

Covid-19 in Prisons: Flattening the Curve and the Need to Reform the Criminal Justice System During This Pandemic

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Subject Area : Law

Abstract

The policy of the Ministry of Law and Human Rights that has been issued to frees prisoners from prison to limit the spread of Covid-19 is actually the type of policy that has been taken correctly in this pandemic era. However, this policy has proved to be contrary to the policy issued by the Supreme Court of the Republic of Indonesia regarding accelerating criminal proceedings via teleconference. Due to these 2 contrary policies, the prisoners population inside the prisons would not decrease at all. The main objective of this research is to find out what would be the ideal concept to reduce the prisoners population inside the prisons in terms of limiting the spread of Covid-19. The research method used in this paper is the normative juridical method, with secondary data being the main data. The results have shown that the law enforcer policies on the status quo were really out of sync. Because of that, the author initiated two new concepts that have been introduced a long time ago but are rarely used by the law enforcer, those are the RNR-Concept and the concept of restorative justice to reduce the prisoners in prisons in order to limit the spread of Covid-19 inside the prisons.

Keywords: Covid-19, Policies, Prisons, Prisoners

Introduction/Background

Indonesia is one of the 220 countries in the world that cannot avoid the grip of the coronavirus disease-2019 ("Covid-19") pandemic (Satuan Tugas Penanganan COVID-19, 2020). The first case of Covid-19 in Indonesia was reported on March 1 2020, and the first death because of Covid-19 infection was recorded on March 11 2020 (Satuan Tugas Penanganan COVID-19, 2020). Until the end of March, the number of positive patients infected by Covid-19 was recorded at 1.528 people. At the end of April, there were at least 10.118 positive patients infected by Covid-19 and 792 people have died. The latest

update in Covid-19 Task Force's website on 13 December 2020 recorded at least 611.631 people have infected by Covid-19 and more than 18.653 people have died because of Covid-19 infection in Indonesia (Satuan Tugas Penanganan COVID-19, 2020).

The spread of Covid-19 has forced the government to make policies to deal with this virus. Various policies ranging from economic policies, health policies, social policies, and including legal policies continue to be issued by the Indonesian government. One of the legal policies issued by the government that attracted enough attention was the policy of inmates assimilation or

releasing prisoners in prisons due to the Covid-19 spreadness. This policy was issued by the Ministry of Law and Human Rights and the reason behind it is because the condition of prisons is very overcapacity. By the end of March, overcapacity in prisons is recorded at 104% (Risyal Hardiyanto Hidayat, 2020). This condition is prone to the spread of Covid-19 because it is difficult to practice physical distancing in prisons, also the poor quality of hygiene and sanitation are common things found in prisons (Risyal Hardiyanto Hidayat, 2020).

In this context, the spread of Covid-19 in prisons has been noted by the Director-General of Corrections at the Ministry of Law and Human Rights. Reports of Covid-19 infection in prisoners until the early of October recorded more than 100 prisoners have been infected with Covid-19. 106 positive prisoners came from the Class II-A Women's Prison in Sungguminasa, South Sulawesi, there were also 35 positive prisoners infected with Covid-19 at the Pondok Bambu detention center in East Jakarta (Padmasari, 2020). The spread of Covid-19 inside the prisons should not be a surprise anymore. This is because in 1918, there was also a Spanish Flu virus infection in the San Quentin State Prison in California, this virus infection began with the transfer of a sick prisoner from a prison in Los Angeles and eventually resulted in the spread of the virus infection to half of the total prison population in San Quentin State Prison. According to Hawk in her article published in JAMA Internal Medicine, she explains that the only method to avoid the current outbreak is to drastically reduce the population in prison, including reducing unnecessary administration and

quicken the release of prisoners (Laura Hawks, Steffie Woolhandler, 2020).

This method seems to be imitated and implemented by several countries affected by Covid-19, including Indonesia. The assimilation policy of prisoners during the Covid-19 pandemic was issued by the Ministry of Law and Human Rights of the Republic of Indonesia ("MOLHR") in several policies, namely:

1. Regulation of Minister of Law and Human Rights Number 10 of 2020 regarding Requirements for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19;
2. Decree of Minister of Law and Human Rights Number M.HH-19.PK.01.04.04 of 2020 regarding Reducing and Releasing Prisoners and Children through Assimilation and Integration in the Context of Preventing and Controlling the Spread of Covid-19; and
3. Circular Letter Minister of Law and Human Rights Number PAS-497.PK.01.04.04 of 2020 regarding Releasing Prisoners and Children through Assimilation and Integration in the Context of Preventing and Controlling the Spread of Covid-19.

However, the policy issued by MOLHR is very contradictory to the policy issued by the Supreme Court of the Republic of Indonesia ("Supreme Court") regarding the acceleration of criminal trial hearings via teleconference. This policy was issued by Supreme Court through the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2020 regarding Administration and Trial of Criminal Cases in Courts Electronically and Circular Letter of the

Director-General of General Courts Number: 379/DJU/PS.00/3/2020 of 2020 regarding Criminal Trial Hearings via Teleconference. This policy when viewed from a legal point of view is actually not wrong, but the implementation of this policy in court is mostly used for the minor crime that actually can be solved outside the court (non-litigation) without having to prioritize retributive justice. Thus, these two law enforcers policies are very contradictory because on the one hand, the Ministry of Law and Human Rights seeks to inhibit the spread of Covid-19 by releasing prisoners who are still in prisons, but on the other hand, the Supreme Court with their policies tries to increase the population of prisoners in prisons by accelerating criminal proceedings by teleconference.

Data from the Attorney General of the Republic of Indonesia recorded that criminal hearings conducted by teleconference from March 30 to July 6 2020 recorded at least 176.912 online

Methodology

The type of research used is literature research or literature review, using two approaches, namely the conceptual approach and the statute approach. The analysis technique used on the materials that have been collected to solve the problems raised in this research is to use descriptive techniques and qualitative interpretation.

Statute approach consists of Law Number 12 of 1995 regarding Correctional Institution, Regulation of Minister of Law and Human Rights Number 10 of 2020 regarding Requirements for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of

trials have happened (Handoyo, 2020). The reason behind those many criminal trials are because the crime rate in Indonesia during the Covid-19 pandemic has increased by 11.8% due to high unemployment and struggle in finding jobs (Yas, 2020). Hence, the policy of reducing prisoners and the policy of accelerating criminal hearing via teleconference are very out of sync. Thus, these policies can not help in limiting the spread of the Covid-19 pandemic in prisons.

This crucial matter is then interesting for the author to discuss, the main problem that will be discussed in this research is how to reduce the population of prisoners in Prisons all over Indonesia. To examine more deeply, the author will discuss how policies carried out by countries around the world in reducing prisoners during the Covid-19 pandemic? And what would be the ideal concept to reduce prisoners in prisons during the Covid-19 pandemic in Indonesia?

Preventing and Combating the Spread of Covid-19, Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2020 regarding Administration and Trial of Criminal Cases in Courts Electronically. Descriptive analytic techniques used in this research is to discuss the main problem with ways of collecting data from books, journals which are then compiled, grouped, and used to analyze the RNR (Risk Need Responsivity) concept and Restorative Justice concept in terms of limiting the spread of Covid-19 in prisons.

Result and Discussion

1. How Countries Around The World Reducing Prisoners Due To Covid-19

United Nations High Commissioner for Human Rights (“UN”) Michelle Bachelet in a press release on 25 March 2020 stated that countries around the world shall protect their inmates/prisoners from covid-19 pandemic with the way of freeing prisoners who are susceptible to covid-19 (Nicholson, 2020). The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (a new kind of treaty body in the United Nations human rights system) also requested the governments to reduce prisons population and other detentions, with ways of early release or temporary release for prisoners if possible (Murphy, 2020). Non-Governmental Organizations (NGO) Human Rights Watch give recommendations to governments around the world to act as quick as possible to reduce prisons population, with the way of prioritizing release to (Murphy, 2020):

- a. Prisoners who were convicted of minor crimes;
- b. Prisoners whose sentence almost finish;
- c. Juvenile prisoners, old prisoners, and prisoners who were susceptible to disease.
- d. Prisoners whose sentence has not been put by the court yet, except for prisoners who have

committed a serious crime that could endanger the life of others.

The United States and its states have implemented a policy of releasing prisoners from prison due to Covid-19. At least, more than 86,000 prisoners across the states of the United States have been infected with Covid-19, 805 of them have died (Solomon, 2020). Therefore, the United States government has adopted a policy to release more than 100.000 people in all prisons in the states in the United States from the middle of March to the end of July. Meanwhile, for criminal proceedings, several states such as California, Delaware, Idaho, North Carolina, and other states have stopped and postponed criminal cases where the trial has not started at all (Gershman, 2020).

Countries in the Asian Continent have also done the same thing, with a high population density, the prisons in countries in the Asian continent are prisons with the highest level of Overcapacity Prisons after countries in South America. Thus, governments in the countries of the Asian Continent have taken action to free prisoners who are in prison to limit the spread of covid-19. These policies are taken by the following countries (Ann, 2020):

Table 1
The Release of Prisoners in Countries Around the Asian Continent

No.	Country Name	Amount of Prisoners Released	Release Methods
1.	Afghanistan	22.399	Early Release
2.	India	± 17.000	Bail and/or Parole
3.	Iran	85.000	Early Release
4.	Myanmar	24.896	Amnesty
5.	Filipina	9.731	Early Release
6.	Saudi Arabia	250	Early Release

7.	Thailand	8.000	Temporary Release
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Not only the Asian Continent, but countries on the African Continent on average have also implemented policies to fight the spread of Covid-19 by freeing prisoners in prison, including (Ann, 2020):

Table 2
The Release of Prisoners in Countries Around the African Continent

No.	Country Name	Amount of Prisoners Released	Release Methods
1.	Algeria	5.037	Amnesty
2.	Kamerun	1.000	Unavailable
3.	Congo	2.000	Release
4.	Etiopia	4.011	Pardons or Reprives
5.	Mesir	4.001	Pardons or Reprives
6.	Ghana	808	Amnesty
7.	Yordania	1.500	Early Release
8.	Kenya	4.800	Early Release
9.	Libya	466	Early Release or Conditional Release
10.	Mali	1.200	Pardons or Reprives
11.	Maroko	5.654	Pardons or Reprives
12.	Mozambik	5.032	Amnesty
13.	Niger	1.500	Early Release
14.	Nigeria	± 50.000	Early Release
15.	Senegal	1.846	Pardons or Reprives
16.	Sudan	4.217	Early Release
17.	Tunisia	1.420	Amnesty
18.	Uganda	2.000	Pardons or Reprives
19.	Zimbabwe	1.680	Pardons or Reprives

At the same time, countries on the European Continent (some of them) have also reduced their prison populations to limit the spread of covid-19, such as (Ann, 2020):

Table 3
The Release of Prisoners in Countries Around the European Continent

No.	Country Name	Amount of Prisoners Released	Release Methods
1.	England dan Wales	± 4.000	Early Release
2.	French	5.000-6.000	Early Release
3.	Ireland	± 300	Temporary Release
4.	Italy	± 200	Temporary Release
5.	Germany	1.000	Early Release
6.	Norway	194	Early Release
7.	Turkey	90.000 – 100.000	Early Release or House Arrest
8.	Poland	9.000 – 12.000	Emergency Release under electronic surveillance.

From the countries of the European Continent mentioned above, there is one country that has implemented quite an interesting policy to limit the population of prisoners in prisons, that is

Germany. The Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) has ordered the German Federal Public Prosecutor

(*Generalbundesanwaltschaft*) to be able to select criminal cases that can be cleared without requiring a trial and which criminal cases to try (Travers , Daniel, 2020). Whereas for criminal cases that can be released without trial, only apply to cases with the type of minor crime. The release should be followed by a penalty/fine which the perpetrator had to pay through the post office. If the perpetrator objects to the amount/amount of the fine given, they can file an objection to the court (Travers , Daniel, 2020).

2. The Need to Reduce the Prisons Population during the Covid-19 Outbreak

According to the data from the World Prison Population List published by United Nations Office on Drugs and Crime, the number

of prisoners worldwide has increased by 25-30% in 15 years since the first World Prison Population List published in 1998. In 2018, World Prison Population data recorded that more than 10 million people worldwide became prisoners. These data indicate that the prisoner population worldwide is always increasing. In Indonesia, the population of prisoners is always increasing rapidly every year, but the capacity of prisons to accommodate prisoners tends to be static. This is the main cause of the overcapacity in Indonesian prisons, and it will never be resolved if the government doesn't think progressive. The data shows that each year the percentage of overcapacity in Indonesian prisons is always increasing, this can be seen from the following table (Zulfikri, 2020):

Table 4
Overcapacity of Prisons in Indonesia

No	Year	Prisoners	Prisons Capacity	Percentage
1.	2015	176.754	119.797	147%
2.	2016	204.551	119.797	170%
3.	2017	232.081	123.481	188%
4.	2018	256.273	126.273	202%
5.	2019	269.846	130.512	206%

Prisons with overcapacity are very vulnerable to the spread of disease, this is because the imbalance between the capacity of the prisons and the amount of prisoners. As a result, the prisons cell became full of prisoners and increased the prisoner's vulnerability to diseases, especially infectious diseases. In fact, there are many prisoners inside the prison whose health conditions were very bad and suffer from diseases such as high blood pressure, asthma, cancer, tuberculosis (TBC), hepatitis C, and HIV. This condition makes them very susceptible to infectious disease or lethal virus such as covid-19

(Kathryn Nowotny, Zinzi Bailer, Marisa Omori, 2020).

In the Spanish flu outbreak in 1918, officials at California State Prison San Quentin confronted the stubborn reality that curbing its spread through the institution was a daunting task (Stanley, 1919). Three waves of the epidemic hit the prison, which taught them that “the disease is transmitted by close contact” Inmates were given masks, but “the men...soon discarded them for the most part” Congregate viewing of picture shows and other “assemblages” were stopped (Stanley, 1919). New inmates were quarantined

before being allowed to enter the general population as were inmates displaying influenza symptoms. The prisoners were warned “against close contact and congregating in inclosed places” But in the end, officials could do only so much to protect their charges. As a total institution, San Quentin was an incubator of the disease (Stanley, 1919).

The same thing will also happen to prisons in Indonesia if during the Covid-19 pandemic the Indonesian government does not reduce the population of prisoners in prisons, prison overcapacity can reach 300% or even 500%. For example, the Banjarmasin Prison with only 366 cells can be occupied, instead it was inhabited by 2688 prisoners (644% overcapacity level) (Zulfikri, 2020). Tarakan Prison with cells capacity that can be occupied by 155 prisoners, instead it was inhabited by 966 prisoners (650% overcapacity level) (Zulfikri, 2020). Bagan Siapi Api Prison with cells capacity that can be occupied by 98 prisoners, but instead inhabited by 810 prisoners (836% overcapacity level) (Zulfikri, 2020).

With an overcapacity level of more than 300%, various prisons throughout Indonesia will become a new cluster for the spread of Covid-19. Fortunately, the Indonesian government through the Ministry of Law and Human Rights has issued several policies to release prisoners who can meet some requirements. When in the meantime Kemenkumham tries to reduce prisoners from prison to stop the spread of covid-19, meanwhile other law enforcers still conduct trials for minor crimes and keep putting new prisoners into prisons. Thus, the prisoner population has only decreased slightly or not at all, given the increase in the number of criminal acts (minor and major)

during the Covid-19 pandemic. Therefore, an emergency policy is really needed in the context of the release of prisoners and the context of new criminal justice reform during the spread of the Covid-19 pandemic.

3. Policy of Reducing Prisoners from Penitentiary Law Point of View

Release of prisoners or assimilation in prisons is basically a part of the penitentiary law study. Penitentiary law literally has the meaning of all positive regulations regarding the punishment system (*strafstelsel*) and the system of action (*matregelstelsel*). According to E. Utrecht, penitentiary law is part of a positive criminal sentence, namely the part that determines (Rommelink, 2017):

- 1) Types of sanctions for violations, in this case against the Criminal Code and other sources of criminal law (Criminal law containing criminal sanctions and non-criminal laws containing criminal sanctions);
- 2) The severity of the sanction;
- 3) The length of time the sanction will be served;
- 4) How the sanctions are implemented, and
- 5) Where the sanction is exercised.

The subject matter that is discussed in penitentiary law is dealing with convictions, the criminal process and the convict. Most of the penitentiary studies locus are in the correctional institutions. History records that exactly 27 April 2020, 56 years of age of the Indonesian Penitentiary will be completed. Social reintegration is defined as the goal of correctional facilities, which is then confirmed in Law Number 12 of 1995 concerning Corrections. At the age of 56 this year, the Corrections still face various weaknesses. The public also does not understand well what is being done and what is the purpose

of the Corrections. The biggest thing that still holds up is the strong sentiment of punishing and the desire to make them suffer (Utang Rosidin, Abdurrahman, Irsan Nasution, 2020).

The existence of the Correctional Law is actually the existence of normative law of penitentiary law. Where the penitentiary law provides regulations regarding the implementation of crimes and provides a basis in determining what types of sanctions should be given for a criminal act committed, how heavy the sanctions are, and how long the sanctions must be suffered by the perpetrator, or talking about how and where the sanctions are carried out.

Basically, the process of treating prisoners in the prisons includes (Utang Rosidin, Abdurrahman, Irsan Nasution, 2020):

- 1) Guidance in the form of direct kinship interaction between the coach and the fostered;
- 2) Persuasive coaching, namely by trying to change the behavior of prisoners by exemplary;
- 3) Coaching in a planned, continuous and systematic manner;
- 4) Personality development in the form of increasing awareness of religion, nation and state, intellectual, intellectual, legal awareness, skills, mental and spiritual aspects.

Based on the Circular Letter of the Head of the Correctional Directorate Number K.P10.13 / 3/1 dated February 8, 1965 concerning Corrections as a Process in Indonesia, the method used in the correctional process involves 4 (four) stages, which is an integrated process, namely:

- 1) Orientation/Introduction Stage

For residents of a correctional facility who enter the prison, they are first examined to

find out everything about the prisoner, the factors or motives for committing a crime, where is the address, what is his economic situation, the aspect of education he received, and so on.

- 2) The Assimilation Stage in a Narrow Meaning

In this stage of assimilation, inmates have carried out guidance that runs less than 1/3 of the length of the sentence. In this phase, it is carried out by placing prisoners in open prisons, so that the prisoners can move freely with minimum safety standards. Through this program, prisoners have begun to be burdened with responsibility for the community. Apart from that, in this process, a sense of respect for both oneself and for others has begun to be instilled, manners, to regain people's trust and change their attitude towards prisoners. The frequency of interaction with the public is further enhanced, for example using a social community service program for the general public. At this stage, activities are held that involve various elements of society. This process lasts up to 1/2 of the length of the sentence the prisoner actually has to accept.

- 3) The Assimilation Stage in a Broad Meaning

This phase begins when the prisoners have undergone less than half of their criminal period, after which the training process is expanded to begin assimilating prisoners into the life of the outside community, such as participating in schools, carrying out work in institutions both public and private institutions, freeing to carry out worship activities and exercise with the community and others. At that time, the ongoing activities were still under the supervision and guidance of prison officials. At this level, the level of

security that is applied is minimal, while the period of detention that prisoners have served is 2/3.

4) Integration Phase to the Community

This phase is the final phase of the coaching implementation process known as integration. If this process from observation to integration runs smoothly and well and the effective detention period is 2/3 or at least 9 months, then the prisoners can get "parole" or "conditional leave" at this stage the coaching process is carried out in the form of a larger community while less and less surveillance so that prisoners can eventually live with the community.

Thus, it is clear that assimilation in the implementation of punishment or penitentiary law is a stage of the correctional process.

4. Ideal Concepts to Reduce Prisoners During Covid-19

a. Reducing Prisoners with the RNR (Risk-Need-Responsivity) approach

The risk-need-responsivity (RNR) model is a theoretically and empirically informed approach to offender management. This model requires that trained practitioners use validated assessment instruments to identify the risks and needs of offenders (Brenda Rose, Francis T. Cullen, 2020). In this case, risk refers to level of supervision and services to be delivered to the offender as well as the offender's likelihood of recidivism. Accordingly, offenders who are identified as being high risk would be closely supervised and would receive the most treatment services. Conversely, offenders identified as low risk would receive the fewest treatment services and would require limited, if any, supervision (Brenda Rose, Francis T. Cullen, 2020).

In addition to determining an offender's risk, the assessment instruments identify an offender's criminogenic needs—that is, factors that have been empirically shown to be associated with criminal activity (e.g., criminal history, education/employment, substance use, antisocial attitudes, antisocial associates, antisocial personality, leisure activities, and family/marital problems) (Wormith, D.A Andrews and James Bonta, 2011). This method will be the answers for all of the problems and questions in society who doubt the policy of releasing prisoners including those who think that the policy of releasing prisoners will increase the percentage of crime (Brenda Rose, Francis T. Cullen, 2020).

Besides the factors addressed above, there are also two important considerations for assessing prisoner risk. First, the type of crime does not always reflect the level of risk of a prisoner. Although the criminal-record of a prisoner is considered important, it does not fully determine the threat of a prisoner to public safety. Second, the level of prisoner risk is dynamic, not static (Brenda Rose, Francis T. Cullen, 2020). Meaning, the risk of prisoners for committing repeated crime can change at any time. Prisoners who went to prison years or even months ago may not have the same likelihood of committing a repeat offense. This is what makes the use of two-sided judgments important. In fact, carrying out a risk assessment while prisoners are in prison can provide actual information about which prisoners belong to a low-risk group of prisoners and which are high-risk (Brenda Rose, Francis T. Cullen, 2020).

In the context of covid-19, the use of the RNR concept with a risk assessment to identify which prisoners are targeted for release is very

relevant to be applied in Indonesia, as the Indonesian government seeks to slow the spread of covid-19 by releasing prisoners while reducing the risk of released prisoners repeating criminal act. The challenge for the Ministry of Law and Human Rights is how to determine the prisoners who will be released into the community without endangering the community itself. Low-risk prisoners are prisoners who are priority candidates for release, whereas high-risk prisoners are certainly not a priority.

In short, the use of targeted release is an evidence-based approach to offender management that will help corrections institutions operate more effectively and efficiently without unduly jeopardizing public safety. Specifically, the targeted release of offenders from an institutional setting will reduce operational costs and allow correctional staff to direct treatment services to those most in need. Additionally, the use of targeted release will help limit the transmission of COVID-19 to staff and inmates within correctional institutions. Finally, the use of targeted release aligns with the public's desire to reduce the size of the prison population.

Nevertheless, it is necessary to synchronize the policies that have been issued by the Ministry of Law and Human Rights, whereby convicts of terrorism, narcotics, and precursors of narcotics, psychotropic drugs, corruption, crimes against state security and serious human rights crimes, as well as transnational organized crimes and foreign nationals are excluded to be released. The release of prisoners will certainly reduce the population in prisons that are overcapacity and will allow prison officials to be able to implement social restrictions, use covid-19 hygiene protocols, and

modify other practices to limit the spread of covid-19 in prisons.

b. Restorative Justice as the Answer to Reform Criminal Justice System

The Ministry of Law and Human Rights as a law enforcer who issued several policies to reduce the prisoner population by releasing prisoners from prisons is actually the kind of policies that need to be taken seriously to limit the spread of covid-19 in prisons. However, this policy becomes useless if law enforcers such as police, prosecutors, and judges are still conducting criminal hearings via teleconference, even more so for the criminal cases that can actually be resolved by promoting a sense of justice and alternative dispute resolution.

Some criminal cases can be resolved without criminal proceedings in court, for example, the case of Grandpa Urip who stole a bicycle in Surabaya because he did not have any money to eat (Santoso, 2020). The case has been decided by the Surabaya District Court in decision number: 813/Pid.B/2020/PN Sby. As a result, Grandpa Urip was sentenced to 5 months in prison, even though in fact Grandpa Urip's case could be resolved by way of restorative justice by just returning the stolen bicycle to the victim. However, law enforcers (police, prosecutors, and judges) continue to delegate the case to the court by conducting criminal teleconference hearings. The next example is Grandpa Sujarwo, who stole Rp. 7,000 (seven thousand rupiah) to buy food. The law enforcer continued the case to court and made Grandpa Sujarwo detained because of the case (Iswara, 2020).

Some minor cases such as mentioned above actually should not be brought by law enforcer into the court to be prosecuted. Basically,

because the case is just a minor case that can be settled through the concept of restorative justice. The background of the thought regarding the concept of restorative justice or better known as restorative justice arises from the reactions given by criminal law experts regarding the negative impact of the current criminal law enforcement which tends to be retributive (prioritizing retaliation). Besides that, the use of a retributive paradigm has not been able to recover the losses and sufferings experienced by victims, even though victims are the most disadvantaged as a result of a crime.

The restorative justice approach seeks to return the conflict (the result of the crime) to those most affected (victims, perpetrators, and 'their communities') and give priority to their interests. The restorative justice approach seeks to restore victim security, personal respect, dignity, and more importantly a sense of control (Waluyo, 2017). By adopting the paradigm of restorative justice, it is hoped that the losses and suffering suffered by victims and their families can be healed and the burden of guilt for the perpetrators of crime can be reduced because they have received forgiveness from the victim or their family. In addition, it is also hoped that it can bring peace to the community of each party so that it does not cause prolonged revenge in the future, both between the victim and the perpetrator and between each community (Waluyo, 2017).

The concept of restorative justice is dynamic, meaning that restorative justice can be applied to all law enforcement stakeholders such as police, prosecutors, and judges. The application of the concept of restorative justice starting from the investigation (Police), prosecution (Attorney),

and trial examination (Judge) takes the following forms:

- 1) Restorative justice in the context of investigation (Police)

The police are the gatekeepers of the criminal justice system. Its role as a criminal investigator places the police in contact with most criminal acts. Thus, the role of the police greatly determines whether a crime will be continued through the litigation or non-litigation channels with the concept of restorative justice. The application of restorative justice by the police can be carried out through discretionary action. Discretion itself is a policy taken by the government to solve a concrete problem at hand. The discretion for the police has a legal basis, namely in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police.

The regulation on police discretion in Article 18 of Law Number 2 Year 2002 has actually provided a juridical basis for the police as investigators to apply the concept of restorative justice in handling criminal cases. With the discretion of the National Police investigator being able to choose various actions in resolving criminal cases being handled, one of the actions that can be taken in the application of restorative justice is to place the victim at a central point in resolving criminal cases and moving away from imprisonment, but the perpetrator is still held accountable. The output from the application of restorative justice at the investigation stage itself is in the form of a Peace of the Parties and an Order to Stop Investigation (SP3).

2) Restorative justice in the context of prosecution (Attorney)

Prosecution as a subsystem of the criminal justice system also has a strategic position in realizing the concept of restorative justice. In general, restorative justice can relate to every stage of the exercise of the prosecutor's authority, starting from detention, pre-prosecution, preparation of charges, and criminal charges in court. The most extreme condition for the role that the prosecutor can play in the application of restorative justice is diverting/diversifying prosecutions to reach out-of-court case resolution in cases of minor criminal acts. Diversion or diversion of prosecution can take the form of parole, simplification of procedures, and decriminalization of certain behaviors.

3) Restorative justice in the context of court hearings (Judges)

Court hearings in criminal cases in Indonesia based on the Criminal Procedure Code (KUHAP) are basically not designed to resolve cases interpersonal (mediation of the parties). The design is built in the criminal justice system in Indonesia, namely the court functions to determine whether the criminal law has been violated and if it is violated, the perpetrator is sentenced to crime, or if not violated, the defendant is released or released from all charges. The traditional role of the court is clearly different, even contrary to the concept of restorative justice, which aims to restore balance in social relations as well as the outcome of the judicial process, namely a mutually acceptable compromise between the victim, the community, and the perpetrator of a crime or crime. In other words, traditionally

having an "adjudicative" character, the concept of restorative justice offers a "negotiation" model (Purba, 2017).

Restorative justice which adheres to a different principle from court hearing is the most obvious problem at this level. In the context of the Indonesian criminal justice system, the provisions regarding "openness" have been very firmly and clearly regulated in the Criminal Procedure Code, which is derived from the principle of "open court hearing to the public". Meanwhile, the meeting model from the concept of restorative justice is usually compiled privately and only with interested parties, so the problem is how judges and legal advisors judge that the interests of each party are respected (Purba, 2017). More broadly, this relates to the judge's ability to design a model for meetings between parties in a forum that is not a "trial hearing" for criminal cases. Thus, judges are required to use strategies or manage the settlement of criminal cases by selecting and offering suitable alternative models (Purba, 2017).

Based on the results of research conducted by Eva Achjani Zulfa, as many as 82% of respondents stated that peaceful efforts were the main choice in resolving problems arising from criminal acts that occurred. The peace initiative came from relatives (43%), security forces (35%), and the rest came from friends or opponents. The peace efforts were not only in the form of compensation but mostly through direct apologies (Zulfa, 2012).

The settlement of criminal cases by law enforcers outside the court using a restorative justice approach during the Covid-19 pandemic

will have the implication of a reduction in potential prisoners in prisons and detention centre. With the reduction in prison residents, it means that the settlement of criminal cases out of court using restorative justice plays a role in overcoming the problem of the spread of the Covid-19 pandemic in overcapacity prisons. Also, with the settlement of cases out of court, this can not only solve the problem of the spread of covid-19 in prisons but also save the state budget.

Based on the descriptions above, it is clear that the settlement of criminal cases through the restorative justice approach during the Covid-19 pandemic has an advantage over the settlement of a conventional criminal justice process. A complete comparison of the mechanism for solving cases through conventional criminal justice processes and restorative justice can be seen in the following table:

Table 5.

Comparison of Criminal Case Settlement through Conventional Criminal Justice and Criminal Case Settlement through a restorative justice approach

Aspect	Mechanism of Case Settlement	
	Criminal Court	Restorative Justice
Purpose	Tackling and Controlling Crime	To seek resolution
Process	Proving fault and punish perpetrator	To seek mutual agreement between the parties
Barometer of Success	The number of cases processed and the penalties that were given.	If both parties agreed
Compatibility of the Sense of Justice	<ul style="list-style-type: none"> • Longer time • More complicated • High-priced 	<ul style="list-style-type: none"> • Faster time • Simple mechanism • Lower-priced
Characteristics of Settlement	<ul style="list-style-type: none"> • Retaliation • Compulsion • Perpetrator need to suffer 	<ul style="list-style-type: none"> • Forgiveness • Volunteer • To fix all parties
Form of Settlement	Win-Lost solution	Win-Win solution
Main Purpose	Integrate perpetrators back into society to become good citizens	Restoring social relations between stakeholders

Thus, the implementation of the RNR Concept to reduce prisoners inside the prison and at the same time applying the concept of restorative justice as the alternative dispute resolution in criminal cases, based on the author assumption, will help to resolve the problems of overcapacity and will stop the spread of covid-19 inside the prisons. This can happen because on the one hand, releasing prisoners with the RNR-Concept can prevent the possibility of recidivism (repeated crime) and reduce the level of

community risk. On the other hand, the criminal settlement with restorative justice can reduce the number of prisoners who will be incarcerated in prisons. Therefore, these 2 concepts are more synchronized than the current law enforcer policies that constantly frees prisoners but still conducting criminal proceedings through teleconference and keeps putting minor crime perpetrators into the prisons.

Conclusion

Conflicting law enforcement policies in limiting the spread of the Covid-19 pandemic in prisons make these policies out of sync and the results are ineffective. Therefore, the author initiated the RNR-Concept to free prisoners and the concept of restorative justice as an alternative to criminal settlement through criminal proceedings to reduce the number of prisoners. The idea of releasing prisoners with the RNR-Concept basically measures the risk of the prisoner before they released, this risk is based on the criminal activity of the prisoner and their criminogenic level. Meanwhile, the concept of restorative justice serves as a substitute for the criminal trial process through teleconference, this concept puts forward non-litigation resolution without criminal retribution and of course, still takes into account the rights of the victim. Thus, the concept of restorative justice implies a reduction in prisoner candidates in prisons.

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