

# Requirements of Terms in Views Sociology of Law

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## ABSTRACT

Parole is a good method for giving prisoners freedom. Although in reality many opinions say that parole is an apology or government sympathy (*executive clemency*), aiming to speed up the time of release, even parole is considered as an attempt to please or give comfort to the perpetrators of crime (*comfort of the criminal*). Actually parole is not to reduce the law, facilitate or provide comfort for perpetrators of crime and also is not a tolerance or forgiveness (*leniency*). The problems examined in this study are: (1) How is the Legal Basis for the conditional release of prisoners according to the provisions of the law in Indonesia ? (2) How is the view of sociology of law against parole on inmates Penitentiary in Indonesia? This study discusses the implementation and impact of parole on prisoners in Indonesia, both in the normative theory of applicable law and in practice. This research is a normative legal research conducted through library research by conducting studies and analyzing primary, secondary and tertiary legal materials. In this writing the researcher also conducted observations on the implementation of parole in Indonesia, the community's response to parole of prisoners.

**Keywords:** *Parole, Prisoners, Sociology of Law*

## 1. INTRODUCTION

In the view of the Indonesian people that the law as a protector, then in this case paving the way for the treatment of prisoners by means of correctional as the goal of imprisonment.<sup>1</sup> The prison concept was later refined by the Decision of the Office of Prisoners' Office Conference on April 27, 1964 which decided that the implementation of imprisonment in Indonesia was carried out with a penal system, a statement in addition to being a direction, the prison sentence could also be a way to guide and foster.<sup>2</sup> Corrections facilities are one part of the sentence that can be imposed on a convict who has been sentenced with a court decision that has permanent legal force (*inkrah*). Currently the criminal function is no longer merely imprisonment, but rather is intended as a place or a means of fostering, rehabilitating and reintegrating prisoners fostered by citizens.<sup>3</sup> It's no longer an attempt for revenge. Implementation of guidance in correctional institutions is based on the principle of caring for, fostering, educating

and guiding prisoners with the aim of becoming good citizens and useful to the community, at least for themselves and their families. Success in fostering prison inmates is when the prisoner returns to the community and does not repeat his crime and it must be fostered from within the prisoner himself.

The function of punishment in prisons is to direct that inmates did not commit a criminal act he has done and realize the inmates of correctional institutions within the community, making the inmates responsible for themselves, their families and the community around them.<sup>4</sup> At present, criminal punishment is more aimed at recovering from conflict or uniting convicts with the community.<sup>5</sup>

Law Number 12 of 1995 concerning Corrections, as stated in the explanation generally contains a statement that the purpose of punishment is an attempt to sensitize convicts and criminal children to regret their actions, and return them to become good citizens, obey the law, uphold the values moral, social and religious, so as to achieve a safe, orderly and peaceful community life. The parole itself is given to prisoners, so that prisoners can adjust to the life of the community before the prisoner ends his criminal term. The decision to grant parole was issued by the Minister of

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<sup>1</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, (Bandung: Refika Aditama, 2006), hal. 97.

<sup>2</sup> Rusnadi Dwi Saputra, Herman, dan Oheo K. Haris, *Pembebasan Bersyarat Bagi Narapidana Terorisme*, Halu Oleo Legal Research, Vol. 1 Issue 3, (Desember 2019). hal.414-428

<sup>3</sup> Samosir Djisman, *Fungsi Pidana Penjara Dalam Sistem Pemidanaan di Indonesia*, (Bandung: Bina Cipta, 2001), hal. 4.

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<sup>4</sup> Oheo K. Haris, "Telaah Yuridis Penerapan Sanksi Pidana Di Bawah Minimum Khusus Pada Perkara Pidana Khusus", *Jurnal Ius Kostituendum*, Volume 2 Issue 2, (Oktober 2017), hal. 241.

<sup>5</sup> Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor M.HH-OT.02.02 tahun 2009 Tentang Cetak Biru Pembaharuan Pelaksanaan Sistem Pemasyarakatan.

Justice after hearing the opinion of the Public Prosecutor and LAPAS Officers who knew the behavior of the convicted person while serving a prison sentence. The authority to grant parole rests with the Minister of Law and Human Rights with various administrative requirements that must be fulfilled by inmates.<sup>6</sup>

Based on Article 1 paragraph (7) of Law Number 12 of 1995 Concerning Correctional Facilities, prisoners are convicted persons undergoing the crime of missing independence at the Penitentiary. According to Article 1 paragraph (6) of Law Number 12 of 1995 Concerning Corrections, a convicted person is a person convicted based on a court decision having permanent legal force. From the statement above, it can be concluded that the convict is a person or a convict who is serving his sentence at the Penitentiary where part of his independence has been lost. Correctional process is based on the security stage in the Correctional Institution, one of the stages is the Integration Phase, which starts from the prisoner who has undergone 2/3 of his sentence until the prisoner in question has completed his criminal period. If the prisoner has served 2/3 of his sentence and at least 9 months, it can be proposed to be given parole (PB). This means that at this stage a prisoner will be given the right to obtain parole when the prisoner truly follows the rules in the Penitentiary and follows the guidance provided by the correctional staff diligently to good behavior and never gets disciplinary punishment.<sup>7</sup>

Placing prisoners as subjects of coaching is the right of prisoners protected by the state. Guidance for inmates is carried out through a system that we now know as the penal system. In the penitentiary system, convicts are referred to as prisoners. Guidance carried out in correctional institutions is a means to prevent fostered residents from repeating their actions after being released from correctional facilities. Through coaching programs, fostered citizens are expected to be re-accepted by their social environment. Penitentiary system is basically a thought for the application of the concept of "*Treatment of offender*" and can be considered to replace the prison system.<sup>8</sup>

But in its implementation, it turns out that the application of the penal concept has not been effective. This is evident from the continuing occurrence of various cases that contradict or eliminate the meaning of the correctional purposes themselves. This can be seen with the condition of LAPAS (Penitentiary) which is mostly in a state of over capacity. To overcome this, reforms in the criminal system need to be held. The addition of other criminal alternatives besides imprisonment can overcome the starting point in overcoming the over capacity of most

LAPAS in Indonesia. The next step is to make effective the provision of prisoners' rights, namely the granting of Remission, Family Visit Leave, Free Leave Leave, Parole and other rights in accordance with applicable laws and regulations. But the step in granting the rights of prisoners as referred to needs to be done through tightening, especially for prisoners who commit *extra ordinary crime*. The types of *extra ordinary crime* in particular are criminal acts of Corruption, Terrorism, Drugs, etc. Because acts of crime such as terrorism, drugs are crimes against humanity and civilization, these crimes are international crimes that pose a danger to security, world peace and harm the welfare of the community so that it is necessary to eradicate in a planned and sustainable manner so that the human rights of the people can be protected and upheld high.<sup>9</sup>

### ***1.1. Formulation of The Problem***

- a. How does the Basic Law Implementation parole in Indonesia?
- b. How is the view of sociology of law against parole on inmates Penitentiary in Indonesia?

### ***1.2 Research Methods***

The method is the main strategy in collecting data needed to answer the problem at hand. Basically something that is sought in this study is nothing but "knowledge" or rather "true knowledge", where this correct knowledge can later be used to answer certain questions or ignorance.<sup>10</sup> This study is intended to determine the extent of the legal politics of changing the Law in Indonesia and the extent to which the politics of national law on changes in the Criminal Code in Indonesia.

This research is a normative law research using normative case studies in the form of legal behavior products, for example studying the law. Normative legal research methods or library legal research methods are methods or methods used in legal research conducted by examining existing library materials.<sup>11</sup> The first stage of normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The second stage of normative legal research is research aimed at obtaining subjective law (rights and

<sup>9</sup> Romli Asmasasmita, *Kapita Selektta Kejahatan Bisnis dan Hukum Pidana*, Buku 2, (Jakarta: Fikahati Aneska, 2013), hal. 101.

<sup>10</sup> Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persada, 1997), hal.27-28

<sup>11</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke – 11. (Jakarta : PT Raja Grafindo Persada, 2009), hal. 13–14.

<sup>6</sup> Rusnadi Dwi Saputra, Herman, dan Oheo K. Haris, *Pembebasan Bersyarat.....Op cit.*

<sup>7</sup> Rusnadi Dwi Saputra, Herman, dan Oheo K. Haris, *Pembebasan Bersyarat.....Op cit.*

<sup>8</sup> HR. Abdussalam, *Sistem Peradilan Pidana*, (Jakarta: Restu Agung, 2007), hal. 333.

obligations).<sup>12</sup> The subject of the study is the law which is conceptualized as a norm or rule that applies in society and serves as a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, principles and doctrine of law, legal discovery in *in concreto* cases, systematic law, synchronization levels, comparative law and legal history.<sup>13</sup>

In legal research there are several approaches, researchers will get information from various aspects of the issue being tried to find the answer. The method of approach in this research is the statutory approach.<sup>14</sup> A normative research certainly must use a legislative approach, because what will be examined are various legal rules which are the focus as well as the central theme of a study. While the data analysis carried out in this study was carried out with a more qualitative approach namely revealing as much data (legal material) as possible so that the issues raised were more transparent. A qualitative approach enables researchers to elaborate data obtained comprehensively and the results of the description become more accountable.

This research is descriptive in nature, describing the symptoms in the community towards a case under study, the approach taken is a qualitative approach which is a research procedure that produces descriptive data.<sup>15</sup> Qualitative approach was used by the author aims to understand the phenomenon under study.<sup>16</sup> The author conducted research with the aim to attract the general principles of law (*rechtsbeginselen*) that can be made to the positive law written or unwritten positive law.<sup>17</sup>

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<sup>12</sup> Hardijan Rusli, "*Metode Penelitian Hukum Normatif: Bagaimana?*", Law Review Fakultas Hukum Universitas Pelita Harapan, Volume V No. 3 Tahun 2006, hal. 50.

<sup>13</sup> Abdul Kadir Muhammad. *Hukum dan Penelitian Hukum*. Cet. 1. (Bandung: PT. Citra Aditya Bakti. 2004). hal.52

<sup>14</sup> Peter Mahmud Marzuki, *Penelitian Hukum*. Cet.2. (Jakarta: Kencana. 2008). hal.29

<sup>15</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : UI Press, 1986), hal. 32.

<sup>16</sup> Soerjono Soekanto, *Pengantar Penelitian.....Ibid.*

<sup>17</sup> Soerjono Soekanto, *Pengantar Penelitian Ibid.* hal. 252.

## 2. BACKGROUND

### 2.1. Theoretical Framework

#### 2.1.1 Parole

Conditional release is the process of fostering a prisoner outside a Detention Center / Penitentiary after undergoing at least 2/3 (two-thirds) of his sentence with the provisions of 2/3 (two-thirds) of the criminal period of at least 9 (nine) months.<sup>18</sup>

Article 15 of the Criminal Code amended by Stb 1926-251 jo 486, which is a Criminal Code that applies until now, conditional release can be given to convicts who have served 2/3 (two thirds) of the length of imprisonment imposed on him , which must be at least 9 (nine) months in which this provision also applies when the term parole is used. This is different when the term parole is used, namely there is an arrangement regarding guidance and guidance in the conditions of parole, namely in Law Number 12 of 1995 concerning Corrections, which states that convicts who undergo parole must follow the guidance given by the Penitentiary (BAPAS).

#### 2.1.2 Inmate

The large Indonesian dictionary gives the meaning that: Prisoners are convicts (people who are serving sentences for criminal acts); condemned. Meanwhile, according to the master dictionary the scientific term states that a Prisoner is a person of punishment; crib people. Furthermore, according to the prisoner's legal dictionary, it is defined as follows: Prisoners are people who undergo criminal offenses in a Penitentiary.

Pursuant to Article 1 paragraph (7) of Law Number 12 of 1995 concerning Corrections, inmates are convicts who undergo the crime of missing independence at the Correctional Institution. According to Article 1 paragraph (6) of Law Number 12 Year 1995 concerning Corrections, a convicted person is a person who is convicted based on a court decision that has obtained permanent legal force.

In Law Number 12 of 1995 Concerning Corrections. Article 14 stipulates that prisoners have the right:

- a. worship according to his religion or beliefs;
- b. receive care, both spiritual and physical care;
- c. get education and teaching;
- d. get proper health and food services;
- e. make a complaint;
- f. get reading material and participate in other mass media broadcasts that are not prohibited;
- g. get a wage or premium for the work done;
- h. receive family visits, legal counsel or certain other people;
- i. get a reduced sentence (remission);

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<sup>18</sup> Peraturan Pemerintah tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan, PP No. 32 Tahun 1999, LN No. 69 Tahun 1999, TLN No. 3846, ps. 1 bagian 7.

- j. get assimilation opportunities including family visit leave;
- k. get parole;
- l. get free leave; and
- m. get other rights in accordance with applicable laws and regulations.

Human awareness of human rights stems from an awareness of the value of self-respect, dignity and human dignity. Indeed, human rights have existed since humans were destined to be born in this world, thus Human Rights are nothing new. The Government of Indonesia whose conscience respects and recognizes Human Rights, commitment to the protection / fulfillment of Human Rights at the implementation stage of the decision. The commitment is an institution of supervisory and observer judges (WASMAT) as regulated in Article 277 through Article 283 of the Criminal Procedure Code, and the enactment of Law Number 12 of 1995 concerning Corrections is an activity to conduct correctional assistance for fostered citizens based on the institutional system, and how to foster which is the final part of the criminal justice system.

### 2.1.3 Sociology Of Law

The sociology of law has the object of study of legal phenomena, that the Roscoe Pound shows the study of legal sociology as a study based on the concept of law as a means of social control. While Llyod, sees the sociology of law as a descriptive science, which utilizes empirical techniques. This relates to legal instruments with their duties. He views the law as a product of a social system and a tool for controlling fiber to change that system. We can distinguish the sociology of law from normative science, which is located in its activities. Normative jurisprudence is more directed to the study of law in books, while the sociology of law is more concerned with law in action.<sup>19</sup> The sociology of law uses a more empirical approach that is descriptive, while normative legal science is more prescriptive. In the jurisprudent model, legal studies focus more on policy products or rules products, whereas in sociological models it is more directed towards social structures. Legal sociology is a special branch of sociology, which uses the study methods commonly developed in the sociology sciences. While the object of legal sociology is :<sup>20</sup>

- a. Sociology of law studies law in its form or Government Social Control. In this case, sociology

- examines a set of specific rules that apply and are needed, in order to enforce order in social life.
- b. Sociology of law examines a process that seeks to shape citizens as social creatures. The sociology of law realizes its existence as a social convention in society.

The use of sociology of law in reality is as follows:<sup>21</sup>

- a. The sociology of law is useful for providing abilities for understanding law in a social context.
- b. Mastery of the concepts of legal sociology can provide the abilities to conduct an analysis of the effectiveness of law in society, both as a means of social control, a means to change society and a means of regulating social interaction, in order to achieve certain social conditions.
- c. The sociology of law provides the possibilities and the ability to evaluate the effectiveness of law in society.

While the characteristics Sociology of law, are:<sup>22</sup>

- a. The sociology of law aims to provide an explanation of legal practices.
- b. The sociology of law always tests the empirical validity of a rule or statement of law.
- c. The sociology of law does not make an assessment of the law.

## 2.2. Discussion

### 2.2.1 Legal Basis for Parole in Indonesia

The main legal basis for parole is contained in Article 15 and Article 16 of the Criminal Code, besides that there are also other implementing regulations in various forms of legislation. In Article 15 and Article 16 of the Criminal Code there are conditions for obtaining parole for prisoners.<sup>23</sup>

Article 15 of the Criminal Code:

- 1) If the convict has served two-thirds of the length of imprisonment imposed on him, at least nine months, then he may be subject to conditional release. If the convict must undergo several consecutive crimes, the criminal is considered as one criminal.
- 2) When giving a conditional release, a trial period is also determined, and conditions must be met during the trial period.
- 3) The probation period is the same as the remaining jail time that has not been served, plus one year. If the

<sup>19</sup> Yesmil Anwar dan Adang, *Pengantar Sosiologi Hukum*, (Jakarta, PT. Grasindo, 2008), hal, 109.

<sup>20</sup> Dikutip dalam <http://nandoxodnan.blogspot.com/2013/09/makalah-sosiologi-hukum-pendahuluan.html?m=1> diakses tanggal 04 Juli 2020

<sup>21</sup> Soejono Soekanto, *Pokok-Pokok Sosiologi hukum*, (Jakarta: Rajawali Pers,1980), hal. 30

<sup>22</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Semarang: Citra Aditya Bakti, 2006) hal. 332

<sup>23</sup> Quoted In <http://sdlvnaa.blogspot.com/2017/12/normal-0-false-false-false-en-us-x-none.html?m=1> accessed date 04 July 2020

convict is in a legal custody, then that time does not include probation.

Article 15a of the Criminal Code:

- 1) Conditional release is given with the general condition that the convicted person will not commit a criminal offense and other misconduct.
- 2) In addition, special conditions may also be added regarding the behavior of the convicted person, as long as it does not reduce religious freedom and political freedom.
- 3) Those who are entrusted with supervision so that all conditions are fulfilled are those officials in article 14d paragraph 1.
- 4) In order for conditions to be fulfilled, special supervision can be carried out which must solely aim at providing assistance to the convicted person.
- 5) During the trial period, conditions can be changed or deleted or new special conditions can be made; so can special surveillance be held. Special supervision can be left to someone other than the person originally entrusted.
- 6) The person who receives a parole is given a letter which contains the conditions that must be fulfilled. If the things mentioned in the above verse are carried out, then that person is given a new passport.

Article 15b of the Criminal Code:

- 1) If the person who is given conditional release during the trial period does things that violate these conditions in his passport, then the parole can be revoked. If there is a strong suspicion that the above are done, the Minister of Justice can temporarily stop the conditional release.
- 2) The time during conviction is released on parole until undergoing another criminal sentence, not the criminal time.
- 3) If three months after the probation period expires, the conditional release cannot be revoked, except if before three months have passed, the convicted person is prosecuted for committing a criminal offense on probation, and the claim ends with a criminal conviction which becomes permanent. Conditional release can still be revoked within three months. Conditional release can still be revoked within three months after the decision becomes permanent, based on the consideration that the convicted person commits a criminal offense during the probation period.

Based on the provisions in Article 15 of the Criminal Code above, it can be seen about the conditions for granting parole. In this case the defendant must have served a sentence of at least two-thirds of the sentence handed down by the judge or at least nine (9) months and within the prescribed period may not carry out acts that could be punished. Requests for parole for prisoners who have fulfilled the two-thirds of their sentence for at least nine (9) months as explained in Article 15 of the Criminal Code, then before the application is submitted to the Regional Office of the Ministry of Justice of the Republic

of Indonesia must first meet the requirements as specified in the Decree of the Minister of Justice of the Republic of Indonesia Number. M.01.04.10 of 1999 concerning Assimilation, Leaving ahead and Parole.

The conditions for granting parole are:

1. Substantive Conditions
  - a. Has shown awareness and remorse for the wrongs that have led to criminal conviction;
  - b. Has shown positive character and moral development;
  - c. Successfully followed the training program with diligence and enthusiasm;
  - d. The community has been able to accept the prisoner guidance program in question;
  - e. During serving a criminal convict or criminal child has never received a disciplinary sentence at least within the last 9 months;
  - f. Criminal period served; has served 2/3 of his criminal period, after deducting the period of detention and remission calculated from the date the court's decision to obtain permanent legal force provided that the 2/3 stipulation is not less than 9 months.
2. Administrative
  - a. Copy of court decision letter;
  - b. An original certificate from the prosecutor's office that the prisoner or convict concerned has no case or is involved in any other crime;
  - c. Community research report (Litmas) from the correctional center about the family who will receive the prisoners, the situation of the surrounding community and other parties that are related to the prisoners;
  - d. Copies (list of letters F) list that contains violations of the rules of conduct committed by inmates during the criminal period of the head of the correctional institution;
  - e. A copy of the list of changes or reductions

In addition to the provisions governing the conditions for granting conditional release above, in article 16 of the Criminal Code also regulates the authorized party to determine the granting of parole. The provisions in Article 16 of the Criminal Code are as follows:

Article 16

- 1) Provisions for the release of conditional are stipulated by the Minister of Justice based on the proposal or after receiving word from the prison administrator where the convict was held, and after obtaining information from the prosecutor where the convict came from. Before deciding, the opinion of the Central Reclassification Council must be asked first, the task of which is regulated by the Minister of Justice.
- 2) Provisions to revoke a conditional release, as well as the things mentioned in article 15a paragraph 5, are determined by the Minister of Justice at the suggestion

or after receiving word from the prosecutor where the convict came from. Before deciding, the Central Reclasering Council's opinion must be asked first.

- 3) As long as the release can still be revoked, then at the instruction of the prosecutor where he is located, the person who is conditionally released the person who is conditionally released can be detained to maintain public order, if there is a reasonable suspicion that the person during the probation has done things that violate these conditions are in the letter. The prosecutor must immediately notify the detainee to the Minister of Justice.
- 4) The maximum detention period is sixty days. If the detention is followed by a temporary termination or revocation of conditional release, then the person is considered to continue serving his sentence starting from detention.

Regarding how to propose parole, about how the Minister of Justice seeks advice from the Central Reclassification Board, about what can be decided by the Minister of Justice. 1917, *Staatblad* year 1919 Number 744. According to Article 1 of the Ordinance regarding parole, a proposal from the Head of Penitentiary sent to the Minister of Justice contains :<sup>24</sup>

- a. Appointment as carefully as possible the convict concerned;
- b. Mention of the judge's decision whose criminal sentence must be carried out by the convict, the day the criminal was started and when it will end;
- c. Everything the prison head knows about the life history of the convict, which should be included, what work or business has been carried out before being convicted, what he has learned, possible ways to earn a living after being released and related to it, a proposal to be given financial provisions or not to the person who is conditionally released from the severance pay;
- d. Special conditions related to the parole which can include, among other things, their place of residence in or outside an area;
- e. The place where the convict wants to go after being released on parole.

Article 2 of this *Ordinance* also stipulates that the proposal from the Head of Penal Institution must be attached with:

- a. The quote of the judge's decision which forms the basis of the convict underwent a criminal sentence with a list of mutations;
- b. List that was passed on the criminal code of conduct which had been handed down to him for three years before the proposal was submitted;
- c. All reports and information obtained based on article 3 or its derivatives after receiving a proposal

regarding parole of prisoners from the head of the prison, the minister of justice will propose the proposal to the central reclassification board. The Minister of Justice will give his verdict on parole for a prisoner by setting an existing time period and determining the amount of money that a prisoner will get as a provision to start with a new business after being released on parole from a prison.

Article 5 of the *Ordinance* on Parole states the following:

- a. When granting conditional release, a letter of permission (Pas) is given to the convict according to the model attached to this ordinance;
- b. The conditions that must be fulfilled during the criminal term have not yet been completed are listed at the back of the permit;
- c. Duplicates of licenses with the fingerprints of the convicts were submitted to the Prison Large Office (now: Ministry of Law and Human Rights).

Article 15a paragraph (1) and paragraph (2) of the Criminal Code only states that for people who are released on parole it can be specified in general terms and special conditions that must be fulfilled by a prisoner during a trial period, but does not explain in detail about the criteria that must be it is used to determine these conditions, except to only limit that special conditions relating to the behavior of prisoners must not limit freedom of religion and political freedom.

Against a prisoner who is undergoing a probationary release period and then commits an offense as determined in Article 19 of the Parole Ordinance, then the parole can be revoked temporarily or can be revoked completely. The mechanism for revoking granting parole is carried out by the Central Reclassification Board or a proposal from the Minister of Justice after the Minister of Justice receives a letter from the district prosecutor where the convict lives in accordance with Article 12 paragraph (2) letters a and b also in paragraph (3) Ordinance for release conditional.

Therefore every prisoner / child can receive parole fulfilling the requirements above. So this parole can be applied for by the prisoner / child detainee himself or his family or other people as long as they meet the requirements above to the registration section at the local Penitentiary or Detention Center. Families or other people who act as guarantor for prisoners / children of detainees then face prison or detention centers for parole of prisoners / child prisoners. The next process the prison / remand center will ask for convicts / court children who are approved must meet the above requirements or not. Requests will be accepted if the above conditions have been met. Asking, asking to be rejected if the above requirements are not met.

<sup>24</sup> Quoted in

<http://sdlvnaa.blogspot.com/2017/12/normal-0-false-false-false-en-us-x-none.html?m=1> accessed date 04 Juli 2020



### 2.2.2 *The Sociology of Law Views Against Parole in Prisoners Assisted by Indonesian Correctional Institutions*

As stated in the Decree of the Minister of Justice of the Republic of Indonesia Number. M.01.04.10 of 1999 concerning Assimilation, Leaving ahead and Parole. Assimilation is part of the process of fostering inmates and children which is carried out by mixing prisoners and children in the community. The forms are varied, from educational activities; skills training; Social work activities; for other coaching in the Community Environment, which is conducted in open prison, independently or in collaboration with third parties. Assimilation can be read in the Decree of the Minister of Law and Human Rights 19/2020 on the renewal and release of prisoners and children, in fact only granting assimilation rights, conditional leave and parole are carried out in the room in accordance with the existing agreement. Just a little loose.

For example, for the assimilation process. In accordance with the rules (Permenkumham 3/18), in normal rules, assimilation can only be given to prisoners who are (a) behaving well proven by not being able to prove a disciplinary agreement within the last 6 (six) months; (B) actively follows the coaching program well; (c) and has been proven 1/2 (one half) of the prison term. The process is tiered and takes time. The prison team records who meets the requirements. Then, the Lapas observer team that received Assimilation assistance for Prisoners and Children for the Lapas Head (Kalapas). Kalapas then passed back to the Director General of Lapas. After being verified by the Director General, approval is sought from the Minister of Law and Human Rights.<sup>25</sup>

This process was started by a simplified Kepmen. All requirements are met, immediately given without going through the tiered and time-consuming earlier. Only as a consequence, there is a conditional (substantive) tightening regarding the detention period. As received earlier, in normal conditions, those who are entitled to assimilation are prisoners who have already started 1/2 a period of detention. Administrative conditions are indeed relaxed. But the substantive conditions (the detention period) were tightened. So by the Minister of Decree, assimilation is only given to prisoners who have a 2/3 criminal period until December 31, 2020. Under normal conditions, specifically for prisoners of Children, received since 3 months in the correctional facility children are entitled. However, this time it was given to a child who had 1/2 of his sentence fell to 31 December 2020.

Whereas parole (PB) is part of a training program to integrate Prisoners and Children into people's lives after fulfilling specified requirements. Under normal circumstances, PB will only be given to those who have at

least 2/3 (two thirds) of the struggle period, with the provisions of 2/3 (two thirds) of the past at least 9 (nine) months; and has won assimilation at least 1/2 (one half) of the remaining mandatory killing period. As for Children, have agreed to a sentence of at least 1/2 (one-half) a prison term; and good behavior during the trial period of at least the last 3 (three) months calculated before the 1/2 (one half) of the prison period

In abnormal situations, it is immediately given to prisoners who have been approved 2/3 detention period. Similarly for children. The tiered administration process and requires time, immediately cut off. It is worth remembering, even though in normal conversation, normatively it has fulfilled the requirements, the assimilation period and PB have not been automatically granted just like that.

We cannot underestimate the conditions only called administrative requirements. Because in realization it's not as easy and as easy as we mention it. Not to mention the agreed substantive requirements of good behavior during the improvement of the sentence.

Recently, the Ministry of Justice and Human Rights granted conditional release to around 36,000 inmates and children as a result of the spread of the corona virus or Covid-19, until April 2020, Indonesia has freed more than 36,000 inmates. The exemption is regulated in Decree of the Minister of Law and Human Rights No. M.HH-19.PK/01/04.04 regarding the Release and Release of Prisoners and Children through Assimilation and Integration in the Framework of Preventing and Handling the Spread of Covid-19. Besides to prevent corona virus transmission, another reason is because the Penitentiary in Indonesia has experienced over capacity up to 104%.

In the Ministerial Decree, one of the considerations in releasing detainees was the high level of occupancy in prison, special guidance for children, and state detention centers so that they are vulnerable to the spread of the Corona virus. "The release and release of prisoners and children through assimilation and integration is an effort to prevent and rescue prisoners and children from correctional institutions, special guidance institutions for children, and state detention centers from the spread of Covid-19," read the first dictum of the Minister of Law and Human Rights Decree.<sup>26</sup>

The assimilation will be carried out at home and the assimilation decree will be issued by the head of prison, the head of LPKA, and the head of the detention center. Meanwhile, the requirement to be free through integration (parole, parental leave and pre-parental leave) is to have served two-thirds of the criminal term for prisoners and has served 1/2 of the term.

The exemption above only applies to prisoners and children who are not related to Government Regulation

<sup>25</sup> Bobby R. Manalu, *Bukan Nasehat Hukum: Covid-19 dan Narapidana (bagian 1)*. Dalam <https://bahasan.id/not-legal-advice-covid-19-dan-narapidana-part-1/> accessed date 04 Juli 2020

<sup>26</sup> Ardito Ramadhan, *Pembebasan 30.000 Narapidana akibat Wabah Virus Corona*, dikutip dalam <https://nasional.kompas.com/read/2020/04/01/09314561/pembebasan-30000-narapidana-akibat-wabah-virus-corona?page=all> accessed date 04 Juli 2020.

(PP) No. 99 of 2012 concerning the Requirements and Procedures for the Implementation of the Rights of Correctional Guidance Citizens, not currently undergoing subsidiary, not a foreign citizen, and not the perpetrators of criminal acts included in extra ordinary crime category, or special crime. And more priority for women, young children and the elderly.

The following details the criteria regarding the release of prisoners and children through assimilation at home signed by the Acting Director General of Corrections:

1. Prisoners with 2/3 (two thirds) convicts will fall until 31 December 2020.
2. Children whose 1/2 (one half) criminal period falls until December 31, 2020.
3. Prisoners and Children who are not related to PP 99 of 2012, who do not undergo subsidies and are not foreign citizens. (PP 99 of 2012 contains drug and corrupt convicts).
4. Assimilation is carried out at home until the start of integration in the form of Parole, Pre-Free Leave and Conditional Leave.
5. The assimilation decree is issued by the Head of Prison, Head of LPKA and Head of Detention Center.

Whereas the criteria regarding the expenditure of prisoners and children through integration (Parole, Free Leave and Conditional Leave), with the following criteria:

1. Prisoners who have served 2/3 of the criminal period.
2. Children who have served 1/2 the criminal period.
3. Prisoners and Children who are not related to PP 99 of 2012, who do not undergo subsidies and are not foreign citizens.
4. Proposals are made through a correctional database system.
5. Integration decree issued by the Director General of Corrections.

Apart from these criteria, the public spotlight is on prisoners who have the status of corruptors, terrorists and drug dealers. The government clearly states that it does not allow release for this category of prisoners. This matter was also warmly discussed in various media. Although in the beginning, Yasonna Laoly as Minister of Law and Human Rights mentioned the release of prisoners who were corrupt, terrorist and narcotics. This raises the pros and cons in the community. In addition Yasonna Laoly's statement also made some people confused because it was inversely proportional to the statement of the President as his superior. For this reason, the government firmly will not release prisoners who are corrupt, terrorist and narcotics dealers.<sup>27</sup>

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<sup>27</sup> Kasiano Vitalio dan Ronaldo C.P Turnip, *Kacamata Driyarkara: Melawan Corona: Menilik Pembebasan Narapidana*, Badan Eksekutif Mahasiswa Universitas Sanata Dharma Kabinet Solidaritas Aksi, dalam <https://usd.ac.id/bem> diakses tanggal 04 Juli 2020

Despite creating pros and cons, according to Yasonna, this policy was taken in order to prevent more massive transmission in the Lapas area which is known to have over capacity. This Ministerial Decree is valid from the end of March 2020 and will be implemented for at least the next 7 days.<sup>28</sup>

After releasing the prisoners, the Ministry of Law and Human Rights was unable to rein in the prisoners in their association with the community. So there are many prisoners who repeat the crime after being released. Many public opinions say that the repetition of criminal acts committed by the prisoners is due to economic difficulties, let alone their release amidst the pandemic. Coupled with the inefficiency of guidance in correctional institutions.

The parole of around 38,000 prisoners caused a lot of unrest in the community, due to the community's perception that the released prisoner would repeat the crime. And such concerns occur in part in the community, as happened in several places, including in several big cities in Indonesia.

Countries that have issued conditional release policies include: Italy which freed approximately 3,000 prisoners on the grounds to prevent the spread of the corona virus, besides that reason, prisons in Italy also experienced an excess of about 20% capacity according to the report of the International NGO Human Rights Watch and that mostly in prisons with serious crimes. Besides Italy, in several countries in America and Europe (Italy, Germany, United Kingdom, United States), Latin America (Colombia, Brazil, Venezuela, Peru), Middle East (Iran, Bahrain, Israel), and Asia and Australia.<sup>29</sup>

### 3. CONCLUSION

- a. The legal basis for parole is contained in article 15 and article 16 of the Criminal Code. Before an application is made to the Ministry of Law and Human Rights, the applicant must first fulfill the requirements as outlined in the Decree of the Minister of Justice RI Number. M.01.04.10 of 1999 concerning Assimilation, Leave before Free and Parole, namely (1) substantive conditions, and (2) administrative requirements. Besides being regulated in the Criminal Code, parole is also regulated in the Conditional Exemption Ordinance dated December 27, 1917, *Staatblad* in 1919 Number 744.
- b. Conditional release granted to around 38,000 public inmates, many of which caused unrest in the community, caused by the public's assumption that released prisoners would repeat the crime. And such

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<sup>28</sup> Dikutip dalam <https://m.liputan6.com/news/read/4217173/ini-kategori-napi-yang-tidak-masuk-program-pembebasan-untuk-cegah-covid-19> diakses tanggal 04 Juli 2020

<sup>29</sup> Dikutip dalam <https://www.google.com/amp/s/katadata.co.id/amp/berita/2020/04/09/kebijakan-penjara-penjara-dunia-di-tengah-pandemi-corona> diakses tanggal 04 Juli 2020



concerns occur in part in the community, as happened in several places including in several big cities in Indonesia.

- c. Need to strengthen the legal basis for parole.
- d. Parole must see the principle of expediency and hope of justice in the community, so as not to cause unrest in the community.

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