

LEGAL POLICY REGARDING REMISSION OF CRIMINALS

Luh Putu Putri Indah Pratiwi

A Program For Law Study

Universitas Pendidikan Ganesha, Singaraja, Indonesia

Email: putri.indah923@yahoo.com

Abstract

This study was conducted aiming to find out how the implementation of remission rights for convicts of criminal acts of corruption in Indonesia and how the process of granting remissions against convicts of criminal acts of corruption when viewed from the perspective of Law Number. 20/2001 concerning eradicating Corruption. The research method used in writing this article is normative research that is examining by looking at the law as a norm. First, remission is still a right of convicts to a criminal act of corruption that has fulfilled the specified conditions of good behavior and has been serving a criminal sentence for more than 6 (six) months, but its implementation has been tightened to fulfill the community's sense of justice in accordance with article 34 of Government Regulation Number 99/2012 concerning Second Amendment to Government Regulation Number 32/1999 concerning the Requirements and Procedures for the Implementation of the Rights of Citizens' Guided Prisoners. Second, granting remission to corruption convicts if it is related to Law 20/2001 concerning Eradication of Corruption, the regulation of granting remission to corruption convicts must be reviewed according to the extent of losses incurred due to corruption committed by convicts to further enhance a sense of justice in Public.

Keywords: Remission, Corruption, Criminal act

Introduction

As a state of law of the Republic of Indonesia mandated in the UUD 1945 Constitution article 1 paragraph 3 which states that "the State of Indonesia is a state of law", with the aim of realizing the life of an orderly, prosperous, and just society, nation and state in order to achieve the country's goals as mandated in the Preamble of the UUD 1945, that special crimes, one of which is corruption, including extraordinary crime, has caused various kinds of chaos in various aspects of the life of the people, nation and state in Indonesia, therefore efforts to prevent and eradicate corruption must be carried out on an ongoing basis that demands increased capacity of resources, both institutional, human resources, and other resources, and develop awareness, attitudes, and behavior of anti-corruption communities so that they are institutionalized in the national legal system as stated in the Law of the Republic of Indonesia Number 46/2009 concerning Corruption Court.

Corruption has been going on for a long time, since the time of Ancient Egypt and occurred in various countries including even in developed countries.¹ In the United States itself, which is already very advanced, there are still practices of corruption, in contrast to primitive societies where social ties are still very strong and effective social

¹ Edward L. Glaeser and Claudia Goldin, eds, "*Corruption and Reform: Lessons from America's Economic History*", (University of Chicago Press, 2006), p. 386 dan Erika Revida. *Korupsi Di Indonesia: Masalah dan Solusinya*. Makalah, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Sumatera Utara. Medan, 2003, hal.1

control, corruption is relatively rare. Corruption is literally something rotten, evil, and destructive. Power in office due to giving, economic and political factors, as well as the placement of family or class into service under the authority of his position. As quoted in the legal dictionary, what is meant by corruptie is corruption, fraudulent acts, and criminal acts that harm state finances.²

Corruption according to Alatas is theft through fraud in a situation that betrays trust. Corruption is a form of immoral acts of encouragement to get something using the methods of fraud and theft. Important points you should know that nepotism and autogenic corruption are forms of corruption. Meanwhile, according to Asyurmadi Mazhar, corruption is a variety of illicit or illegal activities to gain personal or group benefits.³ Law Number 31/1999 Concerning Eradication of Corruption Crimes article 2 and article 3 of this Law states implicitly about acts that are classified and / or are included in the elements of criminal acts of corruption, namely article 2 states that "Everyone who opposes the law does the act of enriching oneself or another person that is a corporation that can harm the country's finances or the country's economy" article 3 states that "any person who aims to benefit himself or someone else or a corporation, misuses the existing authority, opportunity or means him because of his position or position or the means available to him because of his position or position that can harm the country's finances or the country's economy".

The rampant corruption is one aspect that results in low social discipline and is a major obstacle to development. Corruption is the main weapon of organized crime to strengthen power and freedom to act.⁴ Based on this it is not fair if the corruptors can get remission easily. The community views that the granting of remissions to perpetrators of corruption has hurt people's sense of justice. Moreover, remission is not correlated with a decrease in the number of corruption crimes in Indonesia, in fact, these crimes tend to increase, and each year the amount of money that is corrupted is getting bigger too.⁵

Remission is a reduction in sentence based on the provisions of the applicable laws in Indonesia.⁶ According to Article 1 Paragraph 1 of the Decree of the President of the Republic of Indonesia Number 174/1999, remission is a reduction in the criminal period given to convicts and criminal offenders who have behaved well while undergoing a crime except those sentenced to death or life imprisonment. According to Article 1 Paragraph 6 Government Regulation Number 32/1999, remission is a reduction in the criminal period given to convicts and criminal children who have fulfilled the conditions specified in the legislation.

The purpose of granting remission is as one of the criminal law policies in order to realize the goals of the penal system. With the remission, prisoners, especially prisoners of corruption, are expected to be able to realize that the act of corruption that has been committed is wrong, harming the community and the state so that the prisoner does not repeat the crime again. It also provides examples and deterrent effects for others. But in reality, the granting of remissions given by the state to inmates, especially prisoners of

² Evi Hartanti, *Tindak pidana korupsi*, Sinar Grafika, Jakarta, 2009, Hal 9

³ www.zonareferensi.com/pengertian-korupsi/

⁴ Emy Julia Tucunan, "*Hak Remisi Narapidana Tindak Pidana Korupsi*". *Lex Crimen*. Vol. III, Nomor 1, Jan-Mar 2014, hal 98

⁵ Gatot Goei, *Kebijakan Remisi Bagi Kejahatan Korupsi, Teroris, dan Narkotika : Suatu Kajian Hukum dan HAM*, Diakses dari <http://gatotgoeish.wordpress.com/2011/11/04/kebijakan-remisi-bagi-kejahatan-korupsi-teroris-dan-narkotika-suatu-kajian-hukum-dan-ham/>, pada tanggal 28 Mei 2019.

⁶ id.wikipedia.org/wiki/Remisi

criminal acts of corruption does not provide a deterrent effect for former convicts of corruption or other perpetrators of corruption. Even the granting of remissions for corruption convicts has increasingly made the perpetrators of criminal acts of corruption increase and are not afraid to commit criminal acts of corruption.⁷

Law Number 12/1995 concerning Penitentiary article 14 states that one of the rights of a convicted person is to get a reduced sentence. Technically, it is regulated further in Government Regulation Number 28/2006 concerning the requirements and procedures for the implementation of prisoners' rights in prison. In general, the remission is given based on two conditions, namely good behavior while in prison and has served a minimum sentence of six months. However, especially for convicted of corruption, special provisions apply. Article 34 paragraph 3 of Government Regulation Number 28/2006 stipulates that new remissions can be granted after serving 1/3 (one-third) of the criminal sentence. This provision also applies to convicted terrorism, narcotics, crimes against state security, gross human rights crimes, and other organized transnational crimes.

The Minister of Law and Human Rights and Deputy Minister of Law and Human Rights on November 16, 2011 issued a decree numbered M.HH-07.PK.01.05.04 concerning tightening remissions against inmates, extraordinary crimes, corruption and terrorists who did not in accordance with applicable legal procedures, but in the end this decree was debated and sued by the State Administrative Court which caused this decree to be canceled, because remission or reduction of the criminal period is the right of every convict and criminal child as regulated in the legislation.⁸ Based on this background the writer is interested in raising the title LEGAL POLICY REGARDING REMISSION OF CRIMINALS.

Formulation Of The Problem

1. What is the implementation of the remission rights for prisoners of corruption in Indonesia?
2. What is the process of granting remission to corruption convicts viewed from the perspective of Law Number 20/2001 concerning the Eradication of Corruption Crimes?

Method

This study uses a normative research method that is to examine by looking at the law as a norm. To collect material used library research methods, namely by studying the legal literature relating to the subject matter, the set of laws and regulations, legal articles, and various other written sources relating to the material discussed by the author. The materials that have been collected are then analyzed using qualitative analysis methods, where the results are arranged in written form.

Result

Implementation of remission rights for convicts of corruption in Indonesia.

Reduction of the criminal period is the right of every prisoner regulated in Presidential Decree Number 69 of 1999 concerning Reduction of Criminal Period (Remission) and Government Regulation Number 28 of 2006 concerning Amendments to

⁷ Dimas Hario Wibowo, Pelaksanaan Pemberian Remisi Terhadap Narapidana Tindak Pidana Korupsi Di Lembaga Masyarakat Kelas I Semarang, *Unnes Law Journal*, Vol.2, No.1, 2013, hal 13

⁸ Emy Julia Tucunan, *Op.Cit.*, hal 99

Government Regulation Number. 32 of 1999 concerning the Requirements and Procedure for the Implementation of the Rights of Penitentiary Guidance Citizens which have been amended through Government Regulation Number. 99 of 2012 concerning the Second Amendment to Government Regulation Number. 32 of 1999. Article 34 Government Regulation Number. 28 of 2006, States that :

- (1) Every Prisoner and Criminal Child is entitled to Remission. Remission as referred to in paragraph (1) is given to Prisoners and Criminal Children if they meet the following requirements :
 - a. Good behavior
 - b. Has served a criminal period of more than 6 (six) months.
- (2) For prisoners convicted of committing crimes of terrorism, narcotics and psychotropics, corruption, crimes against state security and gross human rights crimes, and other organized transnational crimes, are given Remission if they meet the following requirements:
 - a. Good behavior
 - b. Has served 1/3 (one third) of the criminal period.
- (3) Remission as referred to in clause (1) is given to Prisoners and Criminal Children if they meet the requirements for carrying out acts that assist LAPAS activities.

Article 34A states that:

- (1) Remission for Prisoners as referred to in Article 34 paragraph (3) is given by the minister after receiving consideration from the Director General of Corrections.
- (2) The granting of Remission as referred to in Article 34 paragraph (1) shall be determined by a Ministerial Decree.

To tighten the granting of remissions to inmates, particularly corruption, which is based on Government Regulation 28 of 2006, and with the cancellation of the Decree of the Minister of Human Rights No. M.HH-07.PK.01.05.04 concerning Tightening of Remissions of Prisoners for Extraordinary Criminal Acts of Corruption and Terrorism, then the government changes Article 34 of Government Regulation No. 32 of 1999 through Government Regulation No. 99 of 2012 as follows :

Article 34A states that:

- (1) Provision of Remission for Prisoners convicted of committing acts of terrorism, narcotics and precursor narcotics, psychotropics, corruption, crimes against state security, gross human rights crimes, and other organized transnational crimes, in addition to meeting the requirements referred to in Article 34 fulfill the requirements :
 - a. Willing to cooperate with law enforcement to help dismantle criminal cases he committed
 - b. Having paid the fine and compensation in accordance with the court's decision for convicted convicted for committing a criminal act of corruption; and
 - c. Has participated in the de-radicalization program organized by LAPAS and / or the National Counterterrorism Agency, and stated its pledge:
 - 1) Loyalty to the Unitary State of the Republic of Indonesia in writing for prisoners Indonesian citizens, or
 - 2) Will not repeat the act of terrorism in writing for inmates of Foreign Citizens convicted of committing criminal acts of terrorism.
- (2) Inmates convicted for committing narcotics and narcotics, psychotropic precursors as referred to in paragraph (1) only apply to inmates convicted with imprisonment for a minimum of 5 (five) years.

(3)Willingness to cooperate as referred to in paragraph (1) letter a must be stated in writing and determined by law enforcement agencies in accordance with statutory provisions.

Article 34B, states that:

- (1) Remission as referred to in Article 34 paragraph (1) is given by the Minister.
- (2)Remission for inmates as referred to in Article 34A paragraph (1) is given by the Minister after receiving written consideration from the minister and / or the head of the relevant institution.
- (3) Written considerations as referred to in paragraph (2) shall be submitted by the minister and / or heads of related institutions within a period of no later than 12 (twelve) working days from the receipt of the request for consideration from the Minister.
- (4) The granting of Remission is determined by a Ministerial Decree.

Article 34C states that:

- (1) The Minister may provide Remissions to Criminal Children and Prisoners in addition to convicted persons convicted of committing criminal offenses as referred to in Article 34A paragraph (1).
- (2) Prisoners as referred to in paragraph (1) consist of Prisoners who:
 - a. be sentenced to a maximum term of 1 (one) year;
 - b. aged over 70 (seventy) years; or
 - c. suffering from prolonged illness.
- (3)The Minister in granting Remission as referred to in paragraph (1) after taking into consideration the public interest, security and sense of justice of the community
Remission can be divided into 3 parts, namely general remission, special remission (religious holiday) and additional remission. General remission is a reduction in serving the criminal period given every birthday of the Republic of Indonesia's independence to convicts and criminal children who fulfill the conditions specified in the legislation. Special remission is a reduction in criminal period given every religious holiday (Eid al-Fitr, Christmas, Nyepi, Vesak) to prisoners and criminal children who fulfill the conditions specified in the statutory regulations. Additional remissions (decades) are remissions given every decade of the Republic of Indonesia's Independence Day. The amount of remission is one twelfth (1/12) of the criminal period and a maximum of 3 (three) months.⁹

Remission is given to prisoners who already have court decisions that have permanent legal force and not to prisoners (including not to death row inmates and for life). Permanent legal force for inmates means that they have complete documents in the form of a Court Decision, Minutes of Court Decision, Warrant for Implementing a Court Decision and a Detention Letter from an investigator. In addition, by taking into account the good behavior of prisoners during their criminal period up to the deadline for filing remission, if there is no violation of the rules then the prisoner concerned will be submitted a remission proposal which is the right of the prisoner.¹⁰

The Process of Granting Remission Against Corruption Criminal Inmates Seen From the Perspective of Law 20 of 2001 concerning Eradication of Corruption Crimes.

Article 28D paragraph (1) of the 1945 Constitution states that "every person has the right to recognition, guarantee, protection and legal certainty that is just and equal

⁹ Emy Julia Tucunan, Op.Cit.,hal 104

¹⁰ Ibid

treatment before the law", and Article 3 paragraph (2) of Law Number 39 of 1999 Concerning Human Rights , states that "everyone has the right to recognition, guarantees, protection and fair legal treatment and to obtain legal certainty and equal treatment before the law. Based on this, both the 1945 Constitution of the Republic of Indonesia and the Law Number 39 concerning Human Rights guarantee equality before the law without distinguishing the types of cases given that individual corruptors are human beings who have rights protected by the Law.

Article 34 paragraph (3) Government Regulation No. 28/2006 concerning Amendment to Government Regulation No. 32/1999 concerning the Requirements and Procedure for the Implementation of the Rights of Correctional Prisoners, states that "for prisoners convicted of committing a criminal act of corruption, are given remission if they meet the requirements that is, being of good character, and having served 1/3 (one third) of the criminal period. Law Number 20 Year 2001 Concerning Eradication of Corruption Acts confirms that corruption in Indonesia occurs systematically and is widespread so that it not only harms the country's finances, but also violates the social and economic rights of the community at large, then the eradication of corruption needs to be done in a way extraordinary. Not only the state but the people have also experienced suffering due to the perpetrators of criminal acts of corruption so whether it is appropriate remission given to perpetrators of corruption especially in the one year process of granting remissions given twice in Idulfitri and Indonesian Independence Day.

Law Number 12 of 1995 Concerning Corrections regulates the granting of remissions to all perpetrators of criminal acts including corruptors. Article 14 article 1 letter i of law number 12 of 1995 concerning correctional provisions explains that prisoners are entitled to a reduction in their criminal period. Republic of Indonesia Government Regulation No. 28/2006 also provides remissions against perpetrators of psychotropic crimes, terrorism, narcotics, corruption, crimes against state security, gross human rights crimes, and other organized transnational crimes in which the process and requirements for remission for corrupt convicts regulated in article 34 paragraph 3.

Republic of Indonesia's Presidential Decree Number 174 of 1999 also regulates the remission of convicts and criminal children and also the process of granting remissions in this case the granting of remissions is divided into two parts namely general remission and special remission. General remission was given on August 17 and special remission was given during the religious holiday held by the prisoner. The process of administering General Remission is regulated in Article 4 Paragraph 2 of the Republic of Indonesia Presidential Decree Number 174 of 1999 and the process of implementing Special Remission granting is regulated in article 5 paragraph 2 of the Republic of Indonesia Presidential Decree Number 174 of 1999.

All remission granting processes have been regulated from each regulation that governs them, even though the remission granting process is not regulated in law Number 20 of 2001 concerning Eradication of Corruption, but here we can see that from each regulation governing the process of granting remissions to perpetrators criminal acts, including perpetrators of corruption whether in accordance with law Number 20 of 2001 let alone the process of granting remissions to corruption convicts has the specificity of ordinary convicts, then the arrangements for granting remissions to convicted corruption must be reviewed according to the extent of losses arising from corruption carried out convict.

Conclusion

1. Remission is still a right of convicts of a criminal act of corruption that has fulfilled the specified conditions of good behavior and has been serving a criminal sentence for more than 6 (six) months, but its implementation has been tightened to fulfill the community's sense of justice in accordance with Article 34 of Government Regulation No. 99 of 2012 concerning Second Amendment to Government Regulation No. 32 of 1999 concerning the Requirements and Procedures for the Implementation of the Rights of Citizens' Guided Prisoners.
2. The granting of remission to corruption convicts if related to Law 20 of 2001 concerning Eradication of Corruption, the regulation of granting remission to corruption convicts must be reviewed according to the extent of losses incurred due to corruption committed by convicts to further enhance the sense of justice in the community.

Suggestion

1. The remission of corruption convicts should not be abolished because the convicted corruption is also a human being whose human rights are protected by law and there is no imbalance between the convicted person, especially those convicted of corruption and ordinary convicted persons.
2. The reduction in terms of detention or remission to corruption convicts should be further tightened to the conditions for remitting and adjusted to the extent of losses incurred by those convicted of corruption so that law enforcers do not seem to sell remissions by the public.

References

- Andi Hamzah, *Korupsi Di Indonesia Masalah dan Pemecahannya*, Penerbit PT. Gramedia Pustaka Utama, Jakarta, 1991.
- Evi Hartanti, *Tindak pidana korupsi, Sinar Grafika, Jakarta, 2009*.
- Dimas Hario Wibowo, *Pelaksanaan Pemberian Remisi Terhadap Narapidana Tindak Pidana Korupsi Di Lembaga Masyarakatan Klas I Semarang*, Unnes Law Journal, Vol.2, No.1, 2013
- Emy Julia Tucunan, *"Hak Remisi Narapidana Tindak Pidana Korupsi"*. Lex Crimen. Vol. III, Nomor 1, Jan-Mar 2014
- Edward L. Glaeser and Claudia Goldin, eds, *"Corruption and Reform: Lessons from America's Economic History"*, (University of Chicago Press, 2006), p. 386 dan
- Erika Revida. *Korupsi Di Indonesia: Masalah dan Solusinya*. Makalah, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Sumatera Utara. Medan, 2003
- Gatot Goei, *Kebijakan Remisi Bagi Kejahatan Korupsi, Teroris, dan Narkotika : Suatu Kajian Hukum dan HAM*, Diakses dari <http://gatotgoeish.wordpress.com/2011/11/04/kebijakan-remisi-bagi-kejahatan-korupsi-teroris-dan-narkotika-suatu-kajian-hukum-dan-ham/>, pada tanggal 28 Mei 2019.
- Undang – Undang Dasar 1945
- Undang – Undang No. 12 Tahun 1995 tentang Masyarakatan
- Undang – Undang 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi
- Undang-Undang Republik Indonesia Nomor 46 Tahun 2009 Tentang Pengadilan Tindak Pidana Korupsi

Peraturan Pemerintah Nomor 28 Tahun 2006 Tentang Perubahan Atas Peraturan
Peraturan Pemerintah Nomor 32 Tahun 1999 Tentang Syarat Dan Tata Cara
Pelaksanaan Hak Warga Binaan Pemasyarakatan

Peraturan Pemerintah No. 99 tahun 2012 tentang Perubahan Kedua atas Peraturan
Pemerintah No. 32 tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak
Warga Binaan Pemasyarakatan.

id.wikipedia.org/wiki/Remisi www.zonareferensi.com/pengertian-korupsi/

