Elimination of Remission of Corruption Convicts for the Sake of Community Justice

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Abstract. Corruption is an extraordinary crime because of its damaging effects on state finances and socio-economic and cultural development. This study aims to remove corruption convicts' remissions to create social justice. The research method in this paper is a normative juridical approach based on secondary data in the form of library data. The results of this study show that the abolition of remissions for corrupt convicts is not under the applicable laws and regulations, especially in Article 14 paragraph (1) point I of Law Number 12 of 1995 concerning Corrections which states that convicts are entitled to a reduced sentence. (Remission), but the government intends to provide a more substantial deterrent effect for the sake of a sense of justice for the perpetrators of corruption so that the government synergizes regulations regarding the Remission of corruption convicts so that there is no overlapping legislation.

Keywords: Remission, Corruption, Justice.

1. Introduction

Today the Indonesian nation is being hit by a hazardous disease, namely corruption, that is very dangerous for the nation's journey forward. [1] Almost at every level of work, there is corruption, from the lower level to the top officials. Like a sickness, defilement in Indonesia has been created in three phases: elitist, endemic, and fundamental.[2] At the pompous stage, debasement is, as yet, a common social pathology among elites/authorities. At the endemic stage, pandemic debasement arrives at the more extensive local area. Then, at that point, at a basic stage, when debasement becomes fundamental, each person in the framework is tainted with a similar illness. Therefore, perhaps this nation's corruption disease has reached a systemic stage.[3]

Indonesia as a country whose population is predominantly Muslim, should have a better understanding of the content of meaning in the Holy Qur'an, especially in Surah Al-Baqarah verse 188, which reads, "And do not some of you eat the wealth of some of the others falsely and do not bring the (business) property to the Judge so that you can eat some of the other person's property with (the way of) sin, even though you know. "[4] This verse of the Qur'an should be used as the basis or guideline for Muslims, especially in preventing corruption. Corruption has been considered normal under the pretext of "according to procedures." Corruptors no longer have a sense of shame and fear, instead showing off their corruption results demonstratively.[5]

The government itself is not without effort in dealing with this corruption problem, as evidenced by the many policies adopted, including the record that it has made laws and

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regulations on eradicating corruption four times, starting with Law no. 24 Prp of 1960, Law no. 3 of 1971, Law no. 31 of 1999, and finally Law no. 20 of 2001 as an amendment or addition to several provisions in Law no. 31 of 1999 which is considered incomplete. Nonetheless, it should be recognized that the presence of government organizations that handle defilement cases has not worked actually and productively in annihilating debasement. This was exacerbated by indications of the involvement of law enforcement officials in handling corruption cases. There are at least three things that strengthen this argument. First, through the mass media, it is often found that there are several major corruption cases whose final handling is never transparent. Second, in some instances, it is common for the relevant apparatus to issue an Investigation Termination Warrant (SP3), even though the initial juridical evidence, in that case, is quite strong. Third, even when the Court handles a corruption case, the public is often surprised and even disappointed by the existence of verdicts that go against the grain and the people's sense of justice. Even now, it is even more concerning, and the public is being shown a deplorable spectacle of the conflict between two (2) law enforcement agencies in this country, namely the Corruption Eradication Commission (K.P.K.) and the Indonesian National Police (POLRI).[6] The conflict between the two law enforcement agencies significantly disrupted the performance of both, especially in efforts to eradicate criminal acts of corruption. Ultimately, the public considered that this situation would benefit the corruptors. Furthermore, amid the continued enthusiasm for eliminating corruption in this country, a discourse arose about abolishing remissions or reducing prison terms for corruptors because bribery is considered a great crime that results in significant losses for the government, society, or many victims or causes panic. Anxiety, or extreme fear of society, provides a deterrent for these corruptors.

The discourse on abolishing remissions for corruptors has received various responses from the public. One party that concurs with dropping reductions for corruptors is the Indonesian Debasement Watch (I.C.W.). Indonesian Defilement Watch (I.C.W.) analyst Tama S Langkun evaluated that the cancelation of reductions for corruptors is following the soul of annihilating debasement as expressed in Regulation no. 20 of 2001 concerning the Annihilation of Debasement Jo Regulation no. 31 of 1999 concerning the Annihilation of Debasement Violations. However, some other people do not agree. Some parties say that the policy of eliminating corruptors' remissions is a violation of human rights (H.A.M.). 12 of 1995 concerning Corrections, specifically Article 14 paragraph (1). Based on this background, the problems that arise, which the author tries to limit, are; Is the abolition of remissions for corruptors under existing legal regulations, or is it even contrary to human rights?

2. Methods

This study uses a normative juridical approach as its research technique. Both primary and secondary data were used in this investigation.[7] Preliminary data is information that has never been processed before and was taken directly from the source. Researchers can only use secondary data or information already processed by someone else. The materials are where this secondary information came from.[8]

3. Discussion

3.1. Aspects of Remission for Prisoners

From the description above, it can be understood that the magnitude of the threat facing this nation in the future is caused by corruption, so it is necessary to handle or enforce the law that is genuinely fair by the legal rules in force in this country. All agree that corruption in Indonesia must be abolished, but the handling or law enforcement of corruptors must also follow existing and applicable laws. Therefore, the Indonesian state, as described in the Constitution (U.U.D.) 1945, stated that the Indonesian state is a state based on the law (*rechtsstaat*), not based on sheer power (*Machtsstaat*). Indonesia, which decided on Pancasila as the basis of its form, made Pancasila a source of material law, which was in line with Aristotle's opinion, which stated that the concept of the rule of law was a thought that was confronted (contrast) with the idea of the rule of man.

The concept of an Indonesian legal state based on Pancasila and the 1945 Constitution can be seen materially and formally juridically.[9] Tangibly, the Pancasila legitimate state depends on the worldview of the Indonesian country in an intergalactic expression that is common to Indonesia, to be specific the rule of family relationship, and that implied need for individuals, regard for human nobility and respect and the enforceability of regulation what capabilities to safeguard the maintaining of a vote based system, civil rights and mankind.

As per Jimly Asshiddiqie, the possibility of a law and order country, aside from being connected with the ideas of *rechtstaat* and law and order, is likewise connected with the thought of nomocracy and comes from nomos and cartons. The word nomocracy can measure up to demos, cartons, or keratin concerning a vote-based system. Nomos implies the standard, while Kratos infers power. Then, at that point, what turns into the deciding element in the activity of force is the standard or regulation, so the term nomocracy is firmly connected with the possibility of law and order or the rule of regulation as the greatest power. Thus, since its inception, the concept of a rule of law or the rule of law has been intended to limit the power of state rulers so they do not abuse their power to oppress their people (abuse of power, abuse de droit). On that basis, it can be said that in the rule of law, everyone must be subject to the law equally, that is, to be subject to just laws.

Law and order are set, generally speaking, of the game in the organization of state, government, and society, while the motivation behind the actual law incorporates "*...opgelegd om de samenleving vreedzaam, rechtvaardig, en doelmatig te ordenen*", (put into sorting out a peaceful, just society), and significant). This implies that law and order plans to make state, government and social exercises in light of equity, harmony and advantage or seriousness. In a sacred structure, regulation is utilized to deal with the existence of the state, government, and society. In this regard, Indonesia's rule of law (Rechtsstaat) has distinctive characteristics of Indonesia. Because Pancasila must be appointed as the basic norm and source of direction, the Indonesian legal state can also be called 'the Pancasila legal state.' One of the main characteristics of the Pancasila Law State is the guarantee of the 'freedom of religion' or 'freedom of religion.' But freedom of religion in the Pancasila Law State is always positive, meaning there is no place for atheism or anti-religious propaganda on Indonesian soil.

In addition to the above characteristics, Muhammad Tahir Azhari also stated the attributes of the Pancasila Law State concept, including 1) the presence of a cozy connection between religion and the state, 2) depending on the Unparalleled God, 3) the opportunity of religion from an uplifting outlook; 4) secularism isn't legitimate, and socialism is denied; 5) the standard of family relationship and congruity.

The main objective of a rule-of-law state is to maintain legal order. Namely, demand is generally based on the law found in the people. The rule of law holds legal order so that it is not disturbed, and everything runs according to the law. As expressed by A. Mukhtie Fadjar, law and order is an expression whose creation is fittingly controlled in regulation so that all powers

of its legislative instruments depend on regulation. Individuals may not act freely as per their capacities which is illegal. Law and order is a nation managed not by individuals but rather by regulation (the states are not represented by men but rather by regulation).

For a state to be categorized as a rule-of-law state, the state must fulfill the following requirements: 1) Protection of people's rights by the government; 2) The power of state institutions is not absolute; 3) Applicability of the principle of trias politica; 4) Implementation of the 'checks and balances' system; 5) Mechanisms for implementing democratic state institutions; 6) The power of a free and independent judiciary; 7) Transparent government system; 8) There is freedom of the press; 9) There is justice and legal certainty; 10) Public accountability of the government and implementation of the 'good governance' principle; 11) An orderly legal system based on the constitution; 12) People's participation in electing leaders in the executive, legislative, even judiciary fields to a certain extent; 13) The existence of a clear system for testing legislative, executive and judicial products to suit the constitution. The test is carried out by the Court without causing the Court or legislature to become a 'super body'; 14) In a constitutional state, all state powers must be exercised in accordance with the constitution and applicable law; 15) The rule of law must apply a substantial 'due process' principle; 16) Procedures for arrests, searches, examinations, investigations, prosecutions, detentions, convictions, and limitations on the rights of suspected perpetrators of crimes must be carried out in accordance with the procedural "due process" principle; 17) Equal treatment among citizens before the law; 18) Application of the principle of 'majority rule minority protection'; 19) Fair and objective 'impeachment' process; 20) Fair, efficient, reasonable and transparent court procedures; 21) A fair, efficient, affordable and transparent mechanism for examining the actions of government officials who violate the rights of citizens, such as through the State Administrative Court; 22) The contemporary interpretation of the rule of law concept also includes the requirements for interpreting broad people's rights (including the right to education and a prosperous standard of living), good economic growth, equal distribution of income, and a modern political system and government.

3.2. Elimination of Remission for Corruption Convicts

The Indonesian Regulation State, in light of Pancasila and the 1945 Constitution of the Republic of Indonesia, is obliged to give security and acknowledgment of the assurance of individual status and legitimate status of every Populace Occasion and Significant Occasions experienced by Occupants who are inside and outside the area The Unitary Condition of the Republic of Indonesia. Hamid S. Attamimi, citing Burkens, said that law and order (rechtstaat) is essentially an expression that places regulation as the premise of state power and the activity of this power in its structures is completed subject to regulation. In a law and order state, everything should be finished by the law (everything should be finished by regulation). Law and order verify that the public authority should comply with the law, not that the law should keep the public authority. 14 This assessment is following the law and order P.J.P. Not.

The intro to the 1945 Constitution of the Republic of Indonesia, which is kept throughout the entire existence of the excursion of the Indonesian country, especially concerning Indonesia as a constitutional state, functions as the nation's collective memory. The concept of the rule of law is implicitly reflected. All components of society must understand the country and the state, be it state institutions, regional governments, educational institutions, social organizations, political organizations, companies and individuals. The nation's collective memory, which is part of the record from the history of the nation's journey, is a national asset that describes the true identity and identity of the Indonesian government. Every step and dynamic of the nation's progress as a legal state, society and the Indonesian state in the future must be based on

understanding, appreciation and records of the nation's identity and identity recorded in the form of culture. Concerning the problem of Remission, that matter already has rules, legal basis, and laws that regulate it, namely through Law no. 12 of 1995 concerning Corrections, specifically Article 14 paragraph (1) point I, which states that "Convicts are entitled to a reduction in their sentence (remission)."

Besides, Article 34A section (1) Unofficial law of the Republic of Indonesia N. 99 of 2012 concerning the Second Change to Unofficial law No. 32 of 1999 concerning Terms and Methodology for the Execution of the Privileges of Restorative Prisoners states, "Conceding Reductions for Convicts sentenced for perpetrating violations of psychological warfare, opiates and opiates antecedents, psychotropics, defilement, wrongdoings against state security, serious basic liberties violations, and violations other coordinated transnationals, as well as meeting the prerequisites as alluded to in Article 34, should likewise meet the accompanying measures: a). able to help out regulation authorities to destroy criminal cases they have perpetrated; b). has paid in all-out fines and pay per the Court's choice for convicts sentenced for committing blasphemy.

Regarding the meaning of this Remission, Article 14 of Regulation no. 12 of 1995 concerning Revisions expresses that Reduction is a decrease in the sentence given to convicts who meet the necessities. Andi Hamzah indicated that Reduction is an exclusion from discipline for an entire or part or from a lifetime to a determinate sentence given each August 17. In light of the Unofficial law of the Republic of Indonesia No. 32 of 1999 concerning Terms and Strategies for the Execution of the Privileges of Remedial Families, Abatement is a decrease in the time of carrying out a punishment given to convicts and criminal youngsters who satisfy the circumstances determined in the regulations and guidelines (see Article 1 point 6). In the meantime, the arrangements of Article 1 of the Announcement of the Leader of the Republic of Indonesia No. 174 of 1999 concerning Reduction don't give the significance of Abatement. It only says, "Every convict and criminal serving a temporary prison sentence and imprisonment can be given remission if the person concerned has behaved well while serving his sentence."

Article 1 section (1) Pronouncement of the Pastor of Regulation and Regulation of the Republic of Indonesia Number: M.09.HN.02.01 of 1999, states that Abatement is a decrease in the sentence given to convicts and criminal kids who have acted well while carrying out their punishments. Giving Reduction, as alluded to in the Declaration of the Leader of the Republic of Indonesia No. 174 of 1999 concerning Reduction, is not interpreted as a convenience in the policy of serving a sentence, thus reducing the meaning of punishment, but giving Remission is to minimize the negative impact of the subculture where the crime is carried out, criminal disparity and the criminal consequences of deprivation of liberty. Psychologically, granting remissions suppresses frustration to reduce or minimize disturbances to security and order in Correctional Institutions, Detention Centers and Branches of the State Detention House in the form of escapes, fights and other riots. In the new system of coaching convicts, Remission is placed as a motivation (one of the motivations) for convicts to develop themselves. Reduction isn't a regulation as in the Remedial Framework, nor a gift as in the jail situation, yet as a convict's rights and commitments. If the convict completes his obligations, he is qualified for Abatement as long as the necessities have been met.

The criteria for granting Remission must be clarified to close the chance of Remission becoming a commodity. Even though Remission is the right of convicts, there still needs to be special conditions that will determine whether or not a reduction in sentence is given and the length of sentence reduction for convicts. According to Indriyanto Seno Adji, granting remissions that Correctional Institutions monopolize must be controlled from outside. He suggested the need for a supervisory function in granting remissions. As a training foundation,

its position is vital in understanding a definitive objective of the equity framework, particularly the restoration and resocialization of regulation wrongdoers, even up to the concealment of wrongdoing. The success and failure of coaching carried out by Correctional Institutions will provide the possibility of an assessment that can be positive or negative.

Concerning the legitimate reason for giving discounts, it has undergone a few changes. Indeed, even in 1999, Official Announcement (Keppres) No. 69 of 1999 had not yet been carried out however was subsequently disputed by Official Declaration No. 174 of 1999. Remissions that have been in force and have been in effect in Indonesia since the Dutch era until now are successive as follows: 1) Gouvernement Besluit dated August 10, 1935, No. 23 Bijblad No. 13515 Joe. July 9, 1841, No. 12 and 26 January 1942, No. 22; Was given as a present exclusively on the birthday of the Sovereign of the Netherlands. 2) Official Pronouncement No. 156 dated April 19, 1950, contained in State Newspaper No. 26 April 28, 1950, Jo. The Republic of Indonesia Official Guideline No. 1 of 1946, dated August 8, 1946, and Guideline of the Priest of Equity of the Republic of Indonesia No.G.8/106, dated January 10, 1947, Jo. Pronouncement of the Leader of the Republic of Indonesia Number 120 of 1955, dated July 23, 1955, Concerning Unique Pardon. 3) Official Pronouncement No. 5 of 1987 Jo. Pronouncement of the Clergyman of Equity of the Republic of Indonesia No. 01.HN.02.01 of 1987 concerning Execution of Official Pronouncement No. 5 of 1987, Pronouncement of the Clergyman of Equity of the Republic of Indonesia No. 04.HN.02.01 of 1988 dated May 14, 1988, concerning Extra Reductions for Convicts who Become Organ Benefactors and Blood Contributors and Announcement of the Clergyman of Equity of the Republic of Indonesia No. 03.HN.02.01 of 1988 dated Walk 10, 1988, concerning Methodology for Mentioning a Difference in Life Detainment to a Brief Detainment in light of Official Declaration No. RI. 5 of 1987. 4) Official Declaration No. 69 of 1999 concerning the Decrease of Criminal Period (Reduction). 5) Official Announcement No. 174 of 1999 Jo. Announcement of the Priest of Regulation and Regulation of the Republic of Indonesia No. M.09.HN.02.01 of 1999 concerning Execution of Official Announcement No. 174 of 1999, Announcement of the Priest of Regulation and Regulation No. M.10.HN.02.01 of 1999 concerning Assignment of Power to Concede Exceptional Abatements.

The arrangements that are as yet substantial are the latest, specifically Number Five (5). Nonetheless, these arrangements are as yet added with a few different arrangements. Hence, the arrangements that are as yet legitimate for the ongoing Reduction are: 1) R.I. Official Pronouncement No. 120 of 1955, dated July 23, 1955, concerning Extraordinary Reprieve; 2) Pronouncement of the Priest of Equity of the Republic of Indonesia No. 04.HN.02.01 of 1988 dated May 14, 1988, concerning Extra Reductions for Convicts who Become Organ Benefactors and Blood Contributors; 3) Pronouncement of the Priest of Regulation and Regulation of the Republic of Indonesia No. M.09.HN.02.01 of 1999 concerning the Execution of Official Declaration No. 174 of 1999; 4) Declaration of the Pastor of Regulation and Regulation No. M.10.HN.02.01 of 1999 concerning Appointment of Power to Allow Exceptional Reductions; 5) Round No. E.PS.01-03-15, dated May 26, 2000, concerning Changes to Life Detainment Sentences to Detainment; and 6) Round Letter No. W8-PK.04.01-2586, dated April 14, 1993, concerning the Arrangement of Occupation Pioneers.

Moreover, as referenced above, there is likewise Unofficial law No. 99 of 2012 concerning the Second Alteration to Unofficial law No. 32 of 1999 concerning Terms and Techniques for the Execution of the Freedoms of Restorative Families, the most recent Unofficial law in regards to giving abatements. When seen according to the perspective of Basic liberties (H.A.M.), people essentially have innate privileges regardless, for example, the right to life, the right to security, the option to be liberated from a wide range of persecution and others which are generally called Common freedoms (H.A.M.). The state must guarantee human rights for every

individual, citizen and foreign national, without distinction of race, nation, religion or a particular group. Every individual must have their rights guaranteed. Therefore human rights cannot be revoked by anyone, including himself. Basic freedoms imply that these privileges are resolved like mankind and for humanity. Basic freedoms, which are the key privileges of all people as a gift from God that are inborn in individuals, are normal, general, and timeless concerning human pride and worth and are claimed similarly by everybody, paying little mind to orientation, identity, religion, age, language, economic wellbeing, political perspectives and others.[10]

Based on the rule of law, Indonesia highly upholds human rights, which is realized by regulating it in various regulations, including in the 1945 Constitution as the primary direction (groundnorm), which is then emphasized in Law no. 39 of 1999 concerning Human Rights. As a consequence of the recognition of human rights, Indonesia itself recognizes that all human beings living on Indonesian soil have the right to protection of their human rights, without exception for convicts serving time in correctional institutions; their human rights must be granted and protected. In connection with efforts to develop convicts in Correctional Institutions, this is inseparable from the existence of a basis or justification for imprisonment as a means of criminal politics. The rationale for using criminal sanctions, including imprisonment, is one of the central issues in criminal politics.[11]

Starting from the rational conception of criminal politics as stated above, it is clear that without first setting goals to be achieved, one cannot say that imprisonment is a sensible means. Thus, it cannot be told whether imprisonment is an effective and beneficial means. Furthermore, it cannot provide a basis for justification for each type of punishment chosen, including imprisonment. Therefore, before discussing this issue further, it is necessary first to discuss the "objectives to be achieved."

According to Van Bemmelen, "The theory of retaliation occurs on personal retribution and objective retaliation. Subjective retaliation is retaliation against the perpetrator's mistakes, while objective retaliation is retribution for what the perpetrator has created for the other world". 27 The main characteristics of this fundamental theory are: a) The purpose of punishment is purely retaliation, b) Revenge is the main objective and does not contain suggestions for other purposes such as public welfare, c) Mistakes are one of the conditions for criminal punishment, d) Criminal must be adapted to the mistakes of the offender, and e) Criminal looks back, it is a reproach which is pure, and the aim is not to correct, educate or reinstate the offender.[12]

This hypothesis is additionally called the down-to-earth or religious hypothesis. As per this hypothesis, discipline isn't to fulfill the outright requests of equity, so reprisal is considered to have no worth except safeguarding society. In addition, the punishment imposed is not for revenge on people who have committed crimes but has specific valuable purposes. Certain purposes which are helpful here intend to make guilty persons better people, also concerning the world, for example, by isolating and correcting potential criminals or deterrents, so that the world will therefore be a better place. The qualities contained in this overall hypothesis are: a) The reason for wrongdoing is avoidance; b) Counteraction isn't the last objective, however just a way to accomplish a more significant standard, in particular, the government assistance of society; c) Just infringement of the law can be accused because the culprit (for instance deliberately or culpa) satisfies the circumstances for wrongdoing; d) Punishments should be resolved because of their motivation as an apparatus to forestall wrongdoing; and e) Criminal (planned) violations might contain components of rebuke, yet components of censure and reprisal can't be acknowledged whether they don't assist with forestalling wrongdoing to serve public government assistance. The reason for support for the general hypothesis lies in its

motivation, so discipline is forced not as a result of the individual who carried out the wrongdoing yet so that individuals don't carry out wrongdoing or *nepeccatur*.

Furthermore, the law recognizes a principle, namely the principle of legality, which is reflected in the expression in Latin: Nullum Delictum Nulla Poena Sine Praevia Lege penal (no offense without punishment before there is a prior provision). This principle is essential for individual freedom by setting limits on what activities are prohibited precisely and clearly. This principle protects against abuse of power or arbitrariness of judges and guarantees particular security with permissible and prohibited information. Everyone should be given a warning about illegal acts and the law.

According to Muladi, imprisonment, as stipulated in the articles of the Criminal Code, seems no longer an alternative to improving imprisonment in a more humane direction and avoiding negative impacts on the convict's social development. This means that if convicts while in prison are continuously subjected to punishment, both physical punishment and mental punishment, then after leaving the "prison wall," there is a possibility that they will become criminals whose class becomes more severe or cruel because they carry grudges and will become a scourge, which is terrible for the community so that in this case the community will undoubtedly become traumatized in receiving former convicts in their daily lives. With the best possible development in Correctional Institutions, it will provide significant benefits for the community and the state so that their interests will no longer be disturbed and so on they can feel the peace of life, not always living in anxiety that will permanently be disrupted because of crimes that appear during Their life. Therefore, it is hoped that the granting of remissions will have a good influence and benefits, especially for the convicts themselves, for the former convicts, as well as for the wider community and the country in general.[13]

4. Conclusion

Based on Law no. 12 of 1995 concerning Corrections, specifically Article 14 paragraph (1) point i, states that "Convicts are entitled to a reduction in their sentence (remission)."

Based on the rule of law, Indonesia highly upholds human rights, which is realized by regulating it in various regulations, including in the 1945 Constitution as the basic law (groundnorm), later emphasized in Law Number 39 1999 concerning Human Rights. Human Rights, then on account of the acknowledgment of Basic freedoms, Indonesia itself perceives that all individuals who live on this Indonesian earth are qualified for the security of their common liberties, without exception for convicts who are serving time in Correctional Institutions must be given and protected by these rights. Their human rights.

The author's opinion on this matter does not mean that the author himself is a pro-corruptor but tries to position him in the existing legal rules that apply in this country. Therefore, the author suggests that polemics do not occur regarding this matter. It is necessary to make changes or revisions to legal regulations or laws, especially Law No. 12 of 1995 concerning Corrections, which provides an opportunity for the rights of every convict to obtain Remission without exception for corruptors so that policies do not overlap.

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