

Research Article

Criminal Policy Needed for the Recovery of Socio-Political Conditions for National Resilience Following the COVID-19 Pandemic

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The Large-Scale Social Restriction Policy (PSBB), later changed to the Enforcement of Community Activity Restrictions (PPKM), prohibits people from gathering. Restrictions on activities inside the community have impacted social life, including law enforcement. Criminal law enforcement must adhere to Law Number 8 of 1981 concerning the Criminal Procedure Code, which explicitly regulates the stages of criminal law enforcement in Indonesia. All these stages share something in common - a form of face-to-face examination of all subjects of criminal procedural law. Thus, there exists a problem in extraordinary circumstances. This study aims to identify criminal law enforcement policies during the COVID-19 pandemic in Indonesia to realize the Restoration of the Socio-Political Condition of National Resilience after the COVID-19 Pandemic. This research used a qualitative descriptive approach. The results of this study indicated that Law Number 8 of 1981 concerning Criminal Procedure Law as the basis for criminal proceedings (*lex generalis*) only conducts face-to-face examinations in criminal proceedings. Since COVID-19, there has been no regulation regarding online examinations, thus creating a legal vacuum (*rechtsvakum*) that needs to be filled. Discretion or criminal policy is needed to overcome problems, so the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights on April 13, 2020, Award of Cooperation Agreement (PKS) for the Implementation of Trials Through Teleconferencing during the COVID-19 pandemic.

Keywords: Criminal Policy, National Resilience, COVID-19 pandemic.

1. Introduction

At the end of 2019, the Coronavirus outbreak shocked the world. A brief understanding is that it constitutes the subfamily *Orthocoronavirinae*, in the family *Coronaviridae*, order *Nidovirales*. The first known case was identified in Wuhan, the capital city of Hubei Province in the People's Republic of China, that rapidly spread throughout the world. Eventually, on March 11, 2020, the *World Health Organization* (WHO) declared COVID-19 a global pandemic.[1]

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Corona Virus Disease 2019 (COVID-19) pandemic affects the whole world not only in the health aspect but also in social, political, economic, cultural, and educational, law enforcement. Although a little bit late but Indonesia finally felt its impact on March 2, 2020, when President Joko Widodo officially declare the case of 01 COVID-19 in Indonesia.[2] Since the 01 cases were revealed, the number of COVID-19 transmissions in Indonesia has skyrocketed. It was then met with several measures including Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19). It essentially limits community gatherings to reduce the number of COVID-19 transmissions and orders people to implement the COVID-19 Handling Health Protocol issued on March 4, 2020. Since then, the government has regularly issued strategic policies, at the national and regional levels, to handle COVID-19.

The Large-Scale Social Restriction Policy (PSBB), later change to the Enforcement of Community Activity Restrictions (PPKM), prohibits people from gathering. Because of that, almost all activities were suspended, which led to a positive impact on the environment while making a huge loss to the economic sector[3], considering it almost fully stopped the aspects of daily life such as trade and other economic activities.[4] Restrictions on activities inside the community certainly would have an impact on social life[5], being law enforcement is no exception.

Conceptually, the National Resilience of Indonesia is a dynamic condition of the Indonesian nation which includes all aspects of an integrated national life. It constitutes tenacity and resilience including the ability to develop national resilience to overcome any incoming threats.[6] Due to the COVID-19 pandemic, law enforcement faces complex challenges related to the dynamics of the community being restrained from carrying out their activities, to prevent massive transmission at the beginning of the outbreak in 2020.

Indonesia as a state based on the law requires all action especially from the government through its apparatus, to be carried out based on the authority regulated by laws and regulations. It means that criminal law enforcement must adhere to Law Number 8 of 1981 on the Criminal Procedure Code. The law explicitly regulates stages of criminal law enforcement in Indonesia, starting from preliminary investigation, investigation, pre-prosecution, prosecution (trial), to execution. All these stages share something in common to wit, a form of face-to-face examinations among all subjects of criminal procedural law. Thus, it creates a problem for extraordinary circumstances. In response, on April 13, 2020, the government issued Presidential Decree No. 12 of 2020 on the Determination of Non-Natural Disasters for the Spread of *Corona Virus Disease 2019* (COVID-19) as a National Disaster. It forces law enforcement officials to find a way to

carry a form of law enforcement through criminal policy because the decision of a case is the benchmark for the realization of legal certainty and benefit in criminal law.

The research that has been done previously, among others: first, research conducted by Violette S. R. Mokodongan (2021) found that the implementation of Large-Scale Social Restrictions (PSBB) regulated in Government Regulation Number 21 of 2020, as a derivative of Law Number 6 of 2018 concerning Health Quarantine, shows that the existence of the law is indispensable as a guide when the country is faced with an Extraordinary Event (KLB) that is troubling the world.[7] second, research conducted by Andika Oktavian Saputra (2021) shows that the policy of reducing the criminal period due to the COVID-19 pandemic to provide assimilation and integration to prisoners after fulfilling certain conditions is a progressive policy.[8]

Based on the above explanations, this research will discuss issues related to "Criminal Policy in Realizing the Recovery of Socio-Political Conditions for National Resilience After the COVID-19 Pandemic". The problems that will be discussed in this study are:

1. How is the implementation of criminal policies of law enforcement during the COVID-19 pandemic in Indonesia in the context of realizing the Recovery of Socio-Political Conditions for National Resilience Post COVID-19 Pandemic?
2. How to implement criminal policies of law enforcement post covid 19 pandemics?

2. Method

In this research, the author uses a qualitative descriptive approach. Descriptions are used to provide a complete picture of the context discussed in the study. The discussion mainly describes the context of the COVID-19 pandemic, especially related to government policies aimed to suppress the spread of COVID-19. One instance is the limitation of communal activities and its relationship with criminal policies of law enforcement in Indonesia as one of the supporting elements of Indonesian National Resilience.

The qualitative approach in research is aimed to produce analytical procedures without using statistical procedures or other methods of quantification.[9] Qualitative research is essentially an investigative process similar to detective work, from an investigation main data and additional data will be collected.[10]

Qualitative researchers as human instruments function to set the focus of research, selecting, searching, and finding data sources, collecting data, assessing data quality, analyzing data, interpreting data, and drawing conclusions based on the findings [11]. This study uses a literature review method for data collection. As the reference in

this study, the literature would have different characteristics from one another while still supporting the same idea.[11] The literature mainly comes from official government sources, such as documents, statements, and other releases that can be accessed by the public. This research also would use news, documents, and statements obtained from other sources relevant to the context discussed in this study.

3. Result and Discussion

3.1. Criminal Policies of Law Enforcement During the COVID-19 Pandemic in Indonesia in the context of realizing the Recovery of Socio-Political Conditions for National Resilience Post COVID-19 Pandemic

Article 1 Paragraph (3) of the 1945 Constitution explicitly express that Indonesia is a state based on law. Semantically, Indonesia as a state based on law is a translation of the word *rechtsstaat*. Although this concept has yet been implemented completely and consistently due to the influence of the concept of “*the rule of law*” and the nation’s cultural values that have been adopted and implemented by its people.

In the conception of a state based on law, the principle of legality (*legaliteit beginsel*) plays a significant role, because in substance the principle of legality requires that every government action be based on law.[12] Laws that are made and outlined in the regulation would contain, among others, actions that must be carried out, known as law enforcement. Law enforcement is the process to enforce or function legal norms as guidelines for behavior in legal dynamics or relations in social and state life.[13]

Rigid law enforcement is sometimes problematic because the stagnant law would have to face the dynamic development of society. It means that discretion is necessary to solve legal problems being faced. This discretion is widely known as *criminal policy*, a policy aimed to overcome the problem of crime, thus making it a part of law enforcement.

Sudarto [14] once explained the meaning of the criminal policy, namely: “*A rational effort from the community to tackle crime*” derived from the definition given by Marc Ancel to wit “*The rational organization of the control of crime by society*”. Meanwhile, G Peter Hoefnagel argued that criminal policy is “*the rational organization of the social reaction to crime*”[15] The various other definitions he put forward are:

1. Criminal Policy is the science of responses, a criminal policy is a science that studies the response to a crime that occurs in society.
2. Criminal Policy is the science of crime prevention.

3. Criminal Policy is a policy of designing human behavior as a crime, thus it is a rational total of the responses to crime.

Criminal policy or crime prevention efforts are essentially an integral part to protect the community (*social defense*) and efforts to achieve welfare for the community (*social welfare*). Therefore, good law enforcement would give a positive impact on social and political stability in Indonesia to achieve the goals of maintaining Indonesia's national resilience from the problems that occur.

An understanding of national resilience, especially regarding national security is not limited to military security, but also human security and social security. Issues of law enforcement, human rights protection, poverty eradication, and environmental protection are integral parts of the concept.[16]

Normatively, laws and regulations in a constitutional democratic country function as part of social engineering. To achieve strong national resilience, it is necessary to support effective law enforcement. Policies and strategies of law enforcement are ways to reduce and overcome various aspects that can disrupt national security.

According to Soerjono Soekanto, the cause of problems in society is due to a mismatch between cultural elements that endanger community groups. Social problems are contextual, meaning that it only occurs in one place at a certain time. It may be that in a certain area, the social phenomena that arise are considered a problem, but in another, it is not. It may that at times it is it's a problem, but at other times it's not. Social problems arise for various reasons, such as incompatibility between social values and social actions, minority interests preceding the interests of the majority, and social organizations cannot organize their citizens to be harmonious. One of the social problems currently being faced by the Indonesian people and even the whole world is the outbreak of the COVID-19 pandemic which has claimed 157,000 lives in Indonesia, and more than 6 million people have been exposed to COVID-19.[17]

During the COVID-19 pandemic, criminal policies became crucial, due to the existence of social restrictions which made Criminal Procedural Law according to Law Number 8 of 1981 on the Criminal Procedure Code could not be implemented as it should be. This problem arises because Indonesian criminal procedure law adheres to the principle of direct examination. It means that every subject of the criminal justice system must meet face-to-face in all stages of the proceeding, from preliminary investigation, investigation, pre-prosecution, and examination at trial, to execution. In addition, there has yet been criminal procedural law in Indonesia that regulates the handling of cases

during emergencies, such as the COVID-19 pandemic which lasted even until the time this research was written.

The means to enforce this law have been carried out for a long time. Legislation continues to be refined, but the results have not been satisfactory. This shows that success will depend on law enforcement officers and the public, including the application of discretion through criminal policies. The discretion in law enforcement must consistently be made even though Indonesia is currently experiencing the COVID-19 pandemic.

After its declaration as a non-natural national disaster, COVID-19 with its high transmission rate and all its variants forced the government to implement policies to reduce and inhibit its spread. The restriction was first legalized through Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19). This regulation justifies limiting the rate of community development due to epidemiological considerations and the magnitude of the threat that arises as a result of the spread of COVID-19. However, this regulation also closes judicial services to the public for a certain amount of time to comply with government regulations, especially since the judiciary has become a cluster in the spread of COVID-19 in Indonesia.

In response, Andrew Napolitano[18], a judge, once questioned, *“if liberty can be taken away in time of crisis, then is it really liberty, or is it just a license, via a temporary government permission slip, subject to the whims of politicians in power”*. The COVID-19 pandemic situation has created a new normal such as working from home or studying from home, but it is not so simple for law enforcement that involves various parties. Urgency in finding a new way is necessary to overcome these challenges, a pilot project that can be applied in criminal procedural law in the future is currently still a priority of the national legislation program.

At the beginning of the COVID-19 pandemic, there is an increase in the quality and quantity of street crimes such as mugging, theft, robbery, theft, armed robbery, hoaxes, and vandalism to minimarkets. A total of 3,244 security breaches occurred in the 18th week of the pandemic, then increased to 3,473 cases in the 19th week.[19] With the increase in the number of criminal acts, consequently, the criminal proceeding has to continue running. However, at this time, (the Covid 19 pandemic) face-to-face trial cannot be held and therefore it was held electronically (online).

The criminal policies made by the Attorney General's Office, the Supreme Court, the Ministry of Law and Human Rights, and the Corruption Eradication Commission, especially regarding the implementation of the judicial process, are very appropriate,

but that does not mean it is problems free. Potential problems that can arise with face-to-face trials increase the spread of COVID-19.

The main discussion of conducting an online trial via *teleconference* during the COVID-19 pandemic is whether it constitutes conflicts with the principles of criminal law and criminal justice. However, considering the urgency of the situation, this way of implementation, is a form of relief for the law enforcement process as the Supreme Court expresses the importance of the *Solus Populi Suprema Lex Esto* principle i.e., People's Safety is the Highest form of Law.

Looking back 2002, an online trial had been held. Meaning that the discretion to hold an online trial was not a new thing. It was the trial for the 'Buloggate' case with Rahardi Ramelan as the defendant, and one of the witnesses was BJ Habibie from Hamburg, Germany. His testimony was given through *teleconference* via National Private Television.[20]

Several other cases use *teleconference*, namely the Bali bombing case, in 2011 for hearing the testimony of Wan Min bin Wan Mat who was in Malaysia at the time, and 16 (sixteen) witnesses in the Abu Bakar Baasyir case.[21]

Regarding online trials through teleconference, including the one held during the COVID-19 pandemic, there was a debate about their validity. The debate emerges because procedural law in Indonesia does not regulate such trials, thus some believed it was invalid due to the lack of legal basis supporting its implementation. Even, previously, the Supreme Court had rejected such practice from the request of Schapelle Leigh Corby, who demand witness examination via teleconference. the Supreme Court denied it because of the lack of legal basis, explicitly stated in Supreme Court Decision Number 112 PK /Pid/2006.

Article 4 Paragraph (2) Law Number 48 of 2009 on Judicial Power states that the Court shall help justice seekers and shall try to overcome all obstacles and hindrances to achieve a simple, fast, and inexpensive trial. It means that an online trial can be a solution to the problem caused by the COVID-19 pandemic.

To ensure the protection of judicial apparatus, justice seekers, and court users including defendants in conflict with the law [22], the Supreme Court issued a Supreme Court Circular (SEMA) Number 1 of 2020 on Guidelines for the Implementation of Duties During the Prevention of the Spread of COVID-19 in the Supreme Court and the subordinated judicial bodies. In urgent circumstances or natural disasters (*force majeure*), a case being tried in court can be postponed for a certain period of time. However, specifically for criminal cases, there are limits on how long the defendant can be detained. Although the detention period can still be extended, for the sake of legal

certainty and the principle of a fast trial, the judicial process has to keep on going as much as possible, especially because this right of the defendant is protected by the constitution. Thus, in case of *force majeure*, the trial should be able to be held online through teleconference technology.[22]

For creating the same understanding with the implementation of the online trial, on April 13, 2020, the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights signed a Cooperation Agreement (PKS) for the Implementation of the Trial Through *Teleconference*. The trial was held in accordance with the Attorney General's Instructions through the Circular Letter of the Attorney General of the Republic of Indonesia Number B-049/A/Suja/03/2020 of 2020 on Optimizing the Implementation of Duties, Functions, and Authorities Amid Efforts to Prevent the Spread of COVID-19 and Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020, March 23 and Letter of the Director General of the General Judiciary Agency Number 379/DJU/PS.00/3/2020, March 27, 2020, on Teleconference Criminal Trials. For some time, these were used as the legal basis that make online trials a common practice. Finally, on September 29, 2022, the Supreme Court issued Supreme Court Regulation Number 4 of 2020 on the Administration and Trial of Criminal Cases in Courts Electronically.[23] From the perspective of formal juridical, there is now a clear legal basis for conducting online trial examinations. Although Article 7 Paragraph (1) Law No. 12 of 2011 as the amendment of Law no. 10 of 2004 on the Legislative Drafting, states that the Supreme Court Regulation stands outside the hierarchy of legislation, Article 8 Paragraphs (1) and (2), it is still a legally binding law.

As previously explained, the law is made for humans, therefore it must be able to adapt to human life and made according to human needs. Human life is inherently dynamic while law tends to be more static, therefore it makes sense that law will always be left behind human development. It means that the law should be made without being bounds by time periods, in other words, the law must be able to predict what will happen in the future and continue to be enforced in accordance with human development.

The law has a significant role in Indonesia's national defense because it determines the relationship between the government and its community which is described in the form of legislation while the actualization of legal functions will ensure the establishment of legal authority which will strengthen its role in development. Law and its elements play an important role in strengthening national security.[16]

A harmonious legal substance would help achieve the goal of national law, namely creating a just, affluent, and prosperous society. However, to be able to achieve this, consistent law enforcement along with a consistent legal culture of state administrators,

as well as public awareness to comply with the law is necessary. Such conditions, if supported by the spirit of maintaining the integrity of the Unitary State of the Republic of Indonesia, will greatly assist national security.

3.2. Implementation of Criminal Policies in Law Enforcement Post COVID-19 Pandemic

The policy of developing national law as a system is usually directed at the realization of a national legal system that serves the national interest. One of the means to reform the legal and political system is through restructuring the legal substance by reviewing and rearranging laws and regulations while also considering the general principles and hierarchy of laws and regulations. In addition, it should keep the priority of respecting and strengthening local wisdom and customary law to enrich the legal and regulatory system through jurisprudence as part of efforts to reform national legal materials. [24]

Mochtar Kusumaatmaja shares the same view arguing that the role of law in development is to ensure that changes are carried out in an orderly manner. The changes should be assisted by laws and regulations through legal procedures to realize a national legal system that is in accordance with the needs of the Indonesian people.[25]

Criminal policies carried out by law enforcement officials during the COVID-19 pandemic seem to conflict with the criminal procedure law because of a breakthrough for conducting online trials by utilizing information technology to prevent the spread of the COVID-19 pandemic. However, this discretion would only be temporary because all the regulation that becomes the basis of criminal policy regarding online trials are only applicable as long as COVID-19 is still declared a pandemic and a non-natural national disaster. It became apparent just by looking at the title of the regulation issued by the Attorney General's Office and Supreme Court. Thus, the ideal law should be able to accommodate a legal vacuum (*rechtsvakum*) while also being futuristic (forward-looking), then the law will be more stable because it would be able to accommodate changes that will occur in society in the future.

Lawrence Meir Friedmann describes effective law enforcement would be related to three interconnected points, namely legal substance, legal structure, and legal culture of the society.

Law has a goal to be achieved, namely justice and legal certainty (legal protection). The goal of maintaining public order is achieved by protecting the interests that exist in society fairly. The implementation of these legal objectives can be carried out in a country based on the law.[26]

Friedmann further explained that the purpose of the newly passed law can be achieved if the law has been effectively enforced. Because, in essence, the law does not only refer to the rules (*code of rules*) and regulations (*regulations*), but more broadly, includes its structure, institutions, and processes including the law that lives in society (*living law*) and the prevailing legal culture (*legal culture*).

Until now, the enforcement of criminal law in Indonesia adheres to Law Number 8 of 1981 on the Criminal Procedure Code. However, this regulation has yet to regulate holding trials in a time of emergencies, including non-natural disasters. Therefore, it is necessary to amend the current criminal procedure law. For now, it is currently still in the process of being amended to accommodate the issue of filling current the legal vacuum and legitimizing the implementation of online trials by using information technology as a medium. Interestingly, criminal procedure law in Indonesia also does not prohibit online trials examination.[21]

In addition to being the law that regulates the use of information technology for witness examination and court examination during a pandemic or other circumstances that should be detailed in the articles of upcoming amendments to procedural law, but also prevents polemics over legal certainty for justice seekers (*justiabelen*). After all, the goal of law enforcement is to seek *material truth*, the real truth that set aside administrative and formal matters.

According to Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power active role of judges is important in forming new laws (*rechtvinding*). It aims to achieve material truth and justice for people's lives. An online examination is also a form of new legal formation as long as it does not conflict with the norms and legal provisions that live in society.

Considering the Criminal Procedure Code (KUHAP) does not regulate online examinations, it is necessary to draft the appropriate legal basis to conduct it. The online examination also adheres to the principle of a simple, fast, and inexpensive trial, the more reason for supporting it by regulating its conduct.

The author believes that online trial does not conflict with the principles of criminal procedural law, precisely the existence of a law that regulates its practice would help uphold the principles of fast, simple, and inexpensive justice of criminal procedural law.[27]

Article 50 of the Criminal Procedure Code regulates the three principles of criminal procedural law and are also briefly mentioned in Article 4 Paragraph (2) of Law Number 48 of 2009 on Judicial Power. The principles of fast, simple, and inexpensive trial constitute three different principles. A fast trial is a standard for resolving criminal cases

in the shortest amount of time possible, thus in every stage of criminal proceedings there is a time limit that law enforcement officers must pay attention to; A simple trial means that criminal proceedings should be done in an orderly and uncomplicated manner, thus providing convenience to all subjects in the criminal justice system; Lastly, an inexpensive trial entails that the judicial process should be provided in the lowest possible cost, making it accessible for truth seekers.

Online examination adheres to the three principles of criminal procedural law explained above, therefore it should not be applicable during court examination but also to all stages of criminal proceedings, from the preliminary investigation to court examination.

The practice of online court examinations in criminal cases is a sign that the law is developing to fulfill human needs in the modern era by utilizing information and communication technology. It is a display of the process of globalization and cross-border examination. It also shows that the law is an instrument inseparable from human needs. According to the concept of progressive law, the law is tasked to serve humans, not the other way around.[28] The concept of progressive law prioritizes the greater human interest than interpreting the law from the point of view of "logic and rules". Law is expected to be able to keep up with the development throughout time periods and be able to serve the community by relying on the moral aspect of the human resources of law enforcement itself.

4. Conclusion

Based on the above explanation, the following conclusions can be drawn:

1. Law Number 8 of 1981 on the Criminal Procedure Code as the basis for criminal procedural law (*lex generalis*) only regulates face-to-face examinations in criminal proceedings but since COVID-19 has become a global epidemic, including in Indonesia, the government needs to limit face-to-face meetings to suppress the spread of COVID-19, thus affecting all aspect of life, including law enforcement. Whereas, law enforcement plays an important role in Indonesia's national security, which in turn helps maintain social and political stability in Indonesia. Law enforcement is a way to achieve the legal purpose of justice and legal certainty. To achieve this, the implementation of criminal proceedings must not be hindered, especially since criminal proceeding is limited by timeframe, so that discretion or criminal policy is needed in overcoming these problems, so that law enforcement officers, such as the Attorney General's Office, the Supreme Court, and the Ministry

Law and Human Rights on April 13, 2020, signed a Cooperation Agreement (PKS) for the Implementation of Trials Through Teleconference during COVID-19 pandemic, which was followed by the Supreme Court issuing a Supreme Court Regulation Number 4 of 2020 on Administration and Trial of Criminal Cases in Courts Electronically.

2. In the criminal proceeding, there are times when obstacles are found, one of which is the lack of regulation regarding online examinations, creating a legal vacuum (*rechtsvakum*) that needs to be filled, especially in times of restrictions on community activities caused by the COVID-19 pandemic. Thus, amendments to *lex generalists* of criminal procedural law are necessary since it has yet to accommodate the development happening in society, especially regarding the criminal procedural law during disasters, natural and non-natural disasters, to achieve legal objectives, namely justice and legal certainty.

4.1. Suggestion

1. Online examination using information technology is the answer to the restrictions on communal activities given by the government to suppress the spread of COVID-19. However, its implementation several problems can still be found, especially minimal infrastructure to support online court examination, so in the future, it is necessary to make improvements in its implementation.
2. To provide legal certainty, it is necessary to immediately amend Law Number 8 of 1981 on the Criminal Procedure Code to regulate court examinations by utilizing information technology in certain circumstances or clauses.

Conflict of Interest

The authors whose names are listed in this manuscript certify that they have NO affiliations with or involvement in any organization or entity with any financial interest (such as honoraria; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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