



Remission for the corruptor (Between the human right and the spirit for eradication corruption)

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Abstract

Aim: This paper examines the government's policy of pardoning corrupt officials so that human rights can be upheld and corruption can be eradicated in Indonesia.

Methodology: This study is of the normative juridical variety, and its sources are various statutes, documents, and books dealing with the topics of corruption and remission.

Findings: This study's findings indicate that a pardon for a convicted briber is not a free pass for the briber but rather is granted on the condition that the briber agrees to comply with certain rules (such as government legislation and policies) in exchange for his or her release from prison.

Novelty/Implications: As a result of corruption's negative effects on state finances and the general public's well-being, as well as the widespread corruption directed at those who engage in corrupt behavior, the topic of corruption in Indonesia has recently become a hot topic of discussion. The authors of this paper have tackled a pressing issue and provided policymakers with valuable new information.

Key Words: Remission, Corruptor, Corruption

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INTRODUCTION

Background

Punishment for wrongdoing is governed by criminal law, an ever-present part of everyday society. Soesilo (1996) argues that the judge's imposition of criminal punishment on a defendant at sentencing results in the defendant experiencing a negative emotional state.

In light of this, calling the Indonesian Penal Code, by which we mean the widely known version in the country's treasury, the law of crimes is no exaggeration. Law jinayah, derived from Arabic and translated from English, is synonymous with criminal law in Malaysia. A system of criminal law provides the expected protections against crime outlined above (Erdianto 2011).

Public life has evolved steadily until very recently, and the increasing frequency and sophistication of criminal activity is one factor behind this trend. Corruption is a type of crime that negatively impacts society and affects people's daily lives. The words "corruption," "corruption," and "corruptie" all have their origins in Latin. These words mean "damaged," "rotten," and "dishonest" in the context of financial dealings, respectively (Sudarto 1976).

Corruption has recently become a widely discussed issue in Indonesia for a good reason: not only does it harm the country's corruption, but it also has a negative effect on the general populace, inspiring widespread corruption among those who engage in it. These crimes fall into the extraordinary category because of the extraordinary impact caused by the extraordinary corruption of the causes. To stamp out corruption, Indonesia has implemented a harsh penal code known as *din cam*, which includes the death penalty for certain offenses.

The government issued regulations to open up opportunities in remissions for perpetrators of criminal acts, including corruption, in the middle of citizens' demands for severe punishment for the perpetrators of corruption.

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Government Regulation No. 99 in 2012 concerning the Second Amendment to Government Regulation No. 32 in 1999 on the Terms and Procedures for the Implementation of the Right People Patronage of Corrections and the Regulation of the Minister of Law and Human Rights No. 21 in 2013 as Amended by the Regulation of the Minister of Law and Human Rights No. 21 on 2016 on The Terms and Procedures for the Remission of Sentences for Persons Convicted of Crimes Related to Corruption provide examples of regulations that grant pardons to those who

In such a debate, on the one hand, the possibility of granting clemency to those responsible for corruption is seen as the fulfillment of human rights, while on the other, the existence of rules on granting clemency to those responsible for corruption is seen as weakening the efforts of eradicating corruption. Given the circumstances outlined above, the author planned to investigate the topic further by penning a scientific paper titled "Remission for Corruptor (between the Right and the spirit of Corruption Eradication).

Problem Formulation

The research questions revolve around the government's policy of pardoning corrupt officials to uphold human rights and eliminate corruption in Indonesia.

METHODOLOGY

This study is normative, because it uses secondary data, or often called the research literature. Normative legal research is legal research laying down the law as a system of building norms. Norm system in question is about the principles, norms, rules of legislation, court decisions, agreements and doctrines (Mukti and Achmad 2010). Secondary data used in this study include legislation relating to criminal law and acts of corruption pidana, documents and writings relating to the cases studied.

Methods of data analysis used in this research is descriptive qualitative, meaning authors will present and explain the data obtained from the study of literature, which is manifested in a logical and systematic description. Once the necessary legal ingredients were collected, the next step was an analysis to clarify the settlement of the problem. Then the conclusions were drawn deductively, from things that are common to the things that are special. At this stage the legal material was worked on and utilized in such a way to successfully conclude the truth of which can be used to address the issues raised in the study.

RESULTS AND DISCUSSION

The General Overview of Corruption

One phenomenon in human life that can be found is a crime that is considered as an act of bad and causes harm to others. The impact of this crime caused a reaction that the person who commits a crime will be punished. Punishment is also known by the term of punishment. Ruslan Saleh said that criminal offense is a reaction to this tangible sorrow deliberately inflicted on the country of the offense maker (Roeslan 1983). Of course awarding penalties against those who commit these crimes should be based on rules or regulations and may also be referred to punishment under the law, so that the role of criminal law is needed as a cornerstone in the process of sentencing. The understanding of criminal law in the opinion of experts, is as follows:

a. WPJ. Pompe, criminal law is that criminal law as well as the state administration, civil law and others parts of the law, which is defined as a whole of rules more or less general abstract of the circumstances that are concrete (Sianturi 1986).

b. Moeljatno (2009) states that criminal law is part of the overall law in force in a country that enters the basics and regulates the provision of the act that should not be done. It is forbidden accompanied by criminal sanctions for anyone who did. When and in what way those who have violated the ban may be subject to criminal sanctions and the imposition of criminal law can be implemented.

c. Eddy (2009) defines the criminal law as the law of a country that is sovereign, contains a prohibited act or acts that were ordered, along with criminal sanctions for those who violate or do not comply with, when and in what way criminal sanctions were dropped and how the implementation of criminal law has enforcement imposed

by the state.

Based on the understanding of criminal law, according to experts in the above discussion it can be seen that the formation of criminal law has a goal to be achieved. The purpose of criminal law under classical flow is to protect the interests of the individual from arbitrary authority (Eddy 2009). In contrast to the classical flow in criminal law that aims to protect the interests of individuals from arbitrariness, modern flow in criminal law is aimed at protecting the public from crime (Eddy 2009). As according to Wirjono (2003), the objective of the law is:

a. To scare people not to commit a crime, i.e., either scare people or frighten certain people who have committed crimes who later do not commit a crime again.

b. To educate or improve those who already signify love to do evil in order to be a good temperament which will benefit the community.

Besides having a purpose as described above, it also has the function of criminal law. Sudarto distinguishes the functions of criminal law into two i.e., general functions and special functions. The function of the criminal code is the same as a general law that regulates life or organized order in society. The specific function of criminal law is to protect the legal interests of the deed to be raped by the form of criminal sanctions (Sudarto 1990).

Both the purposes and functions of criminal law as described above illustrates that the state can protect all the people of crime through the criminal law enforcement. One crime lately often being a discussion both in print and electronic media in Indonesia is corruption, since corruption is considered as a crime that has the potential destructive impact on the lives of people at large. Corruption is understood as crimes related to bad actions which could harm state finances in relatively large amounts.

In Black's Law Dictionary, corruption is an act done with the intent to provide a benefit that is not authorized by the rights of the other party and is wrong to use his or her character to gain an advantage for himself or others, contrary to the obligations and rights from other parties. According to Jeremy (2003), the root of the problem of corruption is poverty, without poverty there would be no corruption. Although poverty is a cause of corruption, but poverty is not the only cause.

However, it should be realized that the cause of corruption is influenced by many factors not just kesmiskinan factors, such as the moral to weak surveillance systems. Cressey has developed a theory known as the "Fraud Triangle" which identifies three factors that encourage fraud and corruption, namely (Marhaenningsih 2016);

a. According to Cressey, the first factor in the Fraud Triangle is Pressure. This is a factor that motivates someone to commit fraud, theft of money or corruption because he faced financial problems that can not be completed in a way that is legal. The financial problems could be in the form of personal (e.g., have a debt that he could not pay) or in the form of professional (e.g., job or business in danger).

b. Next, the second factor is Opportunity, which means the opportunity for someone to commit fraud or corruption and unable to hide the fraud so difficult to be found by others because of the weakness of existing legislation or the lack of supervision and controls that exist in the organization where he works.

c. The third factor is rationalization. This third factor is usually a driving force for the majority of people to commit fraud or corruption for the first time that they had no previous criminal record. They did not consider themselves criminals. They also assume that they are ordinary people who were never involved in crime and an honest man trapped in a bad situation. They assume that fraud or corruption that they do is an act that can be justified or acceptable.

Corruption as one of the forms of crime certainly has a negative impact, while the negative impact that may result from corruption could be seen in the preamble to weigh Act No. 20 of 2001 on Corruption Eradication that the corruption has been occurring widespread, not only for state financial harm, but also has been a violation of the rights of the social and economic society at large.

The extent of the negative impact that can be caused by a criminal act of corruption, demands the government to make efforts in the prevention and eradication of corruption. One of the policies that have been made by the government, is setting National Corruption Eradication Action Plan (RAN-PK) 2004-2009. Preventive measures within the RAN PK 2004-2009 prioritized to (Chaerudin 2009):

a. Redesigning public services, especially in areas that are directly related to the daily public service activities.

b. Strengthening transparency, oversight and sanctions on government activities relating to the economic and human resources.

c. Increasing the empowerment of devices supporting the prevention of corruption.

The sector of government regulation has also issued some rules for prevention and eradication of corruption, among others, Act No. 20 on 2001 on the Amendment of Act No. 31 on 1999 on Corruption Eradication and Law No. 30 on 2002 of the Corruption Eradication Commission as the basis for the establishment of the Corruption Eradication Commission (KPK). Further sanctions may be imposed on the perpetrators of corruption under the laws of the corruption eradication, assessing the relative weight of the form of imprisonment, fines to life imprisonment and even capital punishment.

Remission for The Corruptor

In the midst of the efforts made by various parties for the eradication of corruption, appeared polemic about the rules that open up opportunities for remissions to the prisoners involved in corruption. The notion of remission, according to Andi (1986) is a waiver of punishment entirely or in part or be sentenced to a lifetime limited given on every 17th of August. Further understanding of remission under Article 1 paragraph 1 Regulation of The Minister of Law and Human Rights No. 21 on 2013 as Amended By Regulation of The Minister of Law and Human Rights No. 21 on 2016 on The Terms and Procedures For Granting Remission, Assimilation, Permit To Visit The Family, Parole, Permit Toward Freedom and Conditional Permit, states that remission is a reduction undergone in the criminal past given to prisoners, criminals and child eligible specified in the statutory provisions.

Remission in the implementation of the system of imprisonment, especially concerning the penal system is very important. It is a matter of coaching done by officers against inmates prisons. For the implementation of the system of imprisonment in Indonesia, remission has a very strategic position because, prisoners do not berkehlak good (which is the core of the success of its development) which can not be given remission (Dwidja 2006). Remission is a "gift" for narapidana who behaved well when menjalani sentence is in line with the objective of sentencing which seeks to change the behavior of inmates be better so when he has finished serving his sentence, he can be received by the public, as stated in Article 1 paragraph 2 of Law No. 12 on 1995 of Corrections stating that the system of Corrections is an institution on the direction and limits and how coaching Citizens Patronage of Corrections under Pancasila is carried out in an integrated manner between the builder, which is fostered, and communities to improve the quality of citizens Patronage of Corrections in order to realize the mistake, fix, and not repeat a criminal act that can be received by the community, can actively participate in the development, and can spend a normal life as a good and responsible citizen.

The legal basis for granting remission to inmates corruption can be seen in the Regulation of The Minister of Law and Human Rights No. 21 on 2013 as Amended By Regulation of The Minister of Law And Human Rights No. 21 on 2016 on The Terms and Procedures For Granting Remission, Assimilation, Permit To Visit The Family, Parole, Permit Toward Freedom and Conditional Permit. Granting remission to prisoners of corruption is a manifestation of the fulfillment of human rights, but given the adverse effects that may result from corruption offenses as described above lead to the rejection of various circles because they thought remissions to convict corruption is not in line with the spirit of prevention and eradication of the crime of corruption.

For answering this, it must be understood that granting remission to prisoners of corruption, is not giving a "gift" for free, because each inmate who wants to get remission must first qualify as regulated in Article 3, 4, 5 and 10 Regulation of The Minister of Law and Human Rights No. 21 on 2013 as Amended By Regulation of The Minister of Law and Human Rights No. 21 on 2016 on The Terms and Procedures For Granting Remission, Assimilation, Permit To Visit The Family, Parole, Permit Toward Freedom and Conditional Permit. Furthermore, Article 8 of Regulation of the Minister of Law of Human Right expressly stated that granting remission to prisoners of corruption must also be eligible:

- a. Willing to cooperate with law enforcement to help dismantle the criminal case which is done.
- b. Has paid fines and restitution in accordance with a court decision.

In celebration of the anniversary of independence of the Republic of Indonesia to 71, it was celebrated also by the inmates, including convicted of corruption, corrupt alias. A total of 482 people out of 4,907 corruption

convicts got remission on August 17, 2016. The number of criminals who receive the remission on the anniversary of independence this year, was less than last year. In the 70 years of Indonesian independence the number of criminals who earned was much as 1,938 people of the 2,786 inmates of corruption that existed at the time. Based on these data it can be seen that the ratio between the number of inmates who receive remission with corruption and those who do not get a remission relatively still very far away. Only a small proportion of corruption inmates get remission, this is due to the difficulty of corruption convict to meets all the requirements for obtaining a remission, one of which is to pay a fine and compensation corresponding to the court's decision.

Terms of remissions to convict corruption as described above confirm that the remission for inmates corruption is not just a "gift" given freely, especially in Article 8 of the underline that the granting of remission is an effort in order to dismantle the corruption thoroughly so they maintain the spirit (spirit) of prevention and eradication of corruption.

CONCLUSION, RECOMMENDATIONS AND IMPLICATIONS

Problems of corruption in Indonesia have lately become a hot topic to talk about, and this is because of corruption that besides causing losses to the state finance, also poses a very bad impact on the lives of the public at large, causing great hatred, among the people against the perpetrators of corruption. The magnitude of the impact caused by the corruption of the causes of these crimes belongs to the extraordinary crime. In Indonesia alone against perpetrators of corruption is dincam with severe punishment, even the death penalty as an effort to eradicate corruption. Based on the problem and discussion as of this research revealed that the remission for corruptor is based on the regulation (just given if they can fulfil the terms based on the rules such as legislation and policies from the government), and that remission is not a gift for the corruptor, for example, they should help to expose the corruption case that is related to his case.

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