

INMATES ASSIMILATION IN INDONESIA DUE TO COVID-19 AND OTHER COUNTRY'S POLICIES

Sandi Ersya Arrasid

Junior Associate at Law Firm AHR & Partners, E-mail: sandiersya@gmail.com

ABSTRACT

The policy of the Ministry of Law and Human Rights that frees prisoners from prisons to limit the spread of COVID-19 is a policy that has been taken correctly. However, This policy still has several problems, including in increasing recidivists and also the criminal justice system in Indonesia which still prioritizes retributive justice rather than restorative justice. These problems hamper the effectiveness of the assimilation of prisoners to reduce the spread of COVID-19 in prisons. The main objective of this research is to find out what is the ideal concept to reduce the prisoner population in prisons in terms of limiting the spread of COVID-19. The research method used in this paper is normative juridical, secondary data being the main data. The results showed that law enforcement policies on the status quo were very out of sync, therefore the author initiated two modern concepts that have been known for a while, namely the RNR-Concept and the concept of restorative justice to reduce prisoners in prisons in order to limit the spread of COVID-19 without worrying about recidivists.

Keyword: COVID-19, Prison, Prisoners, Policy.

1. Introduction

Indonesia is one of the 188 countries in the world that cannot be separated from the grip of the corona virus disease-2019 ("COVID-19") pandemic. The first case of COVID-19 in Indonesia was reported on March 1, 2020, and the first death due to COVID-19 infection was recorded on March 11, 2020. Until the end of March, the number of positive patients with COVID-19 was recorded at 1,528 people. At the end of April, there were 10,118 positive patients with COVID-19 and 792 people died. The latest COVID-19 case update from the website of the Indonesian COVID-19 handling task force, namely on August 7, 2020, with 121,226 positive COVID-19 patients and more than 5,500 people died due to COVID-19 infection.

COVID-19 infection that continues to spread forces 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. One of the legal policies issued by the government that attracted enough attention was the policy of assimilation or freeing prisoners in prisons during the COVID-19 period. This policy considers that the condition of prisons which is already overcapacity as of March 7, 2020, was recorded by the Directorate General of Corrections at 104% (Risyal Hardiyanto Hidayat, 2020). This condition is prone to the spread of COVID-19 because it is difficult to carry out physical distancing in prisons, plus the quality of poor hygiene and sanitation is commonplace in prisons.

In this context, the spread of COVID-19 into 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 end of June recorded more than 100 prisoners infected with COVID-19. 106 positive people came from the Class II-A Women's Prison in Sungguminasa, South Sulawesi, there were also 35 positive people for 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 Prison, 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 Prison California. Hawk in his article published in JAMA Internal Medicine explains that the only way to avoid the current outbreak is to drastically reduce the population in prison, including reducing unnecessary administration and speeding up the release of prisoners (Laura Hawks, Steffie Woolhandler, 2020). This policy seems to be imitated and implemented by several countries infected with 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 ("Kemenkumham") in several policies, namely:

- a. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Combating the Spread of COVID-19;
- b. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-19.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Preventing and Combating the Spread of COVID-19; and
- c. Circular PAS-497.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Prevention and Combating the Spread of COVID-19.

However, the main concern is that the assimilation policy of prisoners when analyzed is very contradictory to the policy issued by the Supreme Court of the Republic of Indonesia ("MARI") regarding the acceleration of criminal proceedings via teleconference. This policy was issued by MARI through the Letter of the Director-General of the General Courts Number: 379 / DJU / PS.00 / 3/2020 of 2020 concerning Criminal Case Trials by Teleconference. This policy, when viewed from a legal aspect, is actually not wrong, but in practice in court, teleconference hearings are actually carried out more for minor criminal proceedings, where law enforcement can be resolved by non-litigation without having to prioritize retributive justice. Thus, these two law enforcement policies are contradictory because, on the one hand, the Ministry of Law and Human Rights seeks to inhibit the spread by releasing prisoners who are still in prisons, but on the other hand, there are MARI efforts to increase the population of prisoners in prisons by speeding up criminal trials by teleconference.

Data from the Attorney General's Office of the Republic of Indonesia notes that general criminal trials conducted by teleconference from March 30 to July 6 2020 recorded at least 176,912 online trials (Handoyo, 2020). Given that the crime rate in Indonesia during the COVID-19 pandemic, which increased by 11.8%, was due to high unemployment and difficulty finding work (Yas, 2020). Thus, the policy of freeing

prisoners and the policy of accelerating criminal proceedings via teleconference is very out of sync and can be said to have not been maximized to be able to help limit the spread of the COVID-19 pandemic in prisons.

This crucial point is then interesting for the author to discuss, the main problem of this research is how to reduce the population of prisoners in correctional institutions in Indonesia. To study more deeply, the author will discuss how policies carried out by countries other than Indonesia in reducing prisoners during the COVID-19 pandemic? Then what is the ideal concept to reduce prisoners in prisons during the COVID-19 pandemic in Indonesia?

2. Methods

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.

3. Results and Discussion

3.1 How Countries Around The World Reducing Prisoners Due To COVID-19

High Commissioner for Human Rights for the United Nations ("UN") Michelle Bachelet in a press release on March 25 2020, stated that the State must protect people who are in detention from the COVID-19 pandemic by releasing prisoners who are vulnerable to Covid. -19 (Nicholson, 2020). The UN Subcommittee on the Prevention of Torture also calls on governments to reduce the prison population and other populations of places of detention where possible, by making use of the early release or temporary release of prisoners where possible (Murphy, 2020). Non-governmental organizations Human Rights Watch recommends that governments around the world act quickly to reduce the prison population in prisons, by prioritizing release to (Murphy, 2020):

- a. Prisoners who were convicted of minor crimes
- b. A prisoner whose sentence is running out
- c. Child prisoners, the elderly, and people susceptible to disease.
- d. A prisoner whose sentence has not been decided by a court, except for a person who has 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 whom have died (Solomon, 2020). Therefore, the United States government took a policy to release more than 100,000 people in all prisons in the states in the United States around the middle of March to the end of July (King, 2020). Meanwhile, for criminal proceedings, several states such as California, Delaware, Idaho, North Carolina, and others have stopped and postponed criminal cases whose trials have 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, forcing governments in the countries of the Asian Continent to take 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

After the Asian Continent, countries around the African Continent on average have implemented policies to fight the spread of COVID-19 by releasing 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 Reprieves
5.	Mesir	4.001	Pardons or Reprieves
6.	Ghana	808	Amnesty
7.	Yordania	1.500	Early Release
8.	Kenya	4.800	Early Release
9.	Libya	466	Early Release
10.	Mali	1.200	Pardons or Reprieves
11.	Maroko	5.654	Pardons or Reprieves
12.	Mozambik	5.032	Amnesty

14.	Nigeria	± 50.000	Early Release
15.	Senegal	1.846	Pardons or Reprieves
16.	Sudan	4.217	Early Release
17.	Tunisia	1.420	Amnesty
18.	Uganda	2.000	Pardons or Reprieves
19.	Zimbabwe	1.680	Pardons or Reprieves

Meanwhile, for countries on the European Continent, some of them have also reduced their prisoner 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 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
8.	Poland	9.000 – 12.000	Emergency Release under

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 correctional institutions, namely Germany. The German Ministry of Justice has ordered the German Prosecutor's Office to be able to select criminal cases which can be cleared without requiring a trial and which criminal cases should be tried. Whereas for criminal cases that can be released without trial, only apply to cases with the type of minor crime. The release was followed by a penalty or fine which the perpetrator had to pay through the post office. If the perpetrator objects to the amount of the fine given, he can file an objection to the court (Travers , Daniel, 2020).

3.2 The Need to Reduce the Population of Prisoners in Prisons during the COVID-19 Outbreak

According to data from the World Prison Population, the number of prisoners worldwide has increased by 25-30%. 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 what causes the overcapacity of prisons

to never be resolved, the data shows that each year the percentage of overcapacity in prisons always increases, this can be seen from the following table (Zulfikri, 2020):

Table 4: Overcapacity of Correctional Institutions in Indonesia

No	Year	Prisoners	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 susceptible to the spread of disease, this is due to the imbalance between the capacity of the correctional facilities and prisoners. As a result, the room became full of inmates and increased the prisoner's vulnerability to diseases, especially infectious diseases. In fact, there are quite a several prisoners in correctional institutions whose health conditions are very poor and suffer from diseases, such as high blood pressure, asthma, cancer, tuberculosis (TBC), hepatitis C, and HIV, making them very vulnerable to infectious diseases (Kathryn Nowotny, Zinzi Bailer, Marisa Omori, 2020).

At the time of the 1918 Spanish Flu infection, officers at the San Quentin Prison in California said that the task of stopping the spread of the Spanish Flu virus in prisons was a suicide task. Three waves of the spread of Spanish Flu hit the prison, and taught officials that the infectious disease is transmitted through close physical contact. The inmates were given masks, but soon they threw away the masks. Several other methods were carried out to limit the spread of Spanish Flu in the San Quentin prison, but in the end the prison became an incubator or a place to spread the Spanish Flu virus (Brenda Rose, Francis T. Cullen, 2020).

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 to 300% or even 500%, for example in the Banjarmasin Prison with a room capacity that can be occupied by 366 inmates, 2,688 inmates (overcapacity level of 644%), Tarakan Prison with a room capacity that can be occupied by 155 inmates but instead inhabited by 996 inmates (overcapacity level of 650%), the Labuan Ruku Prison with a room capacity that can be occupied by 300 inmates but instead is inhabited by 1,770 inmates (overcapacity level of 640%), the Bagan Siapi Api Prison with a room capacity that can be occupied by 98 prisoners but instead inhabited by 810 inmates (overcapacity level of 836%) (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 a policy to release prisoners who can meet the conditions for release. Even so, law enforcers still include new convicts but on the one hand also release prisoners who are currently serving sentences in prisons. Thus, the prisoner population has only decreased

slightly or not at all, given the increase in the number of criminal acts during the COVID-19 pandemic. Therefore, an emergency policy is needed in the context of the release of prisoners and the context of new convictions during the spread of the COVID-19 pandemic.

3.3 Ideal Concept To Reduce Prisoners During COVID-19a. 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 (Remmelink, 2017):

- a. 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);
- b. The severity of the sanction;
- c. The length of time the sanction will be served;
- d. How the sanctions are implemented, and
- e. 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 correctional system includes (Utang Rosidin, Abdurrahman, Irsan Nasution, 2020):

- a. Guidance in the form of direct kinship interaction between the coach and the fostered;
- b. Persuasive coaching, namely by trying to change the behavior of prisoners by exemplary;
- c. Coaching in a planned, continuous and systematic manner;
- d. 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 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 (Priyanto, 2006):

a. 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.

b. 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.

c. 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.

d. 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.

3.4 Reducing Prisoners with the RNR (Risk Need Responsivity) approach

The theoretical and empirical concept of Risk-Need-Responsivity (RNR) is the approach taken to prisoners. This model requires trained practitioners to use validated assessment instruments to identify the risks and needs of prisoners to be released. In this case, risk refers to the level of supervision and service to be provided to prisoners as well as the possibility of recidivism (repetition of a crime) by the prisoner. Based on this, prisoners identified as high risk will be closely accompanied and will receive the most

medical services. In contrast, prisoners who are identified as being at low risk will receive less monitoring and treatment services (Brenda Rose, Francis T. Cullen, 2020). This answers problems and questions in society who doubt the policy of releasing prisoners, who think that releasing prisoners will actually increase the percentage of crime.

Concerning determining the type of risk of a prisoner, the instruments that become the assessment are the criminal activity of the prisoner, for example, criminal history, education/work, use of illegal drugs, attitudes of prisoners in society, personality, activities while in prison, and problems. family and/or marriage (Wormith, 2011). The RNR concept considers the risks and needs of offenders and then matches them with treatment services designed to target the reduction of criminogenic (the likelihood of a repeat offense) and reducing the prisoner's risk level (Wormith, 2011).

Beside that, 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 (Wormith, 2011). Second, the level of prisoner risk is dynamic, not static. That is, the risk of prisoners being imprisoned in society can change at any time. Prisoners who went to prison years and 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 inmates are in prison can provide actual information about which prisoners belong to a low-risk group of prisoners and which are high-risk (Wormith, 2011).

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 state 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. Even so, 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.

3.5 Restorative Justice as the Answer

The Ministry of Law and Human Rights Policy as a law enforcer that reduces the prisoner population by releasing prisoners from prisons is an appropriate policy 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 proceedings via teleconference, again if the criminal trial is for criminal cases that can actually be resolved by promoting a sense of justice.

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 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 returning the stolen goods 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).

In fact, law enforcers do not need cases to be prosecuted to court. Because basically, these cases are only small cases whose solutions can be done 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). In addition, 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:

a. 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).

b. 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.

c. 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 centers. 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		
Mechanism of Case Settlement		
Aspect	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	☒ Longer time, More complicated and High-priced	Faster time, simple mechanism, and lower priced
Characteristics of Settlement	Retaliation, Compulsion and Perpetrator need to suffer	Forgiveness, Volunteer and To fix all parties
Form of Settlement	Win-Lost solution	Win-Win solution
Main Purpose	Integrate perpetrators back society to become good citizens	Restoring social relations between stakeholders

Thus, the implementation of the RNR-Concept idea of reducing prisoners in prisons and at the same time applying the concept of restorative justice as an alternative to solving

criminal cases, according to the author, can be of benefit to limit overcapacity in prisons which can lead to the rapid spread of the COVID-19 pandemic. On the one hand, releasing prisoners with the RNR-Concept can prevent the possibility of recidivism (repetition of criminal acts) 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 live in prisons. Therefore, these two concepts are more synchronous and in line with law enforcement policies that continue to release prisoners but continue to accelerate criminal proceedings through teleconferences and continue to print new prisoners to be admitted to correctional institutions.

4. 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 he is released, this risk is based on the criminal activity of the prisoner and his 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 correctional institutions.

References:

Books:

- Priyanto, D. (2006). Sistem Pelaksanaan Pidana Penjara di Indonesia.
- Purba, J. (2017). Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restorative Justice.
- Remmelink, J. (2017). Pengantar Hukum Pidana Material 3: Hukum Penitensier.
- Waluyo, B. (2017). Desain Fungsi Kejaksaan Pada Restorative Justice.

Journal articles:

- Brenda Rose, Francis T. Cullen, H. L. (2020). Targeted Release in the Covid-10 Correctional Crisis: Using the RNR Model to Save Lives. *American Journal of Criminal Justice*, 4, 769.
- Kathryn Nowotny, Zinzi Bailer, Marisa Omori, L. B.-R. (2020). COVID-19 Exposes Need for Progressive Criminal Justice Reform. *American Journal of Public Health*, 9, 939.
- Hawks L, Woolhandler S, McCormick D. (2020). COVID-19 in Prisons and Jails in the United States. *JAMA Intern Med.*;180(8):1041-1042.
- Risyah Hardiyanto Hidayat. (2020). Langkah-langkah Strategis Untuk Mencegah Pandemi COVID-19 di Lembaga Masyarakat Indonesia. *Jurnal Pendidikan Kesehatan*, 9, 43.
- Utang Rosidin, Abdurrahman, Irsan Nasution, and D. R. G. (2020). Kebijakan Asimilasi dan Hak Integrasi Narapidana di Tengah Pandemi COVID-19 Perspektif Hukum Penitensier.

Wormith, D. . A. and J. B. and J. S. (2011). The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention? *Criminal Justice and Behaviour*, 38, 735.

Zulfa, E. A. (2012). Keadilan Restoratif di Indonesia: Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana.

Zulfikri, E. I. (2020). Prevention Strategy of COVID-19 in Indonesian Prisons. *International Journal of Engineering Applied Sciences and Technology*, 5.2, 37.

Website material:

Ann, M. (2020). Prisoner releases by country/ jurisdiction - Transform Drug Policy Foundation. Retrieved October 27, 2020, from <https://transformdrugs.org/prisoner-releases-by-country-jurisdiction/>

Gershman, J. (2020). Coronavirus Disrupts U.S. Court System - WSJ. Retrieved October 27, 2020, from <https://www.wsj.com/articles/coronavirus-disrupts-u-s-court-system-11584445222>

Handoyo. (2020). *Kejagung sebut ada 176.912 sidang online tindak pidana umum selama pandemi COVID-19*. Retrieved from <https://nasional.kontan.co.id/news/kejagung-sebut-ada-176912-sidang-online-tindak-pidana-umum-selama-pandemi-COVID-19>

Iswara, N. (2020). Kakek Curi Uang Infak Rp 7000, Ngaku untuk Beli Makan, Divonis Salah oleh Pengadilan, Ini Faktanya - *Tribunnewsmaker.com*. Retrieved October 27, 2020, from <https://newsmaker.tribunnews.com/2020/07/10/kakek-curi-uang-infak-rp-7000-ngaku-untuk-beli-makan-divonis-salah-oleh-pengadilan-ini-faktanya>

King, J. (2020). Coronavirus US: 18,000 inmates could be released early | *Daily Mail Online*. Retrieved October 27, 2020, from <https://www.dailymail.co.uk/news/article-8604793/Nearly-18-000-California-inmates-including-murderers-released-early-coronavirus.html>

Murphy, J. (2020). COVID-19 Prisoner Releases Too Few, Too Slow | *Human Rights Watch*. Retrieved October 27, 2020, from <https://www.hrw.org/news/2020/05/27/COVID-19-prisoner-releases-too-few-too-slow>

Nicholson, C. (2020). UN urges prisoner releases to stem spread of coronavirus. Retrieved October 27, 2020, from <https://www.france24.com/en/20200325-un-urges-prisoner-releases-to-stem-spread-of-coronavirus>

Padmasari, S. I. (2020). *110 Warga Binaan Positif COVID-19, Lapas Perempuan di Gowa Tak Terima Narapidana* | *merdeka.com*. Retrieved from <https://www.merdeka.com/peristiwa/110-warga-binaan-positif-COVID-19-lapas-perempuan-di-gowa-tak-terima-narapidana.html>

Santoso, B. (2020). Tak Ada Duit untuk Belanja, Kakek Urip Nekat Curi Sepeda Milik Tuliye-Suara *Jatim*. Retrieved October 27, 2020, from <https://jatim.suara.com/read/2020/05/05/074106/tak-ada-duit-untuk-belanja-kakek-urip-nekat-curi-sepeda-milik-tuliyem>

Solomon, A. (2020). A State-by-State Look at Coronavirus in Prisons | *The Marshall Project*. Retrieved October 27, 2020, from

<https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

Travers , Daniel, and M. S. (2020). Criminal proceedings in Germany during the COVID-19 pandemic - Lexology. Retrieved October 27, 2020, from <https://www.lexology.com/library/detail.aspx?g=92acbf34-58bb-4d42-a157-2a0fe584e950>

Yas. (2020). Layoffs, crimes on the rise in Indonesia as large-scale social distancing measures take effect - The Online Citizen. Retrieved October 27, 2020, from <https://www.onlinecitizenasia.com/2020/04/24/layoffs-crimes-on-the-rise-in-indonesia-as-large-scale-social-distancing-measures-take-effect/>