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The Discourse of Granting the Rights of Prisoners in Indonesia: The Legal Political Issue and Future Challenges

Puguh Setyawan Jhody¹  

¹ Bapas Kelas I Semarang, Central Java, Indonesia

 puguheshjody54@gmail.com

ABSTRACT

Sentencing is a process of the criminal justice system which is seen as giving punishment to those who commit crimes or criminal acts. A convict who is serving a sentence in a prison is called a prisoner who must be given his rights in the context of the development process according to the correctional system. These rights are regulated by Law No. 12 of 1995

concerning Corrections which has been delegated through Government Regulation No. 99 of 2012. Until now, the regulation still invites controversy because its content is related to the rules for remission and parole for special prisoners. The author will examine the purpose of making Government Regulation No. 99 of 2012, where the study of legal politics. This study uses a qualitative legal research approach with sociological juridical research. The results of this study are when viewed from three legal politics criteria, namely: first, related to state policies regarding the application of law as a way to achieve state goals, namely protecting the entire Indonesian nation and all Indonesian bloodshed, as well as the goals of the correctional system. Second, related to the background of law enforcement because the granting of rights to prisoners of extraordinary crimes needs to be tightened to fulfill the community's sense of justice. Third, related to law enforcement that has been carried out has been going well because the tightening of the granting of these rights resulted in not all prisoners getting remission and parole.

Keywords: *Legal Politics, Prisoners' Rights, PP 99 of 2012, Remission, Parole*

INTRODUCTION

Criminal law works as an institution that regulates society and has the task of determining the boundary line between actions that are qualified in accordance with criminal law and actions that are disqualified against criminal law. against criminal acts against the law given criminal threats and therefore based on the authority of state law enforcement agencies can be filed lawsuits and decisions according to certain ways in accordance with the applicable criminal threats. A person who is sentenced to a prison sentence is a prisoner.¹

In the context of law enforcement in Indonesia, the most frequently used legal means to impose sanctions on violations of rights and

¹ Bambang Poernomo, *Pelaksanaan Pidana Penjara dengan Sistem Pemasyarakatan* (Yogyakarta: Liberty Yogyakarta, 2014).

obligations is imprisonment. This criminal sanction is considered capable of providing a deterrent effect for lawbreakers so that they do not repeat the act, and serves as a regulator of action in society as well as a tool for society to create order and prosperity.² Prior to the crime of loss of liberty in ancient times, it was only known as capital punishment, corporal punishment, exile, forced labor, convicts waiting to serve their sentence in the form of capital punishment or corporal punishment, convicts sentenced to forced labor in the shade at night were put into the priest's monastery which is intended to punish monks and nuns, but all of them are not prisons in the sense that it is intended as a place for the execution of the crime of loss of liberty.³

The imposition of a criminal or sentencing is a process of the criminal justice system which is seen as giving punishment to those who commit crimes or criminal acts based on the provisions of laws and regulations. The end of the punishment mostly resulted in imprisonment in Correctional Institutions (Lapas) because Indonesia has very few alternative punishments. The prison sentence can be said to give an evil stamp (stigma) that will carry over even though they no longer commit crimes.⁴

A convict who is serving a sentence in prison is referred to as a prisoner who must require special treatment in the context of the development process according to the correctional system. The penitentiary system itself has replaced the prison system since 1964 because the prison system is considered to emphasize more on revenge and imprisonment without looking at coaching so that it is not in accordance with civilization and Pancasila values. The penitentiary system has also changed the paradigm that prisons, which were previously places of torture, have turned into places of training for inmates to realize their mistakes and not to repeat crimes so that they become fully human.

² Diasti Rizki Ramadhani, "Implementasi Pemenuhan Hak Mendapatkan Makanan Yang Layak Bagi Narapidana," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 7, no. 1 (2020): 143, <https://core.ac.uk/download/pdf/288190796.pdf>.

³ S Sukarno, "Implementasi Syarat Tambahan Hak Remisi Pelaku Tindak Pidana Korupsi Melalui PP No. 99 Tahun 2012 (Studi Pada Kantor Wilayah Kementerian Hukum Dan HAM ...)," *Gema Keadilan* 6, no. 99 (2019): 137–69, <https://ejournal2.undip.ac.id/index.php/gk/article/view/5625>.

⁴ Bambang Sunggono dan Aries Harianto, *Bantuan Hukum Dan Hak Asasi Manusia* (Bandung: Mandar Maju, 1994).

These penitentiary system reform movements continue to develop, as a result of the humanitarian movement which considers prisoners as complete human beings (subjects) and must be socialized and also supported by scientific discoveries, both social sciences and empirical natural sciences.⁵ The form of reform of the prison sentence implementation system has been determined by the government through Law No. 12 of 1995 concerning Corrections. In the penitentiary system, prisoners are given their rights as a manifestation of the implementation of human rights.

Article 1 No. (2) of Law No. 12 of 1995 concerning Corrections states that:

"The Correctional System is an arrangement regarding the direction and boundaries as well as the method of fostering Correctional Inmates based on Pancasila which is carried out in an integrated manner between the coaches, those who are fostered, and the community to improve the quality of Correctional Inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted back by the community, can play an active role in development, and can live normally as a good and responsible citizen."

The purpose of the correctional system is social reintegration, namely the restoration of the unity of the relationship between life, life and livelihood of the Correctional Inmates.

Considering at the definition of the penitentiary system, it can be seen that this article requires criminals to be protected, prisoners to be fostered with a family pattern. The family approach requires that the attitude of the officer as a parent is expected to influence the behavior of the person being fostered. In addition, the attitude of the outside community participates in the coaching program. As for community participation, especially to receive convicts. Community participation is a link to fill the correctional system. The utilization of the familial approach is a basic problem to improve outcomes for the development of convicts in Indonesia in order to reduce the influence of the prisonization culture in correctional

⁵ Muladi, *Lembaga Pidana Bersyarat* (Bandung: Alumni, 1992).

institutions. Thus, detaining prisoners no longer take advantage of the influence of punishment, let alone the cruelty of officers. In this case, punishment is not an act of retaliation, this is due to the correctional principle which says imposing a criminal is not an act of revenge from the state and repentance cannot be achieved by torture but with guidance.⁶

Prisoners have rights that are protected and guaranteed as regulated in Article 14 of Law No. 12 of 1995 concerning Corrections, including the right to receive a reduced sentence (remission) and get parole. Remission is a legal means in the form of "rights" granted by law to prisoners after fulfilling certain conditions. It can be said that remission is a right that is eagerly awaited by all prisoners in Indonesia, because by getting it, their criminal period will be reduced.⁷ Meanwhile, parole is a coaching program to integrate prisoners into community life after fulfilling predetermined requirements. This term in the Criminal Code (KUHP) is known as *voorwaardelijke invrijheidstelling*, in the translation of the Criminal Code from Badan Pembinaan Hukum Nasional (BPHN) it uses the term conditional release.⁸

The rules regarding the implementation of the rights of prisoners have been delegated by Law No. 12 of 1995 concerning Corrections through Government Regulation No. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Prisoners Amended by Government Regulation No. 28 of 2006, as well as the second amendment through a Government Regulation No. 99 of 2012.

Until now, Government Regulation No. 99 of 2012 still invites public controversy because of its content that intersects with the interests of the political elite, especially those related to the rules for remission and parole for corruption convicts. This Government Regulation has several times been reviewed materially to the Supreme Court (MA) and judicial review

⁶ Wirna Rosmely Ab. Ghafur, Philips A. Kana, "Efektivitas Peraturan Pemerintah Nomor 99 Tahun 2012 Dalam Pemberian Remisi Kepada Narapidana Tindak Pidana Khusus Di Lembaga Pemasyarakatan Kelas IIA Padang," *Unes Journal of Swara Justisia* 1, no. 4 (2018): 386.

⁷ Diyan Isnaeni Selvi Anggraini, Abdul Wahid, "Pelaksanaan Sistem Pemberian Remisi Bagi Narapidana Sesuai Peraturan Pemerintah Nomor 99 Tahun 2012 Tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 32 Tahun 1999 Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan," *Dinamika, Jurnal Ilmiah Hukum* 27, no. 5 (2021): 655.

⁸ Farly Mervy Wongkar, "Pembebasan Bersyarat Menurut Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan," *Lex et Societatis* Vol. VII/N, no. 3 (2019): 18.

to the Constitutional Court (MK) related to Article 14 of Law No. 12 of 1995 concerning Corrections whose main purpose is to cancel Government Regulation No. 99 of 2012. However, the two judicial institutions have never granted it until October 28, 2021, the Supreme Court (MA) stated that several articles in Government Regulation No. 99 of 2012 contradicted Law No. 12 of 1995 concerning Corrections which of course brought many changes related to the granting of prisoners' rights in prison.

From the description above, the author will examine the purpose of making Government Regulation No. 99 of 2012, where the study of the purpose of making laws and regulations will not be separated from the study of legal politics because the study of legal politics contains legal policies made by the state to realize the goals of the state.⁹ The legal politics studied in this paper is related to the legal politics of regulations regarding the granting of prisoners' rights in Indonesia, namely through Government Regulation No. 99 of 2012. In addition, it will also examine the obstacles to implementing the Government Regulation.

METHOD

This research uses legal research with a qualitative legal research approach with sociological juridical research, which means that legal research is studied and researched as a law in action study, because it studies and examines the reciprocal relationship between law and other social institutions. The author uses the type of juridical-sociological research because of this approach the data needed are in the form of information distributions that do not need to be quantified. The distribution of the information in question is that obtained from the results of observations and interviews with informants, so the writer needs to be able to know the results. The type of juridical research is the author analyzes the Legal Politics of Granting Prisoners' Rights in the Perspective of Government Regulation No. 99 of 2012 concerning Terms and Procedures for

⁹ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, 5th ed. (Jakarta: Rajagrafindo Persada, 2009).

Implementing the Rights of Correctional Inmates. The type of sociological research the author analyzes is the social facts that exist in society, namely regarding the Granting of Prisoners' Rights in the Perspective of Government Regulation No. 99 of 2012 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates and the obstacles to their implementation.

RESULT & DISCUSSION

I. LEGAL POLITICS OF GRANTING THE RIGHTS OF PRISONERS IN THE PERSPECTIVE OF GOVERNMENT REGULATION NO. 99 OF 2012

The study of legal politics is one of the studies that is most often discussed by legal scholars, especially for legal scholars who want to critically and comprehensively know a certain purpose of legislation through an interdisciplinary approach. Agreeing on the use of the term legal politics means agreeing that law cannot be separated from political aspects, even ideological, social, economic and so on.¹⁰ Law is understood as a product of political power and therefore almost every legal product produced by a certain political power, the instrumental function of law as a means of power is more dominant when compared to other functions.¹¹ In other words, law does not arise because of the law itself but because political power has a purpose or interest that is stated either covertly or openly which can only be guaranteed by law.

To date, many legal scholars have produced works that are very important in understanding legal politics. Among his most important works is Mahfud MD's dissertation on the Development of Legal Politics, Studies on the Effect of Political Configuration on the Character of Legal

¹⁰ Syahriza Alkohir Anggoro, "Politik Hukum: Mencari Sejumlah Penjelasan," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 78, <https://doi.org/10.26905/idjch.v10i1.2871>.

¹¹ MD, *Politik Hukum Di Indonesia*.

Products in Indonesia in 1993 which was defended at Universitas Gajah Mada.¹² This work discusses how the discipline of political science can help us understand the influence of political configuration on the character of legal products in Indonesia, both in the formation of laws and in their implementation.

Mahfud MD came to the conclusion that law cannot be separated from the political aspect, because a political configuration or certain ideas will be crystallized in legal products. The emergence of legal politics as an interdisciplinary field of discussion in its development has triggered many works of contemporary legal politics that discuss the theoretical and historical scope of legal politics.¹³

Before going further into discussing legal politics, of course, it must first be explained what the meaning of legal politics is. In general, legal politics is interpreted as a political policy that determines what legal regulations should apply in regulating various matters of social and state life.¹⁴ According to Sudarto, legal politics is a state policy through authorized bodies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired to.¹⁵

If this is the case, then the concept of legal politics has a very deep meaning. There are four important things that can be concluded. First, from the phrase "contained in society", of course it is quite broad in scope. This means that legal politics can cover various aspects of national and state life, for example politics, economy, social and culture. Second, with regard to the phrase "stipulate the desired regulations", this is related to the *ius constitutum* or positive law. Third, regarding the phrase "can be used to express", it is related to *ius operatum*. Fourth, concerning the phrase "to achieve what is aspired". In this case, legal politics is also

¹² MD.

¹³ Otong Rosadi dan Andi Desmon, *Studi Politik Hukum Suatu Optik Ilmu Hukum* (Yogyakarta: Tafa Media, 2013).

¹⁴ M. Solly Lubis, *Politik Dan Hukum Di Era Reformasi* (Bandung: Cv. Mandar Maju, 2000).

¹⁵ Sudarto, *Hukum Pidana Dan Perkembangan Masyarakat: Kajian Terhadap Pembaharuan Hukum Pidana* (Bandung: Sinar Baru, 1983).

correlated with the *ius constituendum*. Strictly speaking, the scope of legal politics in Sudarto's perspective can include three things: *ius constitutum*, *ius operatum* and *ius constituendum*.¹⁶

Meanwhile, Mahfud MD¹⁷ explained that legal politics is a legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals. Thus, legal politics is a choice of laws to be enacted as well as a choice of laws to be repealed or not enforced, all of which are intended to achieve state goals as stated in the preamble to the 1945 Constitution.

Mahfud MD's opinion above means that legal politics is one way to achieve state goals through legal policies that are formed. In addition, Mahfud MD¹⁸ also describes the criteria regarding legal politics which in essence are:

- a. State policy regarding the application of law as a way to achieve state goals
- b. Legal background; and
- c. Law enforcement of the law that has been enacted.

These criteria are one way to identify a legal politics in the application of existing laws in Indonesia. Therefore, according to Mahfud MD, the criteria for legal politics can be used to identify the legal politics of granting prisoners' rights, in this case Government Regulation No. 99 of 2012 as follows:

- a. State policy regarding the application of law as a way to achieve state goals

The goal of a country is actually the ideals of a country that the country wants to realize through the procedures or systematic legal instruments that exist in that country. According to Roger Soltau, the aim of the state is to enable its people to develop and carry out their

¹⁶ Hariman Satria, "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia," *Integritas: Jurnal Anti Korupsi* 5, no. 1 (2019): 1–14, <https://jurnal.kpk.go.id/index.php/integritas/article/view/342>.

¹⁷ MD, *Politik Hukum Di Indonesia*.

¹⁸ MD.

creativity as freely as possible. Meanwhile, according to Harold J. Laski, the goal of the state is to create conditions in which the people can achieve the maximum fulfillment of their wishes.¹⁹

Emmanuel Kant argues that the purpose of the state is to establish and maintain law, which guarantees the legal position of individuals in society and also means that every citizen has the same legal position and should not be treated arbitrarily by the authorities. In Pancasila society, based on the 1945 Constitution, it is determined that every Indonesian citizen has the same position before the law and the government.²⁰

The first criterion to identify the legal politics of granting prisoners' rights is to look at state policies in enforcing the law as a way to achieve state goals, especially the goals of the penitentiary system in Indonesia. The enactment of the law in question is regarding the rules regarding the terms and procedures for the implementation of the rights of the Correctional Inmates.

If you look at history, in 1999, Government Regulation No. 32 of 1999 was issued regarding the Terms and Procedures for the Implementation of the Rights of Correctional Inmates as the implementing provisions of Article 14 paragraph (2), Article 22 paragraph (2), Article 29 paragraph (2), and Article 36 paragraph (2) of Law No. 12 of 1995 concerning Corrections. In this rule, the subject of remission and parole as one of the rights of prisoners is given to all prisoners who meet the requirements regardless of the case/crime committed by the inmate. The conditions for remission only include good behavior while serving a sentence. Meanwhile, for parole, the conditions are only if he has served a sentence of at least 2/3 (two

¹⁹ A A Thohari, "Konseptualisasi Negara Hukum Dan Demokrasi; Upaya Menuju Negara Yang Dicitakan," *Lex Jurnalica* 3, no. 1 (2005): 44, https://digilib.esaunggul.ac.id/public/UEU-Journal-4660-A_AHSIN_THOHARI.pdf.

²⁰ Mia Kusuma Fitriana, "Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara," *Jurnal Legislasi Indonesia* 12, no. 02 (2015): 3.

thirds) of his criminal period, provided that $\frac{2}{3}$ (two thirds) of the criminal period is not less than 9 (nine) months.

After several years of enactment of the law through Government Regulation No. 32 of 1999, there was an urge to review the granting of remissions and parole in order to adapt to legal developments and a sense of justice in society, especially in relation to prisoners who commit crimes that result in significant losses. This is also stated in the considerations considering Government Regulation No. 28 of 2006.

The government responded to this by issuing Government Regulation No. 28 of 2006 concerning Amendments to Government Regulation No. 32 of 1999 which contained additional requirements for obtaining remission, namely good behavior; and has served a criminal term of more than 6 (six) months. Furthermore, for convicts who are convicted of committing criminal acts of terrorism, narcotics and psychotropic substances, corruption, crimes against state security and serious human rights crimes, and other transnational organized crimes, the condition for getting remission is that they must have served $\frac{1}{3}$ (one third) of the term criminal first.

Meanwhile, regarding parole, the additional conditions are as follows:

- 1) Has served a criminal period of at least $\frac{2}{3}$ (two thirds) provided that $\frac{2}{3}$ (two thirds) of the criminal period is not less than 9 (nine) months; and
- 2) Good behavior while serving a criminal period of at least the last 9 (nine) months calculated before the $\frac{2}{3}$ (two-thirds) of the criminal period.

In addition, for convicts who are convicted of committing crimes of terrorism, narcotics and psychotropic substances, corruption, crimes against state security and serious human rights crimes, and other transnational organized crimes in addition to having to fulfill the above conditions, additional conditions are given, namely having received consideration from the Director General of Corrections in the form of

considerations of security, public order, and a sense of community justice.

On 12 November 2012 the Government again issued Government Regulation No. 99 of 2012 as the second amendment to Government Regulation No. 32 of 1999. This Government Regulation further tightens the provision of remission, assimilation, and parole for prisoners. Regarding the remission of the tightening in the form of providing additional conditions for prisoners who are convicted of committing a crime of terrorism, narcotics and narcotic precursors who are sentenced to a minimum sentence of 5 (five) years, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and other crimes. other organized transnationals to obtain remission, namely:

- 1) Willing to cooperate with law enforcement to help dismantle the criminal case he did;
- 2) Corruption convicts have paid in full the fines and replacement money; and
- 3) For terrorist convicts, they have participated in the deradicalization program and pledged allegiance to the Unitary State of the Republic of Indonesia (NKRI).

Meanwhile, for parole there are additional conditions, namely:

- 1) Willing to cooperate with law enforcement to help dismantle the criminal case he did;
- 2) Corruption convicts have paid in full the fines and replacement money; and
- 3) For terrorist convicts, they have participated in the deradicalization program and pledged allegiance to the Unitary State of the Republic of Indonesia. The deradicalization program in Indonesia carried out by the BNPT is understood by various parties such as the police, correctional institutions, the Ministry of Religion, the Ministry of People's Welfare, mass organizations, and so on such as universities, both public and private. According to Irfan Idris, Director of Deradicalization at BNPT, the design of

deradicalization in Indonesia has four approaches, namely: Reeducation, Rehabilitation, Resocialization, and Reintegration.²¹

- 4) Undergo assimilation of at least 1/2 (one half) of the remaining criminal period that must be served.

On October 28, 2021, the Supreme Court (MA) through its decision No. 28 P/HUM/2021 stated that several articles of Government Regulation No. 99 of 2012 were contrary to Law No. 12 of 1995 concerning Corrections. These articles include Article 34A paragraph (1) letter a, Article 34A paragraph (3), Article 43A paragraph (1) letter a, and Article 43A paragraph (3). These articles stipulate the conditions for being willing to cooperate with law enforcement to help dismantle cases of criminal acts committed (Justice Collaborator), so that in proposing remission and parole, Justice Collaborator is no longer needed. The considerations in the decision of the Supreme Court include:

- 1) The prison regime has been abandoned for the rehabilitation and social reintegration regime;
- 2) Correctional inmates are not objects, but also subjects;
- 3) The philosophy of criminal implementation in the form of coaching;
- 4) Fulfillment of the rights of Prisoners is granted without exception (equality before the law);
- 5) Fulfillment of the rights of Prisoners is not discriminatory;
- 6) Additional conditions for fulfilling rights are constructed as rewards;
- 7) Fulfillment of the rights of Correctional Inmates is the full authority of the Directorate General of Corrections (Ditjen Pas);
- 8) Assessment of Correctional Inmates in the context of fulfilling rights begins when the person concerned holds the status of Correctional Inmates

²¹ Mochamad Nurhuda Febriyansah, Lailatul Khodriah, and Raka Kusuma, "Upaya Deradikalisasi Narapidana Terorisme Di Lembaga Pemasyarakatan (Lapas) Kedung Pane Semarang," *Jurnal Unnes* Vol.3, no. 1 (2017): 91-108.

In the end, Government Regulation No. 99 of 2012 is one of the state's legal policies, in this case the government in terms of granting prisoners' rights. This legal policy is of course a path towards the state's goal of protecting the entire Indonesian nation and all of Indonesia's bloodshed.²² The concrete form of protecting all Indonesian people is basically the protection of the human rights of Indonesian people, either collectively or individually. This objective must be implemented by Government Regulation No. 99 of 2012. Therefore, the implementation of the said Government Regulation must be carried out properly, correctly, and appropriately, and the regulation should be improved and perfected so that the objectives of the correctional system can also be achieved.

b. Background Law Enforcement in the form of Government Regulation No. 99 of 2012

The second criterion to identify the legal politics of granting prisoners' rights is to know the background of the making of the legislation. The emergence of this Government Regulation is not without reason, referring to the consideration that Government Regulation No. 99 of 2012 has three reasons why this Government Regulation was issued.

First, criminal acts of terrorism, narcotics and narcotics precursors, psychotropic substances, corruption, crimes against state security and serious human rights crimes, as well as other transnational organized crimes are extraordinary crimes because they cause great losses to the state or society or many victims or victims, cause panic, anxiety, or extraordinary fear in the community.

²² Yusup Anchori, "Perlindungan Hukum Korban Tindak Pidana Yang Dilakukan Oleh Orang Dengan Gangguan Jiwa (ODGJ) Dihubungkan Dengan Tujuan Negara Hukum Dalam Sistem Pemidanaan Di Indonesia," *Jurnal Syntax Admiration* 1, no. 8 (2020): 1183, <https://jurnalsyntaxadmiration.com/index.php/jurnal/article/download/143/237/923>.

Second, granting remission, assimilation, and parole for perpetrators of criminal acts of terrorism, narcotics and narcotic precursors, psychotropic substances, corruption, crimes against state security and serious human rights crimes, as well as other transnational organized crimes need to be tightened with requirements and procedures to fulfill sense of social justice. Especially in dealing with corruption, in order to support increasingly sophisticated corruption eradication efforts, the need for perpetrator witnesses who work together to reveal larger corruption cases is a very important factor that encourages the government to create a system that aims to support the eradication of corruption.²³

Third, the provisions regarding the terms and procedures for granting remission, assimilation, and parole as regulated in Government Regulation No. 32 of 1999 as amended by Government Regulation No. 28 of 2006 do not fully reflect the interests of security, public order, and a sense of justice felt by the community. society today.

Vice Minister of Law and Human Rights of the Republic of Indonesia (Wamenkumham RI) at that time Denny Indrayana said that this Government Regulation was issued by the government to emphasize the agenda for eradicating corruption, drugs, and terrorism so that its message could be emphasized as a deterrent.²⁴

c. Law Enforcement of Enacted Laws

Enforcement of law in the context of realizing the concept of a rule of law does not only rely on the substance of the law but also the application of the law (law enforcement).²⁵ However, the phenomenon

²³ Lushiana Primasari Aggi Rafsanjani Akbar, "Urgensi Pengetatan Remisi Narapidana Korupsi Berdasarkan Peraturan Pemerintah Nomor 99 Tahun 2012 Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan," *Jurnal Recidive* 5, no. 3 (2016): 429, <https://jurnal.uns.ac.id/recidive/article/download/47787/29736>.

²⁴ Detik.com, "PP 99 Dibuat Untuk Pemberantasan Korupsi, Narkoba, Dan Terorisme," 2013, <https://news.detik.com/berita/d-2300929/denny-pp-99-dibuat-untuk-pemberantasan-korupsi-narkoba-dan-terorisme>.

²⁵ Sudjana, "Penegakan Hukum Karya Cipta Perspektif Teori Fungsionalisme Struktural," *Kanun Jurnal Ilmu Hukum* 22, no. 1 (2020): 90.

that occurs is often inconsistent law enforcement has a negative impact on the law itself. Whereas law enforcement is a system that has several indicators which are a unity and cannot be separated so that the law can be applied effectively, namely the achievement of law in the form of certainty, justice, and expediency. In that context, law enforcement reform is the answer to how the law in Indonesia is organized within the framework of establishing the aspired rule of law.²⁶

Law enforcement is closely related to the third criterion to identify the legal politics of granting prisoners' rights, namely by looking at the implementation of the law that has been enacted, namely Government Regulation No. 99 of 2012. Satjipto Raharjo²⁷ argues that law enforcement is a process to realize the wishes of the law so that they can become a reality. The legal desires here are the thoughts of the legislators who are formulated in a legal regulation. The formulation of the thoughts of lawmakers as outlined in legal regulations will also determine how law enforcement is carried out.

Satjipto Rahardjo also argued that law enforcement in a country, ideally seen as an interactive process, the results of law enforcement cannot be accepted as the work of law enforcement themselves, but rather a result of the work of a process of mutual influence among the various components involved in the process.²⁸

The implementation of law enforcement from Government Regulation No. 99 of 2012 can be said to be realized if the objectives of the Government Regulation have been achieved, namely: First, to provide tightening on the provision of remission, assimilation, and parole for special prisoners as stated in the Government Regulation. Second, emphasize the message that the state is serious in eradicating corruption, narcotics, and terrorism. Regardless of the No. of people

²⁶ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2018): 148, <https://doi.org/10.35586/v4i2.244>.

²⁷ Satjipto Raharjo, *Penegakan Hukum Sebagai Tinjauan Sosiologis* (Yogyakarta: Genta Publishing, 2009).

²⁸ Sudjana, "Penegakan Hukum Karya Cipta Perspektif Teori Fungsionalisme Struktural."

who oppose this Government Regulation for various reasons, among others, that this Government Regulation is a limitation on the rights of prisoners, and the imposition of additional burdens outside of court decisions. However, if you look at the background and purpose of the Government Regulation, law enforcement has been running well and maximally because the tightening of rights grants has resulted in not all convicts of corruption, drugs, and terrorism getting remission, assimilation, and parole.

II. OBSTACLES TO IMPLEMENTATION OF GOVERNMENT REGULATION NO. 99 OF 2012

Correctional institutions in Indonesia are still in the public spotlight because they often experience various unresolved problems. Starting from capacity, the practice of levying fines in the implementation of services for the rights of prisoners. Penitentiary is the final stage of the criminal justice system, which consists of 4 (four) sub-systems, namely the Police, the Prosecutor's Office, and the Correctional Institution. The Penitentiary Sub-system as the last sub-system of the criminal justice system has the task of carrying out guidance on convicts of criminal offenses with imprisonment.²⁹

The implementation of coaching and granting prisoners' rights in accordance with the correctional system has encountered many steep paths and problems. Starting from the problem of security and order disturbances, narcotics circulation, escape of prisoners, sexual harassment to extortion practices carried out by unscrupulous employees. Especially after the enactment of Government Regulation No. 99 of 2012, prisons became very vulnerable to riots, say the Medan Class I Prison (Tanjung Gusta Prison) in 2013, which was allegedly caused by the implementation of Government Regulation No. 99 of 2012. Minister of Law and Human

²⁹ Iklima Salsabil DM, "Jaminan HAM Untuk Narapidana Dalam Kacamata Sistem Pemasyarakatan Di Indonesia," *Lex Scientia Law Review* 1, no. 1 (2017): 33-40, <https://journal.unnes.ac.id/sju/index.php/lslr/article/view/19480>.

Rights the Republic of Indonesia (Menkumham RI) at that time, Amir Syamsudin said that many inmates objected to the implementation of the regulation, many prisoners felt they were punished twice because of this Government Regulation.³⁰

The presence of the Government No. 99 of 2012 which tightens both in terms of requirements and procedures for granting prisoners' rights such as tightening the granting of remissions and parole, where in this writing the author limits the rights of remission and parole for convicts of special crimes, as if weakens the stimulus function for well-behaved prisoners that have been running so far.³¹ Remission is the right of every prisoner that is protected and regulated by law, without distinguishing between prisoners for general crimes and convicts for special crimes such as corruption, trafficking in persons, terrorism and so on. Instead, by preventing or preventing prisoners from getting remissions or other rights that they can receive.³²

In line with this, several special prisoners at the Class IIA Ambarawa Prison said that Government Regulation No. 99 of 2012 was discriminatory because it differentiated the rights granted to inmates. In fact, according to him, the inmates have followed the coaching program well, and the size of the granting of rights, especially the right of remission and parole, should be based on the results of the assessment of coaching in prisons.

Government Regulation No. 99 of 2012 continues to be a hot discussion, and there are always pressures to revise the Government

³⁰ Tempo.com, "4 Indikasi Penyebab Rusuh Tanjung Gusta," 2014, <https://nasional.tempo.co/read/496263/4-indikasi-penyebab-rusuh-tanjung-gusta>.

³¹ Agung Nugroho, "Studi Tentang Sinkronisasi Peraturan Pemerintah Nomor 99 Tahun 2012 Tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 32 Tahun 1999 Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasarakatan Terhadap Undang-Undang Nomor 12 Tahun 1995 T," *DINAMIKA HUKUM* 11, no. 2 (2020): 24, https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/download/6909/4413.

³² Dimas Hario Wibowo, "Pelaksanaan Pemberian Remisi Terhadap Narapidana Tindak Pidana Korupsi Di Lembaga Pemasarakatan Kelas I Semarang," *Unnes Law Journal* 2, no. 1 (2013): 27–35, <https://doi.org/https://doi.org/10.15294/ulj.v2i1.2898>.

Regulation. This regulation is considered a form of discrimination for special prisoners, in addition to the increasingly overpopulation of prisons with narcotics cases, it is also considered a domino effect from the implementation of this rule. However, there are also parties who do not agree with the revision because they are worried that it will make it easier for corruption convicts to get remission or parole.

As of March 1, 2022, overpopulation in prisons/detention centers throughout Indonesia reached 224% with a total population of 270,321 people, while the capacity was only 132,107 people. Of the No. of residents, 101,520 people are prisoners with cases of narcotics users, and as many as 82,278 are narcotics dealers and dealers. As for corruption convicts as many as 13,263 people, terrorist prisoners as many as 504 people, corruption prisoners 4,675 people, while the rest are general prisoners.³³

With the overpopulation situation in the Correctional Institution, it will greatly affect the security conditions of the prison, because in situations like this, to breathe oxygen, they fight each other because the condition of the residential rooms is very stacked and sleep must take turns because of the dense conditions of the residential rooms. With this condition, Correctional Institutions in Indonesia are very likely to cause disturbances in security and order.³⁴

Government Regulation No. 99 of 2012 in its article formulation does not provide specificity regarding the qualifications of narcotics users, dealers, and dealers. Only given qualifications for drug cases with sentences above and below five years. The qualifications of dealers and users are only separated by the articles of control in Law No. 35 concerning Narcotics, which are notorious for being rubbery, so that many narcotics users are qualified as dealers. So that the No. of narcotics users is significantly more than the official data released by the government. This has the impact that those who are actually narcotics users are actually

³³ Ditjen Pemasyarakatan, "Penghuni Lapas," 2022, <http://sdppublik.ditjenpas.go.id/>.

³⁴ Zeland Muhammad Barr, "Implementasi Tugas Pengamanan Dilembaga Pemasyarakatan Kelas IIB Cianjur Dalam Keadaan Over Crowded," *Widya Yuridika* 3, no. 2 (2020): 283, <https://doi.org/10.31328/wy.v3i2.1681>.

subject to tightening of remissions and parole by Government Regulation No. 99 of 2012.

The rules of justice collaborator (JC) as a requirement for prisoners convicted of crimes of terrorism, narcotics and narcotics precursors who are sentenced to a minimum sentence of 5 (five) years, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and other crimes. other organized transnationals to obtain remission and parole also bring their own problems. In the Joint Decree between the Witness and Victim Protection Agency (LPSK), the Attorney General's Office, the Indonesian Police, the Corruption Eradication Commission (KPK) and the Supreme Court, the definition of a justice collaborator is a witness, who is also a perpetrator, but he is willing to cooperate with law enforcement. in order to dismantle a case related to the case.³⁵

This justice collaborator (JC) must be stated in writing and determined by the relevant law enforcement agency. At the implementation level, most of the certificates are only managed by inmates when they are about to get remission or parole, even though the entire series of legal cases in question have been completed. In addition, the main purpose of the justice collaborator, namely as a form of cooperation with law enforcement in the context of dismantling a case will not be achieved, and the certificate as a justice collaborator is like a piece of paper for administrative requirements only.

In addition to these problems, the requirements for justice collaborator status in Government Regulation No. 99 of 2012 were again in the spotlight when the corruption convict M. Nazarudin received 49 months of remission and a leave program before being released (CMB). In this case, there is a difference of opinion between the Directorate General of Corrections at the Ministry of Law and Human Rights (Ditjen PAS

³⁵ Lilik Mulyadi, "Menggagas Konsep Dan Model Ideal Perlindungan Hukum Terhadap Whistleblower Dan Justice Collaborator Dalam Upaya Penanggulangan Organized Crime Di Indonesia Masa Mendatang," *Jurnal Hukum Dan Peradilan* 3, no. 2 (2014): 102, <https://doi.org/http://dx.doi.org/10.25216/jhp.3.2.2014.101-116>.

Kemenkumham) and the Corruption Eradication Commission (KPK). The Directorate General of PAS of the Ministry of Law and Human Rights said that Nazaruddin had been designated as a collaborating actor (Justice Collaborator) by the KPK based on letter No. R-2250/55/06/2014 dated June 9, 2014 regarding a statement on behalf of Muhammad Nazaruddin; Letter No. R.2576/55/06/2017 dated June 21, 2017, regarding the request for information in collaboration with law enforcement.

While the KPK denied it had issued a letter of JC status against Nazar. A certificate of cooperation for M. Nazarudin because the person concerned since the investigation, prosecution and trial process has revealed the corruption case in the construction of the Hambalang National Sports Facilities Education and Training Center (P3SON), the case for the procurement of E-KTP at the Ministry of Home Affairs and the case with the defendant Anas Urbaningrum and on the basis of M. Nazaruddin has paid the fine to the State treasury.³⁶ This difference of opinion is because Government Regulation No. 99 of 2012 does not explicitly and in detail regulate the implementation and procedures for obtaining Justice Collaborators.

Fortunately, the article regarding the requirements regarding Justice collaborator (JC) has been annulled by the Supreme Court through decision No. 28 P/HUM/2021 dated October 28, 2021, so that in granting the rights of prisoners in prison, there is practically no longer a problem. The government in this case the Ministry of Law and Human Rights has responded to this decision by revising the derivative rules of Government Regulation No. 99 of 2012 namely Minister of Law and Human Rights Regulation No. 7 of 2022 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights No. 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation,

³⁶ Hukumonline.com, "Melihat Lagi Kontroversi Status Justice Collaborator Nazaruddin," 2020, <https://www.hukumonline.com/berita/baca/lt5eead6ab465ce/kontroversi-status-justice-collaborator-di-balik-bebasnya-nazaruddin?page=3>.

Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave.

Ambarawa Class IIA Prison Officer, Agus Wijayanto said that through this Minister of Law and Human Rights Regulation No. 7 of 2022, the condition for being willing to cooperate with law enforcement to help dismantle criminal cases he committed or what is commonly called Justice collaborator (JC) is no longer required in this case. granting remissions or parole for convicts, but other conditions remain in accordance with Government Regulation No. 99 of 2012 because only the Justice collaborator (JC) article was canceled by the Supreme Court. Furthermore, the new Permenkumham also stipulates an assessment based on the Convict Guidance Assessment System (SPPN) as the basis for prisoners who are considered to have good behavior and follow good coaching.

The last obstacle is that Government Regulation No. 99 of 2012 is not in accordance with the correctional system and conflicts with restorative (recovery) and social reintegration philosophies. It was explained earlier that the purpose of this Government Regulation is as a form of resistance against extraordinary crimes such as drugs, terrorism, and corruption. However, this Government Regulation only regulates prisons, especially prisons as criminal implementers. Ideally, providing resistance to extraordinary crimes should be carried out jointly by the Police, the Prosecutor's Office, and the Court. However, in this Government Regulation the burden of the resistance is shifted to correctional facilities. Whereas in terms of authority, judges have the most power to punish light or heavy perpetrators of extraordinary crimes.

On the other hand, remission, assimilation, and parole in the correctional system are an important part of rehabilitation, restoration, and social reintegration efforts. The process of social reintegration is a complicated process, related to the social relationship of the community with lawbreakers in addition to those related to social support and the government, family and social environment as a frame that becomes a benchmark for the success of the social reintegration process. There are 3 main goals of the correctional system in Indonesia, namely clients are

aware of their mistakes, are able to improve themselves by showing positive changes in attitude, do not repeat crimes so that prisoners can be accepted in society, live normally and are able to participate in development.³⁷ Furthermore, according to Iqraq Sulhin, the idea of tightening remission, assimilation, and parole can be implemented to ensure that administrative and substantive requirements are fulfilled. Not in the form of extending the period of time for prisoners to apply for these rights. In addition, the correctional system has the concept of individualization of coaching, meaning that the differentiation of coaching can only be done by looking at the form or model of coaching, not in terms of granting rights as Correctional Inmates.

CONCLUSION

The legal politics of granting prisoners' rights in the perspective of Government Regulation No. 99 of 2012 concerning the Second Amendment to Government Regulation No. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates when viewed from the three legal political criteria according to Mahfud MD can be concluded as follows. First, it relates to state policy regarding the application of law as a way to achieve the state's goals, namely to protect the entire Indonesian nation and the entire homeland of Indonesia, as well as the goal of the correctional system, namely social reintegration. Second, related to the background of the legal enforcement of Government Regulation No. 99 of 2012, in general there are three things, namely: 1) Extraordinary crimes cause great losses to the state or society or many victims or cause panic, anxiety, or extraordinary fear. to the community; 2) The provision of remission, assimilation, and conditional release for perpetrators of extraordinary crimes needs to be tightened with

³⁷ Lovita Nurindah Sari, "Analisis Sosiologis Reintegrasi Sosial Klien Masyarakat," *ENTITA : Jurnal Pendidikan Ilmu Pengetahuan Sosial Dan Ilmu-Ilmu Sosial* 3, no. 1 (2021): 76, <http://ejournal.iainmadura.ac.id/index.php/entita/article/view/4615>.

terms and procedures to fulfill the community's sense of justice; 3) The existing legal regulations have not fully reflected the interests of security, public order, and the sense of justice felt by the community. Third, related to law enforcement that law enforcement has been running well and maximally because the tightening of rights grants has resulted in not all convicts of corruption, drugs, and terrorism getting remission, assimilation, and parole. Obstacles to the implementation of Government Regulation No. 99 of 2012 there are four important things as follows. First, there is a vulnerability to security and order disturbances in prisons because inmates feel different in treatment and feel punished twice. Second, the formulation of the article in the Government Regulation does not provide specificity regarding the qualifications of narcotics users, dealers, and dealers so that there are narcotics users who are actually subject to tightening of remissions and parole. The impact of this is that prisons are becoming more and more full (over population). Third, the problem of justice collaborator (JC) which has multiple interpretations, and the requirements for the procedure are less clear and detailed. Fortunately, the article regarding the requirements regarding Justice collaborator (JC) has been annulled by the Supreme Court through decision No. 28 P/HUM/2021 dated October 28, 2021, so that in granting the rights of prisoners in prison, there is practically no longer a problem. Fourth, with the existence of this Government Regulation, the burden of resistance against perpetrators of extraordinary crimes lies with correctional institutions, which should be carried out together with other law enforcement officers. Remission, assimilation, and parole are important parts of rehabilitation, restoration and social reintegration efforts. In addition, the correctional system has the concept of individualization of coaching, meaning that the differentiation of coaching can only be done by looking at the form or model of coaching, not in terms of granting rights as Correctional Inmates so that it is not appropriate if there are restrictions on these rights.

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About Author(s)

Puguh Setyawan Jhody, S.H., was born in Sragen on March 21, 1995. Completed his undergraduate education at the Faculty of Law, State University of Semarang, and is currently still struggling to complete his master's degree in law, concentration in law and the criminal justice system at the same university. Since 2017 he has worked as the Pembimbing Kemasyarakatan Pertama at the Bapas Kelas I Semarang.