Justice In Granting Remission For Corruption Prisoners (A Review Of Indonesian Criminal Justice System)

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Abstract: "Prisoners are entitled to have a reduction in criminal past (remission)" as stipulated in the Indonesian Criminal Justice System still being debated to this day. This research reviews the essence of the implementation of the substantive law in granting remission against inmate corruption cases from the perspective of public and individual interests. The type of research used in this paper is socio-legal research, reviewing remission policy from the perspective of the criminal law system with philosophical and statute approach. The outcomes of the research indicate that the implementation of granting remission for corruption prisoners does not provide justice, both procedural and substantive, does not provide legal expediency and arising imbalance of justice for individuals, communities and countries. The need to implement remissions with impartial justice for corruption prisoners in granting remission, to be useful for individuals, communities and countries.

Index Terms: Corruption, Criminal Justice System, Legal Policy, Remission

1 INTRODUCTION

The 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as 'the 1945 Constitution') on Article 28D paragraph (1) has been set that, *"Everyone shall be entitled to fair legal recognition, certainty, protection, and assurance and equal treatment before the law".* Established along the constitutional statement of equality before the law principle, there are pros and cons in granting remission to prisoners corruption. On the unitary hand, many people who want the elimination of remission of prisoners corruption. On the other hand, those who consider remission as the rights of prisoners and the abolition of remission is a infraction of human rights. Remission rights arrangements as stipulated in Law No. 12 Year 1995 concerning Correctional Institution provides that, "Prisoners are entitled to have a reduction in criminal past (remission)". Pros and cons regarding remission policy are still being debated to this day. Those who insisted abolish remission argued that the crime of corruption that has been damaging to the state finance and the economic system. Whereby the direct victim is the State and the indirect victim is society in a whole. Moreover, with the type of corruption is classified as an extraordinary crime, cannot be equated with general crime (blue collar crime), because it has a systemic effect, both political, economic and social life of the nation. In short, for those who agree on the tightening of remission policy, they are also based on the international agreements related to the type of corruption as stipulated on the Conference Ad Hoc Committee for the Negotiation of the United Nations Conventions against Corruption (UNCAC), 2003. State conference participants agreed that corruption is a transnational crime, hence that the prevention and eradication of corruption is not as usual, merely in an extraordinary way, and then no longer be national but also international issues. In the 4th Preamble of the United Nations Convention Against Corruption in 2003 set explicitly that *Convinced that corruption is no longer a local matter, but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential*. As a consequence, at the internal level, the Indonesian government has taken during the term of Government Regulation No. 99 Year 2012 concerning the Terms and Procedures for the Implementation of the Rights of Prisoners. It is comprised in the consideration of government regulation which says that:

> *The policy of granting remission, assimilation, leave towards freedom, and parole for prisoners convicted of terrorism, narcotics and psychotropic substances, corruption, crimes against state security and human rights violations are severe, transnational crime and other organized needs to be adjusted to the dynamics and public sense of justice.*

To be sure, this policy is a kind of tightening of prisoners' rights cases of corruption, obtained the right of remission, and is based on Article 29 of the Declaration of Human Rights, which confirms the restriction of individual rights can be justified so far as it aspires to protect human rights broader humanity, origin arranged in the shape of statute law. In contrast, the presence of Government Regulation No. 99 of 2012 was considered to have violated the rights of prisoners in corruption cases. The desire and intention to tighten the remission policy with Government Regulation 99 of 2012 is the concern over the light sentence given by the judge that an average of one year to two years lived criminals do not provide a deterrent effect. Nevertheless, judges handling corruption cases should take an important role to play in the eradication of corruption. Thus, the role of judges in implementing judicial power has a strategic function in understanding the law and legal reform in accordance with the legal values that exist in the community. According to the International Corruption

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Watch (ICW) which refers to the data of the Ministry of Justice and Human Rights as of December 25, 2014, there were 49 inmates corruption granted remission. Consisting of 18 prisoners who refers to the Regulation No. 28 of 2006 in which there are two direct free. While the remission 31 other prisoners refer to the Regulation No. 99 of 2012. Here, researchers describe a partial sample of those who obtain remission as mentioned above:

For instance, 'the initial A', prisoners of corruption cases in 2004. 'The A' sentenced to judge for 10 years, during the course of criminal gain remission for 12 months. In practice, the total criminal that lived 'the A' is for 4 years and 11 months in prison (49.2%) remaining criminal past that must be followed for 5 years and 1 month in prison (50.8%) criminal past. 'The A' even get remission and parole has not yet reached ½ of his punishment (50%). In other cases, for example, 'the initial B' prisoners of corruption cases in 2008 were getting verdict for 4 years and a fine of 200 million rupiah. 'The B' get remission for two months, he had just undergone a criminal sentence of 2 years and 6 months (62.5%) and the remaining criminal 1 year 5 months (37.5%). Thus, 'The B' just a sentence that has not yet reached two thirds (66.7%) of the criminal past that should have lived.

Consequently, the legal issues that arise from this phenomenon is the tendency of setting inmates remissions for corruption cases do not give justice. According to Sukardi, the law enforcement phenomena occurring in Indonesia during the last decade illustrate the law enforcement process which has caused controversy, polemics, certain forms of opposition, protests or harsh criticisms from various circles. The opinions from various parties who disagree with such legal process are often based on the assumption that they hurt the community's sense of law, the community's sense of legal justice who actually no longer find the formal legal process through the criminal judiciary system acceptable.

2 Identification of the Issue

Having observed the developments as described in the above, then the issue to be discussed in this paper is how does the implementation of the substantive law in granting remission against inmate corruption cases from the perspective of public and individual interests.

3 Method of Research

The type of research used in this paper is socio-legal research, reviewing remission policy from the perspective of the criminal law system with philosophical and statute approach. The location of this study conducted in Sukamiskin Penitentiary Kelas IA, Bandung, West Java, Indonesia. The data being used include secondary data consisting of primary law materials in the form of laws and regulations, secondary law materials in the form of reference books, opinion of experts, and the outcomes of previous research, as well as journal articles related to the Indonesian criminal law reform issues.

4 Results and Discussion

4.1 Protection of State Interests

Have to recognize that discussing the imple-mentation of the substantive law in granting remission of corruption cases is part of the most important subsystems of law enforcement, beside structure and legal culture. According to Friedman, the legal system must be Examined as a whole the which includes revaluation, repositioning, and reform of the structure, legal substance, and legal culture. All three are necessary integrated of the legal system should be carried out simultaneously, integral and parallel. A direct victim of corruption cases is the State, this matter even mentioned in the formulation of Article of the Law concerning Corruption Eradication. Among affirmed in Article 2(1) as follows:

> *"Any person who acts unlawfully enrich themselves or another person or a corporation **that can be detrimental to the State finance or economy**, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp 200,000,000, - (two hundred million rupiah) and maximum fine Rp 1.000.000.000, - (one billion rupiah)".*

Although not explicitly mentioned, but according to the authors, corruption cases included in the typology of corruption detrimental to the financial and/or the State's economy significantly. Hence, it is proper in granting remission, mention explicitly the basis of considerations related to the protection of the State interests. An explanation of the "loss of state" and the "financial state" is important because it concerns the State interests, which must be protected and be the basis for consideration in the remission policy. Related efforts to restore financial loss to the state or state economy, being drafted Bill Confiscation of Assets, researchers prefer to use the phrase "Asset Recovery". The term of "asset" in Black's' Law Dictionary is defined as follows:

(1) *An item that is owned and has value*.
(2) *The entries of property owned, including cash, inventory, real estate, accounts receivable, and goodwill.*
(3) *All the property of a person available for paying debts*.

According to United Nations Convention Against Corruption (UNCAC) on Article 2 (d) has defined asset as "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or Immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets. At the national context, the term of "asset" as described in the Law No. 8 of 2010 concerning the Prevention and Combating Money Laundering has defined as "property, ie all movable goods or immovable, both tangible and intangible obtained either directly or indirectly". However, as State Parties, Indonesia has been ratified United Nations Convention against Corruption through Law No. 7 of 2006, as well as supporting the Stolen Asset Recivery (StAR) of the UNCAC, StAR program is assistance from the Word Bank and UN Doc. StAR objectives are as follows: Provide a deterrence effect by showing that there is no safe haven (shelter) for corruption and increase awareness of the international community to give full commitment in combating corruption. In accordance with the provisions of UNCAC Article 52 (4), namely: "*With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and*

effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, State Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group". In addition, to increase the capacity (the ability) of the apparatus in an attempt to restore the stolen assets and prevent corruption in the future through existing mechanisms. Furthermore, to enhancing cooperation among developing countries by helping reduce the barriers experienced by these countries in an attempt to restore the assets that have been stolen or misused. It is also intended to support efforts in the context of the return of the assets of developing countries that are often stored in developed countries. For comparison, in the United States, there are three kinds of forfeiture under the Federal Act, namely: First, *Criminal Forfeiture*. Seizure and confiscation in the form of action by law enforcement officials or government based on the decision of the criminal court; Second, *Administrative Forfeiture*. Forms of action by law enforcement officials in doing confiscation of goods, whether related or not related to a criminal act, but is in the location of foreclosure can be done appropriation by law enforcement officials; Third, *Civil Forfeiture.* Although not part of the criminal case, but the lawsuit filed against the government's alleged property acquisition proceeds of crime, or it may be a continuation of the process of the administrative forfeiture. Recently, in the Indonesian criminal system, legal arrangements regarding the stolen asset recovery have been adopted, either in the Law of Corruption and Money Laundering. Subsequently, The court also responds to the demands of the prosecutor and the Commission policy to punish the accused of corruption by the criminal prison sentence, was also accompanied by criminal penalties as well as an additional penalty in the form of payment of compensation. Equally important, the concept of law enforcement under the Indonesian Criminal Code (*KUHP*) is supposed to be able to fulfill the victim's sense of justice by imposing criminal liability in the form of criminal sanction against the offender. Seen from the criminalization viewpoint, the criminal judiciary system is considered to have failed in creating deterrent effect for perpetrators of criminal acts. Starting from the process of inquiry, investigation, prosecution, judge and executor of the criminal in Correctional Institutions *(LAPAS)*. Hence, in building an ideal legal system, according to Lawrence M. Fridman, there are three components: *First*, Legal Structure. To begin with, the legal system has the structure of a legal system consist of elements of this kind: the number and size of courts; their jurisdiction. The structure also means how the legislature is organized, what procedures the police department follow, and so on. Structure, in the way, is a kind of cross section of the legal system. A kind of still photograph, with freezes the action; *Second*, Legal Substance. Another aspect of the legal system is its substance. By this is meant the actual rules, norm, and behavioral patterns of people inside the system. The third component of the legal system is a legal culture. By this we mean people's attitudes toward law and legal system their belief. In other word, is the climinate of social thought and social force which determines how law is used, avoided, or abused. Based on Friedman's view above, the structure of the legal system consists of elements the number and size of the court, the scope of jurisdiction (including the type of case that they are authorized to check), as well as the procedures for appeal from the court to the other court. Accordingly, legal structure as Friedman's view consists of the existing legal institutions meant to extend the existing legal instruments. Thereafter, Legal Substance is the existence of rules, norms, and human behavior patterns that are in the system. So the substance of the law concerning the legislation in force which has no binding force and serve as guidelines for law enforcement officials. Conversely, legal culture concerning human behavior (including the legal culture of law enforcement officers) for the law and the legal system. Hence, as easily as any arrangement of the legal structure and the caliber of legal substance that is made, without the backing of the legal culture of the people involved in the system and society, then law enforcement will not work effectively. At the practical level, the violation in the granting of remission was due to law enforcement officers who are in the structure, conduct deviation rule of law in granting remission. To summarize the weakness of the institutional organ that runs remissions, also because of the weakness of the substance in the normative rules and regulations, as well as patterns of bad behavior Prisoners of corruption cases as people in prisons that are part of the legal system. Thus, where the importance of improving the system, both the institutional structure, the meaning of the rules of granting remission to create a civilization of the rule of law-abiding society. The author maintains that the vantage point used in valuing the above mentioned various cases using the structure, substance, and culture approach. Substantial changes in the requirements and documents in granting remission to be part of the improvement of the legal system in the enforcement of criminal law, especially corruption overall.

4.2 Protection of Public Interests

In the Decree of the Minister of Justice and Human Rights concerning the granting of remission, did not include consideration of the protection of public interests. In fact, attention to the public interest to be important in the policy of granting remission. This is due to the corruption prisoner after coming out of the Penitentiary will return to the community to interact. In Article 2 of the Act of Penitentiary stated that:

> "*The system of penitentiary formed in order to form prisoners to be fully human, aware the mistakes, improve themselves, and not to repeat the criminal act that can be received by the community, can actively participate in the development, and can live naturally as a good citizen and to be responsible*".

Thus, it is appropriately in a document for granting remission contained the consideration of public interest. Why is it important to be included?

The first reason: the study of victim protection of corruption crimes the community as victims indirectly. Discussing about the victims of crime in the Congress of the 7th United Nations discussing *the Prevention of Crime and the Treatment of Offenders* in Milan through *the Declaration of Basic Principles of Justice for Victims of Crime an Abuse of Power*, as the draft

of resolution on the protection of victims, and eventually became Resolution MU of United Nations No.40/34 defines victims of crime in item 1 as follows:

"*Persons who individually or collectively, have suffered harms, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that are in violation of criminal laws operative within member states, including those law proscribing criminal abuse of power*".

The definition of victims in the view of Paul Separovic Zvonimir is:

> "..*Those persons who are threatened, injured or destroyed by an act or omission of another (man, structure, organization or institution) and consequently. A victim would be anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offences, non-fulfillment of work duties) or from an accident (accident at work, at home, traffic accident, etc.). Suffering may be caused by another man (man-made victim) or another structure, where people are also involved"*.

The scope of protection of victims including the issue of human rights protection in the existing structural system. This is seen from Separovic's opinion that extending the study of victims in the victimology include human suffering. Furthermore, Separovic states that "*the rights of the victim are a component part of the concept of human rights*. Who is included within the scope of victim, it stated by Ezzat A.Fattah was *public order*, *religion, mortality, decency*, *public security*, *public health*, etc. Ezzat A.Fattah also added that a lot of crime, victims are not always obvious and can be identified, but the victim can be abstract like the existing values and the interests of society. J.E. Sahetapy provide an explanation of the scope of victim, that the victim in broad terms include: pain or loss experienced by human beings, corporations, either physically or psychologically, and the reduction of values in terms of psychic broadly, as the embodiment of the function of law to accommodate the human rights values, such as a value of justice, protection of democratic, because the act of crime or abuse of power. In the 6th United Nations Congress in Caracas in 1980 talk about "*crime and the abuse of power offences and offenders beyond the reach of the law*. Gives meaning also the development of the study of crime victims (victimology). The meaning beyond the reach of the law is defined as: 1) The act that is not listed in the Criminal Code or otherwise not violate the law, but it is harmful to the people; 2) The act which has been reached by legislation but not reach by law enforcement due to the character of its law enforcement are selective and diverse. Based on these definitions, it is clear definition of victims includes definitions of *direct victims of crime* or *indirect victims of crime*, either individually or collectively who have suffered physical, mental, and material, as well as includes victims of abuse of power. Direct victims are the victims directly and suffering with the crime. While the indirect victims are the victims indirectly become victims of a crime. In the case of corruption, the victims of corruption crime indirectly are the community, where the budget should be used for the development and welfare of society was corrupted.

The second reason, why the need to contained the protection of public in the document for granting remission, during this the position of victim in the criminal justice system as the party who seeking justice often forgotten, even the substance of law is not much for the protection of victims, especially victims were community. If, studied from the objective of criminalization in the criminal law, offender get more attention, such as rehabilitation, *treatment of offenders*, re-adaptation of social, penitentiary, and others. The legal policy is not a lot of to regulate the protection of victims of crime. The arrangement of protection of crime victims in the legislation only addressed to the individual victims that regulated in the Code of Criminal Procedure, several articles that regulate the rights of victims of criminal acts in the criminal justice system, namely:

a) The right to demand the incorporation of lawsuits for damages in a criminal case (Article 98-101);
b) The right to return the victim's goods (Article 46 paragraph (1));
c) The rights to submission of report or complaint (Article 108 paragraph (1));
d) The right to cassation (Article 233 and Cassation on Article 244);
e) The right to resign as a witness (Article 168);
f) The right to be accompanied by an language expert (Article 177 paragraph (1));
g) The right to be accompanied by an interpreter (Article 178 paragraph (1));
h) The right to reimbursement as a witness (Article 229 paragraph (1));

In addition, the need to include the protection of the public interest in the document for granting remission, because UUPTPK recognizes the role of the community, to participate and to help the prevention and eradication of corruption. The participation of public set out on Article 41 UUPTPK as follows:

(1) The community can participate to help the prevention and eradication of corruption.
(2) The participation of public as referred to the paragraph (1) is realized in the form:
  a. The right to seek, to obtain and to provide information about the alleged corruption has occurred;
  b. The right to receive services to seek, to obtain and to provide information about alleged corruption have occurred to law enforcement officers who handle the corruption crime;
  c. The rights to delivering advice and opinions in a responsible manner to law enforcement officers who handle the corruption crime.
  d. The right to obtain answers to questions about the report given to the law enforcer within a period of 30 (thirty) days.
  e. The right to obtain legal protection in the event:
    1) Implement the rights referred to in paragraph a, b, c;
    2) Requested present in the process of inquiry, investigation, and in court as a informer witness, witness, or expert witness, in accordance with the provisions of the legislation in force.

3) *Community referred to the paragraph (1) have the rights and responsibilities in the prevention and eradication of corruption;*
4) *Rights and responsibilities as set in paragraph (2) and (3) held by sticking rigidly to the principles or provisions stipulated in the legislation and to comply with the religion and other social norms.*
5) *The provisions concerning the procedures for the implementation of public participation in the prevention and eradication of corruption as referred to in this article, further it is regulated by Government Regulation.*

The community as particular concern in the eradication of corruption, even the authority of Corruption Eradication Commission to take over the investigation and prosecution, one of them for reasons of public report were not followed up by the police or the prosecutor. This is the need for unity of understanding of the legal system, especially the criminal law enforcement system, understand corruption as an *extraordinary crime* in three components of structural, substantial and cultural as mentioned by Lawrence M Friedman, the third interact and form a totality. According to author associated with the theory of legal system by Lawrence M Friedman, **the structural component**, namely the bureaucracy of criminal justice i.e police, prosecution, courts and executors of criminal (prisons) including the role of lawyers, participating in shaping the work of bureaucracy properly, including the penitentiary agencies which is the final part of the institutional structure of law enforcement officials, in granting remission the law enforcement officials in the penitentiary and the Ministry of Justice and Human Rights will determine the implementation of remissions according to the legislation. When a deviation occurs, this will damage the criminal justice system that ultimately desired so that corruption prisoner back to the community. In granting remission needed an integration requirement of corruption prisoner into the community through social-work, for prisoners serving as an officer or who have a social work position or authority in their government agencies before. As for their work as entrepreneurs so they can conduct a social work in the social institute either owned by the government and society. This arrangement can be contained the government regulations on technical guidelines for the regulation by the Minister of Law and Human Rights as outlined in the document for granting remissions, it is important to be contained as a form of protection of public interests. Thus, will work a good legal culture in the community, including the attitude of law enforcement officers with regard to the laws and institutions that create the law in both principle/rule loyalties, so that the substance of components that give meaning embodiment of the existing culture and the underlying workings of institutions in the criminal justice system. Thus, the legal substances that produce the rules about how the legal institutions must be able to run well.

The third reason, the need for protection of the public interest. In view the penitentiary as mentioned in Article 1 (2) of Act 12 of 1995 as follows:

> "*An order on the direction and limits and procedure to prisoners based on Pancasila implemented in an integrated manner between the prison staff, who prisoner and communities to improve the quality of prisoners in order to recognize the mistake, improve ourselves and not to repeat the criminal act that can be received by the community, can actively participate in the development and normal life as a good citizen and responsible*".

Based on the description of Article 1 (2) Act 12 of 1995 that the elements of penitentiary are personnel/prison staff, prisoner and community. Thus, according to the author, the supervising of prisoner in the penitentiary is an activity to conduct training for prisoner as the final part of the criminal system, in the criminal justice system. The end of the process in the penitentiary is the integration of corruption prisoner into the public life, then according to author in granting remission, before the rights granted remission, it is essential that the integrating process of corruption prisoner into the public in the form of social work. Prisoners with this cases can see how the life of community, and look at the progress of development, so that the corruption prisoner can contemplate a result of their action, expected after prisoner free, it can contribute in development, because it has been integrated with people's lives. Thus, the integration policies of corruption prisoners as a part of the criminal law, and the criminal law policy in addition to the protection of public interests, also in the framework of public welfare..

5 CONCLUSION

The implementation of granting remission for corruption prisoners does not provide justice, both procedural and substantive, does not provide legal expediency and arising imbalance of justice for individuals, communities and countries. In addition, the substance of law in the Decree of the Minister of Justice and Human Rights on remissions just contain the protection of interests individually, does not contain the protection of state interests, and public interests. The need to implement remissions with impartial justice for corruption prisoners in granting remission, to be useful for individuals, communities and countries. The need to document the Decree of the Minister of Justice and Human Rights on the granting remission contains a consideration of protection of state, public and individual interests.

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