

Human Rights Study on Remission for Corruption Convicts in Indonesia

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Abstract

The moratorium on granting remissions for corruption convicts is a pro and contra in various circles in society. Government Regulation Number 99 of 2012 concerning Remission, some consider it a violation of human rights. But on the other hand, it is considered as one of the government's efforts to prevent corruption in Indonesia. The formulation of the problem in this study is how to provide remission for corruption convicts in Law no. 12 of 1995 concerning Corrections and what is the perspective of human rights (HAM) regarding the remission moratorium for corruption prisoners? The research uses empirical research methods. The conclusion in this study is that first remission is one of the rights for prisoners without exception for corruption convicts. This is regulated in the provisions of Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections which mentions the rights of every prisoner, one of which is the right to get remission. Another thing is also regulated in Article 34 of Government Regulation Number 99 of 2012 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates, which states that every prisoner has the right to get remission on condition that they must be of good behavior and have served a criminal period of more than 6 (six) months. . Second, the remission moratorium is a form of violation of legal rights for corrupt NAPIs. However, tightening the conditions for granting remission for corruption prisoners is the right and fair step for corruption prisoners and also for the community.

Keywords

remission; moratorium;
corruption convicts



I. Introduction

Corruption is a legal problem experienced by all countries in the world without exception in Indonesia. This issue has a big impact, not only detrimental to state finances, the national economy but also the rights of citizens whose rights have been stolen by corruptors. Among the corruption cases that often occur are cases of corruption in the procurement of government goods and services, corruption cases in the education sector, corruption cases in the health sector, gratuities and other corruption cases that always occur every year.

Due to the widespread and systematic impact it has, corruption is categorized as an extraordinary crime (extra ordinary crime). In fact, according to Hamid Awaluddin, corruption is considered a crime against human rights, not only violating positive moral,

ethical and legal principles, but also having negative implications for the quality of life of others as a whole (Hartanti, 2012). According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019).

In 2011, the Ministry of Law and Human Rights of the Republic of Indonesia issued a policy to temporarily stop or implement a moratorium on remissions (reduction of criminal period). This has reaped the pros and cons of various groups to date. The moratorium is a tightening of conditions for obtaining remissions for corruption convicts. This is for the sake of a sense of community justice. While remission is a reduction in the criminal period while the convict is serving his sentence.

The pros and cons of the remission moratorium are because the contra consider that the tightening of remissions is a form of violation of NAPI's human rights, where the granting of remission is one of the rights previously granted by the state to every prisoner without exception for Corruption prisoners. The rights inherent in humans reflecting their dignity, which must obtain legal guarantees and protection by the state. Meanwhile, those who are pro think that the moratorium on remission for corruption NAPI is a form of human rights protection for the people whose rights have been stolen by corruptors. In addition, it is considered that the moratorium on remission is one of the steps taken by the government to prove its seriousness in efforts to eradicate corruption, which is not only limited to the provision of punishment or the imposition of severe legal sanctions (Enggarsasi, 2015).

The polemic of the remission moratorium for corruption NAPI is caused by the debate on human rights. Remission is the right of every prisoner without exception for corruption prisoners as regulated in Article 14 of Law No. 12 of 1995 concerning Corrections and Government Regulation No. 28 of 2006 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates. But on the other hand, every Indonesian citizen has the right to live in prosperity, to get free education from the state, to get a decent and dignified job according to his abilities. However, these rights that should be accepted are difficult to obtain because the budget for that has been misappropriated by state officials for personal and group interests.

These debates become the duty and homework for the government to take an action or legal policy that does not harm various parties. Good for the rights of NAPI Corruption by not destroying the legal rights they have but also not injuring or damaging the sense of justice for the rights of Indonesian citizens in particular.

From the problems in the background above, the formulation of the problem in this study is as follows: First, how to grant remission for corruption convicts according to Law no. 12 of 1995 concerning Corrections and what is the perspective of human rights (HAM) regarding the remission moratorium for corruption prisoners.

II. Research Methods

This research uses normative legal research methods. This study analyzes and criticizes the elimination of remissions for corruption convicts. By referring to the characteristics of normative legal research which emphasizes the ability of researchers to carry out legal interpretations by offering certain theoretical arguments for the existence of a formulation of legal norms.

The type of research in this writing is library research. Even though it departs from the term library, the data that is extracted is not enough to stop at the data that has been written. Researchers also dig up data that comes from the thoughts of experts related to the subject of this research.

The legal materials used in this research are primary and secondary legal materials. Primary materials include legal products that are the object of study and legal instruments that are critical tools as mentioned above. Some of the primary legal materials needed are the articles on human rights in the 1945 Constitution and the legal provisions for granting remissions. While secondary legal materials include the views of practitioners or expert thoughts on primary legal materials. Data collection is done through documentation. In the documentation, the researcher will make important notes regarding the subject of the research. Furthermore, the secondary legal materials used are the thoughts of experts and the views of practitioners. Expert thoughts are useful as material for analysis of the intent of the law and useful for analysis in solving research problems. The collection of secondary legal materials through the collection of writings of thoughts from experts on the subject of research. The writing can be taken from journals, books, papers, research results and various other forms of scientific work. Data analysis will be carried out qualitatively, namely reduction, presentation of data and drawing conclusions. What is meant by data reduction is a researcher's activity which will be practiced in data selection. Not all information will be used as data. Only relevant information will be used as data. Furthermore, the presentation of the data will be done with a verbal narrative pattern. Furthermore, the conclusion will be drawn after getting the reduction and presentation of the data. Thus, the conclusion is drawn scientifically.

III. Discussion

3.1 Elimination of Remission of Corruption Convicts from a Legal Perspective

Indonesia as a state of law is stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. As a state of law, the government is obliged to provide legal guarantees and protection to its citizens without making the slightest distinction, including the legal status of a person. A convict is someone who has served his criminal term in accordance with a court decision that has permanent legal force (*inkracht van gwisde*). The legal status of a prisoner is a limitation of the rights he has.

Remission which is a legal right for every prisoner without exception for corruption convicts is considered by some people as an unnecessary right to be given to corruption prisoners considering the act of committing a criminal act of corruption as an act that also violates other human rights.

The issue of eliminating remissions for corruption NAPIs has received responses from various groups, including the Indonesian Corruption Watch (ICW). Indonesian Corruption Watch (ICW) researcher Tama S Langkun gave a good response that the elimination of remissions for corruptors was in line with the spirit of eradicating corruption as stated in Law no. 20 of 2001 concerning the Eradication of Corruption in conjunction with Law no. 31 of 1999 concerning the Eradication of Corruption Crimes

The right to grant remission is regulated in Article 14 paragraph (1) letter I of Law Number 12 of 1995 concerning Corrections. The remission was granted by the Ministry of Law and Human Rights based on Article 1 paragraph (2) of Presidential Decree no. 174 of 1999 which was delegated to regional offices. The terms and procedures for granting remissions are regulated in Government Regulation Number 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Correctional Inmates.

According to Article 1 point 6 that remission is a reduction in the period of serving a sentence given to convicts and convicts who meet the requirements specified in the legislation. Based on Article 34 of Government Regulation Number 99 of 2012 concerning Remission, it is stated that every convict and criminal child who during a criminal period has good behavior is entitled to receive remission. Other rules are also contained in the provisions of Article 1 Paragraph (1) of the Presidential Decree of the Republic of Indonesia Number 174 of 1999 concerning Remission which states that the condition for obtaining remission is if the Convict and the Criminal Child are serving a temporary prison sentence and imprisonment and the person concerned has good behavior while serving criminal.

There are several types of reduction of criminal period as regulated in the provisions of Article 2 and Article 3 of the Decree of the President of the Republic of Indonesia Number 174 of 1999 concerning Remissions, namely one, remission on the anniversary of the Proclamation of Independence of the Republic of Indonesia on August 17, 1945 which is called general remission. Two, special remissions, namely remissions given to prisoners on religious holidays adopted by the convicts concerned with the stipulation that if a religion adhered to by the prisoner has more than one religious holiday in a year, then the chosen day is a holiday that is glorified by the prisoner adherents of the religion concerned and the third is known as additional remission, namely remission given if the convict concerned while serving a crime has rendered services to the State (Priyatno, 2006).

3.2 Human Rights Perspective on Remission Moratorium for Corruption Prisoners

Human rights according to the Universal Declaration of Human Rights (UDHR) there are 5 (five) types, namely personal rights (rights to guarantee needs), legal rights (rights to guarantee legal protection), civil and political rights, subsistence rights (rights to guarantee the existence of resources to support life) and economic, social and cultural rights. Legal rights are legal rights granted to every citizen by the state regulated in a statutory regulation. One example of these legal rights is the right to protection and equality before the law (equality before the law).

The legal right in question is remission which is one of the rights granted by the state to NAPI including corruption NAPI and its provisions are regulated in Article 14 letter i of Law No. 12 of 1995 concerning Corrections. Legal rights granted by the state may not be granted or removed if the state in this case considers that these rights are inappropriate because they are not in accordance with the requirements determined by law.

Prisoners have been considered as violators of other people's human rights, such as corruption prisoners who have "stealed" the rights of citizens, but that does not mean the human rights inherent in them even though they are prisoners are immediately lost and can be treated arbitrarily by others in order to atone for all his evil deeds.

The state as the highest authority institution has the obligation to protect the human rights of its citizens through legal means that are integrated in the Human Rights Law. NAPI as human beings and citizens are also entitled to legal protection of their rights. Regarding this matter, it is emphasized in article 12 of the Universal Declaration of Human Rights which stipulates that:

No one subjected to arbitrary interference with his privacy, family, or correspondence, or to attacks upon his honor and reputation, everyone has the right to the protection of the law against such interference or attack.

The right to legal protection for NAPI is also formulated in Article 3 paragraph (2) of Law 39 of 1999 concerning Human Rights, which reads as follows: "Everyone has the right to recognition, guarantees, protection and fair legal treatment as well as legal certainty and

treatment equal before the law". Furthermore, it is reaffirmed in Article 5 paragraph (1), which reads as follows: "Everyone is recognized as an individual human being, who has the right to demand and receive the same treatment and protection in accordance with his human dignity before the law."

The debate about the pros and cons of a moratorium on remissions for corruption NAPIs, which was later won by the NAPI's attorney regarding the cancellation of the Minister of Law and Human Rights Decree regarding the moratorium on remissions and parole, according to the author, the debate did not lie in the intention or intent of the rights possessed by NAPI and the rights for the community but lies in the regulations. the law that governs it.

Cariati Mahanani's policy of eliminating remissions from a criminal law perspective said that the elimination of remission policies for corruptors was not the right step, especially if the provisions for being a Justice Collaborator were eliminated. This will complicate the investigation of corruption cases to the roots and allow prisoners to hide information but still get remissions.

The same thing was also conveyed by a Criminal Law expert from the Faculty of Law, University of Muhammadiyah Magelang, Basri, who said that the policy of eliminating remissions for corruption convicts was deemed inappropriate, the policy violated the rights of prisoners as regulated in Article 14 paragraph (1) of Law Number 12 1995 concerning Corrections, namely that prisoners are entitled to a reduction in their criminal period (remission).

Menkumham in this case, if you want to implement a remission moratorium for corruption prisoners, it should not violate the provisions of the article in the Correctional Law which regulates the rights of prisoners to get remission, PP No. 174 of 1999 concerning Remissions.

The tightening of granting remission rights to inmates in PP No.99 of 2012, is the same as PP.28 of 2006. The goal is to have integrity and good intentions in carrying out tasks, as well as changing mindsets without good faith. The differences between Government Regulation Number 28 of 2006 and Government Regulation Number 99 of 2012 are as follows:

Table 1. Terms of Granting Remission Based on Government Regulation

No.	PP No. 28 Year 2006	PP No. 99 Year 2012
	<ol style="list-style-type: none"> 1. Well behaved; 2. Has served 1/3 of his sentence. 	<ol style="list-style-type: none"> 1. Well behaved; 2. Has served a criminal term of more than six months; 3. Not currently serving a disciplinary sentence within the last 6 months, commencing before the date of granting the remission; 4. Has participated in a coaching program organized by prisons with good predicate; 5. Willing to cooperate with law enforcers to help dismantle criminal cases they have committed; 6. Has paid in full the fine and compensation in accordance with the court's decision for convicts convicted of committing a criminal act of corruption.

Table 1 above concludes that there is a change in the form of additional requirements in PP No. 99 of 2012 for corruption prisoners who want to get remission rights where the main requirement in the PP is that the NAPI has paid the fine and replacement money in accordance with the court's decision and is willing cooperate with law enforcement to dismantle criminal cases that he did. These requirements have been regulated in Article 34a in PP No.99 of 2012 which has been tightened.

In addition, the majority of corruption NAPIs convicted of violating Article 2 and Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes carry a maximum penalty of 6 years in prison with a fine of Rp. 200 million and replacement money. The following is data on the names of corruption NAPIs who received remissions in 2017 and 2018.

Table 2. Data of Corruption Content Recipients in 2020 and 2021

No	NAPI name (initials)	Corruption	Punishment					Amount of Remission			
			P	D	SUB	UP	PP	2020		2021	
								General	Special	General	Special
1	HMS	Land acquisition in Kab. Jeneponto	6 years	200 million	3 months	814 million	2 years	2 months	1 month	5 months	1 month 15 days
2	SK	Finance at Postgraduate UNHAS	4 years	150 million	3 months	1.63 M	6 months	2 months	1 month	3 months	1 month
3	BBT (Regent of Jeneponto)	CZ HMS	4 years	200 million	3 months	1.5 M	1 year	2 months	1 month	3 months	1 month
4	HR	CZ BBT	4 years	200 million	3 months	-	-	2 months	1 month	-	-
5	MZL	Finance at BNI Bank	6 years	200 million	3 months	-	-	-	-	3 months	1 month
6	MS . Brigadier	BULOG Rice at Polda	3 years	100 million	3 months	1.1 M	6 months	-	-	2 months	-
7	ASS (Kep.Dec)	Misuse of aid funds	4 years	200 million	2 months	55 million	6 months	-	-	3 months	1 month
8	MA (Kep. Sek)	Misuse of school funds	2 years	50 million	3 months	181 million	4 months	-	-	2 months	1 month
9	SA	Misuse of Bulog funds	2 years	100 million	3 months	191 million	4 months	-	-	2 months	1 month
10	AM	PNPM Mandiri management unit	4 years	75 million	6 months	500 million	1 year	-	-	2 months	1 month
11	M N	Regency Panwaslu Budget. Sidrap	4 years	200 million	6 months	120 million	6 months	-	-	2 months	1 month

12	IT	Pare-Pare Service car procurement	2 years	200 million	2 months	20 million	4 months	-	-	2 months	1 month
13	N (Chairman)	Pinrang Village aid post funds	3 years	50 million	2 months	50 million	6 months	-	-	2 months	1 month
14	R (Secretary)	CZ. N	3 years	50 million	2 months	144 million	1 year	-	-	2 months	1 month
15	RA	CZ.IT	1 year 3 months	-	-	-	-	-	-	1 month	15 days
16	MAT (Camat)	Land acquisition in the district. Biringkanaya	3 years 6 months	200 million	-	971 million	1 year	-	-	2 months	1 month
17	T (Entrepreneur)	CZ MAT	3 years	200 million	-	640 million	1 year	-	-	2 months	1 month
18	AMA	CZ IT	1 year	-	-	-	-	-	-	1 month	15 days
19	AS(Camat Pangkep)	District Fund	1 year	50 million	2 months	11.5 million	1 month	-	-	1 month	15 days
20	RA	Irrigation Project in Bone	1 year	50 million	1 month	-	-	-	-	1 month	15 days
21	MT (Head of BKKBN Takalar)	Procurement of Opjin Beds in Kab. Takalar	1 year	50 million	1 month	-	-	-	-	1 month	15 days
22	KM	CZ MT	1 year	50 million	-	-	-	-	-	1 month	15 days

Description:

- P = Prison
- D = Fine
- Sub = Subsidiary
- UP = replacement money
- PP = Criminal substitute

The results of the research interview with Mr. Azari, as the Head of LAPAS Registration said that PP no. 99 of 2012 is the second amendment of the PP. PP No. 32 of 1999. The PP contains provisions for tightening the conditions for granting remissions for corrupt NAPIs and other special NAPIs as regulated in Article 34 and Article 34 A. The substance of the tightening of remissions is not eliminating remissions altogether, but the conditions being tightened. . This tightening of remissions serves as the aspiration and voice of the people to eradicate corruption by providing a deterrent effect to the perpetrators.

Remission, which is the right of every NAPI, has been delegated through Article 43 paragraph (5) of PP No. 28 which also requires and takes into account the community's sense of justice.

IV. Conclusion

The legal rights possessed by every prisoner are the right of remission without exception for corruption convicts. This provision is regulated in Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections. Other provisions are also regulated in Article 34 of Government Regulation Number 99 of 2012 concerning Remissions.

Remission moratorium for corruption NAPI as a form of violation of legal rights. However, granting remissions with stricter conditions is the right and fair step for various parties, including for the corruption prisoners themselves and also for the community.

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