuring the originality of this article, there are two related studies, namely Penny Naluria Utami, “*Keadilan Bagi Narapidana di Lembaga Pemsyarakatan*”, Jurnal Penelitian Hukum De Jure, Volume 17, No. 3, September 2017 [3], and Dony Michael, “*Penerapan Hak-Hak Narapidana Di Lembaga Pemasyarakatan Kelas I A Tangjung Gusta, Sumatera Utara Ditinjau Dari Perspektifi Hak Asasi Manusia*”, Jurnal Penelitian Hukum De Jure, Volume 17, No. 2, June 2017.[4]

Based on the two studies, there are significant differences with the proposed research, namely the two studies are more on the application of the conditional rights of prisoners who are still constrained by the inharmonious arrangement of requirements stipulated in Government Regulations and Laws so that they can delay or eliminate the rights of prisoners. prisoners' rights. In addition, this research focuses more on the inhibiting and supporting factors in the implementation of prisoners' rights.

Based on the identification of the problems posed by the author, the type of research used in this paper is normative research or often referred to as doctrinal research or literature, using a statutory approach, a theoretical approach, and an analytical approach.

2. METHOD

This research uses the normative method by using the approach legislation, case approach and conceptual approach. The legal materials used are various written regulations, legal books, expert opinions and articles related to this theme.

3. RESULT AND DISCUSSION

I. ASSIMILATION AS A PRISONER'S RIGHT

The enactment of Law Number 12 of 1995 concerning Corrections made the criminal mechanism in Indonesia a correctional system. The correctional system aims to make prisoners aware of their mistakes, improve themselves and do not repeat criminal acts and can be accepted by the community and actively play a role in development so that they become good and responsible citizens.[5] In this case, prison is not only a place to convict someone but also a place to foster or educate prisoners, this is meant so that after completing their sentence they can adjust to life outside the prison as good and obedient citizens on the law.[6]

The limitation of space for movement and the loss of freedom for a prisoner in essence does not limit a criminal to obtain his other rights as a citizen. Therefore, the same treatment by upholding his dignity as a human being is something that cannot be eliminated even in his status as a prisoner. Protection of prisoners by respecting and fulfilling their rights is intended as a legal protection measure for various prisoners' human rights as well as various interests related to the welfare of prisoners.[4] One of the rights of prisoners regulated in Article 14 of the Correctional Law is the right to obtain assimilation as a form of extramural development (outside prison). Assimilation in the extramural coaching process includes two stages of the four stages of extramural coaching. The two stages are carried out in two phases, namely the second phase and the fourth phase.

The second phase is called Orientation Assimilation (introduction to the community), at this stage, it is done by introducing prisoners to community life outside the Correctional Institution. This activity is carried out in two ways: 1) the inmates are taken out to be involved in social activities carried out by the community; and 2) the entry of outside parties into the Correctional Institution, for example, visits from foundations, NGOs, MPAs and so on. The fourth phase, called Assimilation (preparation to unite or return to society); at this stage, the guidance is taken by *Bapas* who serves as guidance in preparation for returning to the community after the sentence ends (pure release) or to obtain parole (PB). This was carried out by the Prisoners' Office after the Prisons' Committee received approval from the *TPP* (Penitentiary Observer Team). This stage is carried out within a period of two-thirds until the time of release.[3]

In principle, the provision of assimilation aims to develop motivation or encouragement in prisoners towards achieving the goals of coaching, providing opportunities for prisoners to get education and skills to prepare themselves to live independently in the community after being released from prison and encourage the community to play an active role in administering correctional.[7] With such a construction, the birth of an assimilation policy towards each inmate is a fulfillment of the rights of a prisoner even though his movement space has been limited and he has lost his freedom to carry out various daily activities in the public space. This is in line with the conception of coaching in prisons which is the choice of the criminal system in Indonesia today.

II. LEGAL CONSEQUENCES OF ASSIMILATION POLICY DURING THE COVID-19 PANDEMIC FROM A HUMAN RIGHTS PERSPECTIVE

The inmates are the main subject of the birth of this policy, so in this case, the impact felt by the inmates can be categorized into two groups, namely:

1) Consequences for the Assimilated Inmates

For prisoners who receive assimilation, granting assimilation is intended so that inmates are not exposed to the Covid-19 virus will be meaningless if the prisoners as recipients of assimilation carry out activities outside the home and heed health protocols and social distancing. Assimilation which has implications for inmates who are entitled to receive assimilation is intended to maintain and protect the health rights of prisoners and their environment. Referring to the 1945 Constitution, this objective is in line with Article 28H of the 1945 Constitution. The regulation of these rights confirms the existence of a clear legal position. In this case, as long as a right is not protected by legal regulations, then the right is not yet a legal right. Law can be identified with rights and obligations.[8]

Observing this conception, the granting of assimilation to the inmates with the objectives described is a right that cannot be separated from their position as citizens. However, the implementation of this assimilation refers to the purpose of the correctional system where the implementation of the integration of inmates in the community is not fully realized. This happens because the community environment in question is not in its usual state, where there are restrictions on residents' activities, wherewith this of course the intention to integrate the inmates with the community environment does not occur.

Such a situation gave birth to a shift in the true meaning of the implementation of assimilation. The consequence of this shift is that the coaching process cannot be carried out completely. The thing that worries about this situation is that prisoners or child prisoners are considered to still have disgraceful characteristics, in the sense that prisoners have not been fully trained with correctional education standards, so that *mutatis mutandis* cannot be called fully worthy of being in the community in general.[9]

2) Consequences for Inmates Who Are Not Assimilated, Recipients

The inmates who do not get or have not met the requirements required in the Assimilation are the parties who also feel the impact of this policy. As for what can be felt by the remaining inmates in prisons, including: first, the effectiveness of the coaching and supervision program. A large number of prison residents certainly has an impact on the established coaching program that cannot run optimally. Therefore, with the reduction in prison residents, the guidance and supervision program carried out on each inmate will be more focused and more optimal. Through the assimilation process, the efforts of fostering and supervising will be compared between the inmates who are the subject of coaching and the correctional officer in charge of providing guidance.

Second, improving the implementation of health protocols. If the prison situation or cubicle is crowded by inmates, then the health protocol cannot be carried out optimally. Therefore, through the Assimilation policy, the remaining inmates can feel more comfortable in the correctional room. Another consequence that arises is social jealousy from the inmates who do not accept Assimilation. This issue becomes more complicated when things happen that are not wanted by the remaining inmates. This problem is clearly illustrated in the case that occurred in Sorong, where there was a riot and burning of the Class IIB Sorong prison. The riots occurred because the prisoners demanded assimilation rights like the other 84 prisoners who were given assimilation and had been released.[10]

Consequences of this kind can occur because of disparities in the provision of assimilation to each inmate. Assimilation is a citizen's right, then assimilation is a constitutional right that is guaranteed by the constitution. In the context of national and state life, constitutional rights are the substance that becomes the main orientation in the administration of state life. On the other hand, citizens have a legal basis in demanding the fulfillment of every constitutional right that is guaranteed and regulated in the constitution.[11]

4. CONCLUSION

The granting of assimilation is intended to guarantee the rights of the inmates as a form of guaranteeing human rights as mandated by the Constitution. The consequences of the Assimilation policy during this pandemic are directly accepted by inmates who have met the requirements for assimilation, while indirectly giving assimilation will also be interpreted negatively by inmates who do not meet the requirements for assimilation. This shows that guaranteeing and protect human rights is not felt by all prisoners. Thus, the assimilation policy during the pandemic is limited, because the implementation of a policy is also limited by applicable law.

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