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Impact of Giving Remissions for the Corruptors in Indonesia

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Abstract

The impact of remission on corruptors is not good for eradicating corruption in Indonesia. As an outside criminal, corruptors cannot be given remission. Remission will not give a deterrent effect. The purpose of this study is to examine the purpose of giving remission to prisoners of corruption and to identify the impact sociologically. This research uses a sociological approach, uses primary data, and qualitative analysis. The results showed the purpose of giving remission to corruptors to motivate in improving positive attitudes and mindsets or building and regretting their actions. This is the aim of remission in general. Another goal is for corruptors to expose larger corruption cases. However, the impact of remission does not affect the prevention of corruption. Corruption cases increase every year in volume, quantity, and quality. However, remission can reduce the overcapacity of Corrections Institutions. The provision of remission for corruptors tends to focus only on showing a good attitude to get remission. Kourpsi as an extraordinary crime should not be given remission. Corruptors must be convicted in the broadest ordinary manner as they did. It can be through impoverishment, social work, a crime that can be embarrassing so people are afraid to commit corruption.

Keywords: Remission, Corruption, Poverty, Indonesia.

I. Introduction

The granting of remissions to criminal convicts of corruption hurts long-term efforts to eradicate corruption in Indonesia. Corruption is a crime that can destroy the joints of life of the nation and state. Corruptors are not eligible for remission. Conversely, it needs severe criminal to cause a deterrent effect.

The granting of remissions to each prisoner creates controversy, especially to prisoners such as corruption, terrorism, and narcotics. Remission should be done proportionally such as including certain requirements (Zaidan, 2016, p. 331). Sociologically the policy of granting remissions to corruptors disappoints people's hopes to achieve the real law goal of justice. Moreover, corruption has greatly expanded its existence in Indonesia systemically which has entered into all fields, both at the central and regional levels, and even spread in all state institutions (executive, legislative and judiciary). Corruption in Indonesia occurs systematically and is widespread so that it not only harms the country's finances but also has violated the social and economic rights of the people (Toule, 2013, p. 104).

In theory, criminal prosecution does not only provide a deterrent effect. There is an element of guidance and coaching with the aim that lawbreakers can realize their mistakes and not repeat their actions (Adhani, 2016). That is the philosophy of imprisonment placed in the Penitentiary (Prison). Corruption is included in the category of extraordinary crime perpetrators. It should have been specifically punished and not given remission.

A remission is a form of government efforts to provide human rights to prisoners without exception. A simple term is a form of dispensation. The presence of a remission policy for corruption convicts in Indonesia is not right to prevent corruption because the state of corruption in Indonesia continues to increase both in quantity and quality. The impact of this increase is felt by every prison in Indonesia, namely the occurrence of overcapacity or the number of prisoners that exceeds capacity (Maroni & Aryani, 2018).

The granting of remission is listed in the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, but in certain situations, the government has the right not to give it. Remission provisions are specifically regulated in article 34 of Republic of Indonesia Government Regulation Number 99 of 2012 concerning Second Amendment to Government Regulation Number 32 of 1999 concerning Procedures for the Implementation of Penal Prisoners' Rights which states that corrupt prisoners can be given remission if the convicted person agrees to cooperate with law enforcement officials in searching for the core perpetrators of corruption cases and agreeing to return property that has been taken or corrupted by the amount taken (Zaidan, 2016).

Corruptors should not be allowed to get punishment or sanctions commensurate with the perpetrators of other criminal acts (Hendratno, 2013). Criminals for corruptors must also educate the general public so that they do not think about trying to commit corruption in their environment.

The granting of remission to corruptors shows that the eradication of criminal acts of corruption in Indonesia does not seem to have strong support both morally and politically. Cases of corruption that have occurred in Indonesia with various types of modus operandi, also indicate that the existence of corruption is becoming more chronic at times and is difficult to eradicate. The modus operandi that is always carried out by corruptors is very systematic and high quality, evidenced by the involvement of several law enforcement officers, government agencies, and other officials, especially those who have high-quality education (Hendratno, 2013).

The Indonesian people in the first step had a burning enthusiasm in eradicating criminal acts of corruption in their environment. That spirit is fading more and more when a remission policy is made for corruptors. Indonesia often gets the nickname by its people as a paradise for corruptors. The nickname was given because the crime given to the corruptors was classified as light and even the corruptor had the opportunity to be free, even though the state loss reached billions of rupiah (Hendratno, 2013). Therefore, it is necessary to review the policy of granting remissions to corruptors.

II. Problem of the Study

Based on the background above, the problem discussed in this research is the purpose of giving remission to convicts of criminal acts of corruption as well as how the impact of giving remissions to convicts of criminal acts of corruption sociologically.

III. Research methods

This research is a type of field research. Field research is a special and realistic method for the existence of a phenomenon and is happening in the community (Suteki & Taufani, 2018, p. 147). This research is a type of field research because it uses primary data taken directly from the research object. The approach used is empirical. An empirical approach is an approach that looks at law issues in terms of their application, law phenomena in society, problems of law efficacy and effectiveness, law enforcement and application, law compliance, litigation problems and dispute resolution (Fuady, 2018). This research uses an empirical approach because it sees the law issues examined as a factual social reality. The data source used in this study is the primary data. Primary data is a collection of information obtained by researchers directly from the source (Suteki & Taufani, 2018, p. 214). This study uses primary data because most of the data used were obtained directly from the research object through interviews. Researchers also use secondary data obtained through online library research. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into basic patterns, categories and description units so that themes can be found presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

IV. Result and Discussion

Purpose of Granting Remission Against Corruption Criminal Inmates

Remission is a reduction in the criminal period given by the Minister of Law and Human Rights to each prisoner while serving a criminal period in detention (Latifah, 2016). Besides, remission is a right granted to every prisoner following Article 14 paragraph (1) letter I of the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections. The government's decision to provide remission to all prisoners including corruption prisoners has caused controversy among the Indonesian people. The community considers that the remission that is also given to prisoners has committed extra-ordinary crimes such as corruption, it will even increase the number of corruption because the officials do not feel afraid and will also get remission (Zaidan, 2016). Criminal detainees of ordinary crime must instead be given severe crimes to get a deterrent effect and not repeat their actions later on.

The government in providing a remission policy cannot be separated from various considerations and objectives to be achieved. The presence of remission aside from a special reason from the government also has hurt the sense of justice for the people of Indonesia (Mispansyah, Karim, Irwansyah, & Moein, 2015, p. 209). The remission policy makes the government seem not to be serious in eradicating criminal acts of corruption in Indonesia. The remission policy is like a breath of fresh air or a gift for prisoners of corruption and of course, it makes the public's confidence decline in the performance of the Indonesian government.

The purpose of remission, including for corruptors, is certainly interesting to study. Because inmates are prisoners who commit crimes or crimes in the community, especially corruption as an extraordinary crime. The granting of remission is controversial because the government in practice in reducing the criminal period is not following the contents of the legislation that has been prepared. Article 2 paragraph 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Family Visit Leave, Conditional Release, Ahead for Leave and Conditional Leave states that prisoners' rights can be granted with considered one of them is an element of justice. The granting of remissions to corruption convicts in practice has hurt a sense of justice in every community, but the policy still applies.

The element of considering justice in granting the rights of fostered citizens is following the theory of law objectives namely the ethical theory put forward by Aristoteles. The purpose of law according to Aristoteles is none other than to go and get justice. Aristotle formulated justice into two types namely distributive justice and commutative justice. Distributive justice is justice given by looking at how much services have been performed. While commutative justice is justice that is not based on how much services have been carried out in other words justice is given equally or carelessly between one person to another (Kansil, 1986). The element of justice in its implementation is not used as a consideration in granting remissions so that people feel disappointed because they do not feel they get justice when the corruptors are given remission rights.

The government's goal to make a policy of granting remission to prisoners, especially corruption, is as a form of "lure" to trigger prisoners to behave well. Prisoners can promise themselves and the community to do good and will not repeat criminal acts in the future. The granting of remission can be seen as a reasonable thing to do considering that remission is a right for every fostered citizen and following the principles of Human Rights.

The provision of remission for corruption inmates is the same as the requirements for prisoners in general, with special conditions. Government Regulation of the Republic of Indonesia

Number 99 of 2012 concerning Second Amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for the Implementation of Prisoners' Rights Article 34 A paragraph 1 states that the granting of Remissions to Prisoners convicted of committing criminal acts of terrorism, narcotics and precursors narcotics, psychotropic, corruption, crimes against state security, serious human rights crimes, and other organized transnational crimes, besides fulfilling the requirements as intended in Article 34, they must also fulfill the following requirements:

1. Willing to cooperate with law enforcement to help dismantle criminal cases he committed.
2. Has paid off a fine and compensation following a court decision for a convicted criminal for committing a criminal act of corruption.
3. Has participated in the de-radicalization program organized by prison and/or the National Counterterrorism Agency.

Another goal of the government is to establish a policy of remission for every convicted corruption because of seeing the facts in the prison that are not conducive. Criminals or inmates who are now referred to as prisoners are in fact before the concept of punishment in Indonesia was changed to coaching when they left the prison many carried out recidivism actions. The concept of revenge conviction or creating a deterrent effect on prisoners in the prison was not a good impact for the future. Not a few inmates who came out of custody were caught again with the action that is more adept at carrying out criminal acts.

The government changed the concept of punishment which was originally a concept of revenge or made a deterrent effect for criminals, into coaching with the hope that after the prisoners are released from detention, they will change their attitude to be better than before. Provision of remission as a form of implementing the concept of coaching in the penal system with the aim that prisoners can be motivated and motivated in self-examination (Nur, 2015). The government also has other reasons for implementing the remission policy for corrupt prisoners. Overcapacity is considered by the government to issue a policy of remission for corrupt prisoners.

The purpose of granting remissions to corruptors is also to assist law enforcement officials in dismantling corruption cases in Indonesia. Remission is like an inducement and threat to corruption convicts, that is, they want to cooperate with law enforcement officials in exposing corruption cases by looking for the real perpetrators of corruption. Corruption convicts who are willing to work together to expose the corruption case or acknowledge their actions will be given a reduced sentence or remission. Threats can also be carried out such as corruption convicts who are threatened with severe punishment and will not get remission if they do not meet the conditions of granting the remission applicable in the legislation. Prisoners who are not ready to be jailed for years and ultimately choose to return state money, then in the process of punishment will be given a reduction in criminal period by the government (Nur, 2015).

Besides, the purpose of granting remissions is also to avoid violations of human rights. However, the granting of remissions accompanied by special conditions for corrupt prisoners did not have a deterrent effect. Remission should not be given to corruption convicts, given that corruption is an extraordinary crime whose handling must be strict and create a deterrent effect for the perpetrators.

Various kinds of regulations regarding remission policies have been made by the government, one of which is the Presidential Decree of the Republic of Indonesia Number 174 of 1999 concerning Remission. Implicitly the aim is:

1. As a form of motivation and stimulant so that convicts and criminal children always remember to behave properly while in custody or prison.

2. As a form of efforts to reduce the negative impacts and subcultures where criminal conduct is carried out, differences in criminal decisions, and the consequences of deprivation of liberty.
3. Special remissions given during religious holidays are expected to be a trigger for correctional fostered residents for self-introspection following the guidance of religion in daily life.
4. As one of the policies that are alternative to criminal law in the context of realizing a penal system that is appropriate or expected according to the minimum standard rules (Sukarno, 2019, pp. 148-149).

Society, in general, has a different perspective on the real purpose of remission. The community hopes that the government in the policy of granting remissions, especially to corruption convicts, can prioritize the principle of justice, and the spirit of preventing corruption.

The Impact of Remission for Corruptors in a Sociological Perspective

The policy of granting remissions to criminal convicts existed since before Indonesian independence, precisely at the time of the Dutch colonial occupation. The granting of remissions in Indonesia has changed several times since the independence of the Republic of Indonesia to the present. The purpose of the remission policy is to implement elements of human rights for prisoners and balance the development of lifestyle or habits of the Indonesian people that have changed significantly.

Society in responding varied. But in general, the government can reconsider if Corruption also gets remission. Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections states that remission is the right of every prisoner. There will be a violation of the law if inmates, including corruption convicts, do not get remission.

The polemic regarding the implementation of the remission policy for corruption inmates and the demand to be abolished until now is still a long debate among practitioners and academics. The focus in granting remissions is seen from the impact when the remission was applied to corruption convicts in Indonesia.

Remission cannot be separated from the purpose and function of the penal system because it is already regulated in the Correctional Act. The correctional system prevailing in Indonesia is a system that is not only rehabilitation and resocialization, but there must be an educative, correlative and definitive element based on the Pancasila philosophy. The purpose of the penal system in Indonesia places more emphasis on the social integrity of prisoners who are better than before. The penal system in Indonesia has now shifted away from the elements of retribution and deterrence (Zulfa, Akbari, & Samad, 2017).

The penitentiary system in Indonesia has turned into guidance, which prioritizes preventive efforts and contains educative elements for fostered citizens. The coaching concept expects that prisoners who are released from detention will be well received by the community because they have received good support from the prison. The aim is expected to have an impact on increasing the efforts of the government, law enforcement officials and the public to always behave commendably and try to prevent corruption in the community.

The impact of remitting corruptors if they are intended to reduce corruption is irrelevant. In Brebes Regency, Central Java, Indonesia, for example, corruption crimes still occur frequently every year, there is no decrease when the remission policy is submitted to corruptors. Even from the law enforcer, the Brebes District Attorney does not agree with the remission of corruption convicts. The conditions imposed in obtaining remissions also do not affect the decline in corruption in Indonesia.

The provision of remission will not cause a deterrent effect. Facts on the ground prove that the impact of remission on corruption convicts in Indonesia is less effective in combating corruption crimes. The law rules for granting remissions need judicial review so that law enforcement officials can work optimally.

Law enforcement does not support and regrets the remission policy because so far the granting of remission has not had a positive impact on combating corruption. The government should make efficient alternative criminal threats, for example, impoverishment for corruptors. These alternatives can provide a deterrent effect on corruption inmates and can be used as education to the public. The concept of impoverishment has been raised and formulated by law experts in Indonesia, but until now it has never been attempted to be realized.

While the prison for example in Brebes has its perspective on the impact of remission for corruptors. The granting of remissions to prisoners of any kind has greatly affected the state of prison in Indonesia. the prison has a limited capacity; it is not possible to accommodate prisoners or prisoners whose number exceeds the capacity of a prison. For example, at Prison in Brebes, Central Java, Indonesia it has accommodated 293 prisoners with a prison capacity of 165 prisoners.

If the government does not enforce or abolish one of the prisoners' rights, namely remission, the prison will continue to experience overcapacity. Remission is one solution to reduce overcapacity in addition to conditional leave and parole. The provision of remission for prisoners, especially corruption, is also not easy, but it must be according to the procedures in the legislation. Not justified if remission becomes a gift for corruptors. Because in getting the remission, corruption convicts have to pay replacement money and in the trial process, they are willing to become a justice collaborator, and all of that is not easy.

Normatively, the direction of granting remissions is very clear in the penal law. The regulations below should follow the rules above to achieve harmony. The regulation on remission has undergone many changes whose purpose is to achieve justice and peace in the community and the prison environment. Changes were made more than once, and still cause controversy in the community environment until now.

According to prison, the community's assumption that the existence of remission will only make it easier for corrupt prisoners to be free from detention is not entirely true. If the existence of remission becomes something that makes it easier for convicts of criminal acts of corruption, then since the enactment of the policy, many prisoners of corruption have been free. For example, such as corruption convicts in Brebes Regency in the intervening four years back, who submitted a request for remission no one managed to get a remission because these conditions were deemed not easy to fulfill.

However, the impact of granting remissions to corruptors **does not affect the prevention of corruption. Corruption cases** have increased both before the remission and after the remission policy was enacted. Remissions that are idealized so that corruptors work together in exposing corruption cases and to ensnare larger corruptors are also difficult to carry out. Need to be an evaluation material for the future to be following what is intended by law.

The implementation of remission for corruptors can be used as law protection carried out illegally because of the abuse of power. These impacts can be anticipated if the party in power or the authorities does not accept any offer to the prisoners who request to be facilitated in the process of granting remissions.

Corruption is a series of actions carried out both on behalf of individuals and law entities which are certainly detrimental to the state finances or public finances for the sake of personal or group interests (Gultom, 2018, pp. 3-4). The impact of the remission policy for corruptors does not affect whatsoever. The public also does not know and does not feel the direct impact of the consequences of corrupt actions carried out by officials.

The indirect impacts are felt, namely causing the economic costs to swell due to irregularities in incentives, the existence of political financing for a public institution, and the existence of social costs by the distribution of welfare and undue distribution of power. The Indonesian people certainly do not feel the impact immediately, but they have begun to feel difficulties in finding food and difficulty meeting their daily needs because without realizing the price of these needs has increased (Gultom, 2018, p. 11).

According to researchers, granting remissions is not a solution to combating corruption in Indonesia. The government must have the courage to take new, efficient and innovative policies such as the granting of severe and strict crimes. Criminals will only feel a deterrent and truly sorry if all elements of society know what he did and agree together that his actions deserve to be given the appropriate punishment.

There needs to be a criminal offense for the perpetrators of corruption following the current behavior of the Indonesian people. The behavior of Indonesian people is very dependent on electronic media and social media. Sanctions that are appropriate to the development of community behavior, especially for those who commit corruption, need to be formulated. One of them is by putting on face the perpetrators of corruption in all electronic media and social media regularly with a large statement of the loss of his country. The time frame for the installation of personal data of corruption perpetrators in all electronic media and social media is of course following the length of the criminal offense in the custody.

The problem of corruption in Indonesia lies only in transparency in government performance, implementation of laws and regulations in everyday life and the law culture carried out by the community. If all of these components can run well, corruption will be reduced.

Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crime states that corruption has been widespread and has not only harmed state finances. Corruption is also a violation of the social and economic rights of the wider community. Corruption should be classified as a crime whose eradication must be carried out extraordinary.

The government and the private sector will certainly commit corruption, it's just that only a few people who at the time of doing so were known by the authorities to eradicate corruption, in this case, the Corruption Eradication Commission. Acts of corruption that are small but have a big impact can be seen in daily life such as when making a National Identity Card, when police officers carry evidence of violations (traffic tickets) on the highway, and so on.

The existence of remission has indeed been regulated in the regulation of the legislation so that it continues to be carried out even though when it comes to the prevention and eradication of corruption, there is no relation. Remission is a policy given to every prisoner to avoid discrimination or difference between one inmate and another inmate. The existence of remission is only as a repressive effort for the government so that corrupt prisoners do not repeat their actions in the future.

The provision of remission will be negative if it is misused in its implementation. Actually, in the implementation of remissions in the field, some are not following the implementation of the law.

The implementation is like the existence of illegal law protection to give remission to prisoners. This certainly does not happen in every prison, but only certain elements do this.

The reason a person commits a criminal act of corruption is based on the power he has. Corruption is not only limited to having money, high positions and the like, but more than that all related to economic, social, and so on (Gultom, 2018). Corruption is caused by:

1. Individual aspects of actors consisting of human greed, morale that is less strong so easily tempted to commit corruption, income that is always insufficient for daily needs, necessities of life that tend to be urgent, consumptive lifestyle because of living in urban environments, lazy to work, and religious teachings that are not applied in daily life.
2. Organizational aspects, namely lack of leadership role models, lack of good culture in the work environment, inadequate accountability systems, poor management control so that opportunities to cover up corruption can be done.
3. Aspects of the place of individuals and organizations namely lack critical nature of one's wealth, lack of awareness that oneself become victims of corruption, lack of awareness that oneself is involved in acts of corruption, lack of confidence and a strong enthusiasm in the community to eradicate corruption and aspects of the legislation that are still fairly weak to eradicate and prevent criminal acts of corruption.

Thus, remission should not be given to corruptors since the type of corruption crime is an extraordinary crime and the consequences of corruption are very large, namely damaging the joints of the country's economy. The impact of remitting corruption on prisoners does not affect the prevention of corruption eradication in Indonesia. Corruption perpetrators are better off being impoverished and for corruptors from politicians, it is better to revoke their right to vote forever. Remembering corruption is like a virus and even a disease in which the treatment must be carried out proportionally and decisively, so that people who see people being caught because of corruption, are not curious or even try such heinous acts.

V. Conclusion

Based on the discussion above it can be concluded that the purpose of granting remissions to prisoners of criminal acts of corruption is to provide motivation in correcting positive attitudes and mindsets or to build and regret their actions. The hope is when corrupt convicts have finished serving a criminal period and returned to the community, turned into humans with good personalities and are determined not to repeat acts of corruption in the future. Following Presidential Decree of the Republic of Indonesia Number 174 of 1999 concerning Remission, the aim is as an effort to reduce the negative impact and subculture where criminal conduct is carried out, differences in criminal decisions or disparities in judges' decisions, and the consequences of deprivation of independence; special remissions given during religious holidays are expected to be able to trigger correctional foster residents to always introspect themselves according to religious guidance in daily life; as one of the policies that are alternative to criminal law to realize the expected penal system according to the minimum standard rules.

The impact of granting remissions on corruption convicts does not affect preventing the occurrence of criminal acts of corruption because it is not a matter of a substantial nature in the eradication or prevention of corruption. This is proven that almost every year there is a criminal act of corruption as in Brebes Regency. The impact of granting remissions that do not affect preventing the occurrence of criminal acts of corruption in Brebes Regency, but only reduces over the capacity of Corrections Institutions. The existence of granting remissions to corruption convicts whose nature

tends not to be published to the public, making the public blind to information about the latest developments in the government to treat criminal convicts of corruption during the conviction. The negative impact arising in granting remissions to convicts of corruption is that corrupt prisoners actually tend to focus on competing in good behavior and doing positive things in detention solely just to get remission; the government in this case seems as though it is not firm in making efforts to eradicate corruption in its country; the lack of government awareness of the existence of corruption which is an extraordinary crime category, evidenced by the way or efforts of the government in dealing with corruption which is equated with other crimes; the purpose of criminalizing criminal convicts of corruption that has begun to be undirected; the potential for the emergence of bribery practices in detention; decreased public trust in the government and law enforcement agencies in eradicating criminal acts of corruption; the criminal conviction of a criminal act of corruption does not cause a deterrent effect and does not cause the effect of education or learning for the wider community not to try to commit a criminal act of corruption in their environment.

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