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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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Criminal policy needed for the recovery of socio-political conditions for resilience following the covid 19 pandemic

Author – BHAVYA. S, Student at ALLIANCE UNIVERSITY, BANGALORE

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ABSTRACT

The Enforcement of Community Activity Restrictions (PPKM), formerly known as the Large-Scale Social Restriction Policy (PSBB), forbids public gatherings. Activities within the community are restricted, which has an impact on social life and law enforcement. The steps of criminal law enforcement in Indonesia are expressly regulated by Law Number 8 of 1981 governing the Criminal Process Code, which must be followed. All of these phases have one thing in common: they all involve some sort of in-person examination of all criminal procedural law topics. As a result, there is an issue under unusual conditions. In order to achieve the restoration of the socio-political condition of national resilience following the COVID-19 pandemic, this study intends to investigate criminal law enforcement practises during the COVID-19 pandemic in Indonesia. A qualitative descriptive method was adopted in this study. According to the study's findings, criminal processes only involve face-to-face exams when following Law Number 8 of 1981 concerning Criminal Procedure Law (*lex generalis*). There hasn't been a regulation governing online exams since COVID-19, leaving a void in the law (*rechtsvakum*) that needs to be filled. The Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights were awarded a Collaboration Agreement (PKS) for the Execution of Trials Using Teleconferencing During the COVID-19 Pandemic on April 13, 2020. Discretion or criminal policy is required to resolve issues.

Keywords: criminal policy, covid-19 pandemic, national resilience

INTRODUCTION

The globe was stunned by the coronavirus outbreak at the end of 2019. It belongs to the order Nidovirales and is part of the subfamily Orthocoronavirinae of the family Coronaviridae. The People's Republic of China's Hubei Province's main city, Wuhan, was the site of the first known case, which quickly spread around the globe. The World Health Organization (WHO) finally proclaimed COVID-19 a global pandemic on March 11, 2020. The epidemic has an impact on all element of life, including social, political, economic, cultural, and law enforcement as well as health. On March 2, 2020, President Joko Widodo formally declared the 01 COVID-19 case in Indonesia, and although a little late, Indonesia felt the effects of it. The number of COVID-19 transmissions in Indonesia has risen since the 01 incidents were made public. Government Regulation Number 21 of 2020 on Large-Scale Social Limitations in the Context of Accelerated the Management of Corona Virus Illness was one of the responses (COVID-19). That really restricts the COVID-19 Handling Health Protocol was established on March 4, 2020, and it calls for community gatherings to lower the number of COVID-19 transmissions as well as orders for people to follow it. Since then, the government has frequently released national and regional strategic initiatives to address COVID-19.

The Enforcement of Community Activity Restrictions (PPKM), formerly known as the Large-Scale Social Restriction Policy (PSBB),



forbids public gatherings. Because to this, almost all operations were stopped, which had a favourable effect on the environment but caused a significant loss to the economy because it almost stopped all economic and daily activity like trading. Social life would undoubtedly be impacted by restrictions on communal activities, and law enforcement is hardly an exception.

Conceptually, Indonesia's national resilience is a dynamic state of the country that encompasses all facets of an integrated national life. It entails tenacity and resilience, as well as the capacity to strengthen national resilience to counter any impending dangers. In order to stop large transmission at the start of the outbreak in 2020, law enforcement must navigate complicated challenges relating to the dynamics of the population being restricted from carrying out its activities. As a state built on the rule of law, Indonesia demands that all actions, particularly those taken by the government through its machinery, be carried out in accordance with the authority governed by laws and regulations. It implies that those in charge of enforcing criminal laws must follow Law No. 8 of 1981 Concerning the Criminal Process Code. The legislation specifically controls different criminal Indonesian law enforcement, from preliminary investigation to investigation, pre-prosecution through prosecution (trial), and execution. All of these phases have one thing in common, namely a style of in-person interviews covering all areas of criminal procedural law. Thus, it poses a challenge under unusual conditions.

The government responded by issuing Presidential Decree No. 12 of 2020 on the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster on April 13, 2020. Because the outcome of a case serves as the standard for the achievement of legal certainty and advantage in criminal law, it pushes law enforcement officers to develop a way to carry out a type of law enforcement through criminal policy.

First, research by Violette S. R. Mokodongan (2021) discovered 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, demonstrates that the existence of the law is essential as a guide when the nation is faced with an Extraordinary Event (KLB) that is troubling the world. Second, according to research by Andika Oktavian Saputra (2021), the decision to shorten the prison sentence in response to the COVID-19 pandemic in order to facilitate inmates' assimilation and integration into society is a progressive one.

Criminal Policies of Law Enforcement During the COVID-19 Epidemic in Indonesia in the Context of Realizing the Recovery of Socio-Political Conditions for National Resilience Post COVID-19 Pandemic

The 1945 Constitution's Article 1 Paragraph (3) states unequivocally that Indonesia is a legal state. As a literal translation of the term "rechtsstaat," Indonesia is a state that is governed by the law. Due to the effect of the idea of "the rule of law" and the cultural norms that the people of the country have acquired and upheld, this concept has not yet been implemented fully and consistently.

The concept of a state founded on the rule of law is greatly influenced by the legality principle (legaliteit beginsel), which, in essence, calls for the legality of all government actions. Laws that are established and described in regulations would include, among other things, activities that must be taken and are referred to as law enforcement. The process of enforcing or operating legal norms as instructions for conduct in legal dynamics or relations in social and state life is known as law enforcement.

Because the law's inertia would have to contend with society's rapid social change, rigid law enforcement can occasionally be troublesome. It implies that using judgement is essential to resolving current legal issues. This discretion is



frequently referred to as criminal policy, which is a strategy for combating crime, making it a component of law enforcement.

In a constitutional democracy, laws and regulations typically serve as a tool for social engineering. Supporting efficient law enforcement is vital to achieve strong national resilience. Law enforcement's policies and tactics can be used to lessen and defeat a variety of factors that could jeopardise national security.

Due to social constraints that prevented Law Number 8 of 1981 on the Criminal Process Code from being applied as it should have been during the COVID-19 pandemic, criminal policies became essential. Because Indonesian criminal procedural law upholds the direct examination premise, this issue emerges. This mandates face-to-face encounters between all participants in the criminal justice system at all phases of the process, including the preliminary investigation, investigation, pre-prosecution, examination at trial, and execution. Additionally, Indonesia does not yet have a criminal procedural legislation that governs how cases are handled in times of crisis, such as the COVID-19 outbreak, which persisted even as this paper was being produced.

This legislation has been enforced for a very long period using various methods. Although legislation is still being improved, the outcomes have not been adequate. This demonstrates that public support, including the use of discretion through criminal laws, and law enforcement personnel will be necessary for success. Notwithstanding the COVID-19 pandemic that is now affecting Indonesia, law enforcement must continually exercise discretion.

Due to COVID-19's high transmission rate and all of its varieties, which led to its designation as a non-natural national calamity, the government was forced to put policies in place to curb and impede the disease's spread. Government Regulation Number 21 of 2020 on Large-Scale

Social Limitations in the Context of Accelerated the Management of Corona Virus Illness was the first to formally codify the restriction (COVID-19). This regulation argues that slowing down community growth is necessary due to epidemiological concerns and the seriousness of the threat posed by the spread of COVID-19. However, in order to comply with government laws and in light of the fact that the judiciary has developed into a cluster as COVID-19 has extended throughout Indonesia, this legislation also temporarily blocks access to judicial services to the general public.

Beginning with the COVID-19 pandemic, street crimes such as mugging, theft, robbery, armed robbery, hoaxes, and vandalism to minimarkets grow in both quality and number. In the 18th week of the pandemic, there were 3,244 security breaches overall. In the 19th week, there were 3,473 cases. [19] The criminal investigation must therefore continue as a result of the rise in criminal conduct. Nevertheless, due to the Covid 19 epidemic, a face-to-face study cannot be undertaken at this time, thus it was conducted virtually instead (online).

According to Article 4 Paragraph (2) of Law Number 48 of 2009 on Judicial Authority, the Court shall assist those who seek justice and shall endeavour to remove all barriers and impediments to a straightforward, quick, and affordable trial. It implies that an online trial may be able to address the issue brought on by the COVID-19 epidemic.

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 to ensure the protection of the judicial system, justice seekers, and court users, including defendants in conflict with the law [22]. A court case might be postponed for a specific amount of time in urgent situations or natural disasters (force majeure). The defendant can only be held for a certain amount of time in criminal trials, though. Although the detention



time may still be prolonged, the legal system must proceed as quickly as possible for the sake of legal clarity and the notion of a quick trial, especially since this right of the defendant is safeguarded by the constitution. Therefore, the trial should be able to be conducted online using teleconference technology in the event of force majeure.

A just, wealthy, and prosperous society would be created, which is the aim of national law, with the aid of a harmonious legal framework. To accomplish this, however, constant law enforcement, a consistent legal culture among state officials, as well as public knowledge of the need to obey the law, are required. Such circumstances will significantly boost national security if they are backed by the spirit of upholding the Unitary State of the Republic of Indonesia.

Implementation of criminal policies in law enforcement post covid 19 pandemics

The goal of the policy of creating a national legal system that serves the national interest is often the establishment of a national legal system. Restructuring the legal substance, which involves examining and rearranging laws and regulations while also taking into account general principles and the hierarchy of laws and regulations, is one way to restructure the legal and political system. As part of efforts to reform national legal materials, it should also continue to place a high focus on respecting and enhancing local knowledge and customary law in order to enrich the legal and regulatory system through jurisprudence.

Indonesian law enforcement up until this point has followed Law Number 8 of 1981 on the Criminal Process Code. This rule has not yet addressed how trials should be conducted in an emergency situation, such as a man-made disaster. The current criminal procedure statute must be changed as a result. For the time being, it is still being updated to take into account the problem of closing the current legal gap and establishing the legitimacy of employing

information technology as a medium to perform online trials. It's interesting to note that Indonesian criminal procedure legislation does not forbid online trial examination.

As stated in Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Authority, judges have an active part in the creation of new legislation (*rechtvinding*). It seeks to bring about objective truth and fairness for individuals' lives. As long as it does not violate societal norms and legal regulations, an online exam qualifies as a new type of legal formation.

It is important to draught the appropriate legal basis to conduct online exams because the Criminal Process Code (KUHP) does not regulate them. The fact that the online exam also abides by the idea of a straightforward, quick, and affordable trial makes it all the more important to support it by enforcing rules on its behaviour.

According to the author, the principles of criminal procedural law are not in conflict with the use of online trials; in fact, a rule governing their use would assist sustain the values of swift, straightforward, and affordable justice.

The three criminal procedural law principles are governed by Article 50 of the Criminal Process Code and are briefly discussed in Article 4 Paragraph (2) of Law Number 48 of 2009 on Judicial Authority. Three separate principles can be categorised as quick, easy, and cheap trials. Every stage of criminal procedures has a time restriction, which law enforcement personnel must observe; a rapid trial is a criterion for concluding criminal cases in the lowest amount of time possible; an easy trial means that all parties involved in the criminal justice system should benefit from efficient and straightforward criminal processes; Lastly, A low-cost trial necessitates that the lowest possible level of judicial service be delivered.

A proof that the law is evolving to meet human needs in the current period by leveraging information and communication technology is the practise of online court exams in criminal

cases. It serves as a demonstration of the globalisation process and cross-border analysis. It also demonstrates how the law is a tool dependent on human wants. The idea of progressive legislation holds that people should serve the law, not the other way around. Progressive law promotes the greater good of humanity over "logic and rules" as the basis for legal interpretation. Law is anticipated to be able to adapt to change throughout time and be able to serve the community by relying on the moral side of the personnel of law enforcement.

CONCLUSION

Law Number 8 of 1981 on the Criminal Procedure Code, which serves as the foundation for criminal procedural law (*lex generalis*), only regulates face-to-face examinations in criminal proceedings; however, given that COVID-19 has spread throughout the world, including to Indonesia, the government must restrict face-to-face meetings in order to stop the disease's spread, which will have an impact on all facets of society, including law enforcement. While law enforcement plays a significant role in ensuring Indonesia's national security, which in turn contributes to the country's continued social and political stability. Justice and legal certainty are two legal goals that can be attained by law enforcement. A Cooperation Agreement (PKS) for the Implementation of Trials Through Teleconference During COV was signed on April 13, 2020 by law enforcement officials from the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights in order to overcome these issues without impeding the conduct of criminal proceedings, especially given that criminal proceedings are time-limited.

A legal vacuum (*rechtsvakum*) has been created regarding online exams, which needs to be addressed, especially at periods when community activities are restricted due to the Covid-19 pandemic. This is one of the hurdles that can be identified in criminal proceedings. In order to achieve legal goals, namely justice and

legal certainty, amendments to *lex generalis* of criminal procedural law are thus required because they have yet to take into account changes occurring in society, particularly regarding the criminal procedural law during disasters, both natural and non-natural disasters.

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