

THE STUDY OF IMPLEMENTATION EFFECTIVENESS IN THE VARIOUS CRIMINAL LAW POLICIES DURING THE COVID-19 PANDEMIC

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ABSTRACT

There are various pros and cons to the criminal law policies by the Indonesian government in the context of dealing with covid 19. So it is necessary to have a study related to the effectiveness of implementing these various policies. The author's background is to discuss the formulation of the problem in this article: What is the criminal law policy during the covid 19 pandemic? And how is the effectiveness in the implementation of these policies? This article uses a normative juridical research method that examines various positive laws from the applicable laws and regulations, and then it is analyzed in analytical descriptive. The Indonesian government has established various policies to prevent the covid 19 transmission. The guidelines consist of: the formation of various legal regulations related to the covid pandemic; a policy of criminal sanctions for violators of social policies during the covid 19 pandemic; prisoner assimilation policy; electronic trial of criminal cases during the covid 19 pandemic; corruption prevention policies; policies on workplaces in public areas. Regarding the effectiveness of implementing these policies, it can be said that the execution tends to be less optimal because the policies are contrary to one another. So this article provides suggestions to the government and the community should have mutual support for the implementation of criminal law policies during the COVID-19 pandemic can be effective.

Key Words: implementation; policy; criminal law; covid-19.

INTRODUCTION

Starting in December 2019, the world was shocked by discovering a new virus variant that could kill humans (Yuliana, 2020). This virus was first found in Wuhan, Hubei Province, China, and was named by the World Health Organization (WHO) as Corona Virus Disease (covid 19) (Halim, 2020). Covid 19 has become a global pandemic because the spread and transmission are fast from human to human and have penetrated various countries worldwide (Valerisha, 2020). The impact of this virus cannot be underestimated; in addition to the increasing number of human

deaths, other effects have also penetrated other sectors in various aspects of life. For example, the legal part is also forced to change according to the Covid-19 pandemic (Soleh, 2020). Changes in legal elements due to the covid 19 pandemic have forced humans to pay more attention to cleanliness and keep themselves from being close to other people because of the fast transmission of covid 19 (Mona, 2020). At the beginning of 2020, WHO announced some health movements to reduce the transmission of covid 19. One of these movements is to limit various human activity spaces in different public places. It is aimed to detect new cases of covid 19. Thus, various legal policies often appear in Indonesia to respond to covid 19.

Indonesia is one of the various countries that have a pretty large number of COVID-19 cases (Kurniawan, 2021). It is known that on July 21, 2021, the number of COVID-19 cases in Indonesia has reached 2.9 million, with 77,000 deaths and 2.3 million in recoveries (COVID-19, 2021). The mount is the basis for the Indonesian government in forming various legal policies during the COVID-19 pandemic, such as social distancing and physical distancing policies (Kresna, 2020). There are different other policies, such as the Large-Scale Social Restriction (PSBB) policy, the 3M health protocol policy (wearing masks, keeping distance, and washing hands), as well as the establishment of a policy of limiting human activities or lockdown (Kennedy, 2020). The various policies adopted in official legal regulations to be obeyed by the Indonesian people, namely in Government Regulation Number 21 of 2020 concerning PSBB, Presidential Decree (Keppres) Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid 19, Presidential Decree Number 9 of 2020 concerning distribution permits and import of medical devices (Kusuma, 2020). Although various policies have been adopted in legal regulation, in reality, different legal policies formed by the Indonesian government to deal with COVID-19 are not appropriately implemented. Several policies reap the pros and cons among the Indonesian community, which mostly violates the policy (Firdaus, 2020).

It is known that criminal law policies cannot be separated from law enforcement policies because they are needed to establish procedures to tackle criminal acts and enforce criminal law (Ridwan, 2013). Besides various legal guidelines related to health during the covid 19 pandemic, there are also law enforcement policies during the covid 19 pandemic. For instance, policy to release prisoners through assimilation stipulated by the Decree of the Minister of Law and Human Rights Number M.HH-19.PK.01.04. 04 of 2020. This policy was issued to prevent the transmission of COVID-19 cases (Sulhin, 2020). However, while there is a policy to release prisoners, other policies stipulate prison sanctions for violators of the COVID-19 policy, such as those who violate the PSBB policy (Yunus, 2020). For PSBB violators as regulated in Articles 212, 216, 218 of the Criminal Code or KUHP, Law no. 6 of 2018 concerning Health Quarantine, PP No. 21 of 2020 concerning PSBB, and Presidential Decree No. 11 of 2020 concerning the Determination of the Covid 19 Public Health Emergency, stipulates that PSBB violators can be sentenced to 1 year in prison and a fine of 100 million rupiahs (Kadafi, 2020). Moreover, the number of PSBB violators is not tiny, as 2000 people in Jakarta have been registered to violate the PSBB (BPK, 2021). In Riau, the Pekanbaru District Court issued a decision to 16 people who were broken the PSBB rules with sentences of one to two months in prison and a fine of 700 thousand to three million rupiahs (CNN, 2020).

In addition, there is another policy from the Supreme Court of the Republic of Indonesia, namely the policy of accelerating criminal proceedings through teleconference. This policy is based on the Letter of the Director-General of the General Judiciary Agency Number: 379/DJU/PS.00/3/2020 of 2020 concerning Teleconference Criminal Case Trials (Iswantoro, 2020). This policy created many disagreements because when the Ministry of Law and Human Rights released prisoners to prevent the spread of covid 19, the Supreme Court accelerated the trial process via teleconference, transferring the pre-trial detainee to prisoners (Arrasid, 2020). Nevertheless, the policy issued by the Supreme Court is a form of progress in court reform that utilizes information

and communication technology. However, because this policy was given during a prisoner release policy, these two policies contradict each other.

The pros and cons of the law enforcement policy for dealing with COVID-19 is not the only problem since there are also pros and cons in implementing the COVID-19 assistance policy. It begins with the distribution process that is not proper, starting from the central government and then to local governments. What happens is that the distribution coincides between the central government and local governments. Another obstacle is the lack of accurate data for beneficiaries and the legal basis for legal immunity and authority abuse of law enforcers (Supriyadi, 2020). Thus, it can be seen that there are various pros and cons related to multiple legal policies issued by the Indonesian government in the context of dealing with COVID 19. So a study is needed regarding the effectiveness of these various policies' implementation.

The explanation above is the author's background in reviewing the article entitled "The Study of Implementation Effectiveness in the Various Criminal Law Policies During the Covid-19 Pandemic". The formulation of the problem discussed in this article is: What was the criminal law policy during the COVID-19 pandemic? And how is the implementation effectiveness of these policies?

RESEARCH METHODS

This article uses a normative juridical research method in examining various positive laws from the prevailing laws and regulations. Then it will be descriptively analyzed, which then provides an overview of the problems and legal phenomena in the community. In addition, this article also uses library research with book and journal sources related to criminal law policies during the COVID-19 pandemic (Suherman, 2020).

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Criminal Law Policy During the Covid 19 Pandemic

According to Prof. Barda Nawawi Arief, criminal law policy has the same term as criminal law politics, or in Dutch, it is known as "*strafrechtspolitik*" (Rahardian, 2015). Besides that, Prof. Barda also stated that criminal law policy could be seen through several approaches, which consist of (Putro, 2015): (a) Social policy approach; criminal law policy solves various social problems to achieve public welfare. (b) The criminal policy approach; criminal law policy that is based on efforts to protect the community by tackling various crimes. (c) Law enforcement policy approach; updating the substance of the law to achieve the effectiveness of the law enforcement process.

The criminal law policy based on the crime prevention process can be carried out through several approaches consist of (Huttu, 2014): (a) The penal procedure or the remediation process through the courts (Criminal Law); (b) Non-penal approach or through efforts outside the court; (c) An integrated approach or integration which is a combination of a penal and non-penal process;

Various efforts have been made by the central, provincial, and district/city governments to anticipate the transmission of covid 19. These efforts have been carried out by taking preventive or repressive measures. The actions were executed by forming various legal policies from the central government and then instructed to local governments. The central and local governments must complete this effort synergistically and thoughtfully as part of law enforcement (Julaidin, 2020). The Indonesian government has implemented various criminal law policies during the COVID-19 pandemic through multiple approaches, which can be grouped as follows:

a. The Formation of Various Legal Regulations Related to the Covid 19 Pandemic

The Indonesian government has formed various legal policies as a form of efforts to prevent the transmission of COVID-19, which include (Kurniawan, 2020): (1) Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and in

the Context of Threats Endanger the National Economy or Financial System Stability. (2) Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19). (3) Decree of the Indonesia President Number 11 of 2020 concerning the Determination of the Public Health Emergency of Corona Virus Disease 2019 (COVID-19). (4) Presidential Instruction Number 6 of 2020 concerning Improvement of Law Enforcement Discipline of Health Protocols in the Prevention and Control of Corona Virus Disease 2019.

b. Criminal Sanction Policy for Violators of Social Policy During the Covid 19 Pandemic

In addition to various criminal policies, there are also social policies established by the Indonesian government to prevent the transmission of the COVID-19 problem in Indonesian society. Such as the existence of social distancing and physical distancing policies, Large-Scale Social Restrictions (PSBB), health protocol policies or 3M (wearing masks, maintaining distance, and washing hands), Enforcement of Community Activity Restrictions (PPKM), and lockdowns. However, the community often violates this social policy (Adam, 2021). It is due to various factors, ranging from economic factors, culture, age, education, knowledge, attitudes, and motivation (Afrianti, 2021). This policy has forced law enforcement officers to impose criminal sanctions to be more obedient to these social policies. So, in this case, the crime is an alternative sanction, and the state must act decisively when a violation occurs to prevent and eradicate covid 19 (Kartono, 2020).

The criminal sanctions imposed for people who violate social policies from the government are contained in Articles 212, 216, and 218 of the Criminal Code (Setyawati, 2020). Criminal sanctions for violations of social policies during the COVID-19 pandemic are based on Article 93 of Law Number 6 of 2018 concerning Health Quarantine. This article regulates violations during PSBB with a maximum criminal sanction of one year and/or a maximum fine of Rp. 100.000.000.00 (one hundred million rupiahs). Then during the COVID-19 pandemic, this regulation was confirmed through Government Regulation No. 21 of 2020 concerning PSBB.

Indonesian Police have made various efforts to enforce these regulations against violators based on the rules. As on Chief of Police Decree Number Mak/2/III/2020 regarding Compliance with Government Policies in Handling the Spread of the Corona Virus, the Indonesian Police have the authority to implement various actions to bring order to the community to comply with social policies set by the Government (Firdaus, 2020).

c. Prisoners Assimilation Policy

One of the criminal policies set by the Indonesian government to prevent the spread of COVID-19 in Correctional Facilities is the issuance of the Minister of Law and Human Rights Decree Number M.HH-19.PK/01.04.04 concerning the Release of Prisoners and Children Through Assimilation and Integration in the Framework of Prevention and Control of the Spread of Covid-19. The background for issuing this decree is due to concerns from the Indonesian government over the massive transmission of COVID-19 in Correctional Institutions. Knowingly, Correctional Institutions tend to be inhabited by many prisoners who crowd in their daily activities. Therefore, a decree was issued from the Minister of Law and Human Rights regarding the release of prisoners. The result of this decree is the conditional release prisoners about 30,000 prisoners (Appludnopsanji, 2020).

d. Electronic Court on Criminal Cases in Pandemic Covid 19

With the existence of various social policies that prohibit people from gathering, these policies also impact the judicial process in Indonesia. As is well known, the Indonesian judicial process often requires several people as law enforcers, witnesses, clerks, defendants, and various other subjects to conduct trials in a courtroom so that the judicial process tends to crowd. In the COVID-19 pandemic, the Supreme Court has established electronic judicial reform that does not require judicial subjects to gather in the courtroom (Retnaningsih, 2020).

As for strengthening the legal basis for electronic criminal case trials, the Supreme Court has established Supreme Court Regulation (Perma) Number 4 of 2020 concerning Administration and

Trial of Criminal Cases in Electronic Courts. This regulation contains provisions related to the procedures for conducting online trials in criminal cases, both criminal cases within the scope of general, military, and *jinayat* courts. This regulation is based on SK KMA No.108/KMA/IV/2020 on the Administrative Working Group and the Trial of Criminal Cases in Electronic Courts and as a follow-up to the Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Police, the Directorate General of Corrections of the Ministry of Law and Human Rights regarding the Implementation of Trials Through Teleconference in the Context of Preventing Covid-19 on April 13, 2020, ago (Adisti, 2021).

e. The Policy of Corruption Prevention

Corruption has become an ingrained crime in Indonesia, and it can also occur during the COVID-19 pandemic today. As an institution responsible for tackling corruption, the Corruption Eradication Commission (KPK) has an analysis related to the vulnerable areas that have the corruption potential during the COVID-19 pandemic. The weak parts are allocating social support funding, procuring goods and services, and receiving funding from third parties. As a preventive effort to be aware of these vulnerable areas, the KPK has issued Circular Letter Number 8 of 2020 on the Use of the Procurement of Goods or Services Implementation in the Context of Accelerating the Handling of Covid 19. The KPK has identified the modus operandi and the various potential actions that lead to corruption, such as fraud, bribery, and conspiracy to supply goods and services. The form of effort implemented by the KPK is prevention in supervising the distribution of Personal Protective Equipment by monitoring and coordinating with the COVID-19 Handling Task Force at the national to regional levels (Parapat, 2020).

f. Policy on Workplace in Public Area

The government made the efforts to support the continued operation of the business sector in the trade and service sector in public areas during the covid-19 pandemic, namely the establishment of policies related to the transmission of Covid-19 in the management of workplaces, workers,

business actors, consumers and the public who are active in the service sector and trade. The policy is in a Circular Letter of the Minister of Health No. HK.02.01/MENKES/335/2020 concerning the Protocol to Prevent the Transmission of Covid 19 in the Workplace of the Service and Trade Sector (Public Area) in Supporting Business Continuity. This circular letter is motivated by the existence of a "new normal" era or a new era that adapts to a clean lifestyle following Covid 19 health protocols in new situations. This circular letter is a form of effort from the central government, regional governments, and the business world to increase support and cooperation across sectors. After all, business in the service and trade sector is a place for gathering and interacting with many people in one location, which can increase the transmission of COVID-19 cases (Hartanto, 2021).

2) Implementation of Criminal Law Policy During the Covid 19 Pandemic

Mazmanian and Sabatier formulated the policy, who stated that the implementation of a policy could only be seen by examining and observing everything that has happened after a procedure is formed or formulated. The review and observation process is carried out on various events and activities running after a policy has been ratified into an official regulation. Such studies and observations can be carried out in multiple forms, either through the administrative process or by observing the impact on society resulting from a policy (Santa, 2021). The implementation of various criminal law policies during the COVID-19 pandemic is observable from the extent to which these policies are implemented in the community.

The observation can start with an analysis of the implementation of social policies established by the Indonesian government, such as PSBB, PPKM, Lockdown. Some people consider this policy to be less effective because it is seen in people who feel that they have not received legal protection from the policies made by the Government (Ristyawati, 2020). In Jakarta, throughout 2020, there were 8,345 reports of PSBB violations (Hanggara, 2021). The breaches of the government's social policies also show that the existence of various legal, regulatory policies established by Indonesian

legislators does not make the public comply with these regulations as seen in the last few months, which shows a decline in public awareness of the dangers of covid 19. This decline is seen in the number of people who do not wear masks in public areas and the tendency of people to crowd in public spaces without keeping their distance. As in the city of Bandung, the Civil Service Police Unit (Satpol PP) conducted people raids on the crowd who were not wearing masks, reaching 260 cases (Ridwan, 2020).

Various violations of social policies have made the government take more decisive efforts by imposing fines and imprisonment for violators. However, implementing this sanction does not necessarily prevent the community from violating the social policy. There are various cases of PPKM violations from sellers or traders, and this is due to economic factors in which the seller must fulfill their needs by trading. Meanwhile, as is known, the PPKM policy limits community activities, including trading, which is limited to a specific time. However, because they do not have the money to pay the fine, some traders prefer to undergo imprisonment.

Like Asep Lutfi, a coffee shop owner in Tasikmalaya City, West Java, he was hit by a PPKM raid by the Satpol PP. But he prefers imprisonment over a fine (Setiabudi, 2021). Then another case occurred in Serang, Banten. A man with the initials BH who works as a toilet guard was sentenced to a fine of IDR 100,000 for not wearing a mask when crossing the Old Market. But he chose to languish in prison because he claimed don't have money. A person in Banten was also caught removing a mask by a Satpol PP officer, and he chose to be imprisoned instead of having to pay a fine (Hardiman, 2021). From these various cases, it can be seen that the implementation of sanctions for violators of social policies does not run optimally and deviates from its goals. This phenomenon will impact the fullness of prisons in Indonesia if every violator quickly chooses prison sanctions. It is also contrary to the prisoner release policy by the Ministry of Law and Human Rights because when the release of prisoners aims to reduce the transmission of covid 19 in prisons, but the existence of social policies makes it easier for people to go to jail.

Then related to implementing the prisoner release policy by the Ministry of Law and Human Rights, there are also pros and cons. This policy has several benefits because there is a decrease in the number of prisoners so that Correctional Institutions and Detention Centers in Indonesia are no longer overcapacity and overcrowded. The impact of this policy is also seen in the reduced psychological pressure of prisoners who experience fear and stress from other prisoners. If prisoners experience psychological pressure or stress, it will affect their immune system to covid 19. Another benefit is the reduction in state expenditure for prisoners' meals. The decrease in expenses is $40,330 \text{ people} \times 153 \text{ days} \times \text{IDR } 32,269/\text{day} = \text{IDR } 199,115.541,810$ (Marthaningtiyas, 2020). But in addition to these benefits, there are also negative impacts of the prisoner release policy.

The impact can be seen in terms of the purpose of punishment. The prisoners not serving complete sentences can impact not achieving the goal of punishment itself, namely a deterrent effect for prisoners who commit criminal acts. When the deterrent effect of the purpose of punishment is not carried out optimally, the prisoners have the potential of not being ready to reintegrate and blend into the community. The reason is that the prisoners do not follow the assimilation program provided by the Correctional Institution properly, such as training and skills programs. Other negative impacts can also be seen juridically and sociologically for the community. In this case, the community will feel anxious and worried about prisoners undergoing assimilation. People tend to be insecure because prisoners only serve half of their sentences, thus committing another crime because they have not felt the deterrent effect of imprisonment (Tantaru, 2021). In addition, the policy for releasing prisoners has some cons because it contradicts the policy of the Supreme Court, which speeds up the trial process via teleconference. When the Ministry of Law and Human Rights released prisoners to prevent the spread of covid 19, the Supreme Court, on the contrary, accelerated the trial process via teleconference, which contra-productive to the former plan, that is to reduce the number of prisoners (Arrasid, 2020).

The electronic trial policy during the COVID-19 pandemic also raised several issues regarding the policy's validity. There is no legal basis for implementing electronic hearings such as regulations equivalent to the Criminal Procedure Code. The Perma and the memorandum of understanding that has been the legal basis for the electronic trial are considered not strong enough as the legal basis for the prosecution, and other regulations governing the electronic criminal justice system tend to be minimal. These problems also show that the current criminal procedural law is still unable to keep up with the times. So that its implementation raises pros and cons among legal practitioners in court, and in the end, the performance of electronic evidence at teleconference sessions is less than optimal (Safitri, 2021).

The KPK has made various efforts to prevent corruption during the COVID-19 pandemic, but what has happened is that some government elements still commit corruption by taking advantage of the COVID-19 social support funding to enrich themselves (Rahmatullah, 2021). During the COVID-19 pandemic, the KPK has arrested many corruption cases, including two Indonesian ministers, namely former Social Minister Juliari P Batubara and former Maritime Affairs and Fisheries Minister Edhy Prabowo (Halim, 2021). According to the Indonesian Survey Institute (LSI), respondents showed that corruption increased during the pandemic in the last two years by 39.6 percent (Pasaribu, 2020). The Indonesian corruption perception index was 40 out of 100 during the covid 19 pandemic. The Indonesian Minister of Finance, Sri Mulyani, stated that the increase of corruption perception index in a country is good. So it takes hard work for Indonesia to reach more significant numbers (Sucahyo, 2020).

From the explanation above, it can be seen that various problems made the implementation of these policies less than optimal in the performance of criminal law policies during the COVID-19 pandemic. However, despite these multiple problems, the Indonesian government has tried its best to make social policies and criminal law policies to prevent the transmission of covid 19. Apart

from the lack of effectiveness in implementing these policies, it is believed that various factors influence their implementation.

CONCLUSIONS

The Indonesian government has established various policies to prevent the transmission of covid 19. The procedures consist of: the formation of various legal regulations related to the covid pandemic; a policy of criminal sanctions for violators of social policies during the covid 19 pandemic; prisoner assimilation policy; electronic trial of criminal cases during the covid 19 pandemic; corruption prevention policies; policies on workplaces in public areas. Regarding the effectiveness of the implementation of the policy, it can be said that the performance tends to be less than optimal. Starting with people who do not comply with social policies such as PSBB, health protocols, and others, the government takes more decisive efforts by setting fines and imprisonment for violators. However, the existence of this sanction is also less than optimal because violators tend to choose prison sanctions that can raise the accumulation of prisoners in Correctional Institutions. Contrary to the prisoner release policy, this policy aims to prevent the transmission of COVID-19 by reducing the number of prisoners in social institutions. Meanwhile, many social policy violators during the COVID-19 pandemic will increase the number of prisoners. Then this policy is also contrary to the Supreme Court's policy, namely the acceleration of trials through online teleconference trials, which further accelerates the judicial process for violators of the social policy of the COVID-19 pandemic.

The formation of criminal law policies by the Indonesian government to prevent the transmission of COVID-19 will not run optimally without the support and awareness of the Indonesian people. Meanwhile, people who violate the policy have urgent reasons, such as economic and needs; thus, mutual aid is needed between the government and the community. For instance, the government fulfills the community's financial needs relatively while implementing the

PSBB PPKM or lockdown policies. Therefore, people can comply with this policy by staying at home without worrying about their needs supported by the government. In the end, the implementation of criminal law policies during the COVID-19 pandemic could be carried out effectively.

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