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Legal Policies in Front of Corruption Bill on Treatment of Remission Between Corruptors and Chicken Thieves

Susiana Kifli

Faculty of Law, Universitas Muhammadiyah Palembang, Indonesia

Email: Susianakifli@gmail.com

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Abstract

The type of research used in this research is normative legal research by using primary and secondary legal materials, along with tertiary legal materials as supporting materials. This is by looking at strength and position of Visum Et Repertum evidence in a criminal act. Regarding the granting of remissions for convicts who commit criminal acts of corruption as regulated in Article 34 (A) of PP No.99 of 2012 concerning Terms and Procedures for Implementation Rights of Correctional Inmates, if viewed from theory of purpose of punishment, there are two thoughts in that regard. First, if granting of remissions is associated with one of known punishment theories, it is a relative theory, which emphasizes purpose of punishment to improve the perpetrators of crimes. By being given this punishment, it is hoped that later a criminal can change into a better person and restore the balance that was damaged due to the crime. The second opinion states that the regulations that apply to convicts of corruption have special requirements before getting remission, but actually any conditions that are intended to be used as basis for remission will only hinder the achievement purpose of sentencing. The reason is, corruption which is essentially an economic offense that harms the state and benefits oneself is carried out based on greed, where with remission mechanism there will be calculations that will speed up a convicted corruption person out of prison.

Keywords: *Legal Policies; Corruption; Thieves*

Introduction

The Correctional Bill (RUU) that had sparked a polemic is likely to be ratified by the government and House of Representatives soon. In a hearing (RDP) House of Representatives Commission III on May 25, 2022, the government and Commission III of House Representatives agreed that there were no problems that would hinder the ratification of bill into law. The basic problem in Penal Code are issue of parole for prisoners in extraordinary crimes cases, including for corrupt prisoners, which has been relaxed

again. This is what made effort to ratify bill in 2019 received a strong rejection from anti-corruption activists.

The Correctional Bill no longer includes tightening remission requirements for prisoners of extraordinary crimes, including corruption, as regulated in Government Regulation (PP) Number 99 of 2012 concerning Terms and Procedures for Implementation of Rights of Correctional Inmates. As a result, the regulation regarding granting of parole was returned to PP No. 32/1999. Deputy Minister of Law and Human Rights (Wamenkum HAM) Edward Omar Sharif Hiariej stated that currently there are no problems in Correctional Bill.

In PP 99/2012, it stipulates requirements for recommendations from law enforcement officers which have been burdensome in granting parole for corruption prisoners. Article 34A in PP 99/2012 stipulates that conditions for granting remission for corrupt prisoners are willing to cooperate with law enforcers to help dismantle criminal cases they have committed, or to become *justice collaborators.*

In addition, corruptors must also pay full criminal fines and compensation for state losses if they want to get remission. Then, Article 43B Paragraph (3) requires a recommendation from Corruption Eradication Commission as a consideration for Director General of Corrections in granting parole. These conditions are not stated in PP No. 32/1999. Later, in October 2021, the Supreme Court revoked PP 99/2012, because it was not in accordance with Law No. 12/1995 concerning Penitentiary which became its parent. The draft Correctional Bill doesn't mention in detail requirements for granting remissions to convicts of criminal acts of corruption.

In 2021, Indonesia Corruption Watch (ICW) once expressed their views on cancellation of PP 99/2012. Although state is obliged to protect the human rights of corrupt convicts, government must also implement *extraordinary* methods in dealing with criminal cases which are classified as *extraordinary crimes*. The reason for cancellation of PP 99/2012 according to Supreme Court that it is not in line with *restorative justice* model of punishment, is discriminatory because it differentiates the treatment of convicts, and causes the condition of prison to be *overcrowded*. ICW reasoned that by canceling PP 99/2012, it meant that Supreme Court was inconsistent with their previous decision. In decisions Number 51 P/HUM/2013 and Number 63 P/HUM/2015, the Supreme Court stated that difference in terms of remission is a logical consequence of differences in character type of crime, the nature of danger, and impact become crime committed by a convict.

The increase corruption in Indonesia is now not only happening in terms of quantity, but quality of *corruption in Indonesia is also increasing*. The prevalence of news regarding case trading, legal mafia, judicial mafia, tax mafia, and case brokers indicates that corruption has infected law itself. There was even a comment in a foreign journal, which said that *corruption is way of life in Indonesia*, which means that corruption has become view and way of life Indonesian people good and less effective. (Elwi Danil, 2012) The term corruption is often associated with dishonesty or cheating someone in financial sector. (Elwi Danil, 2012) As in case of Agus Condro (Humas LPSK, 2012) and case of Susno Duadji (*Gayus Tambunan Ungkap Dalang Sindikasi Mafia Pajak | ICW*, n.d.). This fact revealed the existence by tax mafia, namely Gayus Tambunan who admitted that he had distributed Rp.5,000,000,000,- to prosecutors, police and judges.*Justice collaborators* (*Pemberantasan Korupsi; Kedudukan "Whistle Blower" Perlu Diperkuat | ICW*, n.d.) have a very significant role in uncovering various corruption cases, but provisions regarding the requirements for *justice collaborators* in PP No.99 of 2012 specifically for corruption convicts and for terrorists and drug convicts are considered premature, because there is no legal basis for legislation.

The notion of abolitionism raises criticism of criminal justice procedural which is considered flawed so that punishment created is not always subject to criminal sanctions, such as cases of minor crimes such as theft of chickens which cost less than one hundred thousand rupiahs, but because

procedures are quite administrative in nature criminal justice so that chicken thief can be punished according to his actions without we care about how much state budget is spent in handling chicken theft cases whose nominal is quite large.(Hajairin, 2019) The close relationship between the goals that people want to achieve with a punishment and criminal institutions, prosecution and policy as intended can be seen clearly in way people treat convicts in correctional institutions associated with people's thoughts about crime, which grow in history, namely from inhuman thoughts to thoughts that require that dignity of convict as a human being is still respected, even though he has committed an unlawful act.

Research Method

The type of research used in this research is normative legal research. (Tomy Michael, n.d.) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. This is by looking at strength and position of Visum Et Repertum evidence in a criminal act.

Discussion

Legal Policy on Remission Treatment Between Corruptors and Chicken Thieves

The purpose of sentencing can be achieved by regulating convicts according to character and nature of each criminal act. In this case, corruption, as explained in previous section, is an extraordinary crime, meaning that an extraordinary treatment is needed here so be purpose of punishment can be realized. However, this would be just wishful thinking if state didn't make policies that explicitly related to corruption remission. Remission which is essentially a reduction in prison term or a "discount" for convict. (Endrawati & Permatasari, 2019)

Regarding the granting of remissions for convicts who commit criminal acts of corruption as regulated in Article 34 (A) of PP No. 99 of 2012 concerning Terms and Procedures for Implementation of Rights of Correctional Inmates, if viewed from theory of purpose and punishment, there are two thoughts in that regard.

First, if granting of remissions is associated with one of known punishment theories, it is a relative theory, which emphasizes purpose of punishment to improve perpetrators of crimes. By being given this punishment, it is hoped that later a criminal can change into a better person and to restore the balance that was damaged due to crime. The change in purpose of punishment from concept of revenge has changed in Indonesia since 1964, resulting in emergence of a new "prison" system known as Correctional System. (*Dari Pemenjaraan Ke Pembinaan Narapidana / Disadur ; Romli Atmasasmita | OPAC Perpustakaan Nasional RI.*, n.d.) The essence of this theory has been adopted in the Indonesian penitentiary system as can be seen in section considering letter (c), of Law on Corrections which states,

> *"That correctional system as referred to in letter b is a series of law enforcement aimed at making Correctional Inmates realize their mistakes, improve themselves, and don't repeat criminal acts so that they can be accepted again by community, can play an active role in development, and can live normally as a good and responsible citizen"*

In this case, the provision of remission in Indonesian correctional system is placed as a motivation to develop oneself. Because, remission is no longer a law as in a penal system, nor as a gift as in a prison system, but as rights and obligations possessed by prisoners. This means that if a convict is included in criminal act of corruption, he actually carries out his obligations, he is entitled to remission.

The second opinion states that be regulations that apply to convicts of corruption have special requirements before getting remission, but actually any conditions that are intended to be used as basis for remission will only hinder the achievement purpose of sentencing. The reason is that corruption, which is essentially an economic offense that harms the state and benefits oneself, is carried out based on greed, where with remission mechanism there will be calculations that will speed up a corruption convict out of prison.

This calculation can be calculated economically by corruptor, and compared to amount of corruption that has been carried out, will make corruption convict calmly enjoy his prison term because he knows that there is an acceleration that he can accept will make calculation of money from corruption compared to losses while languishing in permanent detention only gives an advantage. Not to mention the current system of correctional institutions that pamper convicts of corruption with five-star hotel facilities. (Indrayana, 2008)

If you look at criminal sanctions, according to researchers, they can describe that criminal sanctions for theft of chickens are not same as provision of criminal sanctions for corruption because researchers' views lead to crimes that can already be said to be *extraordinary crimes* or a form of *extraordinary crime* and the sanctions are of course only aggravated by simply committing a criminal act of theft of chickens. This requires *restorative justice* in a criminal act of theft of chickens, but on the other hand there is no discrimination in a criminal act of corruption which is very detrimental to state and even state's finances and economy, because state money comes from people.

Future Legal Policies of Correctional Bill on Remission Treatment Between Corruptors and Chicken Thieves.

The policy of legal reform in criminal justice (Lahti, 2020) system actually doesn't only maximize protection of human dignity and rights, but must be directed at changing mindset and behavior of humans as Indonesian citizens to be able to understand legal policies that can tackle human crimes, for development of a national criminal law, more specifically related to renewal of physical punishment model towards psychological punishment.

Separating law and social is very difficult to be realized in various thoughts in main feature *rule of law,* (Arifiyanto & Pribadi, 2019)it is also a separation between wills and decisions on legal issues, not separating law and social life is referred to as social space in area of law and law enforcement itself, the result that arises is bargaining of idea that legal institutions gain procedural autonomy without thinking about autonomy of legal substance, that legal substance is sacrificed in the area of law enforcement.(Nonet & Selznick, 2017)

This is intended to determine remission treatment between corruptors and chicken thieves, which of course are very different in terms of giving sanctions. Apart from that, crime of corruption can indeed be said to be detrimental to state's finances and especially people because financial sources can be obtained from taxes from people and return the state. The other side is that sanctions for chicken thieves also have same portion in *law enforcement* process, of course they have unequal treatment. The fact is that there needs to be improvements in the formation of laws and regulations related to provision of sanctions and equal treatment in determining remissions.

From point of view of criminal law acts, corruption convicts are certainly not prioritized in granting remissions, causes for chicken thieves they come from poor communities or don't come from origins, they give better remissions compared to corruption convicts who are detrimental to state finances. This is what can be said as purpose of a fair punishment.

Therefore, the Correctional Bill in future criminal law policies must pay attention to: (1) ordinary crimes with special crimes *(ransnational organized crime)*; (2) the process of reducing sentence and parole can open up further opportunities for corruption and can eliminate the meaning of punishment and criminal arrangements regarding corruption itself compared to someone who steals chickens; (3) rules to facilitate the granting of reduced sentences and parole for perpetrators of extraordinary crimes are created on the grounds of justice and legal certainty; and (4) corruption should be distinguished from people who steal chickens because of hunger. If equated, it is not fair to the chicken thief. This is what can be said as principle of equality before law.

Conclusion

Regarding the granting of remissions for convicts who commit criminal acts of corruption as regulated in Article 34 (A) of PP No.99 of 2012 concerning Terms and Procedures for Implementation Rights of Correctional Inmates, if viewed from theory of purpose of punishment, there are two thoughts in that regard. First, if granting of remissions is associated with one of known punishment theories, it is a relative theory, which emphasizes purpose of punishment to improve the perpetrators of crimes. By being given this punishment, it is hoped that later a criminal can change into a better person and restore the balance that was damaged due to the crime. The second opinion states that the regulations that apply to convicts of corruption have special requirements before getting remission, but actually any conditions that are intended to be used as basis for remission will only hinder the achievement purpose of sentencing. The reason is, corruption which is essentially an economic offense that harms the state and benefits oneself is carried out based on greed, where with remission mechanism there will be calculations that will speed up a convicted corruption person out of prison.

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