

ASSIMILATION AND INTEGRATION FOR PRISONERS IN THE MIDDLE OF THE COVID-19 PANDEMIC BASED ON MINISTER OF LAW AND HUMAN RIGHTS REGULATIONS NUMBER 10 OF 2020

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Abstract

The purpose of this research is how to provide assimilation and integration for prisoners in the midst of the covid-19 pandemic based on Minister of Law and Human Rights Regulations Number 10 of 2020. Research result show that the provision of assimilation and integration programs is one of the answers to the problem of overcrowded prisons. As a result of being overcrowded, prisons can't implement the health protocol, namely physical distancing recommended by the government. Policies for implementing assimilation programs during the Covid-19 pandemic should be accompanied by legal policies whose impacts can be beneficial for the legal system in Indonesia, especially regarding criminal policies, namely through reconstruction and/or reformulation of the criminal system and criminal sanctions through the application of social work criminal sanctions and prevention and/or or crime prevention through restorative justice efforts and this is taken into consideration as an effort to resolve the over capacity problem.

Keywords: Assimilation, Integration, Prisoners

A. Introduction

One of the current problems with prisons as institutions to carry out coaching for prisoners and children is that there is always an increase in excess capacity (over capacity) and this condition is exacerbated by the situation in Indonesia which is facing the COVID-19 pandemic. The COVID-19 pandemic in Indonesia is part of the ongoing Coronavirus disease 2019 (COVID-19) pandemic worldwide. The disease is caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The first positive case of COVID-19 in Indonesia was detected on March 2, 2020, when two people were confirmed to have contracted it from a Japanese citizen. As of April 9, the pandemic had spread to 34 provinces with DKI Jakarta, East Java and Central Java as the most exposed provinces.

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As of September 6, 2020, Indonesia has reported 194,109 positive cases, the second most in Southeast Asia after the Philippines. In terms of mortality, Indonesia ranks third in Asia with 8,025 deaths. However, the death rate is estimated to be much higher than the reported data because there are no cases of death with acute COVID-19 symptoms that have not been confirmed or tested. Meanwhile, it was announced that 138,575 people had recovered, leaving 47,509 cases being treated. The Indonesian government has tested 1,401,513 people out of a total 269 million population, which means only about 5,198 people per one million population. In response to the pandemic, several regions have imposed large-scale social restrictions (PSBB). Some of these areas have ended the PSBB period and started implementing the New Normal.

In overcoming this situation, the government has made various regulations related to the COVID-19 pandemic, one of which is the Minister of Law and Human Rights Regulation Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Prevention and Control of the Spread of COVID-19. This regulation was made because the overcapacity of prisons in Indonesia is currently at an alarming stage. Currently, prisons in Indonesia can only accommodate 160 thousand people. However, in fact, the number of prison residents has now reached 270 thousand people, so that in the context of preventing and dealing with COVID-19, it is not possible to implement social restrictions in prisons.

Minister of Law and Human Rights Yasonna Laoly revealed that as of mid-June 2020, the number of prisoners who had acted back after being released through the assimilation and integration program amid the COVID-19 pandemic was 222 people.¹

This issue is important to be raised because when viewed in terms of the purpose of punishment according to Wirjono Prodjodikoro, there are two purposes of sentencing, namely:²

- 1. To frighten people not to commit crimes, either by scaring people away (generals preventive) or by scaring certain people who have committed crimes so that they will not commit crimes again (speciale preventive);
- 2. To educate or improve people who commit crimes so that they become people of good character so that they are beneficial to society.

Meanwhile, in Law Number 12 of 1995 concerning Corrections, it is written that the Correctional System in addition to aiming to restore Correctional Inmates as good citizens also aims to protect the community against the possibility of repeating criminal acts by Correctional Inmates

¹ Heru Guntoro, "Yasonna Beberkan Jumlah Napi Asimilasi Yang Berulah," gesuri.id, 2020, https://www.gesuri.id/pemerintahan/yasonna-beberkan-jumlah-napi-asimilasi-yang-berulah-b1YNJZug8.

² Wirjono Prodjodikoro, *Tindak-Tindak Pidana Tertentu Di Indonesia* (Jakarta: Eresco, 1980).



and is an application and an integral part. inseparable from the values contained in Pancasila.

The making of Regulation of the Minister of Law and Human Rights Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Prevention and Control of the Spread of COVID-19 is not in accordance with the purpose of punishment because the purpose of punishment is to frighten certain people who have committed crimes. crime so that in the future they will not commit crimes again and protect the community against the possibility of repeating criminal acts by Correctional Inmates to become unattainable because many inmates do not serve the sentences that were handed down properly, and even return to committing crimes in the community.

The conditions for granting assimilation for prisoners in the Regulation of the Minister of Law and Human Rights Number 10 of 2020 are:

- 1. Good behavior is proven by not undergoing disciplinary punishment within the last 6 (six) months;
- 2. Actively participate in the coaching program well; and
- 3. Has served (one half) of the criminal period.

While the conditions for parole and leave before being released for prisoners in the Minister of Law and Human Rights Regulation Number 10 of 2020 are:

- 1. Has served a minimum sentence of 2/3 (two thirds), provided that 2/3 (two thirds) of the criminal period is at least 9 (nine) months:
- 2. Good behavior while serving a criminal period of at least the last 9 (nine) months calculated before the 2/3 (two thirds) of the criminal period;
- 3. Have attended the coaching program well, diligently, and enthusiastically; and
- 4. The community can receive prisoner coaching activities programs.

From another previous research, its found that the conditions above describe how easy it is for a prisoner who is serving a sentence for a crime he has committed to be given assimilation, parole, and leave before being released. Although the Minister of Law and Human Rights Regulation Number 10 of 2020 was made on the basis of considerations to prevent the spread and transmission of Covid-19, as well as an effort to save prisoners in prisons, the release and release of prisoners seemed forced and not the best solution.³

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³ Halim Dimas Ferdiansyah and Syamsul Fatoni, "Aturan Pembebasan Narapidana dengan Program Asimilasi dan Integrasi di Tengah Wabah Covid-19 di Tinjau dari Peraturan Menteri Hukum dan HAM Nomor 10 Tahun 2020," *Inicio Legis* 2, no. 2 (2021): 164–182.

B. Identified Problems

The problem faced in this paper is how to provide assimilation and integration for prisoners in the midst of the covid-19 pandemic based on Minister of Law and Human Rights (Permenkumham) Regulation Number 10 of 2020?

C. Research Methods

The type of research used is normative legal research, namely research that provides a systematic explanation of the rules governing a particular category of law, analyzes the relationship between regulations explaining areas of difficulty and possibly predicting future development).⁴ The author's reason for choosing this method in order to seek the truth of coherence is to get something that is axiologically a value or stipulation/rule as a reference to be studied.

The research specification focuses on the problem of providing assimilation and integration for prisoners in the midst of the Covid-19 pandemic based on Permenkumham number 10 of 2020. The data collection technique that the author uses in this study is by means of a literature review or (library research). Collection of legal materials from secondary legal materials originating from articles, journals, and interviews with several relevant sources. The approach used is the statutory approach (statute approach) to examine laws and regulations that are related to the legal issues raised. This study uses data analysis techniques with deductive logic, deductive logic or processing legal material in a deductive way, namely explaining something that is general in nature and then drawing it into a more specific conclusion.

D. Research Findings and Discussions

1. Provision of Assimilation and Integration for Prisoners in the Midst of the Covid-19 Pandemic Based on Permenkumham Number 10 of 2020

Assimilation and integration at home is a legal effort in the midst of an emergency situation that can threaten the lives of all human beings due to Covid-19, although the community assesses with various responses related to the number of re-infringement by prisoners, but when calculated from the number of adult/child inmates who issued compared to the number of violations that exist is very small.

As explained earlier that in the policy not all prisoners can be released, but there are certain criteria issued in the Circular of the Director General of Corrections No. 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 Control

⁴ Hakki Fajriando, "Evaluasi Pelaksanaan Community-Based Corrections Di Lapas Terbuka Kelas III Rumbai," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 323–38, https://doi.org/http://dx.doi.org/10.30641/kebijakan.2019.V13.323-338.





of the Spread of Covid-19 which has been signed by Plt. Director General of Corrections. Criteria for prisoners and children who can be released through home assimilation are as follows:

- 1. Convicts whose 2/3 (two thirds) of their criminal terms fall until December 31, 2020.
- 2. Children whose 1 / 2 (one half) of the criminal period falls until December 31, 2020.
- 3. Prisoners and Children who are not related to PP No. 99 of 2012 (narcotics and corruption convicts), who do not undergo subsidiary and are not foreign citizens.
- 4. Assimilation is carried out at home until the start of integration in the form of parole, leave before release and conditional leave.
- 5. The assimilation decree is issued by the Head of Prison, Head of LPKA and Head of Detention Center.

There are several criteria regarding the release of prisoners and children through integration (conditional release, leave before release and conditional leave), with the following criteria:

- 1. Convicts who have served 2/3 of the criminal period.
- 2. Children who have served 1/2 the sentence.
- 3. Prisoners and Children who are not related to PP 99 of 2012, who are not undergoing subsidiary services and are not foreign citizens.
- 4. Proposals are made through the correctional database system.

This provision certainly results in jealousy of other prisoners who remain in prison and feels unfair to those who also want to get the right of assimilation. This is evidenced by cases where hundreds of inmates burned prisons and damaged facilities there as a form of demonstration.

Many people think that in issuing a regulation, of course it must be adjusted to the development and legal needs in society, if it is said that the purpose of the establishment of the policy is to ensure that prisoners are protected from exposure to Covid-19 due to overcrowded prison conditions, in fact if it is implemented it will have the opposite effect. because it can be said that there is little chance of the spread of Covid-19 if prisoners remain in prison, because they do not have direct contact with outsiders. Other efforts that can be done in dealing with this are such as implementing a restorative justice system, sterilizing the area around prisons, limiting visiting schedules and strict inspections of the conditions of inmates.

But basically, the development of prisoners in prisons is carried out with several stages of development, namely the initial stage, the advanced stage and the final stage. After convicts are trained in prisons for approximately (half) of their criminal period, then to



further perfect the coaching program for prisoners, they are given the opportunity to assimilate.⁵

The most important part of the criminal system is the application of a sanction and the provision of direction and consideration of what should be used as a sanction in a criminal act to enforce the enactment of norms. Ideally, prisons play a role in implementing social laws and norms that have been violated in society, so that changes in the nature, way of thinking and behavior of inmates can occur.

The theory of the purpose of punishment adapts to the dynamics of the development of crime that continues to develop in society with consideration of the targets to be achieved.⁷ In relative theory (deterrence) the purpose of punishment is an effort to realize community protection, including efforts to prevent crime, return perpetrators so that they can be accepted back into society and can participate in development. Sentencing is an effort to apply the law and norms that have been violated with the aim of reducing and preventing the occurrence of new crimes in society.8 Criminals are not just to retaliate or reward people who have committed a crime, but have certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society. The basis for criminal justification lies in its objective, namely reducing the frequency of crime. Criminals are imposed not because people commit crimes, but so that people do not commit crimes, so this theory is often also called the theory of goals.

Based on the description above, it is clear that the assimilation program or the release of general criminal convicts who have met certain requirements are not appropriate with the integrative punishment theory, where the purpose of punishment is to teach that the imposition of punishment is to maintain the legal order in society and improve the criminal's personality. Meanwhile, the existence of criminal sanctions in prison for prisoners and children has a very large negative impact. It can be observed that prisoners who are serving sentences in prisons or correctional institutions still have universally recognized human rights. In addition, there is no guarantee that someone who has served a sentence in the form of imprisonment in prison will not repeat the crime. Therefore, the author believes that this assimilation program can be applied to all criminal acts, both general crimes and special acts by following up on formulation

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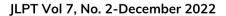
⁵ Muhammad Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana: Ide Dasar Double Track System & Implementasinya* (Jakarta: Rajawali Press, 2003).

⁶ Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia* (Bandung: Refika Aditama, 2009).

⁷ Teguh Prasetyo and Abdul Halim Barkatullah, *Politik Hukum Pidana: Kajian Kebijakan Kriminalisasi Dan Dekriminalisasi* (Yogyakarta: Pustaka Pelajar, 2005).

⁸ Mohamad Anwar, "Asimilasi Dan Peningkatan Kriminalitas Di Tengah Pembatasan Sosial Berskala Besar Pandemi Corona," *ADALAH: Buletin Hukum & Keadilan* 4, no. 1 (2020): 101–6, https://doi.org/10.15408/adalah.v4i1.15504.







policies related to criminal sanctions that pay more attention to human rights, such as social work criminal sanctions and compensation/fine sanctions.

Through the prisoner release policy, which up to now has recorded as many as 35,000 inmates who have been released, have they passed the right assessment, meaning that through this policy has the potential to cause new crime cases, is the prisoner release policy in accordance with the concept of assimilation. However, what is clear is that this policy was carried out in order to suppress the spread and transmission of Covid-19 and reduce the excess capacity of prisoners in the midst of the Covid-19 pandemic.

According to data from the Directorate General (Ditjen) of Corrections as of Tuesday (31/3), the total number of Correctional Assisted Citizens (WBP) in detention centers and prisons in Indonesia is 270,386 people, while the capacity of prisons and detention centers in Indonesia is only able to accommodate 131,931 people. Seeing these conditions, prisoners and detainees have the potential to be exposed to COVID-19. This is because prisoners and detainees are crowded and cannot keep their distance in prisons and remand centers.¹⁰

Furthermore, from the regulation, the Directorate General of Corrections predicts that it will reduce the number and save the budget by Rp260 billion following the release of 30,000 prisoners and the child. The Director of Prisoners' Guidance and Production Job Training of the Directorate General of Corrections said that this figure was obtained from the result of multiplying the living costs of WBP of Rp32,000/day multiplied by 270, which is the number of days remaining from April to December 2020 and multiplied by 30,000 prisoners who will be released. The total state money that must be spent on prisoners and convicts is as much as 200 thousand people. This is when multiplied by Rp32.000/day and multiplied by 365 days, in a year the State Revenue and Expenditure Budget must be disbursed in the amount of trillions of rupiah to feed prisoners/convicts.

For joint information, the number of inmates who inhabit all remand facilities and prisons (all classes) in Indonesia is around 252 thousand. This number is almost 60% more than the capacity of the inmates' shelter, which should only accommodate 170 thousand

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⁹ Irsal, "'Menyoal' Over Kapasitas Penjara Di Tengah-Tengah Pandemi COVID-19," Kantor Wilayah Sulawesi Selatan Kementerian Hukum dan HAM Republik Indonesia, 2020, https://sulsel.kemenkumham.go.id/berita-kanwil/berita-upt/5288-menyoal-over-kapasitas-penjara-di-tengah-tengah-pandemi-covid-19.

¹⁰ Sri Marthaningtiyas, "Implementasi Kebijakan Asimilasi Narapidana Di Tengah Pandemi Covid-19," *SUPREMASI: Jurnal Hukum* 3, no. 1 (2020): 51–65, https://doi.org/10.36441/supremasi.v3i2.130.



inmates. This means that there is overcapacity, it can even reach 300% in some places in Indonesia.

Meanwhile, data obtained from the Correctional Database System, Directorate General of Corrections in 2019 before the onset of Covid-19 recorded the number of prisoners as many as 64,005 people and prisoners amounting to 201,643 people, the total number of residents was 265,648 with a residential capacity of 133,769 people. The difference between the number of occupants and the occupancy capacity is 131,879 people with the percentage of overcrowded being 98.59 percent.¹¹

Seeing the basic problem that looks real is the excess of inmates' occupancy in prisons and detention centers in almost all of Indonesia. This makes prisons and detention centers very vulnerable to the spread of the Corona Virus. Several policies in order to reduce overcapacity appear to have been carried out by the government, including the creation of new rooms, building renovations, and the construction of new prisons with the main objective of increasing the capacity of prisoners.

The situation of prisons and detention centers which are generally overcapacity is the main consideration for this decision. If only one person was exposed to Covid-19, it would be very dangerous for all residents of prisons and detention centers, including the apparatus. This policy is indeed a necessity faced by the state, moreover in Indonesia there is another problem, namely the excess of prison occupants which if this step is not taken, then we are risking the lives of the prisoners. With this fact, it is necessary to make a breakthrough so that prison residents are reduced so that the obligation to carry out physical distancing can run effectively in prisons and detention centers.

We all know that the efforts made by the Directorate General of Corrections to prevent the spread of Covid-19 in prisons include delaying the admission of new prisoners. Just imagine if one brings (the virus) from outside, then goes into a prison or remand center that is currently still overcrowded. It could be that the prisoner is healthy, but turns out to be a *carrier* and infects other prisoners.

The Directorate General of Corrections has also abolished the prison visit service, which is replaced by a video call service. In addition, other efforts to prevent transmission were carried out, such as the application of health SOPs, including checking body temperature, washing hands, spraying disinfectants, and making sterilization booths. Officers who enter must follow the Covid-19 prevention protocol, the obligation to wear masks. Isolation blocks are

¹¹ Niyan Ati Trisnawati, "Pemberian Asimilasi Dan Integrasi Terhadap Narapidana Dan Anak Dalam Rangka Pencegahan Dan Penanggulangan Penyebaran Covid-19 (Studi Di Lembaga Pemasyarakatan Perempuan Kelas IIA Malang)," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 26, no. 14 (2020): 1765–74.



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also provided for prisoners and detainees with the status of people under monitoring and patients under Covid-19 surveillance. However, that is not enough. As we all know, conditions in prisons/prisons in Indonesia are very congested, so physical distancing is not possible. This is the main factor that later emerged an emergency policy related to the assimilation and integration of prisoners and children.

The prisoner release policy is based on the fact that the capacity of prisoners that exceeds the prison's capacity is basically the upstream of the problem. The overcapacity of prisons that occurs is motivated by government policies that still prioritize imprisonment as an effort to provide a deterrent effect in law enforcement. This is exacerbated by the large percentage of the use of imprisonment in the legislation with the available infrastructure is not balanced. As long as there are no policy changes in law enforcement other than sentencing. prisons and detention centers will always experience excess capacity.

When the prisoners who were released because of the assimilation and integration rights program returned to society, the government also participated in monitoring the prisoners. This means that released prisoners will continue to be monitored once a week, the supervision carried out is in the form of video calls or SMS and telephone, besides that there is also direct supervision from officers, prisoners will also be deprived of their rights and returned to prison if they go outside the area. The government in this case also stated that the officers had provided education and conveyed disciplinary rules that should not be violated while carrying out the assimilation and integration rights programs.

Sanctions for violating the assimilation and integration program are ready to be accepted for the prisoners. The rights of assimilation and integration will be revoked for those who are caught acting again, as well as new criminal cases that will be added to the list of cases of the prisoners concerned. In addition, they will also be put in a straft cell or solitary cell and not given the right of remission until a certain time in accordance with applicable regulations.

Supervision of assimilation and integration is carried out by the Correctional Center, with a supervisory officer called the Community Counselor (PK). The supervision is carried out by observing and assessing the implementation of service programs, coaching and mentoring the inmates who are carried out virtually (on the network). This supervision is a means of preventing and dealing with the Covid-19 virus, and so that they do not violate the law again.

Supervision by the Community Counselor is carried out virtually (on the network) through telephone telecommunications facilities, video calls or video conferences. On the one hand, online surveillance can be a means of preventing the spread of Covid-19, but on the other hand, monitoring in this network is experiencing various

Journal of Law and Policy Transformation Website: https://journal.uib.ac.id/index.0hp/jlpt | E-ISSN: 2541-3139



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obstacles in the field, while surveillance of assimilation at home that is not carried out optimally results in violations of the law for perpetrators of criminal acts. This results in the law enforcement process in the community not running well.

In terms of assimilation at home, the fusion process is carried out by perpetrators of law violators into their family members at home, so that they readjust and interact better socially with existing family rules, and do not make behavior that creates legal problems again. The social process is carried out by merging culture, identification, acceptance of attitudes and acceptance of behavior so that law violators do not display behavior that is different from existing rules or norms.

Based on these reasons, this government policy is a basic policy, because the release of prisoners with the motive of suppressing the spread of Covid-19 if the government can guarantee the safety and comfort of the community for the consequences of releasing the prisoners. On the other hand, of course, the government makes a stricter monitoring system in order to reduce the number of crimes that may be committed by released prisoners. It is equally important that the government creates a measurable and tested coaching program before the prisoners are released and released back into the community.

The design and application of criminal law is closely related to imprisonment. In public discourse, including among legal academics, imprisonment is always associated with deterrence against – primarily – criminals. Imprisonment is expected not only to bring a deterrent effect to the perpetrators but also to have a fearful effect on society at large not to be involved in a crime.

However, the development of science also shows that prison sentences which were originally intended to protect the public from criminal disturbances, but in practice actually have a destructive impact on the inmates. There is a tendency that people who have served prison sentences find it more difficult to fit into society and at the same time have a vulnerability to repeat crimes.

Therefore, the international community then tried to find a way how the purpose of punishment can be achieved without using coercive instruments such as prisons. In 1990, the United Nations issued the UN Standard Minimum Rules for Non-Custodial Measures or known as the "Tokyo Rules". In the Tokyo Rules, it is stated that the general purpose of non-imprisonment punishment is to find an alternative punishment that is effective for perpetrators of crime and to provide the possibility for law enforcement to be able to change the crime into a punishment that pays attention to the individual needs of the perpetrator in accordance with the crime committed.



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This study seeks to present how the future of non-prison sentences can be applied in Indonesia. This research is relevant, mainly because of the discussion of the Draft Criminal Code which is predicted as a legal rule that prioritizes the restoration of justice (restorative justice) in the implementation of crimes in Indonesia.

According to the author of the government's policy, releasing prisoners and children in the midst of the current corona pandemic is the right step. However, this policy has become visible because it is facing the corona pandemic. Prisons and detention centers in Indonesia are currently in a state of excess capacity. Even with a capacity of only 130,000 and inhabited by 270,000 inmates, prisons in Indonesia have entered a state of extreme overcapacity and are now no longer overcapacity but already in a state of extreme overcapacity. So the extreme overcrowding is that the number of residents exceeds 150 percent. So the prison conditions are very, very inhumane. There are also not enough doctors. Prisoners who should be prioritized by the government for release are drug users. This is because inmates who use drugs dominate the number of prisoners in Indonesia. Narcotic convicts have to get out. Pregnant convicts, children and the elderly, who are sickly must also be released, the public fears that crime will increase with many prisoners being released.

order to solve the problem of overcapacity prisons/detention centers, the Government should implement other systematics in law enforcement, especially for cases that are classified as mild, the restorative justice system can be considered as an effort to resolve this excess capacity problem. The concept of restorative justice is an approach that focuses more on the conditions for creating the perpetrators iustice and balance for of crimes victims. Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators. Alternative nonimprisonment punishments that can be carried out such as supervision and community service are seen as more efficient than prison sentences because they can achieve the goal of fostering or rehabilitating prisoners before they can finally be released and return to life in the community. This is in accordance with the theory of relative punishment proposed by Muladi, where punishment is not a revenge for the perpetrator's mistakes but a means of achieving a useful goal.

E. Conclusions

Provision of assimilation and integration for prisoners in the midst of the Covid-19 pandemic based on Permenkumham Number 10 of 2020 concerning Requirements for Granting Assimilation and Integration Rights for Prisoners and Children in the Context of Prevention and Mitigation of



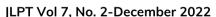
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the Spread of Covid-19 is one of the chores for prisons or detention centers, due to conditions overcapacity in prisons provides an opportunity for the spread of the corona virus, so the government issues a policy of releasing prisoners through assimilation. In addition, the Covid-19 assimilation policy has caused awareness and anxiety among the general public regarding the potential for increased criminality during a pandemic.









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