

Policy formulation of giving remissions that are oriented towards the interests of convicts in corruption cases in the context of fulfilling the rights of prisoners

Chepi Ali Firman Zakaria, Dey Ravena, Muhammad Ilham
Faculty of Law, Universitas Islam Bandung, Bandung, Indonesia

Abstract

One of the correctional system duties is to provide services and protection for the rights of prisoners, including the right to receive remissions, which are given to prisoners and children. Concerning remissions for convicts in corruption cases, it is regulated in Government Regulation Number 99 of 2012. This Government Regulation enactment raises pros and cons because it is considered to add to the conditions for granting remissions for prisoners who have committed serious crimes such as terrorism, narcotics, and corruption. The purpose of this study is to analyze the policy formulation of giving remissions to convicts in corruption cases that are associated with the value of justice and the meaning of punishment. This article concludes that the formulation policy for granting remissions to convicts in corruption cases is regulated in several laws and regulations. This policy is intended to provide protection and fulfilment of prisoners' remission rights. Concerning the value of justice, remission to convicts in corruption cases is fair, as long as the remission refers to the conditions stipulated in the prevailing laws and regulations. Associated with the purpose of punishment, the addition of requirements for granting remissions to convicts in corruption cases is a manifestation of the combined/integrative theory, that is, in addition to aiming to retaliate against the convict's mistakes, it is also intended to protect society, by creating an order.

Keywords: remission, prisoner's rights, justice, and purpose of criminalization

Introduction

The purpose of punishment is not only related to the interests of the defendant or the victim and the victim's family but also the interests of the community, as stated by Barda Nawawi Arief (1998) ^[4, 6]. The objective of the policy to determine a criminal sanction cannot be separated from political purposes in its entirety, namely "protection of the community to achieve prosperity. From what Barda Nawawi Arief stated, the community's safety must be a concern in determining criminal sanctions policies.

Guidance for future-oriented prisoners can be realized if the prisoner is indeed aware that the imprisonment imposed on him is not intended to retaliate against the prisoner's actions and nurture the prisoner in the right way to become human good and responsible following his dignity. Prison punishment does not only cause suffering to the convicted person but also as a means of educating inmates to realize their mistakes and return to the right path, as stated by Sahardjo: "In addition to causing pain to the convicted because of the loss of freedom of movement, guiding the prisoner to repent, educating him to become a useful member of the Indonesian socialist society" (R. Achmad S. Soemadipradja and Romli A, 1979) ^[9].

The General Provisions of Article 1 number 2 of Law Number 12 of 1995 concerning Corrections, state that what is meant by the Correctional System is: "An order regarding the direction and boundaries and methods of fostering Correctional Assisted Citizens based on Pancasila which is carried out in an integrated manner between those who are encouraged, and society to improve the quality of the Correctional Assisted Citizens to realize mistakes, improve themselves, and not repeat criminal acts so that they can be accepted back by the community, can actively play a role in development, and can live reasonably as good and

responsible citizens ". According to Andi Hamzah (1985) ^[2], there are two objectives of correctional facilities, namely: 1) Inserting ex-convicts into society as good citizens (if based on humanity); 2) Protecting the community from the recurrence of the crime of ex-convicts in society because they do not get a job.

The concept of punishment that was previously used is no longer an act of retribution or retaliation, but the idea currently used is the concept of guidance or rehabilitation. In this case, the correctional facility must protect the rights of the convicted convict. The convict must be treated humanely following the principles explicitly stated in Article 5 of Law Number 12 of 1995, that the Correctional Development System is implemented must be based on the following principles: 1) Protection; 2) Equality of treatment and service; 3) Education; 4) Guidance; 5) Respect for human dignity; g) Losing freedom is the only suffering, and 7) Guaranteed the right to keep in touch with individual families and people.

Besides, the correctional facility also must provide services and protection for prisoners' rights, including the right to get Remission, namely the reduction of the sentence given to convicts and children who meet the requirements stipulated in the legislation. The basic rules governing the granting of remissions for prisoners of good character are contained in the provisions of Article 14 paragraph (1) letter I of Law Number 12 of 1995. The definition of Remission is in Article 1 paragraph (6) of Government Regulation Number 32 of 1999, namely, Remission is the reduction of the sentence given to prisoners and children who have fulfilled the requirements stipulated in the statutory regulations. According to the Law Dictionary, Remission is forgiveness of punishment given to someone who has been sentenced to crime (Sudarsono, 2007) ^[15]. There are several types of

remissions in the Indonesian correctional system, namely: General Remissions, Special Remissions, Additional Remissions, and Decade Remissions.

Requirements for granting remissions for a prisoner are based on Article 34 paragraph (2) and paragraph (3) of Government Regulation Number 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants. In addition to the conditions contained in Article 34, other requirements must be met for prisoners who have committed criminal acts of terrorism, narcotics, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes contained in Article 34A paragraph (1) Government Regulation Number 99 of 2012.

The enactment of this Government Regulation raises pros and cons because it is considered to exacerbate the conditions for granting remissions for prisoners who have committed crimes of terrorism, narcotics, corruption, crimes against state security, and serious human rights and other transnational organized crimes. The pros and cons of the revision of Government Regulation Number 99 of 2012 are related to the legal basis for granting remissions and concerning the substance of the PP.

This article focuses on giving remissions to convicts of corruption, seen from the policy aspect of the formulation of Remission, and is related to the value of justice and the purpose of punishment, concerning the addition or tightening of conditions provision of remissions.

Discussions

The concept of punishment that was previously used is no longer an act of retribution or retaliation, but the idea currently used is the concept of guidance or rehabilitation. In-Law Number 12 of 1995 concerning Corrections in which it has been confirmed that the correctional system is held to form correctional assisted citizens to become fully human, aware of mistakes, improve themselves and not repeat criminal acts so that they can be re-accepted by the community, can actively play a role in the development and can live naturally as good and responsible citizens in the community. Therefore, when they are in the correctional institution, they are given education and skills to be useful for life and have expertise when they leave prison. In this case, the penitentiary facility has to protect the convicted person's rights, and the convict must be treated humanely following the principles explicitly stated in Article 5 of Law Number 12 of 1995.

Concerning the right to receive remissions, in Indonesia, the provision of remissions cannot be separated from the existing penitentiary system. This Correctional System aims for the assisted citizens not to repeat their acts of violating the law that has been committed as members of the community and can play an active role as other members of the community. With this remission, there is a balanced position in the coaching carried out in the correctional institution. Therefore, this remission is a right given to prisoners, especially the perpetrators of corruption. In the penitentiary system, punishment falls into the aspect of deterrence and aspects of guidance and rehabilitation. This remission is one of the prisoners' rights which is a success that has been achieved because this remission is given to prisoners who have good behaviour while serving a sentence in a Penitentiary.

Data on convictions for corruption cases in December 2019

were 5,078 prisoners, January 2020, 4,982 prisoners, and February 2020, and there were 4,886 convicts (ICW, 2020). For corruption convicts who received remissions at Idul Fitri 2019, there were 50 convicts, while those who received remissions on August 17, 2019, were 338 inmates (Republika.com, 2019) ^[26].

Remission is a part of coaching that cannot be separated because remission is a right given to prisoners. The purpose of providing this remission is so that inmates have the desire not to repeat acts that violate the law and behave well so that they can play an active role in social life when they are released.

Based on the Government Regulation of the Republic of Indonesia Number 32 the Year 1999 Article 1 point 6, the meaning of remission is a reduction in serving a sentence given to convicts and children who meet the requirements stipulated in the legislation. Article 1 of Presidential Decree No. 174/1999 does not provide the meaning of remission. Only states that: "every prisoner and child criminal who is serving temporary imprisonment and imprisonment can be given remission if the person concerned has good behaviour during the sentence".

According to Andi Hamzah (2000), remission is a reduction in sentence for all or part of or from life to a determinate sentence given every August 17. As one of the prisoners' rights, remission has a strategic position to improve prisoners' behaviour. With this remission, inmates are allowed to improve themselves. This is useful so that prisoners can be accepted back into society. In the Penitentiary, prisoners are motivated to do good to get remission. Still, to get the remission not only must meet the requirements of good behaviour, mostly convicts who are perpetrators of corruption and theory, but they must also meet additional needs as contained in Article 34A of Government Regulation No. In 2012. Even the Ministry of Law and Human Rights, some groups considered that Government Regulation No. 99/2012, was unfair and discriminatory in providing remissions to some instances of convicts. The conditions stipulated in this Government Regulation are considered burdensome.

Legal protection of prisoners can be interpreted as an effort to protect the law for the various freedoms and rights of prisoners (fundamental rights and freedoms of prisoners) and multiple interests related to prisoners' welfare (Barda Nawawi Arief, 1998) ^[4, 6]. Legal protection of prisoners' rights in Indonesia has been regulated in Law Number 39 of 1999 concerning Human Rights, and Law Number 12 of 1995 concerning Corrections. The essence of prisoners' protection is the realization of the development of prisoners following the correctional system, which is enforced in the Correctional Law. Protection of prisoners' rights, one of which is the right to get remission, is a manifestation of the guarantee of human rights, which is one of the characteristics of the rule of law, including the rule of law of Pancasila.

According to Friedrich Julius Stahl, the characteristics of the rule of law are as follows: 1) The existence of protection of human rights; 2) Separation or distribution of power to guarantee human rights; 3) Government based on regulations; and 4) The existence of a State administrative court in disputes (S.F Marbun and Moh. Mahfud MD, 1989). Sri Soemantri put forward the most critical elements of the rule of law, namely: 1) That the government in carrying out its duties and obligations must be based on law

or legislation; 2) There is a guarantee of human rights (citizens); 3) There is a distribution of power; 4) The existence of supervision from judicial bodies (rechterlijke Controle) (Sri Soemantri M, 1992) ^[12]. Padmo stated that in the rule of law there is a pattern as follows: 1) Respect and protect human rights; 2) Democratic state institutional mechanisms; 3) Orderly law; 4) Free judicial power (Padmo Wahjono, 1979).

The principle of equality theoretically or practically covers the political, legal and social fields and the economic and cultural fields. The enforcement of the principle of equality is a prerequisite that supports the Pancasila Rule of Law's existence to actualize or implement its commitment to welfare the lives of the strata of society as the mission of governance.

With the tightening of remissions as stated in Government Regulation 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 Assistants, it is quite challenging to obtain remissions for criminal offenders today, because it is related to the existing conditions. This is different before there was a tightening in giving the remission.

Government Regulation Number 99 of 2012 is that it can help the government uncover criminal cases because there is assistance from the perpetrator of the crime, and the conditions are more complicated than the previous regulations. In this GR, particular criteria are exclusive of treatment given to prisoners, and this is different from Law Number 12 of 1995, which does not differentiate the treatment of all prisoners.

Regarding the pros and cons of granting remissions to corruption convicts and the Ministry of Law and Human Rights' plan to revise Government Regulation Number 99 of 2012, because it is considered burdensome to provide remissions to convicts who are considered serious crimes, it is necessary to pay attention to Supreme Court Decision Number 51 P / HUM / 2013 which has provided powerful legitimacy for the implementation of PP 99 of 2012, so that there is no discriminatory reason and violates the rights of corruption convicts previously stated by the government.

According to his considerations, the Supreme Court stated that

"... That there is no conflict between Government Regulation Number 99 of 2012 and Law Number 12 of 1995 because the main objective of Government Regulation Number 99 of 2012 is prisoners' development. Different guidance for prisoners is a logical consequence of the differences in the character of the types of crimes committed by prisoners, differences like the dangers of the crimes committed and the effects of the crimes committed by each prisoner;

"... Whereas the existence of Government Regulation Number 99 of 2012 tightens the conditions for giving remissions, their implementation reflects the value of justice. It shows the distinction between ordinary or minor criminal offenders and those that cost many social, economic and political costs that must be borne by the State or the Indonesian people. Thus, the difference in treatment is an ethical consequence of treating somewhat following the impact of moral, social, economic, security, youth and future damage from the crimes committed by each prisoner.

"... Corruption in Indonesia has taken away the Indonesian people's fundamental social and economic rights and is

taking place systemically and extensively to become an extraordinary crime; Government Regulation Number 99 of 2012 shows the consistency of spirit or spirit. Handling severe crimes or Extraordinary Extraordinary Crimes in nature, these crimes do not destroy Indonesian society's social order.

"... Considering, that the Correctional Law regime is a regime for implementing punishment and correctional / guidance. In case, Government Regulation Number 99 of 2012 does not eliminate prisoners' rights in the context of serving the crimes imposed by the Court Regime but rather carries out the process of implementing the convictions effectively and appropriate guidance so that the objectives of the punishment can be maximally achieved. Therefore, between Laws and Government Regulations, the object of the Material Review Rights does not contain "legal, ideological irrelevance" in it, nor is there a violation of the principle of "independence/separation" of statutory regulations;

"... Considering, that the existence of tightening regulation on granting such rights to certain crimes that are indeed a priority to be eradicated is acceptable. Especially for the perpetrators of the criminal act of corruption, they are parties that can potentially damage the possibility of citizens getting all kinds of guarantees for economic, social and cultural rights contained in the provisions of Article 22 of the DUHAM. This has become a severe problem that has threatened national and international stability and security, weakens the institutions and values of democracy and justice and endangers development and law enforcement;

"... Considering, that Government Regulation Number 99 of 2012 does not contradict Article 5 and Article 6 of Law Number 12 of 2011; Considering, that the formation of Government Regulation Number 99 of 2012 has been based on Articles 5 and 6 of Law Number 12 of 2011 because the existence of Government Regulation Number 99 of 2012 is an order of Article 14 paragraph (2) of Law Number 12 of 1995 and in its formation has fulfilled the principles of forming fair laws and regulations, namely: clarity of objectives, appropriate institutional or official appearance, conformity between types, hierarchy and content, can be implemented, utility and efficiency, transparency of formulation and openness".

With this Supreme Court Decision, the government is expected to be consistent with the rules it has made itself and be careful in issuing policies to not conflict with existing laws and regulations. Justice is something that humans are looking for, as caliph or ruler on earth. As a ruler, it is his job to uphold justice. Allah affirms that only those who believe can keep justice, become fair witnesses, and not follow lust. People who enforce the law legally are categorized as closer to taqwa. When connected with the concept of justice according to John Rawls, justice does not only include the moral idea of the individual but also questions the mechanism of achieving justice itself, including how the law can participate in supporting these efforts (Jogi Nainggolan, 2015) ^[7].

The rulers' task, both in the executive, judicial and legislative fields, is to carry out God's mandate. The mandate is intended to be related to many things, one of which is fair treatment. The justice demanded is for groups or Muslims, but includes all humans and even all creatures. The verses of the Al-Qur'an concerning this matter are numerous, one of which is a warning to the Prophet

(PBUH), who almost blamed the Jews for being influenced by a thief's family's defence. It is in this context that the word of Allah came down in Surah An-Nisa (4) verse 105: It means: And do not be a challenger (innocent), because (defend) those who are treasonous.

Based on this verse, leaders are required to be careful in deciding a case, not to be biased or unequal to create unilateral losses. These obligations can be summarized in two ways, namely: Fulfilling the mandate and enforcing the law fairly to all people and regulating the interests of the state according to its demands, to bring good to individuals and the congregation, inside and outside.

Realizing objective justice is an attitude that is very difficult for humans to achieve, due to human nature with a tendency to follow lust. That is why many ulama refuse to be promoted to judge, not because they are reluctant to consider a problem, but because they fear that he will not achieve objective justice due to emotions or lust that envelops him (Muhammad Mutawalli Sya'rawi, 2005) ^[5].

All these types of justice are assigned by the authorities to enforce these types of justice because they have the power, and the public has given the ruler a social mandate. Therefore, the ruler must be responsible for upholding justice as somewhat as possible, and establishing the law partially even though there are limitations in humans, and this is human relativity. Based on the description above, remissions for corruption convicts must be carried out according to the rules, professionally and proportionally. Prisoners who wish to receive remission must comply with the requirements stipulated in the laws and regulations, and through established procedures. Regulations regarding remissions are made to create legal certainty, benefit, and justice in providing these remissions.

Conclusion

Based on the author's description above, the following conclusions can be drawn: 1) the formulation policy for giving remissions to convicts of corruption cases is regulated in several laws and regulations. This policy is intended to protect and fulfil the right to remission of these prisoners; 2) In connection with the value of justice, remission to convicts in corruption cases is fair, as long as the remission refers to the conditions stipulated in the prevailing laws and regulations; 3) In connection with the purpose of punishment, the addition of requirements for granting remissions to convicts in corruption cases is a manifestation of the combined/integrative theory, that is, in addition to the purpose of repaying the convict's mistakes, it is also intended to protect the community, by creating an order.

References

1. Al' Quran dan Terjemahnya. Mujamma Al Malik Fahd Lithiba at Al Mushhaf, Kerajaan. Arab Saudi, 1990.
2. Andi Hamzah, Sistem Pidana dan Pemidanaan Indonesia dari Retribusi ke Reformasi, Pradnya Paramita, Jakarta, 1985.
3. Kamus Hukum. Ghalia Indonesia, Jakarta, 2000.
4. Barda Nawawi Arief, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, Citra Aditya bakti, Bandung, 1998.
5. Muhammad Mutawalli Sya'rawi, *Adalatullah: Keadilan dan Hidayah Allah*, terjemahan. Ahsan Askan, Cendekia, Jakarta, 2005.
6. Muladi dan Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*, Edisi Revisi, Alumni, Bandung, 1998.
7. Jogi Nainggolan, *Energi Hukum Sebagai Faktor Pendorong Efektivitas Hukum*, PT. Refika Aditama, Bandung, 2015. Hlm. 51
8. Padmo Wahjono. *Pembangunan Hukum Indonesia*, In Hill Co. Jakarta, 1989.
9. R. Achmad S. Soemadipradja dan Romli A, *Sistem Pemasarakatan di Indonesia*, Bina Cipta, Bandung, 1979.
10. Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Cetakan ketiga, Ghalia Indonesia, Jakarta, 1988.
11. S.F Marbun dan Moh. Mahfud MD, *Pokok-pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 1987.
12. Sri Soemantri M, *Bunga Rampai Hukum Tata Negara Indonesia*, Penerbit Alumni, Bandung, 1992.
13. Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, 1985.
14. Soerjono Soekanto, *Metode Penelitian Hukum*, UI Press, Jakarta, 2002.
15. Sudarsono, *Kamus Hukum*, Rineka Cipta, Jakarta, 2007.
16. Undang-Undang Nomor 12 Tahun tentang Pemasarakatan, 1995.
17. Undang-Undang Nomor 39 Tahun tentang Hak Asasi Manusia, 1999.
18. Peraturan Pemerintah Republik Indonesia Nomor 32 Tahun Tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasarakatan, 1999.
19. Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun Tentang Perubahan Atas Peraturan Pemerintah Nomor 32 Tahun Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasarakatan, 2006-1999.
20. Peraturan Pemerintah Republik Indonesia Nomor 99 Tahun Tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 32 Tahun Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasarakatan, 2012-1999.
21. Keputusan Presiden Republik Indonesia Nomor 174 Tahun Tentang Remisi, 1999.
22. Putusan Mahkamah Konstitusi Nomor 49/PUU-X/2012 Perihal Pengujian Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.
23. Putusan Mahkamah Agung Nomor 51 P/HUM/2013
24. <http://www.kemenkumham.go.id>
25. SMS Gateway Ditjenpas Kemenkumham, 2019.
26. republika.co.id