



Legal analysis of the principle of utilization of law in granting remission for convicted corruption criminals as reviewed from law number 22 of 2022 on corrections

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Abstract

Corruption crimes clearly pose hazardous and disturbing consequences for society, particularly in terms of the country's finances and economy. The impact on the public can destroy the potential effectiveness of all government programs, which can impede development and harm individuals or groups. The purpose of this research is to examine the legal benefits of granting remission to corruption convicts under Law No. 22/2022 on correctional systems. The method used in this research is a normative juridical approach based on literature or secondary data. The results of this research indicate that the remission given is expected to encourage inmates to always reflect on themselves according to the demands of religion in daily life as one of the alternative policies to criminal law in realizing the expected correctional system that meets the minimum standard rules. The application of the principle of legal benefits to override legal positivism requires a comprehensive study of its impact on society and not just focusing on the interests of a few parties.

Keywords

Legal benefits principle, remission granting, corruption crimes.

Introduction

The granting of remissions to each convict is still causing controversy, especially the granting of remissions to convicts who are caught in specific criminal cases such as corruption, terrorism and narcotics. The granting of remissions to the perpetrators of special crimes must be carried out proportionally, including including

certain conditions. These conditions are not enough just to behave well while in detention, but other special conditions are also needed. Prisoners who can meet these special requirements are entitled to get a reduction in their sentence or remission.¹

Sociologically, the policy of granting remissions to convicts of corruption crimes has actually damaged people's hopes of achieving the real goal of law, namely justice. Corruption that often occurs in Indonesia also makes people agree that the existence of corruption has in fact become an obstacle to the realization of prosperity for the Indonesian people. Granting remissions is justified in the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, but in fact the government in making its decision has the right not to grant them. Perpetrators of corruption should not be allowed to receive punishment or sanctions commensurate with the perpetrators of other crimes.²

Provisions for remission are specifically regulated in Article 1 paragraph 6 of Government Regulation of the Republic of Indonesia Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens which states that convicts and criminal children have the right to receive remission, namely cutting the time period in serving a sentence provided that they comply with the provisions - provisions that apply and are contained in laws and regulations. Provisions regarding the conditions for granting remissions for corruption convicts listed in a regulation have been amended several times in its development. The first change is Government Regulation of the Republic of Indonesia Number 28 of 2006 concerning Amendments to Government Regulation of the Republic of Indonesia Number 32 of 1999 concerning Procedures for the Implementation of the Rights of Correctional Families, especially in Article 34 which states that additional requirements for corruption convicts are good behavior while in detention and has served a third of the sentence. In the second amendment, regulated in Government Regulation of the Republic of Indonesia Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Procedures for the Implementation of the Rights of Correctional Assisted Citizens, there is an additional article namely article 34 A which states that corruption convicts can be given remission if the convict The agreement agreed to cooperate with law enforcement officials in finding the main perpetrators of corruption cases and agreed to return the property that had been taken or corrupted in accordance with the amount taken.

Decree of the President of the Republic of Indonesia Number 174 of 1999 concerning Remission explains that there are types of remissions that are applied in prisons such as general remissions, special remissions, additional remissions, humanitarian remissions namely prisoners who are willing to become organ donors or blood donors, follow-up remissions, special remissions which are delayed and special remissions are conditional.³

¹ M. Ali Zaidan, *Kebijakan Kriminal*, Jakarta: Sinar Grafika, 2016, Cet. ke-1, hlm. 331.

² Edie Toet Hendratno, "Kebijakan Pemberian Remisi Bagi Koruptor, Suatu Telaah Kritis dari Perspektif Sosiologi Hukum", *Jurnal Hukum dan Pembangunan*, Nomor 4, Oktober-Desember, 2013, hlm. 523-525.

³ Eva Achjani Zulfa, et al., *Perkembangan Sistem Pidana dan Sistem Masyarakatan*, Depok: Rajawali Press, 2017, Cet. ke-1, hlm. 107-110.

Granting remissions for corrupt convicts actually proves that it is as if the eradication of corruption in Indonesia does not receive strong support both morally and politically. Cases of corruption that have occurred in Indonesia with various types of modus operandi also indicate that the existence of corruption has become increasingly chronic and difficult to eradicate over time. The modus operandi that is always carried out by corruptors is very systematic and of high quality, as evidenced by the involvement of several law enforcement officers, government agencies, and other officials, especially those with high quality education.⁴

All countries in the world agree that corruption is an extraordinary crime category. Each country makes maximum efforts in preventing and eradicating criminal acts of corruption and following up on the perpetrators of criminal acts of corruption that occur in their country. China is a country that is firm, very enthusiastic and total in eradicating corruption. Corruption cases have occurred in China which were carried out by Liu Zhijun, a former Minister of Railways of China and Zhang Zhongseng, a former Mayor of Luliang. They were sentenced to death for being proven guilty of corruption. Starting from this case, China is committed to continuing to take firm action against the perpetrators of corruption in the country.⁵

Corruption cases have also occurred in Malaysia, and the way they are resolved is not much different from China. Criminals who have been proven guilty of corruption in Malaysia must face the death penalty by hanging. This is in contrast to Indonesia, where the punishment for corruption seems lenient because it takes into account human rights, and therefore, the death penalty or hanging is firmly rejected in the sentencing of corrupt individuals. Based on this example, it is necessary for corrupt individuals in Indonesia to be dealt with firmly so that Indonesian society does not underestimate the efforts of law enforcement agencies in eradicating corruption.⁶

The majority of corruption cases in Indonesia are caused by five factors: the lack of integrity and professionalism among individuals, the weakening commitment and consistency of law enforcement officials and legislative regulations, opportunities that support the emergence of corruption in the workplace or in society, greed, weak faith, honesty, and shame, as well as the non-professional salary system for both government and private workers.⁷

The granting of remissions in Indonesia was previously carried out in the corruption case of the Sea Games Athlete Village in 2011 by Muhammad Nazarrudin, who received a remission of one month and fifteen days or more (varies). The remission was given at the West Java Penitentiary during the Idul Fitri

⁴ Edie Toet Hendratno, Op.Cit., hlm. 527-528.

⁵ DetikNews, Simak Berbagai Hukuman Bagi Para Koruptor di Penjuru Dunia, <https://news.detik.com/dw/d-4383314/simak-berbagai-hukuman-bagi-para-koruptor-di-penjuru-dunia>, diakses pada tanggal 26 Desember 2022.

⁶ Ibid

⁷ Ibid., hlm. 42-43.

1440 Hijriyah or Eid Al-Fitr 2019.⁸ The convict was involved in a corruption case related to the Sea Games Athlete Village in 2011, with a cash amount of 3.2 billion.

The government's shortcomings in granting remissions are the lack of transparency or publication to the public regarding the names of corruption convicts in Indonesia who receive remissions, both in the category of high-profile and medium-to-low-profile corruption.

Initially, Indonesian people had a strong spirit in eradicating corruption in their environment, but the spirit has been fading over time, especially when a policy of granting remissions to corruption convicts was made. Indonesia is often referred to by its people as a haven for corruptors. This nickname is given because the criminal sanctions given to corruptors are relatively lenient, even though the state's losses amount to billions of rupiah.⁹

Based on this phenomenon, there is a need for firmness from law enforcement officials and the Indonesian government in improving regulations to eradicate and prevent corruption in Indonesia. Recently, controversy has arisen among the public regarding Minister of Law and Human Rights Yasonna Laoly's policy of granting remissions to corrupt inmates, which has been opposed by various parties, particularly anti-corruption NGOs and the Corruption Eradication Commission (KPK). Various arguments for and against have emerged in response to the remission plan to be carried out by the Ministry of Law and Human Rights. However, remissions are given without distinguishing between special and ordinary inmates, as a government responsibility to provide protection and fulfill their rights. Moreover, remissions are also the right of inmates and are present as an effort to rehabilitate them or, in other words, to achieve social reintegration of inmates. However, with the current reality, it is interesting to examine the granting of remissions to corruptors, whether it is appropriate to give them or at least how the regulations should govern them. Of course, the aim is to ensure that remissions do not undermine corruption as an extraordinary crime but are purely a means of rehabilitating inmates.

Research methods

This type of research is a normative legal research, which is conducted by examining legal materials obtained through library research. In normative research, written laws are examined from various aspects such as philosophical theory, comparison, structure or composition, consistency, general explanations and explanations for each article, formality, and binding strength of a law. The language used is legal language.¹⁰

The author used the literature research technique to collect legal materials for this research. This technique is intended to obtain relevant and necessary

⁸ CNN Indonesia, 50 Koruptor di Jawa Barat Dapat Remisi Lebaran, <https://www.cnnindonesia.com/nasional/20190604153732-12-400945/50-koruptor-di-jawa-barat-dapat-remisi-lebaran>, diakses pada 26 Desember 2022.

⁹ Wikipedia, Muhammad Nazaruddin, https://id.wikipedia.org/wiki/Muhammad_Nazaruddin#Kasus_Korupsi_Wisma_Atlet, diakses pada 6 Juni 2019.

¹⁰ Marzuki, P. M. (2021). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. Hlm. 35.

secondary materials and information related to the main topic of the research, which is sourced from conventions, books, media, research journals, and other sources of information such as documented data on relevant websites. Through this literature research, it is expected to obtain a theoretical foundation for the study and analysis of the issues discussed in this research.

Results and discussion

Legal changes certainly have a different meaning from legal developments, namely a legal reform aimed at achieving better people's lives than before. The public, on the other hand, may perceive the development of the law as a trigger for violent contradictions and can even become a cause of social unrest because its implementation is deemed inappropriate. Facts on the ground, one of the triggers for violent contradictions among the public is the government's policy of granting remissions to corruption convicts. Remissions are usually given to corruption convicts during independence commemorations and Eid al-Fitr.¹¹

The government in providing remission policies is of course inseparable from various considerations and goals to be achieved. The presence of remission aside from having a special reason from the government, has actually hurt the sense of justice for the Indonesian people. The remission policy makes it seem as if the government is not serious in eradicating corruption in Indonesia. The remission policy is like a breath of fresh air or a boon for corruption convicts and of course this makes people's trust in them decrease

The purpose of granting remission is of course a very important discussion considering that convicts are people who commit crimes or crimes in the community and become a controversy because the government in practice provides policies regarding reducing criminal sentences not in accordance with the contents of the laws and regulations that have been drawn up. Article 2 paragraph 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Family Visiting Leave, Parole, Prior Release Leave and Conditional Leave states that the rights of convicts can be granted with consideration One of them is the element of justice. In practice, granting remissions to convicts of corruption has hurt the sense of justice in every society, but the policy is still enforced.¹²

The element of considering justice contained in Article 2 paragraph 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Requirements and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave is actually in accordance with the theory of legal purposes,

¹¹ Edie Toet Hendratno, *Op.Cit.*, hlm. 524.

¹² Pasal 2 ayat 3 Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

namely the ethical theory put forward by Aristotle. He said in his theory that the purpose of law is none other than to achieve justice. Aristotle formulates justice into two types, namely distributive justice and commutative justice. Distributive justice is justice that is given by looking at how many services have been performed, while commutative justice is justice that is not based on how many services have been done, in other words, justice is given equally between one person and the other person.¹³

In practice, this element of justice is not used as a consideration in granting remissions, so that people feel disappointed because they do not feel they are getting justice when the corruptors are given remission rights. The aim of the government to make a policy of granting remissions to prisoners, especially corruption, is as a form of "lure" to trigger prisoners to behave well. The hope is that inmates can promise themselves and society to do good and will not repeat criminal acts in the future.

Granting remissions is something that is reasonable to apply considering that remissions are the right of every inmate and in accordance with the principles of Human Rights (HAM).¹⁴ The government's goal is to give remissions to prisoners, especially corruption, to provide a reference for every prisoner to immediately regret his actions and behave well while in detention. He said that granting special remissions for corruption convicts was not given easily. There are several special requirements that must be met so that convicts of corruption can get remission from the government.¹⁵

Government Regulation of the Republic of Indonesia Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates Article 34 A paragraph 1 states that: Provision of Remissions for Convicts convicted of committing crimes of terrorism, narcotics and precursors to narcotics, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes, in addition to meeting the requirements referred to in Article 34, they must also meet the following requirements:¹⁶

- a Willing to cooperate with law enforcers to help dismantle criminal cases they have committed;
- b Have paid in full the fines and compensation money in accordance with the court's decision for the convict who was convicted of committing a criminal act of corruption; and
- c Has participated in a deradicalization program organized by LAPAS and/or the National Counterterrorism Agency, and made a pledge:

¹³ Kansil, C.S.T., *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, Cet. ke-7, 2006. Hlm. 95.

¹⁴ Ibid

¹⁵ Ibid. hlm 97

¹⁶ Peraturan Pemerintah Republik Indonesia Nomor 99 Tahun 2012 tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 32 Tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan.

- 1) allegiance to the Unitary State of the Republic of Indonesia in writing for Indonesian Citizen Convicts, or
- 2) Will not repeat acts of criminal acts of terrorism in writing for Foreign Citizen Convicts who have been convicted of committing criminal acts of terrorism.

Untung Sumedi also said that another goal for the government was to establish a policy of granting remissions to every corruption convict because he saw the facts in prisons that were not conducive. Criminal actors or convicts who are currently referred to as convicts in fact, before the concept of punishment in Indonesia was changed to coaching, when they left prison, many carried out recidive actions. The concept of punishment for revenge or creating a deterrent effect on convicts who are in Correctional Institutions does not have a good impact in the future. Not a few convicts who get out of detention are actually caught again with actions that are more proficient in carrying out their criminal acts.

The government, which realized this, eventually changed the concept of punishment, which was originally a concept of revenge or created a deterrent effect for criminals, into coaching in the hope that after convicts leave detention, their attitude will change for the better than before. Granting remission is also a form of implementing the concept of coaching in the correctional system with the aim that prisoners can be motivated and passionate about self-introspection. The government also has other reasons for implementing a policy of granting remissions for corruption convicts. Over Capacity is something that is considered by the government to issue a policy of granting remissions for corruption convicts.

If this condition is allowed to continue and there is no remission policy, prisons will continue to experience over capacity. Lapas has made every effort so that the rights of convicts can be fulfilled properly and there is no commotion like what happened in Bandung Lapas some time ago. Remission is one effort that is highly recommended to minimize the occurrence of over capacity in prisons.

Remission policy to authors. According to him, the remission or reduction of the criminal past compiled by the current government already contains an element of coaching. Prisoners who are fostered in prisons and then have a good impact when serving their sentence in prisons, deserve to be given appreciation in the form of cutting their sentences. Prisoners in this case are also ordinary people or ordinary people, it is human nature to be able to change for the better when they make a mistake, so granting remission for each prisoner is a good policy to build a good correctional system in prisons.

Conclusion

The purpose of granting remission to corruption convicts based on the results of interviews between the author and the source is to provide motivation to improve their attitudes and build positive mindsets, or to regret their actions. This is aimed at transforming corrupt convicts into individuals with good personalities and determined not to repeat their corrupt acts in the future. However, this differs from the government's actual purpose in formulating policies on remission for

corruption convicts, which is implicitly stated in Presidential Decree No. 174 of 1999 on remission. The government's goal is to reduce the negative impact and subculture of the place of implementation of the punishment, differences in criminal judgments or disparities in judges' decisions, and the consequences of deprivation of liberty. Special remissions given during religious holidays are expected to trigger inmates to always introspect themselves according to religious guidance in daily life. This policy is one alternative to criminal law to achieve a penitentiary system that meets minimum standards.

The government, in making policies on granting remissions to corruption convicts, should consider goals that are relevant to public desires. These goals should be implemented through relevant and efficient regulatory reforms that do not hurt the public's sense of justice. The government can also change remission policies with moral or social sanctions that can make corruption convicts regret their actions. Moral or social sanctions are not only felt by corruption convicts but also by the public, especially state officials who know the case. They will be careful in performing their duties to keep their trust.

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