



REMISSION FOR CORRUPTORS AND THE CHALLENGES OF CORRUPTION ERADICATION IN INDONESIA

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Abstract

Granting of remission for prisoners has been set in the Correctional Act 1995 (UU No. 12 Tahun 1995 Tentang Pemasyarakatan) and granting remission for corruptors has been set specifically in Government Regulation on the second amendment of Government Regulation No. 99 of 2012 on the requirements and procedures on granting the rights of the convicted person. However, this policy will injure the public's sense of justice. It is because the corruption is harmful for the society and State, eventhough the law justifies on granting of remission for corruptors. From the point of view of human rights, corruption has been recognized as the violation of social and economic rights of the people. Therefore, corruption should no longer be classified as an ordinary crime, but extraordinary crime. The penalty for corruptors commonly tends to be mild from time to time, especially due to the granting of remission. The paper aims to discuss on the policy of granting remission for corruptors based on the philosophical, sociological, historical and juridical views. By using the normative qualitative method, the researcher found this policy has the challenges in corruption eradication in Indonesia because such policy is contrary with the spirit of government in corruption eradication in Indonesia and remission will remove the objective of sentencing.

Keywords; corruption, challenges, policy, remission

1. Introduction

Some corruptors in Indonesia have been granted remission by government. In 2010, 330 (three hundred thirty) corruptors have been granted remission and 11 (eleven) of them were released immediately after their detention period reduced. In 2011, 235 (two hundred thirty-five) corruptors. In 2013, 182 (one hundred eighty-two) corruptors. In 2014, The Ministry of Justice and Human Rights has also granted remission for 49 (forty-nine) corruptors (Sofiani, 2013). In 2015, 1.938 (one thousand nine hundred thirty-eight) corruptors. The prisoners may be granted remission when

they have good behavior and never have a bad record while undergoing sentence. However, this policy will injure the public's sense of justice, even though the law justifies concerning granting of remission for corruptors. It is because the corruption is harmful to the society and State. From the point of view of human rights, corruption has been recognized as the violation of social and economic rights of the people, therefore corruption should no longer be classified as an ordinary crime, but extraordinary crime. Based on the above legal and social facts, the research will discuss on the issue of "Remission for Corruptor and the Challenges of the Corruption Eradication in Indonesia". Remission has been set in some legislations, among others the Correctional Institution Act 1995 (UU No. 12 Tahun 1995 tentang Lembaga Pemasyarakatan), Presidential Decree No. 174 of 1999 concerning Remission, Government Regulation No. 99 of 2012 on the Second Amendment of Government Regulation No. 32 of 1999 on the Requirements and Procedures of Granting the Rights to the Convicted Person (Wulandari, 2019).

The penalty for corruptors commonly tends to be mild from time to time, especially due to the granting of remission. One of the interesting case relating to granting of remission is Aulia Pohan's case (former governor of Bank Indonesia), who has been arrested by the investigators of the Corruption Eradication Commission (KPK) on 27 November 2008. (Enggarsasi & Sumanto, 2015). The Court sentenced him to imprisonment 4 years and 6 months. Subsequently, the Court of appeal reduced his sentence into 4 years and it has been reduced again by the Supreme Court into 3 years only with a fine into 200 (two hundred) million rupiahs. Finally, in 17 August of 2010, Aulia Pohan also granted remission for 3 months, which means, Aulia Pohan only sentenced to imprisonment for 2 years and 7 months and it is not comparable with the crime has been committed.

The aim of imposition of punishment is guiding the prisoners to be a better person after rehabilitation and to make it happen we need sufficient time because the time period will be influential. The short time penalty will hinder the effort to reach its purpose and it will reduce deterrent effect of punishment given to corruptor in Indonesia. Certainly, it is contradictory with the nation's spirit of corruption eradication. On the other hands, according to Yusril Ihza Mahendra, the policy of granting remission is constitutional because it has been regulated in the existing law in Indonesia. Moreover, Indonesia recognized the principle of equality before the law. Based on the above introduction, the problem has been formulated in the following statement of problems, are as follows; what is the criminal policy concerning granting of remission for corruptors in Indonesia, from philosophical, sociological, historical and juridical views and what are the challenges of remission in corruption eradication in Indonesia (Syamsuri, 2021).

2. Method

This research uses a descriptive Juridical-Normative Research Method. The problem approach method used in this research is using a statutory approach, a case approach and a comparative law approach.

3. Results and Discussion

3.1 Granting of Remission for Prisoners Based on the Philosophical, Sociological and Historical Views

Pancasila as the ideology of Indonesia gives strength to live and to lead in the pursuit of a better life. Pancasila's principles should always be implemented as a basic philosophy, fundamental basis to all regulations and administration of the state. The fifth principle of Pancasila states social justice is for all citizens, the meanings of this principle are as follows: developing a noble deed, equality before the law, maintaining a balance between rights and obligations, respecting the others right, helping each other, don't use the right to oppress others, don't use the right for actions that are not useful, don't use the right which can be detrimental to public interest, working hard, no discrimination (Syauket, 2021).

In Article 28D (1) of Indonesian's 1945 Constitution mentions "Everyone shall be entitled to fair legal recognition, certainty, protection, and assurance and equal treatment before the law". It means all the offenders, including the corruptors are have same rights to be granted remission when they have fulfilled all the requirements based on The Correctional Institution Act 1995. Meanwhile, granting remission for corruptor specifically is regulated in Government Regulation No. 99 of 2012 on remission. Also, in Article 28I (2) of 1945 Constitution States "Everyone has the right freely over discriminatory treatment on any basis and deserve protection against such discriminatory treatment" (Subardini, 2015).

Human rights protection shall be guaranteed by Indonesia in its constitution, granting remission is a part of Human rights protection. Therefore, the State shall not discriminate the corruptors by not providing remission to them. In the sociological view, the Correctional system wants to realize the relationship integration between convicted person and the public life. Integration paradigm assumes the prison often impacts the prison subculture that is destructive of human values, so that inmates must be guided in such a way to be introduced to the prevailed values in society. Prisoners shall be granted a chance to socialize with the existence of community. Eliminating any permanent prisoners in the world is very important because basically a prison can lead to dehumanization (Ghozali, 2016).

According to Junaedi Kadir: "Prisons tends to dehumanize people and ignore the rights of offenders, prisons have an obligation to guide the offenders having a better life and can live in the community again (as appropriate)". Remissions will provide an opportunity for corruptors to visit family, socializing with people, and other activities that can change negative with positive values and support the prisoners to live with society again as appropriate. Remission is a manifestation of the State's responsibility to support its citizens (inmates) being able to adapt and interact in the life of society, and imprisonment is not a tool to aggravate their behaviour (Toni & Jati, 2013).

The prosecution system emphasizes the element of revenge gradually abandoned because it's deemed incompatible with the concept of rehabilitation and social reintegration. The system's aim is correcting and guiding prisoners becoming better person who don't has intention to commit crimes anymore. In the historically view, Indonesia has left retribution theory and implemented relative theory. It means that all prisoners included corruptors shall to be corrected being a good citizens and can live with the community again as appropriate. Sahardjo gave the idea concerning

correctional institution shall educate prisoner being a good citizen as known as *behandelings filosofie*. Sahardjo also states the State is not entitled to make prisoners worse while undergoing the sentence.

3.2 The Policy of Granting of Remission for Corruptor in Indonesia Based on the Juridical Views

There are three (3) theories of sentencing (*theorieen strafrechts*), namely first; theory of retribution (*absolute theorieen/vergelding*), second; theory of purpose or correcting (*relatieve theorieen/doeltheorieen*); and third; combined theory (*verenigingstheorieen*). Indonesia, nowadays in its development, has left the theory of retribution (*absolute theorieen theorieen/vergelding*) and implementing the relative theory or correcting (*relatieve theorieen/doeltheorieen*). There are ten (10) correctional principles must be implemented in the correctional system, are as follows; people who are misled or misguided should be nurtured and guided being a good citizens, criminal imposition is not for revenge, sense of repentance cannot be reached solely through torture but also through guidance, state is not entitled to make the convict worse after rehabilitation, inmates shall be granted a chance to socialize with community or society, the job was given to the inmate shall be related to State development, guiding and educating to prisoners must be in conjunction with *Pancasila* and very person is a human being and shall be treated as human beings (Triyono & Meidita, 2023).

Section 14 Paragraph 1 of The Correctional Institution Act 1995 governs the rights of prisoners, are as follows; entitled to worship in accordance with religion's norm or beliefs, entitled on physical or spiritual treatment, entitled to deserve education, entitled to health care and decent food, entitled to submit a complaints, entitled to get information on the latest news, entitled to a salary, entitled to be visited by family and legal counsel, entitled to be granted remission, entitled to visit family, entitled to parole, entitled to a leave of absence; and entitled to reserve other rights in accordance with the rules of law (Hasan et al., 2018).

In the provisions of Section 14 paragraph (1) letter (i) of Correctional Institution Act 1995 states one of the prisoner right is granting remission , Remission for corruptor is regulated specifically in the Government Regulation No. 99 of 2012. Which means the State shall not ignore the right of corruptors to be granted remission or the State shall not discriminate corruptors by ignoring their rights, it is in conjunction with Article 28I (5) of 1945 Constitution states "to uphold and protect human rights in accordance with the principles of a State of law which is democratic, the exercises of human rights are guaranteed, regulated and set forth in the legislation". And also, Indonesian's 1945 Constitution regulates the principle of equality before the law, which has been listed in Article 28D Paragraph (1), this Article describes Every person is entitled to get recognition, and yet the most important guarantee in the article is getting the same treatment before the law (Hendratno, 2014).

The Human Rights Act 1999 also set the equality before the law, Section 4 of this Law states; The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law and equality, and the right not to be prosecuted based on retroactive law is a human right

which cannot be reduced under any circumstances and by anyone. The above information stated that the Government Regulation Number 99 of 2012 in Section 34 about granting of remission to the corruptor is in accordance with 1945 Constitution and Human Rights Act which are guarantee the recognition of protection and equal treatment before the law because of government regulation over to attend as an instrument for the realization of legal justice.

Requirements to be granted remission are as follows, first; Inmates or convicted children are entitled to remission if they: are well-behaved, proven by not undergoing disciplinary punishment within 6 (six) months, commencing prior to the date of the remission grant; and has followed the coaching program organized by the Correctional institution with a good rating. undergoing the sentence more than six (6) months. Second; inmates convicted of committing a criminal act of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security, serious human rights violations, as well other transnational organized crime, in addition to meeting the requirements for a common criminal, must also meet the following requirements; willing to cooperate with law enforcement to help dismantle the criminal case he did, has paid a fine and compensation in accordance with the decision of the court; and has followed the de-radicalization program organized by the Correctional Institution and/or the National Agency.

3.3 The Challenges of Remission in Corruption Eradication in Indonesia

3.3.1 The Policy of Remission for Corruptors is Contrary with The Spirit of the Government in Corruption Eradication

Corruption still cannot be eradicated because the government cannot maximize the punishment for the corruptors who destroyed the economic and State finance, corruptors should not be given the pleasure in their punishment by granting remission. Corruptors shall be sentenced with maximum punishment because of their crime which classified as an extraordinary crime, and it is conjunction with the spirit of government to eradicate corruption but when remission is still granted, it will harm the essence of purpose of sentencing itself and injured sense of justice of people. According to Johannes Andenae, the primary purpose of sentencing is to satisfy demand of justice. Immanuel Kant in his book philosophy of Law states the sentence itself shall carried out solely to provide justice (demanding of fairness).

The interesting case related to granting remission for corruptors is Romli Atmasasmita case, who has been granted the petition of cassation, Romli declared free from any claims. Another case is Aulia Pohan case (former governor of Bank Indonesia), who has been arrested by the investigators of the Corruption Eradication Commission (KPK) on 27 November 2008. Moreover, the punishment given to Gayus Tambunan, where the punishment given to him is not comparable with his crime. Gayus was sentenced based on the decision of the Corruption court on 1 March 2012 with imprisonment for 6 years and a fine of IDR. 1 billion.

Based on above cases proves that the government is still not able to eradicate the corruption in Indonesia, it is because the sentence commonly tends to mild, especially with the provision of remissions where the requirements are easier to be fulfilled. Hereby, it will make the public doubt with the government's intention to eradicate corruption in Indonesia. Indonesian Corruption

Watch (ICW) stated there are 40 of Corruption cases have not solved yet. Among others are Bali Bank scandal case (IDR. 904 billion), corruption case in PT Perumnas (IDR. 859 billion), and corruption case in Branch Office of PT Taspen (IDR. 679 billion). Also, corruption cases in BLBI has not solved yet and handled clearly.

Moreover, types of corruption are classified as an extraordinary crime, and they cannot be equated with ordinary crime (blue collar crime), because it has a systemic effect, both political, economic and social life of the nation. It is in accordance with the 4th Preamble of the United Nations Convention against Corruption in 2003 set explicitly "Convinced that corruption is no longer a local matter, but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential". According to Zainal Arifin Mochtar said that Corruptors should not get a remission because corruption is not same with ordinary crimes, in ordinary criminal cases only affected to individual or particular person. Meanwhile, corruption has detrimental impact to the whole society (Nur, 2017).

1945 Constitution Article 28J (2) everyone shall be subject to the restrictions regulated by law with the sole purpose of securing due recognition and respect for the rights and freedoms of others. And the Article 29 of the Declaration of Human Rights, confirms the restriction of individual rights can be justified as far as it aspires to protect human rights, originally arranged in the shape of statute law. The 1945 Constitution and the Human Rights Act guaranteed equal rights and equal treatment before the law. However, through Article 28J Paragraph (2) of 1945 Constitution we may restrict the rights on top with the intention of fulfilling the demands of a sense of Justice. Read more in Article 28J Paragraph (2) of the 1945 Constitution which mentions that "in the exercise of rights and freedom, everyone is subject to the mandatory limitations, which are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the demands of a fair in accordance with considerations of a moral, religious values, security and public order in a democratic society".

3.3.2 Remission will Remove the Objective of Sentencing

General function of criminal law is to regulate social life or organized social order, and there are three theories related to sentencing, are as follows; first, retributive/absolute theory. Andi Hamzah states this theory is primitive, the foundation of this theory is retaliation. The State entitled to sentence the criminal offenders because they committed the criminal action and has attacked the rights and legal interests (private, public or state). The policy of retaliation in this theory has two directions, are as follows; aimed to the offenders and intended to satisfy the resentment of people (subjective side of retaliation) (Luqman Hakim & Munawwaroh, 2020). Meanwhile, Karl O. Christiansen identified five main characteristics of the absolute theory; those are; the propose of criminal law solely is retaliation, retaliation is a primary goal without any guiding prisoners being a good person, punishing something immoral, the punishment must be tailored to a crime which has been committed, don't has purpose to correct, educate and guide the prisoners (Simarmata, 2012).

Second theory is relative Theory from Doel Theorien, The aims of this theory is to guide and support the inmates being a good person and have a better life than before without intention to

commit same or other crimes anymore. This theory is tool to enforce discipline in the community, the purpose of criminal law is to order the life of society and to uphold the justice and public order, this theory has 3 (three) characters, are as follows: first, intimidating (*afsschrikking*), second; correcting (*verbetering/reclas ering*) and third; destroying (*onschadelijk maken*). Generally, the main principals or characteristics of relative theory are as follows, prevention, prevention as a tool to achieve higher goals, namely the welfare of society, only person who has violated the law or conducted any infringement are required to be sentenced. Indonesia at the moment uses this theory (*relatieve theorieen/doeltheorieen*) as the objective of sentencing theory in Indonesia, and has abandoned the theory of retribution as the criminalization purpose.

Third theory is combined theory, According to this theory, the purpose of punishment includes both retaliation or deterrence and prevention is to improve the offender mentality. The Correctional Act 1995 in its explanation states the purpose of punishment is an attempt to sensitize prisoners to regret his actions and support them being a good citizens, obeying the law, uphold the values of moral, social and religious life of the community and to reach a safe orderly and peacefully. Corruptors who have committed the corruption act which categorized as an extraordinary crime shall be guided within longer period time.

In fact, the punishment tends to be mild and it cannot cannot give deterrent effect for them. Commonly, the time period of punishment given to corruptors is around 2 years 9 months in jail. Jail punishment within time period of 10 years in jail given to corruptors can be counted by the fingers. Moreover, corruptors may be granted the right to earn remission or reduction sentence period. It is very rare to find corruptors who are punished with a maximum punishment (20 years), it is because commonly they were punished no more than 3 years in jail. Period of punishment may be reduced by remission.

Aulia Pohan's case (former governor of Bank Indonesia), who has been arrested by the investigators of the Corruption Eradication Commission (KPK) on 27 November 2008. The Court sentenced him to imprisonment 4 years and 6 months. Subsequently, the Court of appeal reduced his sentence into 4 years and it has been reduced again by the Supreme Court into 3 years only with a fine into 200 (two hundred) million rupiahs. Finally, in 17 August of 2010, Aulia Pohan also granted remission for 3 months , which means, Aulia Pohan only sentenced to imprisonment for 2 years and 7 months and it is not comparable with the crime has been committed.

Gayus Tambunan's case, he has been sentenced by the Corruption Court to imprisonment within 6 years which the punishment was given is not comparable with his crime, he has committed corruption act with the amount of IDR 1 (one) trillion. In 2010, the former of General Inspector Djoko Susilo has committed corruption with amount of IDR. 121 billions. Unfortunately, he was only sentenced 10 years in prison, the penalty is comparable with a loss of state as a result of his crime. Angelina Sondakh's case, she has been arrested because of corruption case and sentenced by the Corruption Court with imprisonment 4,5 years. She was proven to receive money totaling IDR. 12.58 billions and USD 2.35 millions in 2010. Nazaruddin has corrupted the State's Budget more than IDR. 1 trillion and the punishment given to him only 4 years and 6 months in jail. This decision occurred because the assembly of judicial review annul the decision of Supreme Court in cassation level. Previously, in cassation level the Supreme Court sentenced him with imprisonment 6 years in jail.

Corruptors should be given the maximum penalty, without remission. They already corrupted the money of the state that causing damage to millions of people, so it does not deserve to get the remission. Precisely, corruptors should be impoverished, and given social sanction. Indeed, the prison is not the place for retaliation but prison also is not as the place for the criminal actors to enjoy any privileges including remission which is given by the government. Punishing a corruptor maximally does not only give some learning for prisoners themselves but also may make the millions of people outside the prison walls to avoid the action to corrupt the money of society (Sofwan, 2022).

Meanwhile, members of the legal and Judicial Monitoring Division, Lalola said that, "Looking at the trend of corruption verdict of 2013 and 2014 was dominated by the provision of a light sentence by the court, if observed, during the judgment to corrupt an average of only 2 years and 8 months. If remission is granted, then a punishment ascertained will be increasingly reduced and there is no deterrent effect received by the corruptor. They could be free, while Indonesia is in emergency situation because of corruption."

In 2018, the Court found that Setya Novanto received about \$7.4 million from the corruption conspiracy, Novanto enriched himself with millions of dollars of public money by abusing the authority and opportunities available to him because of his political position. Novanto was among about 80 officials, lawmakers and several companies who used the introduction of a \$440 million electronic identity card system in 2011 and 2012 to steal more than a third of the funds. The corruption case, epic even by the standards of Indonesia's notoriously corrupt parliament, and Novanto's monthslong efforts to elude questioning by the Corruption Eradication Commission disgusted and angered many in the world's third-largest democracy. The anti-graft commission's lead investigator in the scandal was attacked with acid after leaving dawn prayers in April last year and blinded. No one has been arrested.

The court said businessmen and Ministry of Interior officials involved in the electronic ID project invited Novanto to work with them because they believed his influence in parliament would be crucial in securing its budget and financing. What followed were delays in the project and inflation of the value of project contracts, allowing funds to be stolen. Novanto organized key meetings for project finance and budget approval and was involved in transferring money abroad and using unregistered money changers to avoid taxes and law enforcement scrutiny, the court said. Several other leading politicians, including ministers in President Joko Widodo's government, are possibly implicated in the scandal.

Corruption will always happen when the government does not maximize penalties for corruptors, and corruption will increase when corruptors are given comfort while undergoing their punishment by giving remission to them, we must be able to determine what corruptors are appropriate and inappropriate to be granted remission although they have fulfilled all the requirements to be granted remission set in applicable laws. Indeed remission is a right that shall be upheld in order to promote justice for people, on the other hand this policy will make corruptor cases increasing in Indonesia because in reality the corruptors in Indonesia were not afraid to be sentenced, they know that when they are convicted, they will have a different facility than the usual offenders, especially they may also granted remission.

4. Conclusion

Based on the previous discussion in Chapter IV, it may be concluded that granting remission based on the philosophical view is referring to the Pancasila as the ideology of Indonesia, in the fifth principle stating social justice for all the citizens of Indonesia, it means that all the citizens have same right without any discrimination. Therefore, all of the offenders included corruptors have same right to be granted remission, when they were fulfilled all the requirements, which has been guaranteed by the existing law in Indonesia. The 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as „the 1945 Constitution“) on Article 28D paragraph (1) has been set that, “Everyone shall be entitled to fair legal recognition, certainty, protection, and assurance and equal treatment before the law”. Established along the constitutional statement of equality before the law principle, it means that all of the offenders included the corruptors have same right to be granted remission by government, when they have fulfilled all the requirements, which are stipulated in The Correctional Institution Act 1995. Meanwhile, granting remission for corruptors specifically is regulated in Government Regulation No. 99 of 2012 on remission. Also, in Article 28J (2) of 1945 Constitution States that “Everyone has the right freely over discriminatory treatment on any basis and deserve protection against such discriminatory treatment”. In the sociological view, remission is a manifestation of the State’s responsibility to keep any of its citizens being able to adapt and interact well in the life of society and State. Imprisonment is not a tool to aggravate their behaviour. Prison should be put into the context of integrating them properly in public life. Historically, prison has been changed to be “Correctional Institution and referring to the correctional system, on the basis of the idea of Sahardjo, remission is present as a reflection of the Criminal System implementation in Indonesia who embraced the Correctional System.

Granting remission for the corruptors as the prisoners, it was guaranteed in several regulations in Indonesia such as the Correctional Institution Act 1995 the Presidential Decree No. 174 of 1999 concerning Remission, and Government Regulation No. 99 of 2012 on the second amendment of Government Regulation No. 32 of 1999 on the Requirements and Procedures for the Implementation of the Rights of Prisoners Even though the law justifies such policy of granting remission for corruptors but it has the challenges in corruption eradication, granting remission for corruptors in Indonesia is contradictory with the spirit of government to eradicate corruption act as an extraordinary crime, and this policy will also remove the main objective of sentencing (theory of relative). Recommendation from researcher in this Journal will give several suggestions related with the issue, are; adding penalty period for corruptors to seven years (minimum), making the requirements to be granted remission stricter; and eliminating remission for corruptors who sentenced within short period in prison.

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