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LAW & SOCIAL POLICY | RESEARCH ARTICLE

Analysis Juridical to Convict Recidivists Who Get Assimilation In Time Covid-19 Pandemic

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Abstract: This study aims to determine the basis for the provision of assimilation policies during the Covid-19 pandemic and to find out the reasons for the prosecutors demand maximum punishment against recidivist defendants who received assimilation during the Covid-19 pandemic. This research uses normative research methods, covering primary and secondary legal materials. and tertiary, this research was conducted at the Makassar District Prosecutor's Office at the Makassar Port, with the legal materials obtained and analyzed using a statutory approach to obtain a systematic picture. The results of this study indicate the provision of assimilation and integration for prisoners and children through the Regulation of the Minister of Law and Human Rights Number 10 of 2020 and the Decree of the Minister of Law and Human Rights Number 19 / PK / 01/04 /2020, the basis for the provision of maximum demands by the prosecutor to recidivist convicts, namely the Attorney General's circular. Research recommendations If this policy is seen as a strategy to reduce the spread of Covid-19 in prisons, the government should not immediately abandon the rules that have been made for the safety of the surrounding community.

Keywords: recidivist; assimilation; covid-19;

1. INTRODUCTION

The phenomenon of the Coronavirus pandemic or COVID-19 as a global disaster has had an extraordinary impact on all aspects of life that take place on earth. Coronavirus Disease (COVID-19) itself is a new type of virus that has never been identified before in humans. (Zaini et al., 2022) that causes an imbalance to occur at this time takes place in a relatively short period of time, causing all world activities to not be on track. Very economic very chaotic happened, condition no political order is impacted by the domino effect of the moderate coronavirus happened. Not except in Indonesia, since government states this is a disaster nationally and even globally, (Bou-Karroum et al., 2021) various steps taken by the government as one option For tackling and reducing the impact of this coronavirus. at the moment this lots already cases of transmission of the coronavirus that occurred in Indonesia. (Bickley et al., 2021)

The moment This is in effort prevention and handle the spread of Covid-19 in Indonesia in the form of restrictions social scale big not only impact formal and informal workers. Almost all aspects of life are disturbed looking that from the perspective of existing phenomena, society is faced with condition vulnerability social and vulnerability security. (Anugerah et al., 2021) Crime rate during the implementation of the PSBB status because the Coronavirus or Covid-19 pandemic in the country is experiencing an increase, numbers reached 11 percent. Ironically, phenomenon crime in the middle PSBB conditions, the perpetrators most is ex assimilation program prisoners issued by the government through the Ministry of Law and Human Rights. However, really a pity because the reasons for ex returning convicts do crime precisely forced crime return because of the crushed economy in the middle PSBB conditions.

Perpetrator crime in doing action opposes law triggered by some factors, both originating from in self alone nor from outside himself alone, between one with others related tightly. Follow criminal is deed defined human in law and against proper law convicted and committed with error. Follow criminal refers in something the offense with on purpose or no on purpose has done to a perpetrator. There are also perpetrators crime that is not wary in do crimes and repeat crimes the after perpetrator is free from sentencing the crime or said, the perpetrator recidivist. Someone who can say perpetrator recidivist general if fulfill criteria that have been determined or arranged in notes Article 486 of the Criminal Code, namely:



1. Repeat the same crime or by law considered the same like ("same kind" = eg this time stealing, next time stealing Again or this time cheating, next time cheating again. "by law considered The same kind" = all those articles in Article 486, although there are various kinds, however, considered same. So are the articles in 487 and 488);
2. Between doing one crime with others already there is a judge's decision (if not yet there is the judge's decision, it is something combined crime "*samenloop* "not" receive");
3. Must be punishment prison (no punishment confinement or fine); And
4. Between no more than 5 (five) years counted since wrong undergo the same very or part from the sentence imposed.

Article 2 of the Law Number 12 of 1995 concerning correctional states that system penitentiary held in framework prisoners realize the error, fix themselves, and no repeat Again follow ever criminal done. it is to prepare inmates so they can integrity in a manner healthy to society. Because it, then carries out system penitentiary needed participation public good with stage cooperation in coaching nor with who willing to accept return inmates who have finished undergo the criminal. (Fehr & Gächter, 2000)

Related to the rampant current Covid-19 outbreak, deep makes policy liberation prisoners, the government set it through programs of assimilation and entitlement integration. The assimilation program is the building process executed by prisoners and children with blended convicts and children in society. Furthermore, right integration is gift liberation conditional leave approaching free and on vacation conditional for prisoners who do follow criminal besides follow criminal terrorism, narcotics and precursors narcotics, psychotropics, corruption, crime to national security and crime right basic heavy man, as well crime transnational organized, or foreign nationals.

Liberation prisoners this time is part of an effort government disconnect the spread of Covid-19 in Correctional Institutions and Homes Prisoner. Excluded policies for prisoner drugs and corruption it is also made Because conditions of Correctional Institutions and Homes Exceeded prisoner capacity. As the number of prisoners and detainees in Indonesia reached 270,386 people. (Marthaningtiyas, 2020) Temporary capacity institution correctional and home prisoners are only capable accommodates 131,931 people. Because the Minister of Justice and Human Rights Yasonna H Laoly issued Decree Number M.HH-19.PK.01.04.04 of 2020 concerning the Expulsion and Exemption of Prisoners and Children Through Deep Assimilation and Integration Order Prevention and Response Spread of Covid-19.

Based on the matter mentioned, in Decree Number M.HH19.PK.01.04.04 of 2020 concerning Expulsion and Exemption Prisoners and Children Through Assimilation and Integration, that expenditure convicts and children past assimilation done for two convicts third of his sentence until December 31, 2020, children who are half their criminal terms until December 31, 2020. As before exists Corona pandemic, the formerly already once reduction program initiated amount prisoners in prison, for example with proposal optimizing drop criminal replacement from criminal fine, criminal conditional, and penal mediation, which is its implementation Still need adjustments and changes law criminal and system punishment. As part of the Integrated Criminal Justice System. (Tirtakusuma, 2020) (Muschert et al., 2020)

government decision to liberate prisoners based on Minister of Law and Human Rights Regulation No. 10 of 2020 concerning Condition Giving Assimilation and Integration Rights for Prisoners and Children in Order Prevention and Response The spread of Covid-19 and the Decree of the Minister of Law and Human Rights Number M.HH-19.PK.01.04.04/2020 concerning Expulsion and Exemption Prisoners and Children Through Deep Assimilation and Integration Order Prevention and Response Spread of Covid-19. Liberation has been done to prisoners with consideration vulnerable to the spread of Covid-19 in prisons/detention centers / Development Institutions Special children (LPKA).

2. METHOD

Type study used in study This is type study law normative or doctrinal, incl type study normative because study. This is done with the method analyze norms law (existing provisions). Material law used in the study This is material law that has a connection with the problems and goals of the research. As for the ingredients law used in the study namely: Material primary laws, Materials this primary law consists of regulation legislation, records official or treatises in deed regulation legislation, demands prosecutor and judge's decision. As for the ingredients required law is Constitution Number 12 of 1995 concerning Correctional Institutions, Regulation of the Minister of Law and Rights Fundamental Man Number 03 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Leave Visit Family, Vacation Approaching Free and Leave Conditional, and Regulation of the Minister of Law and Rights Fundamental Man Number 10 of 2020 concerning Condition

Giving Assimilation and Integration Right for Share Convicts and Inner Children Order Prevention and Response Spread of Covid-19, Secondary Law materials, materials law secondary which is a publication about the law which is not is documents official. Material law existing tertiary in study for example dictionary law, dictionary big Indonesian. Collection technique material law in study This is with do search ingredients literature or normal called with library research related with discussion. Research libraries are used To get accurate information from material primary laws, materials law secondary, and materials law-related tertiary study problems. Material obtained law will be identified and inventoried, materials the Then analyzed use approach legislation to obtain a systematic and comprehensive overview of all legal entities obtained For produce prescription or argument new laws, then interesting something conclusion based on analysis that has been done.

3. DISCUSSION

Prosecutor General demands criminal maximum for defendant recidivists who get assimilation during the pandemic covid-19 above base circular from Attorney General's office, where? contents namely the perpetrators besides imposed terms and conditions in assimilation and or liberation conditional, (Nuh & Wulan, 2021) also raises effect wary for convict meant and gave the message for the benefiting community situation during this Covid-19 emergency, then as much as possible maybe the convicts who have repeat follow criminal For demanded criminal maximum.

The prosecutor general demands criminal maximum for defendant recidivists who get assimilation during a pandemic covid -19

Prosecutor general, second term the can We find in Article 1 number 6 of the Law Number 8 of 1981 concerning the complete Criminal Procedure Code ("KUHP") reads: (a) prosecutor is assigned office authority by law This For Act as prosecutor general as well as carry out decision court that has to obtain j strength law fixed ; (b) Prosecutor general is given attorney authority by law This For do prosecution and execution judge's determination.

After hearing the reading demands crime filed by the plaintiff General in essence as follows:

1. State The defendant M. ZAKIR Alias SAKIR BIN H. AHMAD and the defendant RIZAL JAYA BIN SAMSUL ALAM, were proven firmly and convincingly guilty do follow criminal " theft in circumstances burdensome " as arranged and threatened criminal in Article 363 paragraph (2) of the Criminal Code in the Indictment.
2. Drop criminal to the defendant M. ZAKIR Alias SAKIR BIN H. AHMAD with criminal prison for 3 (three) years and the defendant RIZAL JAYA BIN SAMSUL ALAM with criminal prison for 9 (nine) years prison, deducted entirely from the period of arrest and detention that has been served by the defendants with orders of the defendants still detained.
3. State goods proof in the form of :
 - 1 (one) fruit padlock.
 - 16 (six-twelve) sheets of headscarves of the Saudi Arabian brand.
 - Cash an amount of Rp. 25,000.- (two twenty- five thousand rupiah).(returned to witness WAHYUDI KAMARUDDIN)
4. Determine that the defendants burdened pay the cost of each case in the amount of Rp. 2,000,- (Two Thousand Rupiah)

Considering, the demands read by the plaintiff general above, the defendant's state understands and asks a panel of judges for the defendant's light punishment with the reasons for the defendant confess guilty, sorry, and promised no repeat his deeds; considering, that the defendant filed to trial by the prosecutor general with the indictment as following :

That He the defendant M. ZAKIR Alias SAKIR BIN H. AHMAD and the defendant RIZAL JAYA BIN SAMSUL ALAM, on Tuesday, May 05, 2020, approx at 01.44 Indonesian Centre Time, or at some point time in the month May 2020, located inside Shop Sinar Happy, which is located on Kalimantan Street, District Wajo Makassar City or at some point place certain ones still including within the competent jurisdiction of the Makassar District Court judge and examine case this, take goods something, the whole or part someone else 's, with Meaning For owned in a manner oppose law, in time Evening in A House or yard existing closed his house, which was done by people who were there not is known or at the will of those entitled to, for entering into the place do crime, or until the goods are taken done with damaging, climbing, which acts were committed by the defendant with ways as following :

- Starting on the day Tuesday, May 05, 2020, approx at 01.00 WITA the defendant M. ZAKIR Alias SAKIR together with the defendant RISAL JAYA BIN SAMSUL

ALAM and Br. BASRI Register of Interviewees (not yet caught) enter the Shop Happy Rays with the way the defendants and Mr. BASRI climb the wall shop Then enter the pass window safety Then damage key the lock with method broken after M. ZAKIR Alias SAKIR together with the defendant RISAL JAYA BIN SAMSUL ALAM and Br. BASRI is located in the Shop Ray happy floor two bro Basri took bag Then the defendant M. ZAKIR Alias SAKIR took goods 80 (eight twenty) faceted hijab scores four brands of Saudi Arabia, 10 (ten) children's hijab scores Rabbani brand school, 10 (ten) inner faceted headscarves four satin motifs so total all headscarves taken around 100 (one hundred) Kodi or around 2000 (two thousand) sheets Then enter into the bag the whereas the defendant RISAL JAYA stood guard watching while have a look If there are people after the defendants and Mr. BASRI live to go while bring bag contains the headscarf and comes out through windows that have tampered with previously after That bag contains a headscarf stored inside House empty and the next day of the accused sell it on the side road.

- As a consequence of the deed, the defendant WAHYUDI KAMARUDDIN experienced a loss of about IDR 46,500,000.- and report the actions of the defendants to investigator Makassar Harbor Police.

Deeds defendant the on arranged and threatened criminal in Article 363 paragraph (2) Criminal Code H .; Considering, that to indict Prosecutor General the above, the Defendants state Already understand and no will submit object.

Considering, that furthermore, Assembly will consider from Suite the actions of the Defendants thereof, the Defendants have proven guilty or No on the accused article to him. (Pozzulo et al., 2009) Considering, that The next panel of judges will consider is based on facts law These are the Defendants can be stated to follow criminal as alleged by the Plaintiff General to him. Considering, that For state somebody has done something follow criminal, then the person's actions must fulfill whole elements from following the crime charged to him, considering that the Defendants has charged by the Prosecutor General with indictment single Violate Article 363 Paragraph (2) of the Criminal Code, which the elements are as following: (Saputra, 2019)

1. Element Goods who ;
2. Element Take goods something wholly or partly belongs to someone else;
3. Element With Meaning owned in a manner that opposes law ;
4. Element at the time Evening in A House or yard existing closed his house, which was done by people who were there not is known or No desired by the person entitled ;
5. Elements Performed by two or more people with allied ;
6. Element For Enter into the place do crime, or until the goods are taken done with damage, climb ;

Considering, that before dropping criminal to the Defendants based on Article 197 paragraph (1) letter (f) of the Criminal Procedure Code, especially formerly will be considered aggravating and mitigating factors To use application fair and just law with the actions of the Defendants proven such; Aggravating things:

- The Acts of the Defendants have caused loss for witness Wahyudi Kamarudin IDR 46,500.000,-
- Defendant Rizal Jaya Bin Samsul Natural is a recidivist and has been convicted by the Makassar District Court for 1 (one) year and 2 (two) months in Prison ;
- Defendant Rizal Jaya Bin Samsul Nature at the moment do theft Still undergo criminal test or criminal conditional in the Assimilation program Ministry of Law and Human Rights;

Mitigating matters:

- The Defendants behave politely in court and confess Keep going bright his deeds so that expedite trial ;
- The Defendants regret his deeds and promise No will repeat his deeds again ;

Considering, that in case This to the Defendants themselves has imposed lawful detention, then based on Article 22 paragraph (4) of the old Criminal Procedure Code time detention must be deducted entirely from the sentence imposed. Considering, that because the Defendants detained and detained the Defendants themselves based on reason enough, then need to be determined that the Defendants still is at in prisoner ;

1. State Defendant I. M. Zakir Alias Sakir Bin. H. Ahmad, Defendant II. Rizal Jaya Bin Samsul Nature, has proven in a manner valid and convincing guilty do follow the crime " Theft in circumstances burdensome ";



2. Drop criminal to Defendant I. M. Zakir Alias Sakir Bin. H. Ahmad, with criminal prison for 2 (two) years, and Defendant II. Rizal Jaya Bin Samsul Nature, with criminal prison for 6 (six) years ;
3. Determine the period of arrest and detention that has been served by the defendants deducted entirely from the sentence imposed; _
4. Ordered that the defendant still is at in prisoner ;
5. Instruct goods proof in the form of:
 - 1 (one) fruit padlock;
 - 16 (six-twelve) sheets of the Saudia brand headscarf Arabian;
 - Cash an amount of IDR 25.000; (returned to witness Wahyudi Kamauddin);
6. Burden cost case to each of the defendants IDR 2.000,-;

As for the base gift Prosecutor General demands criminal maximum to defendant case repetition following criminal participant assimilation that is circular from attorney Great, where contents. In relation to news coverage in various mass media exists convicts who follow the assimilation program and or liberation conditional in framework prevention of the spread of Covid-19 have to do crime return repetition follows criminal together. (Nuh & Wulan, 2021) The given instruction as follows:

1. The perpetrators besides imposed terms and conditions in assimilation and or liberation conditional, also for raises effect wary convict meant and gave the message to the benefiting community situation during this Covid-19 emergency, then as much as possible maybe the convicts who have repeat follow criminal For demanded criminal maximum.
2. Report handling the case in number 1 referred to Junior Attorney General Act Criminal General in a manner tiered.

The Amar verdict is something very thing important in creating objective law alone. Justice, expediency, and certainty of law must be implied in something verdict. (Macaulay, 2020) The decision that alone filed for who just join share in something case criminal because that to use create the target of law that alone. kindly juridical whatever penalty the sentence imposed by the judge does not become a problem during No exceed minimum and maximum limits penalty the penalty imposed in the relevant article, but the one that becomes a problem is what is the basis or What reason judge's consideration drop decision form penalty criminal so that the verdict passed in a manner objective can acceptable and fulfilling a sense of justice for public broad in general. (Ardiyanto et al., 2020)

The indictment filed by the Prosecutor General is one important tool used by the Panel of Judges to predict factors and considerations in dropping something verdict. Based on function, the Panel of Judges made a letter indictment as guidelines in doing an inspection in court and of course made a reference base in the drop decision. About matter proof from results tool evidence presented by the Attorney Prosecutor General in front of the judge so Already can be categorized as follow criminal in a matter this already complete 2 tools valid evidence listed in Article 183 paragraph (1) of the Criminal Procedure Code namely: statement witness, statement experts, letters, instructions, and descriptions defendant. (Nugroho, 2017)

In the case criminal, the Defendant Rizal Jaya Bin Samsul Natural filed somewhere trial in which the defendant has done something following criminal theft with burdens made during the Covid-19 pandemic. On inspection at trial, The Panel of Judges has checked, researched, and considered revealed facts in the trial. (Anindhita et al., 2021) The judge's considerations were based on the prosecutor's indictment, as well as information witnesses and testimony the defendant added with the judge's conviction as well based on aggravating and mitigating reasons the accused, so after an in-depth analysis process by the Panel of Judges The prosecutor's demands are 9 (nine) years prison so the defendant Rizal Jaya Bin Samsul Natural dropped criminal to prison for 6 (six) years.

According to careful writer follow criminal theft with the weighting carried out by Rizal Jaya Bin Samsul Natural demanded maximum by the Attorney Prosecutor General ie 9 (years) imprisonment Because the defendant is a prisoner recidivist who get assimilation during the Covid-19 pandemic situation with reason No There is work still after go out from prison. Bring Correct defendant stated guilty violate Article 363 paragraph (2) of the Criminal Code" if described theft in item 3 is included with one matter in points 4 and 5, then threatened criminal maximum imprisonment of nine years. This writer concluded that the decision Panel of Judges in case Number 1311/ Pid.B /2020/PN Mks, has been in accordance with the norm applicable law Because all elements in Article 363 paragraphs 1 and 2 of the Criminal Code have been

fulfilled, which became the basis of the judge dropped a decision to the defendant. (Mursyid, 2019)

4. CONCLUSIONS AND RECOMMENDATIONS

Prosecutor General demand a criminal maximum for prisoner recidivists who get assimilation during the Covid-19 pandemic because exists circular from Attorney General where are the perpetrators besides imposed terms and conditions in assimilation and or liberation conditional, also raises effect wary for convict meant and gave the message for the benefiting community situation This Covid-19 emergency, preferably criteria inmates to be issued past policy acceleration assimilation and integration must be supervised with tight. this must be done in a manner serious to minimize the possibility of prisoners who get the right assimilation and rights integration That do repetition moment Already return to society.

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