

Judicial Sentence Modification to Prevent the Transmission of Covid-19 in Correctional Institutions

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Abstract - The transmission of Covid-19 is very worrying and has affected almost all aspects of human life, including inmates in the Correctional Institution. Prisoners are one of the very potential transmission of Covid-19 amidst the overcrowding or overcapacity of prisons or institutional correction in Indonesia. Currently, it seems as if there is a dilemma between inmates having to undergo punishment in a custodial institution or the need for a policy to release prisoners for the sake of saving from the threat of Covid-19. Therefore, through normative legal research, it will reveal and find out how the regulation of imprisonment and the condition of the Correctional Institution is currently being carried out and how to modify the implementation of the crime to prevent the transmission of Covid-19? The current regulation of imprisonment does not allow modification in the form of the implementation of prison sentences that have been imposed by judges or those that have been served, so that it has an impact on overcapacity in the penitentiary or institutional correction. Even though there have been efforts through the Regulation of the Minister of Law and Human Rights No. 10 of 2020 which allows for assimilation, but it is not maximized because the conditions are quite difficult. Thus, a new policy or regulation is needed to modify the implementation of imprisonment in order to save inmates from the threat of Covid-19 in the Correctional Institution because it is an emergency that is directly related to the health and safety of convict life.

Keywords - Correctional institutions, Covid-19, Imprisonment, Judicial sentence, Sentencing modification.

INTRODUCTION

Since the outbreak of Covid-19 in early 2020, it has had a wide impact on all sectors of life around the world, including in Indonesia. The impact of Covid-19 is also very influential on law enforcement and inmates who are serving a prison term in the correctional institution. Especially for inmates, there is great concern that if one inmate is infected with Covid-19, it will be very easy to spread to all other inmates in the midst of the overcapacity of almost all correctional institutions in Indonesia as well other countries (Simpson & Butler, 2020). Some studies revealed that correctional institutions and detention centers have the potential to become clusters of Covid-19 transmission such as in Italy, Brazil and US (Pattavina & Palmieri, 2020; de Oliveira Andrade, 2020; Nowotny et al., 2021). Specifically, in Indonesia, as of September 30, 2020, at least 96 positive cases were found in seven prisons and detention centers in Jakarta (Lidwina, 2020). While outside Jakarta, there are 120 residents and 18 officers infected in seven prisons and remand centers. The contagion is due to the overcapacity of the prison inmates. The Ministry of Law and Human Rights recorded that the prison capacity in Indonesia is around 133.8 thousand people, but the realization of prison inmates reached 236,000 people as of October 2020 (Lidwina, 2020).

This concern is very reasonable considering that Indonesia is a country with a fairly high spread of Covid-19, especially with the outbreak of a new variant of Covid-19 in mid-2021 which is more easily transmitted. Convicts who are sentenced to very heavy sentences and are still serving their sentences in a custodial institution are obliged to serve their sentences until they are completed according to applicable law. On the other hand, it is undeniable that the spread of Covid-19 is a serious problem that is very wary of in Indonesia, especially with overcrowded prison conditions, limited facilities and health workers and a series of other problems. Currently, the problem of prisoners in the correctional institution is not only a legal issue but the most important thing is how to save prisoners from the spread of Covid-19. This makes the imprisonment is not only about legal matters, but also have paramount importance in the Covid-19 pandemic (Nweze et al., 2021; Wang et al., 2020; Van Hout, 2020; Clarke et al., 2020).

There is a kind of dilemma between resolving the remaining criminal charges in the custodial institution in accordance with the rules and the need to make a policy to provide early release to convicts or modifying the sentence with parole or other forms of mitigating punishment in anticipation of the spread of Covid-19. Moreover, there are quite a lot of views in the community so that prisoners remain in the correctional institution until their sentence is completed. In addition, there are also groups that support the need to save prisoners from the threat of Covid-19 which is very terrible and even has many lives, therefore saving convict life is more important and above all else.

LITERATURE REVIEW

The crime of deprivation of liberty is regulated in the Indonesian Criminal Code consisting of 2 (two) parts, namely imprisonment and detention. Surprisingly, the Criminal Code does not explain what is meant by imprisonment and confinement, but it is only explained in the science of criminal law. In criminal law, imprisonment is actually intended for crimes that are classified as serious or serious because the sanctions are indeed very heavy (there is even a life sentence), while imprisonment is for minor crimes. So far, the crime of independence is known to be the most important or the backbone in tackling crime is imprisonment. According to Muladi & Diah Sulistyani (2020), the existence of imprisonment in the criminal justice system remains the backbone of criminal law, due to the influence of the classical school of law. Juridically, the crime of deprivation of liberty is regulated in Article 10 of the Indonesian Criminal Code which consists of the main and additional penalties (Moeljatno, 2009). Firstly, based on Law No. 20 of 1946, the principal crime includes death penalty, imprisonment, confinement, fines and criminal cover. Secondly, additional penalties include revocation of certain rights, deprivation of certain items, and announcement of judge's decision.

Specifically, for imprisonment, it is further regulated in Article 12 of the Criminal Code that imprisonment can be applied for a lifetime or for a certain period of time. Life imprisonment or life sentence requires the convict to languish in a custodial institution for life or for the rest of his life (Collin, 2004). The existence of this prison sentence or the justification for imprisonment is actually to protect the community. This goal can only be achieved if during the period of loss of independence, it is directed as much as possible so that the convict can return to society or re-socialize the convict (Suparni, 1996). Life imprisonment when it is associated with the idea of rehabilitation in the correctional system is actually a contradiction.

Life imprisonment must be carried out as long as the convict is sentenced to death in the Correctional Institution, while the correctional system is oriented that the sooner the convict gets out, the better. This is explained in Law Number 12 of 1995 concerning Corrections that the purpose of punishment is to repair the perpetrator (rehabilitation) which is temporary, and not forever. Based on Article 1 paragraph (2) of the Correctional Law, it is explained that Correctional Inmates are to be aware of their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by the community, can play an active role in development, and can live naturally as a good and responsible citizen. Thus, the existence of life imprisonment is contrary to the idea of rehabilitation in the Correctional Law. The existence of a rigid life imprisonment as in the current formulation of the Criminal Code is not in line with the government's desire to reduce the overcrowding/overcapacity of prisons. For example, if the convict has behaved well, it will not affect the criminal period served, even if there is a threat of a disease outbreak such as Covid-19, this cannot be an excuse for the convict to serve his sentence outside the Correctional Institution.

In addition to life imprisonment, there is also imprisonment for a certain period of time with a minimum of 1 (one) day and a maximum of 15 (fifteen) consecutive years and if there is a weighting for example due to recidivism, the maximum imprisonment can be imposed for 20 (twenty) years. jail. The existence of a life sentence or a certain period of time because it is intended for serious crimes or crimes that are extraordinary crimes. As for minor crimes or for criminal offenses, they can be imposed with imprisonment (detention). The penalty of confinement is regulated in Article 18 of the Criminal Code, which essentially states that a minimum imprisonment of 1 (one) day and a maximum of 1 (one) year, but if there is a weighting, it can be subject to a detention of 1 (one) year 4 (four) months (Moeljatno, 2009). Interestingly, even if a crime is sentenced to imprisonment or confinement, it is also possible for the convict not to serve his sentence in a custodial institution, and be replaced with a conditional sentence or suspended sentence. Some crimes that are classified as minor which are decided by the court, for example, are subject to imprisonment or imprisonment for a maximum of 1 (one) year, then a suspended sentence can be applied as regulated in Article 14 of the Criminal Code.

The birth of this conditional sentence or suspended sentence is the influence of the modern flow that pays attention to human values and people-oriented criminal (oriented offender sentence). Currently, to avoid criminal independence with a suspended sentence, it is also very limited due to various problems so that there are still many defendants who are sentenced to short prison sentences which ultimately have an impact on overcrowding/overcapacity in correctional institutions throughout Indonesia. Along with the shift in thinking and the influence of global developments, it is hoped that changes in prison sentences will become more humane, and in its development the idea emerged to reduce and avoid the application of imprisonment with other alternatives, both at the stage of the judicial process and the stage of implementing the crime.

The implementation of a criminal is a sub-system of the criminal system which largely determines that the criminal sanction is executed. The punishment system is a system of authority/power to impose a criminal, and the imposition of "criminal" can not only be seen in a narrow/formal sense, but can also be seen in a broad/material sense (Nawawi, 2011). In a narrow/formal sense, criminal imposition means the authority to impose/impose criminal sanctions according to law by the authorized official or judge. Meanwhile, seen in a broad/material sense, criminal imposition is a chain of legal action processes from authorized officials, starting from the investigation process, prosecution, to the criminal decision handed down by the court and carried out by the criminal implementing apparatus (Syaufi & Zahra, 2021).

The authority to impose/impose a criminal, especially a judge, will affect the stage of implementing the crime. If the judge tends to impose too many prison sentences, it can result in overcrowding/overcapacity of the Correctional Institution, whether it is a long prison sentence or a short prison sentence. Especially for short prison sentences, there are many criticisms from various parties because the prison system is carried out "institutionally" which takes quite a long time and stages so that it is not suitable for short prison sentences. There are a number of difficulties in serving this short or short prison term which can be identified (O'Hara, 2016). The difficulties include lack of education plans in prisons for convicts serving short prison sentences and lack of education arrangements for those serving short prison sentences, the availability of illicit substances in prison, overcrowded conditions of

correctional institutions, the volatile nature of the prison environment, including involvement in feuds and violent attacks; and disruption to family relationships as the most difficult aspect of imprisonment is separation from family.

METHODS

The main problems in this paper are how is the regulation of imprisonment and the current condition of the correctional institution in Indonesia and how is the modification of the implementation of imprisonment in preventing the transmission of Covid-19 in the Indonesian penitentiary. The writing of this article uses a normative legal research method, namely legal research that puts the law as a system of norms by assessing the possible implementation of modification of punishment and examining the role of prison institutions in preventing the transmission of Covid-19. The system of norms in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines about the public health role of state agency (Nasirin & Lionardo, 2021), especially Indonesian penitentiary in the Covid-19 pandemic (Fajar & Achmad, 2010). Normative legal research is research that focuses on studies of documents in the literature that emphasizes secondary data in the form of primary legal materials in legislation and secondary legal materials that can be obtained from journals, books, articles and so on. The data collection of legal materials is done by understanding and reading the literature and documents related to the problems of the role of prison institutions in preventing the transmission of Covid-19. The data was used to obtain the information about overcapacity of prison in Java and outside Java. Furthermore, an in-depth and thorough analysis was carried out related to the modification of the implementation of imprisonment in preventing the transmission of Covid-19 in the Correctional Institution.

RESULTS

From human rights perspective, psychological impacts that often occurs for convicts in prisons are dehumanization, imprisonment, stigmatization and high costs for the needs of prisoners as well as the emergence of various other deviant behaviors. This is a series of problems that arise in imposing imprisonment. Therefore, if the prison sentence is imposed too often by the judge, it will have a serious impact not only on the convict, but also on the nation and state as it will cause overcapacity. The density of prisons can be seen from the Correctional Database System in Indonesia (2021), especially in provinces that are very densely populated (especially in Java) and outside other areas (Table 1).

TABLE 1
PRISON OVERCAPACITY BASED ON JAVA

No	Province	No. of Prisoners	Capacity	Overcapacity
1	Jakarta	17,911 prisoners	5,851 prisoners	206%
2	West Java	22,767 prisoners	15,965 prisoners	53%
3	Central Java	13,620 prisoners	8,197 prisoners	66%
4	East Java	25,191 prisoners	12,358 prisoners	121%

TABLE 2
OVERCAPACITY OF PRISONS OUTSIDE JAVA

No	Province	No. of Prisoners	Capacity	Overcapacity
1	East Kalimantan	12.375	3.586	245%
2	North Sumatera	34. 222	10.964	217%

Based on Table 1, it can be seen that Jakarta (206%) ranks first in the overcapacity of prisons in Java, while outside Java, East Kalimantan (245%) is the highest. The data was taken in 2019 before the outbreak of Covid-19 in Indonesia or before the policy was issued to provide assimilation to convicts due to Covid-19. The policy was issued in 2020, namely in the form of Minister of Law and Human Rights Regulation No. 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Prevention and Overcoming the Spread of Covid-19.

Hence, criminal modification is one alternative to avoid the crime of independence, especially in the implementation of imprisonment. Modifications are intended for custodial crimes, especially prison sentences that have been imposed by judges and have been carried out which are possible to be modified with non-custodial/non-imprisonment crimes. According to Johnston (2014) that judicial sentence modification has become popular as a possible means to save money, reduce prison overcrowding, and prevent unjust and inappropriate punishment. The purpose of this modification or criminal change is to relieve the convict so that he does not linger in the custodial institution amid the current threat of Covid-19.

Efforts to prevent the transmission of Covid-19 within institutions were responded to by the government with the issuance of Minister of Law and Human Rights Regulation 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. Based on Article 2 of the regulation, it is explained that the convict who has served a prison sentence of ½ (one half) of the length of his sentence with a record of good behavior for the last 6 (six) months and actively participating in the program well, can be given assimilation carried out at home accompanied by with supervision. The definition of assimilation based on Article 1 paragraph (3) of the regulation is the process of fostering prisoners carried out by assembling prisoners with the community.

Interestingly, assimilation in the Regulation of the Minister of Law and Human Rights Number 10 of 2020 is not for all criminal acts. Based on Chapter II of the regulation, it is explained that there are several criminal acts that are excluded, namely for criminal acts of terrorism, narcotics, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and transnational organized crimes, as well as foreign nationals. Therefore, the policy of granting assimilation cannot be applied if they have not served half of the total length of his sentence, unfavorable behavior while in the correctional institution. Moreover, the crimes committed are in the form of terrorism, narcotics, psychotropic, corruption, crimes against state security and serious human rights crimes, transnational organized crimes and foreign nationals, and convicts who have just served a prison sentence or a sentence that is long enough.

In addition, in the regulation, especially in Chapter 3, it is also explained that it is possible for the convict to get parole, leave before release, and conditional leave. Interestingly, the condition for obtaining the policy has been serving a prison sentence of 2/3 (two thirds) of the length of imprisonment, and this is actually not a new policy because the condition for obtaining conditional release has been regulated in Article 15 of the Criminal Code, namely having served 2/3 (two thirds) of the length of imprisonment which must be at least 9 (nine) months. Thus, the policy to integrate convicts into society through parole has existed for a long time because it has been regulated in the Criminal Code.

Even though there are still weaknesses, the government's steps through its ministerial regulations to save prisoners from the threat of the spread of Covid-19 need to be appreciated. This can be seen through the assimilation program, which essentially gives the convict an opportunity to blend in with the community under certain conditions. Even though the conditions for obtaining the policy are not easy, and there is a very small possibility that the percentage of all prisoners in Indonesia will be eligible for conditional release, so that this step has not fully resolved the problems faced in the Penitentiary.

Completing the overcrowding of Correctional Institutions as a whole requires a change in thinking from the idea of a criminal which aims to punish (retaliate) to a criminal to repair and rescue the perpetrators which requires the formation of new rules. One of the formulations in the new regulation requires a rule that formulates that it is possible to modify a prison sentence that has been imposed by a judge and has been implemented in a custodial institution and replaced or converted into a non-imprisonment/non-custodial crime. This is a shift in thinking from an offense-oriented criminal to an offender-oriented criminal in the form of criminal modification. Criminal modification aims to adjust the criminal by looking at the development or needs of the convict in the custodial institution so that the prison sentence that has been imposed by the judge in its development can change following the development of rehabilitation or from a humanitarian perspective. One of the interests or seen from the humanitarian side is rescuing convicts from the spread of Covid-19.

The rescue of the convict from the threat of Covid-19 is very urgent because it is directly related to the safety and life of the convict, and this is not just serving a sentence in a custodial institution due to the convict's actions. Therefore, criminal modifications by providing assimilation or actions outside the institution (non-custodial/non-imprisonment) for the convicts do not need to be limited to certain criminal acts or see the length of the sentence served as stipulated in the Regulation of the Minister of Law and Human Rights No. 10 of 2020. Criminal modifications can be applied to light, moderate criminal sanctions and it is also possible for serious crimes for certain reasons, for example by reason of the spread of diseases such as Covid-19.

Related to this criminal modification, Grossman & Shapiro (2003) have stated that, sentence modification for persons serving more serious. Thus, the modification of imprisonment is not only for crimes classified as minor but also for serious crimes because the idea of modern punishment departs from criminal individualization, namely that the provision of criminal sanctions is very dependent or must be in accordance with the perpetrator. This means that although the judge's actions and punishments are very heavy, under certain conditions the punishment can be adjusted to certain conditions, among others, for the reason of saving prisoner life from Covid-19.

This criminal modification is actually not a new policy, it can be seen from the idea of reducing or avoiding imprisonment in international agreements, for example the one that is quite popular is the 1990 Tokyo Rules. In the 1990 Tokyo Rules, especially in Rule 2 regarding the scope of non-custodial measures (specifically numbers 2.3 and 2.4) are explained. It explains that to provide greater flexibility, namely according to the nature and severity of the crime with the personality of the perpetrator, as well as to avoid unnecessary use of imprisonment. The criminal justice system must provide flexibility in the choice of non-custodial actions or sanctions starting from pre-trial (pre-trial), trial and sentencing, and post-sentencing. Moreover, it explains the need for the development of new non-custodial measures that must be encouraged and closely monitored and their use evaluated (United Nations Standard Minimum Rules for Non-Custodial Measures/The Tokyo Rules, 1990). Moreover, some studies highlighted the role of penal policy in reducing the impact of Covid-19 on prisons (Dünkel, 2020; Nowotny et al., 2020).

Specifically, in the field of post-conviction non-custodial sanctions (Rule 9.2) in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), it is explained that the forms of changes or modifications to criminal sanctions are by leaving (furlough) and (half-way houses) in Indonesia which are called correctional centers, providing work or education outside

the correctional institution (work or education release). The other modifications to criminal sanctions include various forms of parole, remission of penalties and forgiveness to the perpetrator (pardon).

The idea or idea to avoid the application of imprisonment in the Tokyo Rules above has actually been formulated in the Indonesian current draft of Criminal Code, but until now it has not been ratified into law with various obstacles. The criminal system or the criminal application system in the draft of Criminal Code has several basic ideas behind it. This was stated by Arief (2008) that the criminal system as outlined in the draft of Criminal Code was motivated by various basic ideas or principles such as mono-dualistic balance between the interests of society (general) and individual interests; balance between "social welfare" and "social defense"; balance between offender-oriented crimes/offender and victim. The other principles used such as by using a "double track system" between criminal/punishment and action/treatment/measures, using effective "non-custodial measures as alternatives to imprisonment, the implementation of elasticity/flexibility of sentencing, criminal modification/change/adjustment ("modification of sanction"; "redetermining of punishment"), subsidiarity in choosing the type of crime, judicial pardon and prioritizing justice over legal certainty. The tentative purpose of using legal principle to reduce prison populations in the Covid-19 pandemic also revealed by previous studies (Vest et al., 2021).

Based on the 10 (ten) principles or basic ideas above, specifically in point 7, namely the existence of a basic idea in the modification/change/adjustment of criminal or "modification of sanctions"; "redetermining of punishment". The form of this modification is further formulated in the "guidance and rules of punishment" of the draft of Criminal Code which essentially explains that even though there has been a sentencing decision that has permanent legal force, it is still possible for modifications/changes/adjustments/reviews (principle of "redetermining punishment"). modification of sanction"; the principle of "the alteration/annulment/revocation of sanction"), both regarding changes to laws or changes in "legislative policy" as well as changes/improvements/developments in the convict.

Based on this, criminal modifications can occur due to changes in the law or due to changes in convicts for the better while in Correctional Institutions and is one of the implementations of the idea of criminal individualization. According to Arief (2010), the idea of criminal individualization contains the characteristics such as criminal accountability is individual or personality principle. Hence, criminals are only given to people who are guilty (culpability principle; "no crime without guilt"); and criminal sanctions must be adjusted to the characteristics and conditions of the perpetrators, thus there must be flexibility/flexibility for judges in choosing criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modifications (changes/adjustments) in their implementation. So, it contains the principle of flexibility and the principle of criminal modification.

Looking at the comparison with other countries, this modification of the criminal with a non-custodial/non-imprisonment crime has long been implemented, for example the idea of criminal individualization in Greenland which gave birth to "the elasticity of sentencing" and "the alteration/annulment/revocation of sanctions". This criminal modification can be formulated in the sentencing rules which contain norms regarding criminal and sentencing, or in the sentencing guidelines which contain instructions on what things should be considered in imposing a sentence (Arief, 2012). Changes from custodial crimes to non-custodial/non-imprisonment crimes are considered suitable for crimes with certain characteristics or for certain reasons. These characteristics include: whether the perpetrator is a recidivist, has a high probability of not repeating the crime, the history of their previous actions, the perpetrator regrets their actions, and their status in society (Napitupulu et al., 2019).

In addition, to determine criminal sanctions that are appropriate to the perpetrator and in order to achieve the purpose of punishment, it is very necessary to understand the philosophy of punishment. Through the philosophy of punishment, we can find a philosophical conception of "who is a human being", so that sanctions are allowed or not allowed against him. Meanwhile, through the theory of punishment, we can understand "what" a sanction is imposed on a human being-whether to retaliate, reproach, educate or protect society (Sholehuddin, 2003). Based on the nature of the punishment, the sentence imposed and has been implemented can be changed or modified, and it is in accordance with the individualization of the criminal whose criminal purpose is to improve the perpetrator in addition to protecting the community. The results of this study are in line with Montoya-Barthelemy et al. (2020), and Rapisarda et al. (2020) revealing the critical role of correctional institutions for public health.

CONCLUSION

The results conclude that the regulation of imprisonment (for life and a certain time) in the Criminal Code is to avoid imprisonment with a suspended sentence and to relieve it with parole. There are no specific rules for modifying the implementation of the crime with other sanctions, especially for serving a sentence outside the institution (non-custodial/non-imprisonment) so that it has an impact on the overcapacity of Correctional Institutions in Indonesia which raises various problems amid the development of various forms of modification of criminal implementation. Moreover, the government's efforts to prevent the transmission of Covid-19 to prisoners through the Minister of Law and Human Rights Regulation No. 10 of 2020 with a policy of granting assimilation, but the application of these requirements is very severe and limited to certain criminal acts so that it is not optimal. Therefore, a new policy/rule is needed to modify the implementation of imprisonment in preventing the transmission of Covid-19 for all prisoners because it is an emergency, which is directly related to the health and safety of human life (convicts) and the policy of saving from the spread of Covid-19 is more important than everything.

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