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Remission Policy for Corruption Perpetrators in The Perspective of Justice

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ABSTRACT

Corruption is recognized as an extraordinary crime that poses significant challenges to governance and justice systems. The remission policy for corruption perpetrators often raises concerns regarding its alignment with the principles of justice, as it can be perceived as undermining the severity of corruption offenses. This research addresses the critical question of how remission policies can coexist with the values of justice, particularly in the context of Indonesia's legal framework. The primary aim of this research is to explore the legal norms surrounding the remission policy for corruption perpetrators from a justice perspective. It seeks to analyze whether the existing policies uphold the principles of fairness and justice as articulated in the Indonesian Constitution and the state ideology of Pancasila. This research employs a normative legal research methodology, utilizing secondary data such as laws and legal theories. Two key approaches are applied: a statutory approach, which interprets legal norms within existing legislation, and a philosophical approach, which delves deeply into the theoretical underpinnings of justice. The findings indicate that while remission can be viewed as a human right and a potential reward for good behavior, its application must be strictly regulated to maintain public trust and uphold justice. The research emphasizes that remission policies should be grounded in solid legal foundations and should incorporate principles of community justice to ensure that they do not compromise the fight against corruption.

Keywords: *Corruption, Justice, Law, Remission Policy*

INTRODUCTION

The crime of corruption is considered an extraordinary crime, requiring extraordinary efforts to eradicate it and prevent its occurrence. Due to its extraordinary nature, a specific regulation was established, the Law No. 31/1999 on the Eradication of Corruption, which was later amended by Law No. 20/2001. Article 2 Paragraph (1) of this law states that “Any person who unlawfully commits an act of enriching oneself or another person or a corporation that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).”

The remission policy is regulated in the Minister of Law and Human Rights Regulation which regulates the terms and procedures for granting remission, assimilation, leave to visit family, parole, pre-release leave, and conditional leave. In Article 3, remission is defined as a reduction in the criminal period given to prisoners and juvenile offenders who meet the requirements in accordance with statutory regulations. There are two types of remission, which include humanitarian remission and additional remission. This policy is under the authority of the Ministry of Law and Human Rights (Kemenkumham), while the Correctional Institution (Lapas) is in charge of fostering and evaluating prisoners. However, the granting of remission for prisoners of corruption cases often causes controversy in the community because it is considered to be a violation of the sense of justice.

Corruption as an extraordinary crime has a major impact on people's lives, therefore the remission policy given to perpetrators of corruption crimes should be considered from the perspective of justice. In this context, the values of justice as stated in the 1945 Constitution become a reference, including in the first, second and fourth paragraphs of the opening of the Constitution, as well as the second and fifth precepts of the state ideology Pancasila. The justice in question is proportional justice, in accordance with individual needs and a sense of justice in society. As a sovereign state of the people, Indonesia is obliged to organize a legal order that upholds the principles of justice to create a harmonious life of the nation and state, in accordance with the mandate of Article 1 Paragraph (2) of the 1945 Constitution which emphasizes that sovereignty is in the hands of the people. Therefore, this research aims to determine the legal norms related to the remission policy for the perpetrators of corruption in the perspective of justice.

LITERATURE REVIEW

There are a number of previous studies related to the research topic addressed in this research. Rosafiyanti (2017) examined the granting of remission for

corruption crimes from a human rights perspective.¹ This research reveals that the granting of remission to perpetrators of corruption crimes may be associated to the concept of human rights, where remission is considered a natural right that can be obtained as a form of reward. However, the terms and procedures for granting remission must be carried out strictly, one of which is through the application of the justice collaborator requirement which is reinforced by the reverse proof system. This aims to prevent corruption and realize a clean and transparent government. Thus, the granting of remission to corruption prisoners can still consider the principles of justice and humanity. However, the granting of this remission must be based on a solid legal foundation and supported by a firm government. The difference between Rosafiyanti's research and this research lies in the methods used; Rosafiyanti's research uses normative juridical methods, while this research uses normative methods with a statutory approach and philosophical approach, which focuses on the existence of values or theories of justice in remission policies for corruption perpetrators.

Eddie Toet Hendratno also examined the policy of granting remission for corruptors by conducting a critical review from the perspective of legal sociology.² The research used normative juridical methods, while this research uses normative methods with a statutory approach and philosophical approach. The focus of this research is to seek the existence of the value or theory of justice in the remission policy for corruption perpetrators.

Corruption is an extraordinary crime, even the United Nations Convention Against Corruption (UNCAC) categorizes corruption as a human rights crime and a crime against humanity.³ Corruptors should be punished to the maximum without remission, considering their actions that harm state finances and torment millions of people. It is inappropriate for corruptors to receive the privilege of remission. Instead, corruptors should be impoverished and given social sanctions as a form of justice. Prison is not a place for revenge, but it is also not a place for criminals to receive privileges, such as remission. Maximum punishment for corruptors is not only a lesson for them, but also provides a deterrent effect for the community to avoid similar criminal acts. Thus, the elimination or tightening of remissions for corruptors is a feasible policy to implement.

¹ Rosafiyanti, "Remisi Terhadap Tindak Pidana Korupsi Dalam Perspektif Hak Asasi Manusia" (Universitas Narotama Surabaya, 2017), <https://repository.narotama.ac.id/438/2/DewiRosafiyanti.pdf>.

² Eddie Toet Hendratno, "Kebijakan Pemberian Remisi Bagi Koruptor, Suatu Telaah Kritis Dari Perspektif Sosiologi Hukum," *Jurnal Hukum & Pembangunan* 44, no. 4 (December 26, 2014): 518, <http://jhp.ui.ac.id/index.php/home/article/view/33>.

³ Colin Nicholls et al., "The United Nations Convention Against Corruption I," in *Corruption and Misuse of Public Office* (Oxford University PressOxford, 2024), 609–643, <https://academic.oup.com/book/58180/chapter/480382710>.

RESEARCH METHODOLOGY

The type of research used in this study is normative legal research that utilizes secondary data, such as laws and legal theories. In this research, two key approaches are applied. First, the statutory approach, which is an approach that relies on legal norms, allowing legal issues to be understood as a concept that should be (*das sollen*). Second, the philosophical approach, which aims to explore the problem in depth, thoroughly and fundamentally. Through the speculative and explorative nature of philosophy, this approach explores legal issues in normative research radically. This research specifically examines the existence of remission policies for corruption crimes from the perspective of justice.

RESULT AND DISCUSSION

Remission, as defined by the Great Dictionary of Indonesian Language, is a reduction in sentence given to a person who has been sentenced to a criminal offense.⁴ Remission is granted to prisoners or people convicted of criminal offenses. The definition of remission is explained in more detail in Regulation of the Minister of Law and Human Rights No. 7/2022 Article 4, which states that “Remission is a reduction in the criminal period given to prisoners and juvenile offenders who meet the conditions specified in the laws and regulations.”⁵

Remission Policy in General Criminal Offenses

Prisoners as perpetrators of criminal offenses undergo a punishment system, one of which uses the principle of loss of freedom as the only suffering, as stated in Law No. 22/2022 concerning Corrections Article 3 letter g.⁶ In addition to the deprivation of liberty, prisoners also have certain rights described in Article 9 of the Law. In addition to these rights, remission also provides certain rights as described in Article 10 letter a, which is called remission. The granting of remission must fulfill certain requirements, which are explained in Article 10 Paragraph 2, which are:

1. Behave well,
2. Actively participates in the guidance program, and
3. Has shown a decrease in risk level.

⁴ Kamus Besar Bahasa Indonesia (KBBI), “Arti Kata Remisi - Kamus Besar Bahasa Indonesia (KBBI) Online,” *Kamus Besar Bahasa Indonesia (KBBI)*, last modified 2025, <https://kbbi.web.id/remisi>.

⁵ Kementerian Hukum dan HAM Indonesia, *Peraturan Menteri Hukum Dan HAM Nomor 7 Tahun 2022 Tentang Perubahan Kedua Atas Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 3 Tahun 2018 Tentang Syarat Dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti*, 2022, <https://peraturan.bpk.go.id/Details/203716/permenkumham-no-7-tahun-2022>.

⁶ Pemerintah Pusat Indonesia, *Undang-Undang (UU) Nomor 22 Tahun 2022 Tentang Pemasarakatan*, 2022, <https://peraturan.bpk.go.id/Details/218804/uu-no-22-tahun-2022>.

Remission is not granted to prisoners sentenced to life imprisonment or death sentence. As a policy, the granting of remission requires supervision, which is explained in Article 88 Paragraph (1) of Law No. 22/2022, which states that “Internal supervision of the implementation of the correctional function is carried out by the Minister / Head of Institution.”⁷ Remission is divided into two categories, as per Article 3:

1. General Remission: Granted on the Independence Day of the Republic of Indonesia, August 17.
2. Special Remission: Granted on public holidays of the religion adhered to by the prisoner or juvenile concerned. Where a religion has multiple holidays, this is regulated in Article 10 letter a.

In addition, Article 4 regulates the other types of remission:

1. Humanitarian Remission: Granted to prisoners who are sentenced to a maximum term of one year or aged over 70 years. For prisoners over 70 years old, age is calculated based on the calculation in the court decision, in the absence of a birth certificate
2. Additional Remission: Could be granted by the Minister under certain conditions, such as:
 - a. Performing services to the country,
 - b. Performing acts that are beneficial to the state or humanity,
 - c. Assisting with guidance activities in correctional institutions.

Remission Policy in Corruption Offenses

In the context of corruption crimes, as stipulated in Article 10, the granting of remission to prisoners has more specific and strict provisions compared to general criminal offenses. Prior to receiving remission, corruption perpetrators must meet the requirements listed in Article 5, which include meeting the criteria for good behavior while serving their sentence and having paid fines and restitution in accordance with a court decision that is legally binding.

In addition, other administrative requirements are also required as valid evidence that the sentenced person has complied with applicable legal provisions. This includes including a copy of the court decision stating the amount of fines and restitution that must be paid as well as a certificate stating that the convict is not currently serving another sentence in lieu of a fine.

The granting of remission for corruption perpetrators has a different procedure from the granting of remission for general crimes. This procedure involves several stages of verification which are quite strict. The first verification is carried out by authorized officers at the prison level, which is then continued with further evaluation by the Directorate General of Corrections. Afterwards, the recommendations from this evaluation are submitted to the Minister of Law and

⁷ Ibid.

Human Rights for final approval. This aims to ensure that the granting of remission is not only based on administrative feasibility, but also considers aspects of justice and public interest, given the huge impact that corruption crimes have on society and the state.⁸

This longer and stricter procedure reflects the state's commitment to preventing abuse of remission, especially for corruption perpetrators, as well as maintaining the principle of justice for the people affected by these criminal acts.

Remission Policy during COVID-19

During the COVID-19 pandemic, the Indonesian government issued policies related to remission in response to the emergency situation. The government declared the pandemic a national disaster through Presidential Decree No. 12/2020.⁹ The Ministry of Law and Human Rights issued a policy to grant parole to certain prisoners. Parole, which is stipulated in Government Regulation No. 99/2012, is granted after the prisoner has served two-thirds of the criminal period, with certain provisions.¹⁰ The granting of parole is regulated in the Regulation of the Minister of Law and Human Rights No. 10/2020, which limits the granting of remission to prisoners involved in criminal acts of terrorism, narcotics, corruption, and certain other crimes.¹¹

Analysis of Remission Policy in the Perspective of Justice

In the Preamble of the 1945 Constitution, there are many mentions of the word “justice” or “just” that appear repeatedly, around 12 times. The word “fair” appears in the second precept of Pancasila, namely “Just and civilized humanity,” and in the fifth precept of Pancasila, namely “Social justice for all Indonesian people.” Thus, justice in this context becomes a grand vision that must be realized. Terminologically, the word “justice” comes from the Arabic word “adil” or “al-'adl,” which means “middle” or “middle of the road.”¹² Justice means not taking sides, always favoring the right, and not being arbitrary.

⁸ M Ali Zaidan, “THE POLICY OF GRANTING REMISSION TO CORRUPTION INMATES IN ORDER TO ERADICATE CORRUPTION IN INDONESIA,” *Jurnal Dinamika Hukum* 16, no. 1 (January 13, 2016), <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/518>.

⁹ Pemerintah Pusat Indonesia, *Keputusan Presiden (Keppres) Nomor 12 Tahun 2020 Tentang Penetapan Bencana Nonalam Penyebaran Corona Virus Disease 2019 (COVID-19) Sebagai Bencana Nasional*, 2020, <https://peraturan.bpk.go.id/Details/135718/keppres-no-12-tahun-2020>.

¹⁰ Pemerintah Pusat Indonesia, *Peraturan Pemerintah (PP) Nomor 99 Tahun 2012 Tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 32 Tahun 1999 Tentang Syarat Dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan*, 2012, <https://peraturan.bpk.go.id/Details/5314/pp-no-99-tahun-2012>.

¹¹ Kementerian Hukum dan HAM Indonesia, *Peraturan Menteri Hukum Dan HAM Nomor 10 Tahun 2020 Tentang Syarat Pemberian Asimilasi Dan Hak Integrasi Bagi Narapidana Dan Anak Dalam Rangka Pencegahan Dan Penanggulangan Penyebaran Covid-19*, 2020, <https://peraturan.bpk.go.id/Details/174004/permenkumham-no-10-tahun-2020>.

¹² Badi'ul Marom, “Konsep Keadilan Dalam Al-Qur'an Perspektif Tafsir Ibnu Katsir” (IAIN Kudus, 2022), <http://repository.iainkudus.ac.id/id/eprint/9246>.

The development of the idea of justice initially stemmed from a mythological approach. However, with the emergence of the thought of Plato and Aristotle, there was a major change in the concept of justice, moving from a mythological to an intellectual-rational approach which was then associated with power-holding institutions and human collectivity.

The granting of remission is also explained in the Regulation of the Minister of Law and Human Rights No. 7/2022 in Article 2, which considers “public justice” as one of the important points. In this case, “community justice” refers to justice applied collectively by society. In John Rawls' view, to achieve social justice, he proposed the principle of equal freedom. This principle limits individual freedom only in favor of broader freedom for society. Individual freedom, obtained through general distribution, is the form of freedom that every rational individual desires.

The remission policy contained in the Regulation of the Minister of Law and Human Rights No. 7/2022 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Ahead of Release, and Conditional Leave, contains Article 10 which states that prisoners who commit corruption crimes must meet certain requirements to obtain remission, including paying fines and compensation in accordance with court decisions. However, the granting of remission for corruption convicts cannot replace the harm caused by corruption.

In Rawls' view, in order to evaluate the fairness of the basic structure of society, the principles of justice must be applied fairly.¹³ Should there be an unjust principle, then the unjust party should not dominate the unjust benefit. Justice must be equal, also known as justice as equality. Justice must be understood in light of other aspects such as economics, community organization, and human psychology, in order to be interpreted objectively in the proper proportion.

In the context of the remission policy described in the Regulation of the Minister of Law and Human Rights No. 7/2022, Article 10, prisoners who commit corruption crimes must fulfill certain requirements, including paying fines and restitution in accordance with court decisions.¹⁴ Although remission is acceptable, it is undeniable that it does not compensate for the harm caused by corruption.

Rawls argues that in order to evaluate the fairness of the basic structure of society, the principle of justice can only be accepted if there are no unfair principles that allow certain parties to dominate unfair advantages.¹⁵ Justice must include

¹³ Anton Jamnik, “Rawls’ Theory of Justice as Fairness as Foundation and Challenge for Local Self-Government,” *Lex localis - Journal of Local Self-Government* 20, no. 3 (June 21, 2022): 641–665, <http://pub.lex-localis.info/index.php/LexLocalis/article/view/1881>.

¹⁴ Indonesia, *Peraturan Menteri Hukum Dan HAM Nomor 7 Tahun 2022 Tentang Perubahan Kedua Atas Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 3 Tahun 2018 Tentang Syarat Dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cut*.

¹⁵ Liubin Zhu and Mengxu Wang, “Reflection on the Issue of Income Distribution Fairness in China: Based on The Perspective of Rawls’ Theory of Justice,” *Yixin Publisher* 2, no. 2 (February 29, 2024): 9–19, <https://scholar.kyobobook.co.kr/article/detail/4010068876701>.

equality, and people should be aware of the various aspects of economics, social organization, and human psychology, in order for justice to be objectively comprehended.

In a democratic system, people's representatives play a role in choosing the principles of justice. In this context, Rawls proposed the concept of maximin, which describes a situation in which a person does not know their future position in society, and thus the bargaining strategy used aims to ensure justice for all.¹⁶

Rawls also adopted the principle of formal justice, which is believed to ensure equal treatment of all people based on written laws and formal rules.¹⁷ However, sometimes the sense of justice is not entirely in line with the law, which is sometimes considered unfair. In the case of the remission policy, this policy is not coherent with the value of justice, because true justice can only be achieved if the policy addresses the broad layers of society, rather than merely certain groups. The remission policy, which is considered inequitable by some people, often causes rejection, especially when it is considered to provide leniency to perpetrators of corruption that harm society.

Rawls argues that an adequate theory of justice must take a contractual approach, where principles of justice are the result of free, rational, and equal agreement.¹⁸ In Indonesia's democratic system, although the contractual approach is supposed to be implemented in the legislative space based on the constitution, there are often unfair practices such as money politics that undermine the process of achieving justice.

Beyond the issue of remission policies that are always controversial, remission should not be given to perpetrators of corruption, as it may violate the value of public justice.¹⁹ Ultimately, based on the perspective of justice, the granting of remission to corruption perpetrators is considered an act that violates justice. True justice is a value that lives as human nature, which is founded on the idea of achieving a peaceful and just civilization. In this context, the remission policy is considered unlikely to have a positive impact on creating a just and peaceful society.

CONCLUSION

The policy of granting remission which is required to fulfill certain conditions is explained in Article 10 Paragraph 2. The requirements, as referred to in Paragraph 1, include good behavior, actively participating in development programs, and

¹⁶ Karen Lebacqz, *Teori-Teori Keadilan* (Bandung: Nusa Media, 2015).

¹⁷ Elizabeth Anderson, "Rawls's Principles of Justice as a Transcendence of Class Warfare," in *Rawls's A Theory of Justice at 50* (Cambridge University Press, 2023), 78–94, https://www.cambridge.org/core/product/identifier/9781009214704%23CN-bp-4/type/book_part.

¹⁸ Sukarno Aburaera, Muhadar, and Maskun, *Filsafat Hukum: Teori Dan Praktik* (Jakarta: Kencana, 2015).

¹⁹ Zaidan, "THE POLICY OF GRANTING REMISSION TO CORRUPTION INMATES IN ORDER TO ERADICATE CORRUPTION IN INDONESIA."

showing a decrease in the level of risk. In addition, prisoners must also have served a minimum sentence of 6 (six) months. The granting of remission does not apply to prisoners with life imprisonment or death penalty. Remission is granted by the Minister who is determined and informed to correctional institutions, and printed by related parties.

As for prisoners who commit corruption crimes, they must meet the requirements listed in general crimes, and must have paid in full the fines and compensation in accordance with the court decision which is the authorized body. The procedure for granting remission for corruption perpetrators involves special observation by a team of observers appointed by the Correctional Institution. Meanwhile, the conditional parole was carried out during the COVID-19 pandemic as a measure to prevent the spread of the disease, which later resulted in a special regulation. This parole is intended for general prisoners and narcotics convicts sentenced to less than 5 (five) years.

The correlation between law and justice is a constitutive unity that places justice as the ultimate goal of law. Based on John Rawls' theory of justice, justice as equality emphasizes that every individual is entitled to the same rights, but individual freedom must not violate the collective freedom of society. In this context, the policy of granting remissions to perpetrators of corruption is considered contrary to the value of justice in society. Therefore, the remission should be abolished because it is not in line with the principles of justice that should be reflected in procedural legal norms.

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