

Provision Of Remissions For Criminal Acts Of Terrorism

Murningsih Hariyati*)

*)Master of Law Student at Sultan Agung Islamic University, Semarang E-mail : moorningsih@gmail.com

Abstract

Terrorism is an act that creates an atmosphere of terror, widespread fear, or causes mass casualties, by depriving freedom or loss of life and property of others, causing damage or destruction to vital and strategic objects, or the environment. , or public facilities, or international facilities.

Every prisoner regardless of his crime has the right to receive remission, because remission is a basic right for every prisoner without exception, and also becomes one of the efforts in realizing the goals of the correctional system, namely fostering prisoners in Correctional Institutions, as regulated in Law No. 12 of 1995 concerning Corrections. .

Because the crime of terrorism is classified as an extraordinary crime, so that the granting of remission is not equated with a general crime. In this case, there are special conditions that must be met to be able to get remission, namely in addition to good behavior, one must also be a justice collaborator. This has been regulated in the Government Regulation of the Republic of Indonesia Number 99 of 2012 concerning the Second Amendment to the Regulation of the Government of the Republic of Indonesia Number 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Correctional Inmates. These provisions are contained in article 34 A.

Keywords: Remission, Prisoners, Crime of Terrorism.

1. Introduction

Terrorism is an extraordinary crime that has become the world's attention, because the consequences it causes are in addition to causing casualties and damage to property, acts of terrorism also damage the stability of the country, especially in terms of economy, defense, security and so on. Meanwhile, sociologically, acts of terrorism damage spiritual values in the order of social life by giving rise to religious arguments as justification for these acts of terror.

The terrorists generally refer to themselves as separatists, liberation fighters, crusaders, militants and mujahideen. In justification in the eyes of terrorism: "The real meaning of jihad is, mujahideen is far from acts of terrorism that attack civilians who are not involved in the war". Terrorism itself is often seen in the name of religion. This kind of justification is then used as an opportunity for a group of people to seek one-sided profit by justifying the notion of terrorism.

As a civilized nation and a religious community, of course, we reject the act of terrorism in whatever form it takes, it is clearly not legitimized by any law in this world. No religion, let alone Islam, allows violent means to achieve its goals and missions. This is where we are reminded again that the danger of terror and terrorism is actually a universal and global danger that knows no geo-political boundaries and even the boundaries of a country. Terrorism is an entity of danger and challenge with mankind in this world.

The 1945 Constitution states explicitly that the State of Indonesia is a state of law, this means that the State of Indonesia is a legal state guided by Pancasila and the 1945

Constitution. The State of Indonesia guarantees the rights of all its citizens along with their position in the rule of law. Vice versa, every Indonesian nation is obliged to uphold the law and obey the law wholeheartedly without exception.

So, every act that violates the law (criminal act) that is detrimental to the nation and state must be dealt with in accordance with the applicable rules or regulations which in this case is known as punishment.

Punishment is essentially alienating from the community as an liberation of guilt. Punishment is not aimed at revoking the human rights inherent in him as a human being. As a state of law, the rights of prisoners are still respected and protected. Prisoners must also have their rights protected even though they have violated the law.

In connection with this, one of the rights of prisoners is the right to get a reduction in their criminal period (remission), namely for prisoners who meet the requirements specified in the legislation. As has been mandated by Article 14 of Law no. 12 of 1995 concerning Corrections, which was later regulated in PP 32/1999, was strengthened by Presidential Decree No. 174 of 1999 concerning Remissions, and Government Regulation Number 28 of 2006 concerning Amendments to Government Regulation Number 32 of 1999 concerning the requirements and procedures for the implementation of the rights of prisoners in prison.

It can be said further, that remission is an instrument that can encourage the willingness and ability of prisoners to do useful actions to develop the behavior of prisoners so that they always behave well. In addition, remission is intended to encourage inmates to comply with the provisions, and become more disciplined.

If it is associated with a criminal act of terrorism, which is an extraordinary crime, giving remission to the case is contrary to the government's movement to eradicate the crime of terrorism. The eradication of terrorism must be carried out in an extraordinary manner, so the deterrent effect must also be extraordinary. The existence of remission is considered to reduce the deterrent effect.

Giving remissions to convicts of terrorism cases can be used by inmates to behave well while serving a criminal period in a correctional institution, then get remission and after enjoying the freedom to repeat the same crime because the imposition of criminal sanctions for convicted terrorism cases has not caused a deterrent effect for the perpetrators..

In the explanation of Law Number 12 of 1995 concerning Corrections, the Correctional System is a series of criminal law enforcement units, therefore its implementation cannot be separated from the development of a general conception of punishment. Prisoners are not only objects but subjects who are no different from other human beings who at any time can make mistakes or make mistakes that can be subject to criminal penalties, so they do not have to be eradicated.

In the Correctional System, prisoners get their rights without exception, as stated in Article 14 of Law Number 12 of 1995 concerning Corrections, namely:

- Prisoners have the right to worship according to their religion and beliefs, which means in this case it is explained that prisoners in prisons should not be prevented from worshipping according to their beliefs.
- Getting treatment, both spiritual and physical, which means receiving spiritual care who is entitled to attend religious events held in prisons according to their respective religions

and physical care has the right to take care of themselves in prisons.

- Get education and teaching. Education in this case is gaining knowledge in various activities within the Correctional Institution and teaching in the form of skills in prisons.
- Get proper health care and food. Health services if prisoners suffer from illness and proper food every time prisoners receive food in prison.
- Submitting a complaint means that if there is something that they do not receive in the prison they have the right to report it to the prison officer.
- Obtain reading materials and participate in other mass media broadcasts that are not prohibited, which means receiving reading materials such as newspapers and magazines and being able to watch television on official channels that have been permitted by KPI.
- Get wages or premiums for the work they do, which means they can receive wages for the work they do in prison.
- Receiving visits from family, legal counsel, or certain other people, means being able to meet with family, legal counsel or certain other people if they visit prisons.
- Getting a reduction in the criminal period (remission) means being able to get a reduced prison term on independence day and religious holidays according to their respective religions.
- Getting assimilated opportunities includes time off to visit family. This means being able to participate in activities outside the prison, including working outside the prison and also being able to leave detention to visit family.
- Getting parole means that if you have served 2/3 of your criminal sentence, you can apply for parole and get the parole.
- Get leave before being released.
- Obtain other rights in accordance with applicable laws and regulations.¹

These rights are not obtained automatically but with certain conditions or criteria such as to get Remission.

As stated in the Government Regulation of the Republic of Indonesia Number 32 of 1999 dated May 19, 1999 concerning the Terms and Procedures for the Implementation of the Rights of Correctional Inmates, there are articles that regulate the Terms and Procedures for Remission, Assimilation and parole.

Article 34 Paragraph (1) reads: "Every convict and convict who during their criminal period behaved well were entitled to get remission"²

This means that all prisoners without exception and without differences in the type of crime are entitled to get remission if during the criminal period they behave well.

With the provision of remissions as a motivation as well as a gift so that the inmates of correctional institutions, including inmates of terrorist crimes, try to do good, and regret their actions.

Based on the description above, the formulation of the problem in this study is how is the implementation of granting remissions to prisoners of criminal acts of terrorism?

¹Article 14 paragraph (1) of the Republic of Indonesia Law Number 12 of 1995 concerning Corrections

²Article 34 paragraph (1) Government Regulation of the Republic of Indonesia Number 32 of 1999 regarding the Terms and Procedures for the Implementation of the Rights of Correctional Inmates

2. Research methods

In this study the author using the type of normative juridical research that is focusing research on secondary data sources (library research). In addition to supporting secondary data, a descriptive-analytic type of research is also carried out, namely conducting research by collecting primary data obtained from the literature related to the subject matter discussed.

3. Results and Discussion

3.1. Implementation of Granting Remissions for Convicts of Criminal Acts of Terrorism

3.1.1. *Conditions for granting remission to convicts of criminal acts of terrorism, in view of PP No. 99 of 2012.*

The crime of terrorism is an extraordinary crime that causes great losses to the state and society, based on these considerations in 2011, the Ministry of Law and Human Rights to revise Government Regulation no. 28 years and replaced by Government Regulation no. 99 of 2012 concerning the second amendment to Government Regulation no. 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Correctional Inmates, Government Regulation No. 99 of 2012 is considered to answer the sense of justice in the community, and the community hopes that the regulation can provide a deterrent effect to every convict who commits terrorism crimes.

Several provisions in Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates are amended, especially in Article 34A Paragraph (1) amended to read as follows:³

- Granting of remissions to prisoners convicted of crimes of terrorism, narcotics and narcotics precursors, psychotropics, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes, in addition to fulfilling the requirements as referred to in Article 34, must also meet the requirements as referred to in Article 34. fulfill the requirements :⁴
 - Willing to cooperate with law enforcers to help dismantle the criminal case he committed;
 - Have paid in full the fine and replacement money in accordance with the court's decision for convicts convicted of committing a criminal act of corruption, and
 - Has participated in the deradicalization program organized by LAPAS and/or the National Counterterrorism Agency, and has pledged to: Loyalty to the Unitary State of the Republic of Indonesia in writing for Indonesian Citizen Prisoners, or Will not repeat acts of terrorism in writing for foreign national prisoners who are convicted for committing terrorism crimes.
- Convicts who are sentenced for committing a crime of narcotics, narcotics precursors, psychotropics as referred to in paragraph (1) only apply to prisoners who are sentenced to

³Article 34 Government Regulation No. 99 Year 2012

⁴See Article 34 of Government Regulation no. 99 years as a form of tightening the granting of remissions.

imprisonment for a minimum of 5 (five) years.

- The willingness to cooperate as referred to in paragraph (1) letter a must be stated in writing and determined by law enforcement agencies in accordance with the provisions of the legislation.

Article 34B:⁵

1. The remission as referred to in Article 34 Paragraph (1) is granted by the minister.
2. Remission for prisoners as referred to in Article 34 paragraph (1) shall be granted by the Minister after receiving written consideration from the Minister and/or the head of the relevant institution.
3. The written considerations as referred to in paragraph (2) shall be submitted by the minister and/or the head of the relevant institution within a maximum period of 12 (twelve) working days from the receipt of the request for consideration from the Minister.

Article 34C:⁶

- The Minister may grant remissions to criminal children and convicts other than convicts convicted of committing a crime as referred to in Article 34A Paragraph (1).
- The convicts as referred to in paragraph (1) consist of prisoners who:
 - Sentenced to a maximum criminal term of 1 (one) year;
 - Over 70 (seventy) years old; or
 - Suffering from chronic illness.
- The Minister in granting remission as referred to in Paragraph (1) after considering the public interest, security, and a sense of community justice.

3.1.2. Procedures for Granting Remissions to Convicts of Criminal Acts of Terrorism, Judging from PP No. 99 of 2012.

Changes in the implementation of the law are phenomena that occur naturally, therefore it is necessary to understand what actually happened, why it happened, and how the application of the law took place. The discourse on the application of law in society is an instrument that is inherent in social life. But in reality it is ruled out. Therefore, society demands the need for a new legal order to maintain social order.

For certain people, legal developments can be considered as triggers for rampant contradictions, and hard and even become the cause of social unrest due to unfair implementation. This view is based on the facts that occur around human life, that legal instruments do not work satisfactorily and instead trigger conflicts that are enlarged and destructive.⁷

One of the facts that have the potential to trigger sharp contradictions in today's society

⁵Article 34B Government Regulation no. 99 of 2012.

⁶Article 34C Government Regulation no. 99 of 2012.

⁷In Adam Podgorecki's Journal, "A Sociological Theory of Law", (Milano:Dott.A.Giuffre Editore, 1991), Page 156

is the government's policy in this case the Ministry of Law and Human Rights to provide remissions to the perpetrators of terrorist crimes. Remission is indeed the right of the convict, but granting remission still requires state policy. This means that the state can grant these rights but can also limit them with clauses determined by the state. Article 28J Paragraph (2) of the 1945 Constitution states that in exercising rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law. Its purpose is to ensure the recognition and respect for the rights and freedoms of others, and to meet fair demands in accordance with considerations of morals, religious values, security,

3.2. Procedures for Granting Remissions to Terrorism Convicts

The implementation of granting remission to Terrorism convicts is set out in Government Regulation No. 99 of 2012, while the requirements for obtaining remission are stated in Article 34A paragraphs 1 and 3 of Government Regulation no. 99 of 2012, namely:

- Willing to cooperate with law enforcement to help dismantle criminal cases he did.
- Has participated in the deradicalization program organized by LAPAS and/or the National Counterterrorism Agency, and has pledged to:
 - Loyalty to the Unitary State of the Republic of Indonesia in writing for Indonesian Citizen Prisoners, or
 - Will not repeat acts of terrorism in writing for foreign nationals convicted for committing terrorism crimes.

In principle, remission (reduction of punishment) is a legal means in the form of rights granted by law to prisoners who have met certain conditions. All convicts or convicts who meet the requirements, without exception, convicts of terrorism can apply for remission. This has been mandated by Article 14 of Law no. 12 of 1995 concerning Corrections, which was later regulated in Government Regulation Number 99 of 2012 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates, which in strengthen with Presidential Decree No.174 Year 1999.

According to article 34 paragraph (2) Government Regulation no. 99 of 2012 Second Amendment to Government Regulation No. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates, remissions are given to convicts and convicts if they have good behavior and have served a criminal period of more than six months. And specifically for prisoners who are classified as extraordinary crimes, namely terrorism crimes, they can be given remission if they behave well and have served one-third of their criminal period. the requirements for applying for remission for the crime of terrorism are more stringent, namely terrorism convicts can apply for remission if they have served 1/3 of their sentence and have behaved well while in prison and are ready to become justice collaborators and have also participated in the deradicalization program at the Correctional Institution. Starting from the issue of the crime of terrorism which is classified as an extraordinary crime (extraordinary crime) which is defined as an extraordinary crime, namely a crime committed using a special skill, organized/systematic and has a very broad impact. Classification of criminal acts terrorism as an extraordinary crime in Indonesia is easily

accepted, especially since the first Bali Bombing incident.⁸ However, the tightening shows that as a basis or reason for refusing to grant remissions to prisoners, including terrorism convicts, it should not be used as a reason to undermine the basic philosophical foundation of the institution. correctional with

The correctional system. Institution Correctional institutions must adhere to the 10 principles of correctional facilities in carrying out their duties. Weaknesses in other sub-systems within the framework of the integrated criminal justice system must be corrected in these sub-systems, so that in the end the system will run well. It is realized that there are still weaknesses in the implementation of the correctional system in prisons, but these weaknesses must be corrected in its implementation, without changing the basic principles it contains.

crime of terrorism, as an extraordinary crime, should be responded to by The imposing a maximum criminal sentence. However, when prisoners have shown good behavior, they must be given their rights according to the law. If the right to remission is no longer granted, it must be regulated in the legislation as an exception, for legal certainty. Opinions against granting remission to terrorism convicts occur because of a lack of understanding of the paradigm shift from prison to a correctional institution which has been implemented since 1964, as well as a lack of understanding that the absolute theory (revenge/deterrence) has long been abandoned by countries in the world, including Indonesia.

The duties of Correctional Institutions are stated in Law Number 12 of 1995 Chapter I General provisions of Article 2 that the Correctional System is held in order to form correctional inmates so that they become fully human, realize mistakes, improve themselves and do not violate criminal acts so that they can be accepted again by the community. and can actively play a role in development and live a normal life as a good and responsible citizen.⁹

The Banyan Tree of Protection in relation to prisoners and students is an idea, idea, or conception of the purpose of imprisonment and its implementation, namely the implementation of a prison sentence called "Penitentiary". Against the idea that was sparked by Sahardjo, as an Indonesian human, it is no exception that he must lift his hat as high as possible for the idea he has put forward, as well as the State of Indonesia cq the Government of Indonesia, it is appropriate to give the highest appreciation for his services to fight for rights. human rights for all, especially for prisoners who were originally considered the trash of society because they have lost their way of life. That's how it should be.¹⁰

Until now, there are still many disagreements and doubts about what is meant by Correctional, and the consequences are very visible in its implementation. Some of the implementers in their efforts to identify the Correctional by giving more concessions to the prisoners, by letting them wander outside the walls, some of the implementation of realizing the correctional as the last behandelung (treatment) phase,¹¹ as overgangs of the phase from

⁸ Abdurrahman dan Rayyan, *Membongkar Jaringan Terorisme*, (Jakarta, Abdika Press, 2009),, page 54.

⁹ Anton Setiawan, *Pelaksanaan Pembinaan Menurut Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasarakatan*, (Tesis Pascasarjana Fakultas Hukum USU:2009) page 5.

¹⁰ A. Widiada Gunakarya. S.A, *Sejarah Dan Konsepsi Pemasarakata* (Bandung; Armico, 1988), p., 62-63

¹¹ Ibid, Page 65

within the walls into the midst of society, some equate correctional with socialization. Remission is one of the most awaited rights by every inmate, including convicts of special crimes, because remission is a right for every convict who is a link in the chain of a development process in the correctional system. For convicts of special crimes in obtaining remission, the steps are quite difficult because they must meet the requirements contained in Article 34 and the requirements that have been tightened in Article 34A Paragraph (1) letters a and b of Government Regulation Number 99 of 2012, because it is considered to fulfill a sense of justice. society as one of the objectives of the law.¹²

If viewed from the point of view of the theory of legal objectives, namely ethical theory, then one of the requirements for tightening the granting of remissions for special crimes has fulfilled a sense of justice. Creating justice means giving everyone what is due.

The imposition of stricter conditions in granting remission to perpetrators of extraordinary crimes is indeed in accordance with a sense of justice.

Every case must be considered specifically in order to create justice, including convicts of special crimes that must be considered in getting remission, they should be someone who does not deserve remission, but because we uphold human values and run the correctional system, the right to remission is our main focus. the chain of a coaching process is entitled to be obtained by every prisoner, regardless of the crime committed by imposing stricter conditions in Article 34A Paragraph (1) letters a and b of Government Regulation Number 99 of 2012, then the moratorium on granting remissions is categorized as an obstacle that does not support the purpose of the penitentiary system itself.¹³

Efforts to overcome several criminal acts mentioned in the Government Regulation must be carried out simultaneously, thoroughly and continuously. Various factors that need to be considered in order to eradicate organized crimes must be studied carefully which can not only be limited to theory, but based on facts that are felt and found in the midst of society.

4. Closing

With the existence of PP No. 99 of 2012 which is tightening the granting of remissions to prisoners of terrorist crimes based on the realization of a sense of justice for the community, the Ministry of Law and Human Rights evaluates the granting of remissions to perpetrators of terrorism crimes because the impact is very broad and has bad consequences for many people. aspects of national and state life. The granting of remissions as outlined in Article 34A Paragraphs 1, 2 and 3 of Government Regulation Number 99 of 2012, which states that the requirements and procedures for granting remissions to convicts of corruption are, Willing to cooperate with law enforcement to help dismantle criminal cases they have committed (Justice Collaborator).) and has participated in the deradicalization program organized by LAPAS and/or the National Counterterrorism Agency and has made a written pledge. The remission for convicts of a special crime is given by the Minister after receiving written consideration from the head of the relevant institution.

¹²Article 34A Paragraph (1) letters a and b of Government Regulation Number 99 of 2012

¹³Article 34A Paragraph (1) letters a and b of Government Regulation Number 99 of 2012,

Indonesian citizens must have a common understanding in studying the concept of penitentiary that is run in Indonesia. This understanding is that the function of punishment is no longer merely providing deterrence and retaliation for prisoners as prisoners in prisons who are in the Correctional Institution, but punishment is an effort and effort for rehabilitation and social reintegration in fostering correctional inmates. The state, especially the government, must remain consistent in respecting, providing protection and fulfilling its obligations in protecting the human rights of prisoners by providing remission rights. A large country is a country that knows how to treat and nurture violators of its laws, whether they are violators of general criminal law and violators of the law of terrorism.

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