

Elimination of Justice Collaborator Requirements in Granting Remissions for Corruptors in Indonesia: Progress or Setback in Legal Reform?

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Abstract

Crime is an unfortunate and widespread issue in society, necessitating efforts to address it through the criminal justice system. The final step in this system involves implementing the judge's decision through the penitentiary. The rights of convicts, including the right to remission for convicts of corruption, are safeguarded by Law Number 22 of 2022 concerning Corrections. However, there has been a significant change in the requirements for obtaining

remission for convicts of corruption following the issuance of Indonesian Supreme Court Decision Number 28 P/HUM/2021. This decision has led to legal reform in Indonesia, particularly concerning the conditions for granting remissions, as the requirements for justice collaborators for convicts of corruption are no longer applicable. The research conducted on this subject utilized a normative juridical method with a statutory approach. The study's findings highlight a transformative shift in Indonesia's prison system, which has evolved from a punitive-oriented approach to a more rehabilitative and correctional system. This new approach emphasizes coaching programs that focus on convicts' rights and aims to integrate them back into society successfully. As a result of these changes, the prison system now seeks not only to punish criminals but also to facilitate their recovery and improvement during their incarceration. The ultimate goal is to enable convicts to reintegrate into society positively and contribute meaningfully once their sentences are completed.

Keywords

Legal Reform, Justice Collaborator, Remission, Corruptor Convicts

Introduction

Crime is the unlawful act of violating established laws, resulting in physical, financial, or emotional harm to another person. Throughout history, the presence of evil has been an unfortunate aspect of human life, leading to the occurrence of crimes worldwide. These criminal acts may vary from one region to another, but their existence is a universal reality. Numerous factors contribute to the occurrence of crimes, including social, economic, and political injustices. Conditions such as poverty, social and economic inequality often act as triggers for criminal behavior. Moreover, injustices within the legal system and government policies can also lead to criminal acts. Additionally, technological advancements and societal changes can influence the prevalence of crime in a given area.¹

¹ From a Social Learning perspective, Albert Bandura proposes that criminal behavior is a result of a psychological learning process, wherein individuals are influenced by their surroundings. This process involves exposure to criminal behavior displayed by others, followed by repeated exposure accompanied by reinforcement or reward. Consequently, people become more inclined to imitate the observed criminal behavior. For instance, if a child witnesses their parent stealing and perceives that such actions lead to positive rewards,

The term crime is typically attributed to individuals who engage in disgraceful acts. Legally, crime is defined as an action that meets specific criteria set by the law, and those who violate these conditions may face punishment.² The purpose of criminal law extends beyond deterrence; it aims to facilitate the integration of offenders back into society. By imposing penalties on criminals, the legal system seeks to deter them from repeating criminal acts.³

Crime has always existed in the community so it is common for it to occur. However, because crime is detrimental, it must be dealt with.⁴ Crime prevention efforts are divided into two, namely the penal route (criminal law) and non-penal. First, penal efforts or through criminal law. In criminal law, countermeasures are more focused on repressive nature, namely actions taken after a crime has occurred with law enforcement and imposition of punishment on crimes that have been committed.⁵ Crime prevention is carried

such as having more money for enjoyment, the child may feel motivated to imitate stealing behavior. Conversely, if a behavior does not lead to a reward or results in a negative consequence, the child learns to refrain from repeating that behavior to avoid adverse effects. In Bandura's perspective, humans possess an active thinking capacity that allows them to make conscious decisions regarding whether to imitate and adopt behaviors they observe in their social environment. See Albert Bandura, and Richard H. Walters. *Social Learning Theory*. (Prentice Hall: Englewood Cliffs, 1977); Razieh Tadayon Nabavi. "Bandura's Social Learning Theory & Social Cognitive Learning Theory." *Theory of Developmental Psychology* 1, No.1 (2012): 1-24.

² Suparni, *Eksistensi Pidana Denda dalam Sistem Pidana dan Pemidanaan* (Jakarta: Sinar Grafika, 2007). See also Tim Lindsey, and Helen Pausacker, eds. *Crime and Punishment in Indonesia*. (London: Routledge, 2020); Erika Magdalena Chandra, "Victimless Crime in Indonesia: Should We Punished Them?." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 6, No. 2 (2019): 216-232.

³ Zulkarnain, *Teori-Teori Hukum Pidana dan Kriminologi* (Pekanbaru: Al-Mujtahadah Press, 2016).

⁴ Vivi Ariyanti, "Kebijakan Penegakan Hukum dalam Sistem Peradilan Pidana Indonesia." *Jurnal Yuridis* 6, No. 2 (2019): 33-54; Febriyanti Silaen, and Syawal Amry Siregar. "Hubungan Kebijakan Kriminal dengan Kebijakan Hukum Pidana." *Jurnal Darma Agung* 28, No. 1 (2020): 8-16; Sahat Maruli Tua Situmeang, "Kebijakan Kriminal dalam Penegakan Hukum untuk Mewujudkan Keadilan dalam Perspektif Hak Asasi Manusia." *Res Nullius Law Journal* 1, No. 1 (2019).

⁵ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: PT Citra Aditya Bakti, 2002). It is further explained that Crime prevention policies and efforts are an integral part of social policy, encompassing both the protection of society (social defense) and the pursuit of social welfare. The primary objective of criminal policies is to safeguard society to achieve overall social welfare. However, the conceptual boundaries of crime prevention have not been entirely clear, even though it has long been considered a central goal of criminal politics. The traditional aims of the criminal justice system, including measures like imprisonment, safeguards, and rehabilitation, primarily focus on repressive actions and dealing with violations or crimes after they have already occurred. Nevertheless, a more comprehensive concept of crime prevention necessitates considering efforts aimed at

out after the crime occurs to coaching. Although with the existence of criminal threats it is also expected to be a preventive effort. In fact, efforts to tackle criminal acts by using penal means are part of criminal policy in protecting society from crime, as well as part of social policy to achieve national goals as contained in the preamble to the 1945 Constitution of the Republic of Indonesia.⁶

Prevention of crime through penal facilities is operationally carried out through steps called the criminal justice system. The mechanism of the criminal justice system starts from investigation, prosecution, examination at court hearings, and implementation of judge's decisions carried out by correctional institutions.⁷ Regulations related to correctional facilities are currently contained in Law no. 22 Concerning Corrections. In Article 1 number 18 it is explained that correctional institutions or also known as prisons are institutions or places that carry out the function of fostering convicts.

The promulgation of Law No. 22 Concerning Correctional Services was a subject of controversy prior to its enactment. Towards the end of 2019, Indonesia witnessed numerous student demonstrations across various regions, including Medan, Jakarta, and Makassar. The demonstrations were organized to address specific demands related to the postponement of the ratification of several draft laws, such as the Draft Law on the Criminal Code, the Draft Law on Penitentiary, the Draft Law on Land, and the Draft Law on Minerals and Coal. As a consequence of these widespread demonstrations, the ratification of the four draft laws was deferred. President Joko Widodo cited the reason for postponement as an opportunity for the government to gather public input and improve the substance of the laws in line with the aspirations of the people.

Some of the reasons for the draft law being criticized by the public are because there is leeway for convicts of corruption cases in obtaining remissions

preventing crimes before they happen. In light of the above, it becomes imperative to develop a crime prevention strategy that can effectively provide public protection. This entails a proactive approach to address the root causes of crime and implement measures aimed at deterring criminal behavior before it manifests. By integrating preventive measures into criminal policies, societies can work towards creating a safer and more secure environment for all. *See also* Mark T. Berg, and Christopher J. Schreck. "The meaning of the victim-offender overlap for criminological theory and crime prevention policy." *Annual Review of Criminology* 5 (2022): 277-297; Joshua D. Freilich, Steven M. Chermak, and Brent R. Klein. "Investigating the applicability of situational crime prevention to the public mass violence context." *Criminology & Public Policy* 19, No. 1 (2020): 271-293; Anis Widyawati, "Criminal Policy of Adultery in Indonesia." *Journal of Indonesian Legal Studies* 5, No. 1 (2020): 171-186.

⁶ Saiful Abdullah, "Kebijakan Hukum Pidana (Penal) dan Non Hukum Pidana (Non Penal) dalam Menanggulangi Aliran Sesat," *Law Reform* 4, No. 2 (2009): 95-110.

⁷ Sugiharto, *Sistem Peradilan Pidana Indonesia* (Semarang: Unissula Press, 2012).

and convicts for obtaining recreational rights and conditional leave rights.⁸ In essence, the public rejects the ratification of the Penitentiary Bill because if the Draft Law is passed it will make it easier for convicts of corruption cases to get remissions. With the ratification of the Penitentiary Draft Law, Government Regulation Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Families will be passed. In Government Regulation no. 99 of 2012, in order for convicts of extraordinary crimes cases, one of which is corruption, to get parole and remission, there are stricter conditions than other convicts.⁹ The condition is that convicts must be willing to cooperate with law enforcers to help dismantle criminal cases they have committed.

However, on October 28, 2021, the Supreme Court issued Supreme Court Decision Number 28P/HUM/2021 which states that Article 34A Paragraph (1) Letter a and paragraph (3) and Article 43A paragraph (1) letter a and paragraph (3) of Government Regulation Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens does not have permanent legal force.¹⁰ By issuing Supreme Court Decision This means that the things that made the public reject the Penitentiary Bill have officially become invalid.¹¹ Sometime after it was released Supreme Court Decision Number 28P/HUM/2021, the Draft Law on Corrections was officially promulgated and entered into force

⁸ Endri Kurniawati, "Kontroversi RUU Pemasarakatan dan Pertanahan dalam Prolegnas", *TEMPO Online*, January 17 (2020). Retrieved from <https://nasional.tempo.co/read/1296210/kontroversi-ruu-pemasyarakatan-dan-pertanahan-dalam-prolegnas>; Iqbal Basyari, "RUU Pemasarakatan Disahkan, Remisi Koruptor Bakal Lebih Mudah", *KOMPAS Online*, May 28 (2022). Retrieved from <https://www.kompas.id/baca/hukum/2022/05/28/ruu-pemasyarakatan-permudah-remisi-koruptor>; Fathiyah Wardah, "Tanpa Syarat Pemberian Remisi di RUU Pemasarakatan, Koruptor Makin Leluasa Bergerak", *VOA Indonesia*, May 31 (2022). Retrieved from <https://www.voaindonesia.com/a/tanpa-syarat-pemberian-remisi-di-ruu-pemasyarakatan-koruptor-makin-leluasa-bergerak/6597015.html>

⁹ Kuswandi, "MA Batalkan PP 99/2012, Yudi: Aturan Itu Penting Untuk Ungkap Korupsi!" *JAWA POS*, 2021, <https://www.jawapos.com/nasional/01/11/2021/ma-batalkan-pp-99-2012-yudi-aturan-itu-penting-untuk-ungkap-korupsi/>.

¹⁰ BAPAS Klaten, "Sosialisasi Permenkumham No.7 Tahun 2022, 'PP 99 Tidak Dicabut Tapi Ada Beberapa Pasal Yang Dirubah'", *Online*, 2022, <http://bapasklaten.kemenkumham.go.id/berita-utama/sosialisasi-permenkumham-no-7-tahun-2022-pp-99-tidak-dicabut-tapi-ada-beberapa-pasal-yang-dirubah>.

¹¹ Dewi Nurita, "RUU Pemasarakatan Disahkan, Tak Ada Pengecualian Remisi Bagi Koruptor," *TEMPO*, 2022, <https://nasional.tempo.co/read/1609958/ruu-pemasyarakatan-disahkan-tak-ada-engecualian-remisi-bagi-koruptor>.

on August 3, 2022 to become Law Number 22 of 2022 concerning Corrections and repeal Law Number 12 of 1995 concerning Corrections.

Research related to the granting of remissions for convicts of corruption after the Supreme Court Decision Number 28P/HUM/2021 is important because after the decision there were changes to new policies and regulations. Through Supreme Court Decision Number 28P/HUM/2021 there is a significant change in the conditions for granting remissions for convicts of corruption. Previously, remission rights for corruption convicts were limited and difficult to obtain, but after the issuance of Supreme Court Decision Number 28P/HUM/2021 remission rights for corruption convicts became easier to implement.

After the Supreme Court Decision Number 28P/HUM/2021, research still needs to be carried out regarding the granting of remissions for convicts of corruption. This is because of course there are still several factors that can affect the granting of the remission. Therefore, this research is needed to provide an overview of the granting of remissions for convicts of corruption after the Supreme Court Decision Number 28P/HUM/2021 and also to evaluate the effectiveness of related laws and regulations, especially in terms of granting remissions to convicts of corruption. Thus, this research is expected to provide recommendations and appropriate solutions for improving and perfecting the conditions for granting remissions for convicts of corruption in the future.

Before proceeding with the discussion, it is important to clarify the definition of convicts as per Law No. 22 Concerning Corrections. Convicts refer to individuals serving prison sentences for a specified duration, including those on death row awaiting a decision's implementation while receiving coaching in correctional institutions. A convict is a person subject to punishment. Under Law No. 22 Concerning Corrections, convicts possess various rights, including the right to obtain remission. Remission, as explained in Article 10 paragraph (1) letter a of the same law, entails a reduction in the sentence period for convicts who meet the requirements as stipulated in the statutory provisions. Therefore, the authors intend to analyze remission for convicts convicted of corruption and examine the present condition of the Indonesian penitentiary system, along with the process of granting remissions following the Supreme Court Decision Number 28 P/HUM/2021.

Method

The study adopts a combination of the statutory and conceptual approach. The statutory approach entails examining various laws and regulations relevant to the research topic, while the conceptual approach involves studying

perspectives and doctrines within legal science as developed in books, articles, and other relevant sources.¹² According to Peter Mahmud Marzuki, the approach aims to establish relationships with the subject under study and gain a comprehensive understanding of the research problem.¹³

Regarding the granting of remission for corruptors, authors are conducting normative legal research, specifically a doctrinal approach. This research involves examining library materials, including relevant laws and regulations related to remission for corruptors. The statutory approach is employed to understand the specific legal provisions and criteria for granting remission in corruption cases. Additionally, the conceptual approach is used to explore the views and doctrines within legal science that pertain to remission in corruptor cases. By analyzing books, articles, and other pertinent sources, researchers aim to gain a comprehensive understanding of the remission process for corruptors and its implications within the legal framework.

A Discourse of Correctional System in Indonesia

The criminal justice system is a system in a society to deal with crime. Overcoming means here the effort to control crime so that it is within the limits of social tolerance.¹⁴ The criminal justice system in it consists of supporting sub-systems which as a whole become one unit (totality) trying to transform inputs into outputs. The output of the criminal justice system is the achievement of 3 (three) objectives of the criminal justice system, namely to resocialize the perpetrators of criminal acts (short term), crime prevention (medium term goal) and social welfare (long term goal).¹⁵ In the criminal justice system in Indonesia, initially the means of punishment was used as the main tool so that the imposition of criminal sanctions was considered the most effective way to achieve the goals of the criminal justice system.

Imprisonment during the Dutch colonial era was a reaction by the state due to a criminal act and was formulated into a criminal law, the implementation of imprisonment used more of a security approach because the purpose of the crime was retaliation. After Indonesia's independence, this situation continued so that Sahardjo was motivated to eliminate the suffering of people in prison. His thoughts were set forth when he received the title

¹² Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif & Empiris* (Jakarta: Kencana, 2016).

¹³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹⁴ Sugiharto, *Sistem Peradilan Pidana Indonesia*.

¹⁵ Muladi, *Kapita Selekta Hukum Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

Doctor Honoris Causa at the University of Indonesia on 5 July 1963 with the title Banyan Tree Protecting Pancasila Law.¹⁶

According to Sahardjo, the aim of imprisonment is besides causing suffering to the convict because he has lost freedom of movement, guiding the convict to repent and educating him to become a useful member of Indonesian socialist society.¹⁷ Sahardjo's idea can then be translated into 10 basic principles of correctional. The main principles are as follows.¹⁸

- a. The lost person is supported as well, by giving him the means to live as a good and useful citizen in society.
- b. Sentenced criminal is not an act of revenge from the state.
- c. Repentance cannot be achieved by torture, but by guidance.
- d. The state has no right to make someone worse / more evil than before he entered the board.
- e. During the loss of freedom of movement, convicts must be introduced to society and may not be exiled from it.
- f. The jobs given to convicts cannot be part-time, or only assigned to the interests of the position or the interests of the country at any time
- g. Guidance and education must be based on Pancasila.
- h. Everyone is human and must be treated as one, even if he has strayed.
- i. Convicts are only sentenced to loss of independence.
- j. The obstacle to implementing the Penitentiary System is the legacy of prisons whose conditions are sad and difficult to adapt to the task of Penitentiary, which are located in the middle of the city with high and thick walls.

The concept of correctional which was initiated by Sahardjo was then perfected by the Decision of the Service Conference of Prison Leaders in 1964 which decided that the implementation of imprisonment in Indonesia was carried out with the correctional system. So from that moment on, the purpose of imprisonment has changed from the previous goal as retaliation to fostering

¹⁶ It is further emphasized that Sahardjo drew upon ancient Javanese symbolism by using the banyan tree to represent justice. The choice of this symbol harks back to old Java, where the banyan tree held significant cultural and spiritual importance. By utilizing the banyan tree as a representation of justice, Sahardjo sought to connect contemporary ideas of justice with the rich historical and cultural heritage of Java, infusing the concept with deeper meaning and resonance. *See also* Ahmad Irzal Fardiansyah and Suseno Sigid. "Indonesian Law Enforcement; between the Lady and Banyan Tree." *International Journal of Social Science and Humanity* 8, No. 5 (2018): 147-150; Petrus Irwan Panjaitan, Radisman Saragih, and Inri Januar. "Persepsi Anggota Masyarakat Mengenai Resosialisasi dan Rehabilitasi Mencegah Bekas Narapidana Menjadi Residivist." *To-Ra* 5, No. 3 (2019): 225-244.

¹⁷ Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia Sdari Retribusi Ke Reformasi* (Jakarta: Penerbit Pradnya Paramita, 1986).

¹⁸ A. Widiada Gunakarya, *Sejarah dan Konsepsi Pemasyarakatan* (Bandung: Armico, 1988).

convicts so they are aware of their actions and not repeat the crimes they have committed so that one day they will be accepted in society and have positive skills in accordance with those acquired while serving time at the Institution. Correctional. This concept was then used as the basis for the formation of Law Number 12 of 1995 concerning Corrections which has now been revoked by Law Number 22 of 2022 concerning Corrections.

According to Sahardjo's thought, in the 9th basic principle of society it is stated that "*convicts are only sentenced to loss of independence*". The loss of independence is only temporary so that in the end the convicts will return to society.¹⁹ That means, only the right to independence is lost from convicts, other rights as human rights in general are still owned by convicts. Human rights as rights inherent in human beings are effectively fulfilled because they are protected by law.²⁰ The law here plays a role in protecting the human rights of its citizens, not as a mere reflection of power.²¹

The change of the prison system to a correctional system changed the way of looking at the law enforcement network in Indonesia.²² The existence of a coaching model for convicts in correctional institutions is inseparable from a dynamic, which aims to provide more provisions for convicts in facing life after completing their sentence (free).²³ Through Law no. 22 Concerning Correctional Institutions, the model of guidance in Indonesia which was originally the prison system was abolished and replaced with a correctional system so that the treatment of convicts must be educational in nature.²⁴ This system adheres to a system of integrating convicts into society through coaching programs that pay more attention to convicts' rights compared to the old system, namely the prison system.²⁵ According to Sahardjo, the purpose of imprisonment is besides causing suffering to the convict because he has lost freedom of movement, guiding the convict to repent and educating him to become a useful member of Indonesian socialist society.²⁶ The coaching

¹⁹ Arief, *Bunga Rampai Kebijakan Hukum Pidana*.

²⁰ Maidin Gultom, *Perlindungan Hukum Terhadap Anak* (Bandung: PT Refika Aditama, 2008).

²¹ Muladi, *Kapita Selekta Hukum Pidana*.

²² Aditya Nugraha, "Konsep Community Based Corrections Pada Sistem Pemasyarakatan Dalam Menghadapi Dampak Pemenjaraan," *Jurnal Sains Sosio Humaniora* 4, No. 1 (2020): 141–151, <https://doi.org/10.22437/jssh.v4i1.9778>.

²³ Ismail Pettanase, "Pembinaan Narapidana dalam Sistem Pemasyarakatan," *Solusi* 17, No. 1 (2019): 57–63.

²⁴ Made Darma Weda, *Kriminologi* (Jakarta: PT. Raja Grafindo Persada, 1996).

²⁵ Harsono, *Sistem Baru Pembinaan Narapidana* (Jakarta: Djambatan, 1995).

²⁶ Hamzah, *Sistem Pidana dan Pemidanaan Indonesia Sdari Retribusi Ke Reformasi*.

process in correctional institutions is based on the correctional system because actually the goal of imprisonment is correctional.²⁷

In connection with the above, this definition explicitly explains that correctional is an integral part of the realm of the criminal justice system and must then be implemented in a clear system so that in the implementation of the correctional itself becomes effective to be applied and enforced. In Article 1 point 2 of Law No. 22 Concerning Corrections explained that "*The Correctional System is an arrangement regarding the direction and limits as well as the methods of implementing the Correctional functions in an integrated manner.*" In the correctional system, a convict is still recognized as a member of the community so that in the process of coaching he cannot be separated from social life.²⁸

There are several objectives of the implementation of the correctional system, namely:

- a. provide guarantees of protection against the rights of Prisoners and Children;
- b. improve the quality of personality and self-reliance of inmates so that they are aware of mistakes, improve themselves, and not repeat criminal acts, so that they can be accepted again by the community, can live normally as good citizens, obey the law, are responsible, and can play an active role in development; And
- c. provide protection to the public from repetition of criminal acts.

The penitentiary system in Indonesia is implemented based on the principles of protection, non-discrimination, humanity, mutual cooperation, independence, proportionality, loss of independence as the only suffering, and professionalism. Some of the functions of correctional institutions are service, coaching, social guidance, treatment, security, and observation. Then in Article 9 of Law no. 22 Regarding Corrections it is explained that every convict has the right to:

- a. performing worship in accordance with his religion or belief;
- b. receive treatment, both physical and spiritual;
- c. get education, teaching, and recreational activities as well as opportunities to develop potential;
- d. get proper health services and food in accordance with nutritional needs;
- e. obtaining information services;
- f. get legal counseling and legal assistance;
- g. submit complaints and/or grievances;

²⁷ Wizna Gania Balqis, "Pelepasan Bersyarat dalam Perspektif Tujuan Pemidanaan," *Jurnal Nalar Keadilan* 1, No. 2 (2021): 82–94.

²⁸ Prijatno Dwidjaja, *Sistem Pelaksanaan Pidana Penjara di Indonesia* (Bandung: Refika Aditarma, 2006).

- h. obtain reading materials and follow broadcasts of mass media that are not prohibited;
- i. receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all actions that endanger the physical and mental;
- j. get work safety guarantees, wages, or work result premiums;
- k. get social services; and
- l. accept or refuse visits from family, advocates, assistants, and the community.

In addition to the rights referred to in Article 9 then in Article 10 paragraph (1) it is also explained that convicts who have met certain requirements, convicts also have the right to remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, parole, and rights other in accordance with the provisions of the legislation.

Prior to the existence of a well-organized correctional system, imprisonment was more retributive in nature, namely to avenge the mistakes made by the perpetrators of crimes. Prison sentences are imposed without considering the recovery or improvement of the perpetrators of the crime. After the existence of a well-organized correctional system, a rehabilitative approach began to be applied in sentencing prison sentences. Imprisonment sentences are imposed with the aim of changing behavior and improving the conditions of offenders. The penal system pays greater attention to the welfare and rehabilitation of prisoners, through programs such as job training, education, and the provision of skills and knowledge that can help them improve their lives after leaving prison.

In addition, the correctional system implemented in Indonesia also guarantees the rights of convicts as stated in Article 9 of Law No. 22 concerning Corrections. This condition is different from the conditions in the past which were very bad. Thus, the imposition of prison sentences today does not only pay attention to retaliation for criminal acts, but also pays attention to the recovery and improvement of convicts so that they can return to contribute to society after their sentence ends.

Granting Remissions for Corruption Convicts After Supreme Court Decision Number 28 P/HUM/2021

The controversy that occurred in 2019 before Law No. 22 Concerning Corrections was passed, namely because in this law convicts are allowed conditional leave and relaxed remissions for corruption convicts. The controversial articles are Article 34A Paragraph (1) Letter a and paragraph (3)

and Article 43A paragraph (1) letter a and paragraph (3) of Government Regulation Number 99 of 2012 concerning the second amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of the Fostered Citizens.

According to Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, judicial power in Indonesia is exercised by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, administrative court environment state, and by a Constitutional Court. Then it was explained that the Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other powers granted by law. In connection with the controversy in Article 34A Paragraph (1) Letter a and paragraph (3) and Article 43A paragraph (1) letter a and paragraph (3) Government Regulation Number 99 of 2012 concerning the second amendment to Government Regulation Number 32 of 1999 concerning Terms and Conditions Procedures for the Implementation of the Rights of Fostered Citizens, interested parties can submit a judicial review to the Supreme Court.

On June 23, 2021, Subowo, Acep Dermawanto, Endang Senjaya, Onang Sobandi, and Umarudin filed a petition for objection to the right to judicial review against Article 34 A paragraph (1) letters (a) and b, Article 34A paragraph (3), and Article 43 A paragraph (1) letter (a), Article 43A paragraph (3) Government Regulation Number 99 of 2012, Concerning the Second Amendment to Government Regulation Number 32 of 1999, Concerning Requirements and Procedures for the Implementation of the Rights of Correctional Families. In accordance with the amar in the Supreme Court Decision Number 28P/HUM/2021, the request of the applicants was partially granted. According to the decision, Article 34 A paragraph (1) letter (a), Article 34A paragraph (3), Article 43 A paragraph (1) letter (a) and Article 43A paragraph (3) Government Regulation Number 99 of 2012, Concerning Changes Second, on Government Regulation Number 32 of 1999, regarding the Requirements and Procedures for the Implementation of the Rights of Correctional Families Contrary to higher laws and regulations, namely Law Number 12 of 1995 Concerning Corrections (now revoked). The sound of the article is as follows:

Article 34A

(1) Granting Remissions for Prisoners convicted of committing crimes of terrorism, narcotics and narcotics precursors, psychotropics, corruption, crimes against state security, serious human rights crimes, and other organized transnational crimes, apart from

having to meet the requirements referred to in Article 34, must also meet the requirements:

- a. willing to cooperate with law enforcers to help dismantle criminal cases they have committed;*

Article 34A

(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 the provisions of laws and regulations.

Article 43A

(1) The granting of conditional release to convicts convicted of committing crimes of terrorism, narcotics and narcotics precursors, psychotropics, corruption, crimes against state security and serious human rights crimes, as well as other organized transnational crimes, apart from having to fulfill the requirements referred to in Article 43 paragraph (2) must also meet the following requirements:

- a. willing to cooperate with law enforcers to help dismantle criminal cases they have committed;*

Article 43A

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

To follow up on the Supreme Court's decision, Minister of Law and Human Rights issued Regulation No. 7 of 2022 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave (hereinafter referred to as Regulation of the Minister of Law and Rights Human Rights No. 7 of 2022). In Article 3 of the Minister of Law and Human Rights Regulation Number 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Family Visiting Leave, Parole, Prior Release Leave, and Conditional Leave (hereinafter referred to as Regulation of the Minister of Law and Human Rights No. 3 of 2018) explained that remission consists of general remission and special remission. General remissions are given on the anniversary of the Proclamation of Independence of the Republic of Indonesia on August 17, while special remissions are given on religious holidays adhered to by the convict or child concerned, provided that if a religion has more than one religious holiday in a

year, then the chosen is the holiday that is most glorified by the adherents of the religion concerned. Then, in Article 4 of the Regulation of the Minister of Law and Human Rights No. 7 of 2022 it is explained that in addition to the remissions referred to in Article 3, convicts and children can be given humanitarian remissions and additional remissions.

Regulation of the Minister of Law and Human Rights No. 3 of 2018 and Regulation of the Minister of Law and Human Rights No. 7 of 2022 regulates many things, one of which is the conditions for granting remissions because in Law no. 22 Concerning Corrections itself does not specifically regulate remission requirements, Article 10 paragraph (1) of Law no. 22 Concerning Corrections only explains in essence that convicts are entitled to remission after fulfilling certain conditions. Then in Article 10 paragraph (2) of Law no. 22 Regarding Corrections it is explained that certain requirements as referred to in paragraph (1) include having good behavior, actively participating in coaching programs, and having shown a reduced level of risk.

According to Minister of Law and Human Rights Regulation No. 3 of 2018 it is explained in Article 5 paragraph (1) that remissions can be given by the minister to convicts who have met the requirements of good behavior and have served a sentence of more than 6 (six) months. The condition for good behavior is proven by not undergoing disciplinary punishment within the last 6 (six) months, starting before the date of granting Remission and having attended a coaching program organized by Correctional Institutions with good predicate.

Furthermore, in Article 10 of the Regulation of the Minister of Law and Human Rights No. 3 of 2018 it is explained that convicts who commit acts of corruption to obtain remissions, apart from having to fulfill the requirements as referred to in Article 5, must also fulfill the requirements of being willing to cooperate with law enforcement to help uncover criminal cases they have committed and have paid in full fines and money. substitute in accordance with a court decision. However, after the issuance of Minister of Law and Human Rights Regulation No. 7 of 2022, the provisions of Article 10 in the Regulation of the Minister of Law and Human Rights No. 3 of 2018 amended to read: *"Convicts who commit acts of corruption to obtain remission, apart from having to fulfill the requirements referred to in Article 5, must also have paid off fines and compensation money in accordance with the court's decision."*

Thus, it means that it is true that the conditions for obtaining remission for corruption convicts have been made easier/loosened because the requirements for obtaining remission only need to have good behavior, have served a criminal term of more than 6 (six) months, and pay in full fines and compensation money in accordance with the court's decision. Therefore, to be able to obtain remission rights, corruption convicts no longer need to

cooperate with law enforcement to help uncover criminal cases they have committed.

Perpetrators of corruption should not be allowed to receive punishment or sanctions commensurate with the perpetrators of other crimes.²⁹ With the benchmark that corruption is an extraordinary crime because it is systemic and endemic with a very broad impact that not only harms state finances but also violates the social and economic rights of the wider community.³⁰ When examined from a doctrinal viewpoint, according to Romli Atmasasmita, it is not an exaggeration to call the crime of corruption an extraordinary crime. Furthermore, if examined in terms of the negative consequences or impacts that have greatly damaged the order of life for the Indonesian people since the New Order government until now, it is clear that acts of corruption are the deprivation of the economic and social rights of the Indonesian people.³¹

Corruption is a crime that is very detrimental to the state and society. Corruption can hinder development and undermine good governance. Therefore, the punishment for the perpetrators of corruption must be strict and severe in accordance with the nature of the crime. However, in practice, granting remission rights to convicts of corruption still seems soft and tends to be ineffective. Therefore, the government needs to tighten the granting of remission rights for convicts of corruption with the obligation of a justice collaborator.

First of all, it is necessary to understand that the criminal act of corruption is an extraordinary crime which is very detrimental to the state and society. Acts of corruption can drain the state budget, undermine good governance, and hinder national development. For example, in several cases, budgets that should have been allocated for infrastructure development or other public services were instead used for personal interests or certain groups in power. The impact is that development progress is hampered, while people who are supposed to be the beneficiaries of public services must be willing to accept poor or even non-existent services.

Corruption crimes can also undermine good governance. Corruption can cause a decrease in the quality of public policies and reduce the credibility of the government in making decisions. In the long run, acts of corruption can

²⁹ Doddy Syukma R, Abdul Bari Azed, and Bunyamin Alamsyah, "Implikasi Berlakunya Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 7 Tahun 2022 Terhadap Pemenuhan Hak Remisi dan Pembebasan Bersyarat di Lembaga Pemasyarakatan Kelas IIA Jambi," *Legalitas: Jurnal Hukum* 14, No. 2 (2022): 337–52, <https://doi.org/10.33087/legalitas.v14i2.378>.

³⁰ Ifrani Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa," *Al-Adl: Jurnal Hukum* 9, No. 3 (2018): 319–36.

³¹ Lilik Mulyadi, *Tindak Pidana Korupsi di Indonesia (Normatif, Teoritis, Praktik Dan Masalahnya)* (Bandung: PT Alumni, 2007).

undermine the morality and integrity of government and threaten national stability. Therefore, as a crime that is very detrimental to society and the state, corruption must be treated seriously and firmly. Punishments for perpetrators of corruption must be adequate and provide a strong deterrent effect for perpetrators and parties involved in the crime.

Most corruption convicts still have the same remission rights as other criminal convicts, although the nature of the crimes is different. This has caused many perpetrators of corruption to get out of prison quickly and resume their corrupt practices. Therefore, there needs to be an effort to tighten the granting of remission rights for convicts of corruption. One way that can be done is with the obligation of a justice collaborator.

A justice collaborator is a person who provides information or assists in uncovering criminal acts of corruption that have occurred or are ongoing. In this case, the obligation of a justice collaborator is not only limited to providing information or helping uncover criminal acts of corruption, but also repairing or providing financial losses that have occurred as a result of acts of corruption committed. In the context of granting remission rights, the obligation of a justice collaborator can be used as one of the criteria considered in granting remission rights. Corruption convicts who have justice collaborator obligations can get fewer remission rights or even no remission rights at all if these obligations are not fulfilled. It is hoped that this will encourage convicts of corruption to be more active in providing information or helping to uncover criminal acts of corruption that have occurred, as well as repairing financial losses that have occurred as a result of acts of corruption committed.

In addition, granting remission rights for convicts of corruption must also be considered based on the level of financial losses incurred. The greater the financial loss incurred, the smaller the right of remission granted to convicts. This can be one of the efforts to prevent convicts of corruption from committing the same act of corruption in the future.

In addition, there needs to be increased supervision of the implementation of the granting of remission rights for convicts of corruption. Supervision must be carried out strictly and thoroughly to ensure that convicts who are granted remission rights meet the criteria and conditions set. This supervision can be carried out by related institutions, such as the Corruption Eradication Commission or correctional institutions. In this case, supervision is not only limited to the process of granting remission rights, but also includes fulfilling the obligations of a justice collaborator and paying for financial losses that have been incurred as a result of acts of corruption. With strict supervision, it is hoped that the granting of remission rights for convicts of corruption can be carried out better and more effectively.

Conclusion

The current penal system has replaced the prison system. The correctional system pays greater attention to the welfare and rehabilitation of convicts through coaching programs so that they can assist convicts in improving their lives after leaving prison. The penal system guarantees the rights of convicts. If certain conditions have been met, convicts can also get additional rights, one of which is remission. After the Supreme Court Decision No. 28P/HUM/2021, the difference between ordinary crimes and extraordinary crimes, in this case, is that corruption becomes equal. The provision of remission rights for convicts of corruption should be more stringent with the obligation of a justice collaborator. This aims to encourage convicts of corruption to be more active in providing information or helping to reveal corruption that has occurred, as well as repairing financial losses that have occurred as a result of acts of corruption committed. In addition, there is also a need to increase supervision over the implementation of the granting of remission rights for convicts of corruption crimes to ensure that the granting of remission rights is carried out better and more effectively. Thus, abuse of remission rights by convicts of corruption can be avoided.

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