



## Legal Protection for Prisoners for a Conditional Exemption in the Perspective of Human Rights

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### Abstract

*The purposes of this paper are to analyze and find the implementation of the liberation of parole for inmates certain crimes. This study is a normative legal research; the approach used is the approach of legislation, Conceptual, Comparative, and Historical. The results obtained are Implementation of parole for inmates of certain criminal acts, in essence, embodies the formulation remissions to the perpetrators of certain criminal offenses have been formulated differently from other criminal offenders through PP No. 28/2006 juncto PP No. 32/1999 juncto PP 99/2012.*

**Keywords:** Legal Protection, inmates, parole, HAM

### 1. Introduction

Indonesia is a state law that guarantees legal protection for its citizens. Legal protection is an obligation for a country on the recognition, protection, and ensuring the rights of citizens for the sake of social justice and prosperity for all people. This is in accordance with the mandate of the Constitutional Law of the Republic of Indonesia Year 1945 and Pancasila as the ideological foundation of the nation. State law is a dimension of a democratic state and contains the substance of Human Rights (hereinafter referred to as HAM). Without the substance of the State Human Rights law will lose its essence and tend as a tool by the government to the oppression of the people and as an instrument to justify the government's actual policies violate human rights (Sunggono and Harianto, 1994).

United Nations (hereinafter referred to as the United Nations) have indicated that international rights issues lawbreaker to the issue of the implementation of imprisonment has been recognized as an urgent issue that needs to be followed up, not only for the member states of the UN is concerned, but is already a problems of the nations of the world. The principles of legal protection derived from Pancasila as an ideal basis, the Constitution of the Republic of Indonesia Year 1945 as a constitutional principle (structural), and the Act as the operational principle. The concept of legal protection has the ideal basis (philosophical) in the V principle of Pancasila, namely; "Social justice for all the people of Indonesia". Definition of justice for all Indonesian people it contains a right of all Indonesian people to be treated equally before the law and government.

Law enforcement based a legal framework for good or raw (good legal system) is expected in the era of globalization, a country where enforce laws that violate human rights, is certain to be criticized and even isolated by other countries as a member of the world community who do not have a commitment to human rights. Law enforcement

officers consisting of the police, prosecutors, courts and correctional facilities should already be aware of his position, especially in law enforcement that aims to create the Indonesian state fair prosperous and prosperous equitable, so that law enforcement officers do not apply arbitrary and does not pay attention to human rights in law enforcement. This can be seen in history that the founding fathers when it set up the Republic of Indonesia to formulate that Indonesia is a country based on law (*rechstaat*) not based on power alone (*machstaat*).

In Act No. 12 of 1995 concerning Corrections Article 8 (1) states: "the correctional officer is a functional law enforcement officials carry out tasks in the field of development, security and guidance Citizens Correctional Patronage".

The tasks and functions of correctional should be based on the applicable law to achieve compliance and protection of human rights can be realized. Rights is a power law, ie law in the subjective sense that the will power granted by the legal order, because the rights protected by the legal order, the rights owner has the power to defend their rights from interference/threat of any party (Kelsen, 2006).

Implementation of imprisonment originally set in *Gestichten Reglement Reglement* or prison, Stb 1971, No. 708, dated December 10, 1917. However, since the release of Act No. 12 Year 1995 regarding Correctional, then Regalement prison is no longer valid. In order to reform the system of execution of imprisonment in 1964, the term penal system has been changed to the penitentiary system, and the prison term was changed to the penitentiary.

The concept of Corrections in Indonesia was first introduced by Sahardjo on July 5, 1963 delivered a speech with the theme "Banyan Tree aegis". So it can be interpreted that the concept of national law such as the banyan tree which symbolizes aegis. Then the penitentiary system was formally implemented on 27 April 1964. In effect the penitentiary and imprisonment have the same meaning but different purpose. Correctional as a tool for interaction, the rehabilitation of a citizen to apply good and law-abiding while the prison tends to make people more and more criminals in jail after (Atmasasmita, 1983).

Prison is a place for supervision to prisoners. That is, where the convict earnest well prepared so that one day after his sentence is completed will be returned to the community with job skills that have been trained in prisons. Sahardjo (Panjaitan and Simorangkir, 1995) said that the renewal of the prison system, among others:

1. Each person is a social creature.
2. There are no people living outside the community.
3. Prisoners sentenced only to lose the freedom of movement, so it needs to be cultivated in order to have a livelihood.

## 2. Research Methods

The research type that has been done is a normative legal research is research that examines and analyzes legislation, legal principles and legal norms in order to obtain clear description of the legal aspects of spatial planning that is responsive and sustainable, despite this study is normative but also supported by field data (empirical).

## 3. Discussion

### 3.1 Constraints in the Implementation of the Granting of Certain Inmates in Prison

In the implementation of assimilation for inmates at the Correctional Institution found a variety of obstacles that can be a limiting factor for the implementation of the program of assimilation, these constraints are:

- a. The lack, or Lack of Funds  
Funds allocated for the assimilation of so few that the facilities and work tools for assimilation earned less satisfying and less diverse.
- b. Lack of experts or experienced people who can be a mentor inmates.  
Experts or experienced people (tutor) in guiding the inmates who assimilated very useful in order to be a transfer of skills useful for inmates will be, particularly for inmates who carry out the assimilation of work (farming in paddy fields and raise fish in ponds belong to prisons).  
Prisons have difficulty to be able to invite experts to be a mentor inmate due also to the lack of availability of funds to use the services of a professional tutor. In addition to this tutor, the Penitentiary is also difficult to get help from a psychologist that can be useful to guide and characteristics of inmates.
- c. Lack of cooperation with third parties which can hold the applicant assimilation  
Assimilation work with third parties is a form of assimilation with the most potential to help inmates who want to assimilate, but the Penitentiary experienced problems in a collaborative effort with third parties. This happens

because of the third party feel fear, suspicion and misgivings to use the services and personnel of prisoners, or a third party who did not want to bother with making an agreement with the Penitentiary regarding assurance oversight of the work or other matters relating to this cooperation.

Besides, the provision which stipulates that employers are prohibited from employing children (Article 68 of Law No. 13 of 2003 on Labor), it is this which affect in the absence of third parties who want to cooperate to receive and employ inmates who assimilated lately.

d. Responses (stigma) that recent Society Against Prisoners

Basically people are factors that affect the implementation of correctional supervision on students, because a person indirectly determines the success or failure of the coaching process in prisons. In terms of guidance in the form of assimilation, there are constraints such as poor public views towards inmates. This greatly affects the assimilation activities of inmates.

### 3.2 Efforts to Overcome Obstacles in the Implementation of Certain Rights of Prisoners on Prisons

In regard to overcome various constraints faced by Corrections in the implementation effort of assimilation of the inmates, the Prison by all means and efforts have been tried in order to support and encourage the assimilation goes smoothly. These efforts are:

a. To find an alternative way out to take care of procedural ease of assimilation;

Alternatives that can be given to ease the submission process of assimilation such as: giving examples of papers required for the submission of assimilation, with examples of this letter is expected of the applicant or the families of inmates will be easier to draw up the necessary papers.

b. Seek additional budget for assimilation

Because the funds were minimal for this then the Penitentiary to find another way, such as: applying for additional budget to the Ministry of Justice, asking for the help of tools or work facilities from the local government or the private sector, and marketing of agricultural and fishery inmates which is expected to attract both consumers as well as from other parties that want to use the services and personnel with the prisoners who can support the success of assimilation program.

c. Provision of expertise alternative

In addition to working facilities, then the Penitentiary also circumvent the provision of tutor work and skills of professional and requires payment with job training given by an employee who is also in charge of a field of work, also by relying on inmates who have the skill or proficiency in a field of work in accordance with profession practiced before entering Penitentiary or volunteers who voluntarily want to train inmates to increase occupational skills.

d. To collaborate with external parties

Efforts to establish cooperation with external parties continue to be implemented by the Correctional Institution, such as the search for third parties who are interested or willing to use the services and the employment of inmates who assimilated, provide counseling to a third party that the employment of child labor was not prohibited because these provisions are not absolute or because there another provision which stipulates that a child can work, but of course on the condition, type of work, working time and other requirements that are different from adult workers (Article 69-71 of Law number 13 of 2003 on Manpower).

It also encourages the parties Penitentiary Ministry or Agency concerned (Particularly in the field of Labour) to be more serious in the search for partners to accommodate assimilation activities of inmates.

e. Provide legal counseling to the community, organize and engage inmates in various social activities, physical, spiritual and so to eliminate the negative view of society towards inmates.

### 3.3 Implementation of the Parole for Prisoners Specific Crime

#### 3.3.1 Parole (Voorwaardelijke Invrijheids Stelling)

As disclosed in previous pages that parole is granting exemption subject to conditions to prisoners who have undergone criminal for two-thirds of the sentence, in which two-thirds of it is at least nine months. After his release from prison in addition burdened by several conditions, inmates are also given additional probation for a year and immediately added to the rest of the sentence (Suhardi, 2005). Parole is granting exemption subject to conditions to prisoners who have been It also encourages the parties Penitentiary Ministry or Agency concerned (Particularly in the field of Labour) to be more

serious in the search for partners to accommodate assimilation activities of criminal inmates. njalani for two thirds of the sentence, in which two-thirds of it is at least nine months (Prayuda et al, 2007).

Therefore parole is the coaching process outside Penitentiary inmates after serving at least 2/3 (two thirds) criminal past with the provisions of 2/3 (two thirds) of the criminal past of at least nine (9) months. Parole is part of the function of the Correctional Institution, which is one of the parts of the Indonesian criminal justice system, namely the police, prosecutors, and courts (Pandjaitan and Widiarty, 2008).

Provisions concerning parole in legislation Indonesia, the first time included with the term release of the conditional in the Code of Penal (Penal Code), wherein the preparation of the Criminal Code made by *Wetboek van strafrecht voor Nederlandsch-Indie*, the Criminal Law itself (Soemadipradja and Atmasasmita, 1979).

The existence of conditional release provisions in *Wetboek van strafrecht voor Nederlandsch-Indie* affected by the system of imprisonment in the UK (progressive system), which meant the rest of the parole last criminal in order to convict returns well into society (Kanter dan Sianturi, 2002).

Definition of conditional release is not explicitly written in the Criminal Code. Conditional release provisions of the Criminal Code defined by K.B. 33 dated October 15, 1955 in force in Indonesia on January 1, 1918 (vide Stb. 1917-497 jo 645), changes through Stb. 1926-251 jo 486.29 On Article 15 long determined that conditional release is applied to the imposition of lengthy imprisonment (Poernomo, 1985).

Conditional release will be granted if three quarters of the sentence have been spent in prison, which must be at least three years. Whereas in Article 15 of the Criminal Code, as amended by Stb 1926-251 jo 486, which is the book of the Law of Criminal Law applicable to the present, conditional release may be granted to convicts who have undergone 2/3 (two thirds) of the length of imprisonment which inflicted on him, who must be at least nine (9) months, where this provision also applies when the parole term use.

Furthermore, the regulations governing conditional release, the Criminal Code and Conditional Release Ordinance (*Voorwaardelijke Invrijheidstelling*) S. 1917-749, there are no provisions on assistance and guidance to convicts serving parole.

It was different at the time the term of parole is used, which contains a provision regarding the guidance and coaching in the provision of parole, which is in Act No. 12 of 1995 concerning Corrections, stating that convicts serving parole must follow the guidance given by the Office of Corrections (BAPAS).

Based on the goal rather than criminal punishment other than retaliation against the perpetrators of crimes are also intended to safeguard the community, from both of those goals also intends to prepare and give the inmates returned to the current provision in the community.

Coaching prisoners held by the community system is expected to be able to achieve the objectives of punishment, to achieve these goals one of the efforts is by granting parole.

Conditional release was originally known in *Wetboek Van Strafrecht (WvS)* Netherlands, later amended by Stb. 1926 No. Jo 251 486 which is a continuation of Stb. 1917 No. 749 currently known as *Ordinance Op De Voorwaardelijke Invrijheids Stelling*.

Lamintang (1984) say that parole is divided into two categories, namely:

- 1) Exemption conditional on the obligation to execute imprisonment in a correctional institution as stipulated in Article 15 to Article 17 of the Criminal Code, further after stipulated in the ordinance dated December 27, 1917, Stb number 749, also known as the *ordinance de voorwaardelijke invrijheidstelling* or regulations regarding Parole.
- 2) Exemption conditional on the obligation to receive education in an educational institution of a State as referred to in Article 68 paragraph (2) and Article 69 paragraph (1) of the Ordinance on December 21, 1917, Stb number 741, also known as *dwangopveding Regeling* or regulations concerning the forced education.

Exemption will be further explained is the parole of the obligation to carry imprisonment as where it has been stipulated in Article 15 to Article 16 of the Criminal Code. In practice in the field of law, especially criminal law often encountered various different translations on parole. In Dutch used the term *voorwardelije invrijheidstelling* which when translated means the Parole (Lamintang, 1984).

BPHN gives meaning to the term conditional release without realizing that these terms can lead to misinterpretation, especially for the layman, since the release of this term is not commonly used in criminal law and BPHN themselves often have difficulty in use (Ibid, 1984).

Looks parole term will more commonly use in criminal law if Article 191 paragraph (1) and paragraph (3), Article 192 paragraph (1), Article 183 paragraph (2) letter b Criminal Code and others (Ibid, 1984).

In our Penal Code there is no article that mentions the notion of parole; the Criminal Code only mentions about the conditions that a prisoner is eligible for parole. Definition of parole will appear more clearly if we look at legislation outside

the Criminal Code and expert opinion of legal science field.

Parole under the provisions of Article 1, letter b Decree of the Minister of Justice No. M.01-PK.04.10 1999 concerning Assimilation, Parole and Leaves Ahead Non are:

Parole and furlough nearing release is the process of coaching inmates outside the penitentiary, under Articles 15 and 16 Criminal Code as well as Article 14, Article 22 and Article 29 of Law No. 12 of 1995 concerning Corrections.

In supervising the inmates are running the parole made by the State Attorney and BAPAS. The surveillance is intended to keep monitoring the deeds convicts granted leave to undergo. When later in the execution of prisoners on parole are in fact lived in an irregular manner, lazing work, hang out with recidivist, repeat the criminal offense, give rise to unrest and violating parole provisions regarding the implementation of the exemption that is given withdrawn.

### 3.3.2 Basic Law of the Parole

Under the terms of Article 15 of the Criminal Code of the above can be seen on a condition of parole. In the event that the defendant must have served at least two-thirds of the sentence imposed by the judge or at least nine (9) months and over a specified time should not do acts that are punishable.

For parole for prisoners who have met two-thirds of the time the sentence is at least nine (9) months as described in Article 15 of the Criminal Code, before the application is submitted to the Office of the Ministry of Justice of the Republic of Indonesia must first meet the requirements as determined in Ministry of Justice of the Republic of Indonesia Number. M.01.04.10 1999 concerning Assimilation, leave is nearing release and parole.

- 1) Terms Substantive
  - a) Have shown awareness and remorse for the mistakes that caused sentenced;
  - b) Have demonstrated the development of moral character and positive;
  - c) Successful program development activities diligently and eagerly;
  - d) The public has been able to receive coaching program inmates concerned;
  - e) During the course of criminal prisoners or criminal child never gets disciplined at least within the last 9 months;
  - f) Criminal past that lived had undergone two thirds of the sentence period, net of custody and remission period is calculated from the date the court ruling obtained permanent legal effect to the provisions of 2/3 is not less than 9 months.
- 2) Administrative
  - a) The copy of the court decision;
  - b) The original letter from the prosecutor's statement that the prisoners in question does not have to be stuck with cases or other criminal offenses;
  - c) Social research report (LITMAS) of the penal hall of the families who will receive the prisoners, the circumstances surrounding community and others who have to do with prisoners;
  - d) Copy (register letter F) containing the list of violations of the discipline, inmates' criminal past during the run of the prison director;
  - e) A copy of the list of changes or reduction in criminal past, such as pardon, remission, and others from the prison director;
  - f) Letter of intention of the parties who would receive the prisoners, such as; the family, schools, government institutions/private and local government known as low headman or village head;
  - g) Health certificate from a psychologist or a doctor that inmates both body and soul healthy and in prisons where there are no psychologists and doctors, the certificate may be requested to the doctors clinic or public hospital;
  - h) For children of prisoners or criminal foreigners needed additional terms:
    - Certificate able to guarantee the embassy/consulate of the foreign national.
    - A letter of recommendation from the head of the local immigration office.

In addition to the provisions regulating the requirements for granting parole mentioned above, in Section 16 Criminal Code also provides for the competent authorities to establish granting parole.

After receiving the proposal regarding a person's parole inmates of the Head of Penitentiary, the Minister of Justice will propose to the Council the proposals *Reclasseering* Center. Minister of Justice will give its decision on parole for an inmate with a set period of time there and set the amount of money to be gained by inmates in preparation to start with a new business after being released on parole from prisons. Article 5 of the Ordinance on the Parole provides as follows:

- 1) At the time of granting conditional release, granted a letter of permission (Pas) to convict it according to the

- model annexed to this Ordinance;
- 2) The requirements that must be satisfied during the sentence unfinished listed on the back of the license;
  - 3) Duplicate license bearing the fingerprint convict was submitted to the Office of Prisons (now: Ministry of Law and Human Rights).

### 3.3.3 *Terms Parole*

The terms of conditional release consists of the terms of substantive and administrative requirements. That is:

- 1) Substantive Requirements  
The terms of substantive parole are as follows:
  - a) Have shown awareness and remorse for the error cause was sentenced;
  - b) Have demonstrated the development of moral character and positive
  - c) Successful program development activities with diligence and vigor;
  - d) Communities can receive Prisoners program development activities and criminal child concerned;
  - e) Good behavior for a sentence and never get disciplined for at least nine months;
  - f) Have undergone criminal past 2/3 of a criminal past, provided two thirds of the criminal past of not less than nine months.
- 2) Administrative Requirements  
Administrative requirements in parole are as follows:
  - a) Quote the judge's decision (verdict extract);
  - b) The research report made by the community or the community Supervising Prisoners fostering progress report and protégé of Correctional created by guardian Correctional institutions;
  - c) The notification to the Attorney General of the country granting parole plan of Prisoners and Correctional protégé concerned;
  - d) A copy of the register F (a list that includes about disciplinary violations committed Prisoners and Correctional protégé during his criminal past) of the Head or Chief Prison and Detention;
  - e) A copy of the list changes or Criminal Reduction Period (Presidential clemency pardon, remission, and others) from the Head or Chief Prison and Detention;
  - f) Letter of intention of the parties will accept the Prisoners and Correctional students (families, schools, government agencies, private sector, or others).

### 3.4 *Problems of implementation of the Parole*

As for the problem of implementation of the Parole are as follows:

- a. The nomination process for obtaining parole for inmates, still not implemented in accordance with the policies set out in the legislation in force;
- b. Policies for phasing in the process of granting parole in fact requires quite a long time;
- c. The nomination process for obtaining parole for inmates, still not implemented in accordance with the policies set out in the legislation in force;
- d. Policies for phasing in the process of granting parole in fact requires quite a long time;
- e. Barriers in the process of granting parole is already very complex, obstacles faced not only on the issue of human resources correctional officers, but also constrained in inconsistency in applying existing policy mainly technical mechanisms and substantive problem in granting parole;
- f. Another obstacle that becomes an obstacle in the process of granting PB is a lack of concern for agencies who still insists on the policy of each.

## 4. Conclusion

Based on the above discussion, concluded that the granting of parole for inmates specific criminal acts, in essence, embodies the formulation remissions to the perpetrators of criminal offenses particular has been formulated differently from perpetrators of other crimes through the Government Regulation No. 28 of 2006 juntco Government Regulation No. 32 of 1999. Against the criminals can obtain remission after undergoing a third of its criminal past and must be of good character. Related to the policy of a moratorium on granting remission to criminals conducted by the Ministry of Law and Human Rights should be appreciated in the spirit of combating corruption, but in terms of the philosophy of punishment

and the legal basis for the implementation of the moratorium should be reviewed so that the policy has a solid legal basis and in line with the philosophy punishment contained in the concept of correctional services.

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