



VIEWS OF CRIMINAL LAW EXPERTS ON PROVIDING REMISSIONS FOR CORRUPTION PRISONERS: ISLAMIC CRIMINAL LAW PERSPECTIVE

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Abstract: In Indonesia, corruption is included in an extraordinary group of crimes. With this unique title, the revocation of permits for corruptors is being discussed, resulting in pros and cons from the public and legal experts. Regarding the recognition of the problem in writing this article, the author limits whether the cancellation of the pretext of corruption is in line with the current law or actually contradicts human rights. This research uses a normative juridical approach, namely by reading literature data or secondary data. Regarding the results of the examination, the revocation of corruption remissions is not in line with current regulations, especially Law Number 12 of 1995 concerning Corrections, namely Article 14 (1) (i), which states the reduction of criminal time (sentence). Corruption in Islamic law is included in ta'zir because it is not explicitly mentioned in the Qur'an and hadith. According to Islamic criminal law, the ta'zir Jarimah can be given to the creator of the Jarimah as in QS An-Nissa verse 16 which means: "And against two people who commit an abominable act among you, then give punishment to both of them, then if both of them repent and make amends themselves, so let them be. Indeed, Allah is the Most Accepting of repentance, the Most Merciful." then if both of them repent and improve themselves, then let them be. Indeed, Allah is the Most Accepting of repentance, the Most Merciful." then if both of them repent and improve themselves, then let them be. Indeed, Allah is the Most Accepting of repentance, the Most Merciful."

Keywords: Corruption; Remission; Purpose of Punishment.

1. INTRODUCTION

Corruption is a legal phenomenon that is widespread in society. The increasing number of cases every year makes people afraid of the impact they will experience as corruption decreases. Corruption results in slowing economic growth in a country, decreasing investment, increasing poverty and increasing income inequality. Corruption can also reduce the level of happiness of people in a country. Efforts to prevent and eradicate criminal acts of corruption must continue to be improved and strengthened, while still respecting human rights and the interests of society. Corruption in Indonesia is handled with special criminal law which is also regulated in special legislation, namely Law Number 31 of 1999 concerning the eradication of criminal acts of corruption as amended by Law No. 20 of 2001. (Irfan, 2014)

In Islam, corrupt behavior is expressly prohibited in Al-Baqarah: 188 "And do not let some of you consume the wealth of others among you in a false way and (do not) bring (the affairs of) the wealth to the judge, so that you can eat some of it." from other people's property by (committing) sin, even though you know."

In corruption crimes, there is a policy that can be given to convicts, namely forgiveness. According to Andi Hamzah in his book, it is a gift to reduce state sentences for prisoners with good behavior. Andi Hamzah, Criminal Law Terminology (Jakarta: Sinar Graphics, 2013). According to Soedarsono, his legal dictionary contains a reduction



in the sentence imposed on the convict. Article 1999 (1) of the Republic of Indonesia Presidential Decree no. 174/1999 does not provide a clear definition of forgiveness, but only states that: "Every convict and criminal child who is serving a temporary prison sentence or confinement sentence can be given remission if the person concerned behaves well while serving the sentence." (Soedarsono, 1992)

2. DISCUSSION RESULTS

2.1 Definition of Remission

The elimination (remission) of sentence time in punishment patterns, especially those related to social systems, is very important. This relates to educational issues carried out by Correctional Institution staff regarding prisoners. In carrying out the criminal scheme of release, the prisoner must fulfill the conditions imposed on the prisoner himself, otherwise the right to release will not be granted. According to Andi Hamzah, pardon is a full or partial release or life sentence which is held every August 17th. (Andi Hamzah, 1986)

In PP 32/1999 regarding the provisions and procedures for enforcing rights for prisoners, it is stated that the reduction of cases by judges is given to perpetrators of criminal acts and children who have fulfilled the requirements specified in the law (Article 1 chapter 6), that in Presidential Decree No. . 174 of 1999, regarding the provisions of Article 1, it does not provide a definition of reduction, it only states one of the conditions for granting it. Article 1 (1) Presidential Decree no. 174 of 1999 only states that "reducing the number of criminal acts imposed by judges on convicts and children who behave morally while serving their sentences". MH Fachruddin Razi, SH, "Granting Remissions to Corruption Convicts in the Realization of Equal Status in the Law," nd

Forgiveness can be divided into three categories, namely general forgiveness, special forgiveness (religious holidays) and additional forgiveness. General forgiveness is a reduction in the length of sentence given every Independence Day of the Republic of Indonesia to criminals and minors who have fulfilled the conditions specified in the law. Special reductions are reductions in sentences given on every religious holiday (Eid al-Fitr, Christmas, Nyepi, Vesak) for perpetrators of criminal acts and perpetrators of minors who meet the requirements specified in the law. Additional forgiveness (decade) is a deduction that is given every ten years on the Independence Day of the Republic of Indonesia. The sanction is 1/12 of the sentence and more than three months.

Convicts previously sentenced by the court are granted permanent residence and are not convicts (including those sentenced to death and life imprisonment). Permanent legal power for detainees means that they have complete documentation in the form of court decisions, records of court decisions, implementation of court decisions and arrest warrants from investigators. Apart from that, by paying attention to the prisoner's good behavior during the period of his crime until the time of applying for clemency, if there are no violations of the law (F Register) then the prisoner concerned will apply for remission for a pardon decision which is the prisoner's right.

The legal requirements for granting remission are: (Emy Julia Tucunan, 2014):

- Regulation no. 12 of 1995, Article 14 paragraph 1 letter (i)
- National government policy no. 32 of 1999 concerning conditions and procedures for implementing the rights of prisoners under guidance (Articles 34 and 35) as stated in
- amended by Law no. 99 in 2012.
- Decree of the President of the Republic of Indonesia No. 69 of 1999 concerning



Reduction of Prison Period.

- Decree of the President of the Republic of Indonesia Number 120 of 1955 concerning the Imposition of Special Penalties for Prisoners who lose their freedom on the day of the decade.
Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number 01-HN.02.01 of 2000 concerning Additional Remissions and Criminal Offenders.
- Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M.01-HN.02.01 of 2005 concerning Determination of the Reduction of Special Legislation on the Sixtieth Anniversary of the Proclamation of Indonesian Independence.

2.2 Remission according to Islam

The term remission in Islamic criminal law is not found as in Indonesian, the word remission is a loan word from English, namely remission, which means pardon, pardon, reduction. In Indonesian, remission means forgiveness or reduction of punishment. In Arabic terms, there is no definite meaning regarding the word remission, but there are several terms that are almost equivalent to the meaning of remission itself, namely al-Afu' (forgiveness, forgiveness), ghafar (forgiveness), rukhsah (relief), syafa'at (help), tahfif (relief). Apart from that, according to Sayid Sabiq, forgiveness is also called Al-Qawdu "herding" or forgiveness which is the same as diyat or reconciliation without diyat even though it exceeds it.

In connection with the issue of reducing the period of remission sentences, Islam also recognizes forgiveness or reduction of the sentence period. (Arifin Zaenal, 2009) The aim of Islamic criminal law itself is to educate and provide understanding of Islamic law. In order to achieve a happy life, we must take what is useful and reject what is not useful for life. Solely to achieve Allah's pleasure in human life both in this world and in the hereafter.

In Islam, it is known as intercession, intercession is divided into two, namely qiyadah intercession (leadership) and maghfirah intercession (forgiveness). In general, intercession that comes from God's grace, the source of goodness and mercy is called forgiveness (maghfiroh) and that which comes through intermediaries of grace is called Intercession. Looking at the explanation above, according to the author, remission can also be called intercession qiyadah, which means the intercession that a leader has given to his people. In ancient times the Prophet SAW was a syafi' (intercessor) for Amir al-Mu'minin and Fathimah al-Zahra and the two of them became shafi' for Hasan and Husain. Each imam becomes a shafi' for the other imams, his students and all his followers. This hierarchy is maintained so that everything owned by the ma'shum imams is obtained through the intercession of the noble Prophet. The term related to remission in criminal law which is often used and has a meaning almost similar to the term remission is tahjifif uqubah (reduction of sentence). In the encyclopedia of Islamic criminal law, commutation or pardon of punishment is one of the reasons for confinement (cancellation) of punishment, whether given by the victim, his guardian or the authorities.

2.3 Pros and Cons of Providing Commutation of Sentences for Corruption Convicts

Through the Decree of the Service Conference held on April 27 1964, the concept of correctional services was also refined. This decree declares that the actual implementation of prison sanctions in Indonesia is based on a socialization pattern,



apart from being a target, it also acts as a rule to guide and instruct prisoners. (Ahmad Fakhurrozi, 2017)

Contra to the Prize for Commuting Sentences for Corruption Convicts, the UN Agreement refutes UNCAC 2003 which has been legalized by the Government through Law no. 7/2006, as explained above, corruption is actually a special crime that has a big impact on the country and causes problems for many people. Corruption prisoners are not humans who are classified as weak individuals but also have power or authority, but they abuse this power.

Providing gifts for commutation of sentences is an early sign of embezzlement behind prison cells carried out by prison officials. Analytically, this has the effect of further diminishing the essence.

So basically giving remissions to corruption convicts can also be considered less effective because giving remissions makes the perpetrators feel relieved and does not rule out the possibility that after they are released they (corruptors) will repeat their actions again, but in a neater way. Because the criminal act of corruption cannot be viewed as an ordinary crime, but rather has become an extraordinary crime (extraordinary crime).

The existence of people who agree and reject the moratorium on remissions for perpetrators of criminal acts of corruption, basically shows that there is a gap between normative law (das sollen) and sociological law (das sein) or a gap between the legal attitude in society as it should be and the behavior of law enforcers as it should be. Not a few parties feel dissatisfied and feel hurt when they see the lightness of sentences given by judges to perpetrators of corruption. The disappointment and hurt feelings increase when the fact is seen that corruptors in prison receive very special treatment and facilities. The legal rules also expressly state that all humans have the same position before the law (equality before the law).

Obtaining justice is one of the basic rights that humans have. Justice can only be upheld if there is equal treatment for everyone who has the same conditions. (Soerjono Soekanto, 1994) However, in practice we can still see injustice occurring. Responding to the development of pros and cons related to the planned remission moratorium for corruptors, Satjipto Rahardjo, who quoted the opinion of Chambliss and Seidmann, argued that in the perspective of legal sociology, laws, regulations, doctrine and Legal fiction is often considered as myths in law which are proven false in everyday legal life. (Satjipto Rahardjo, nd)

2.4 Analysis of Islamic Criminal Law on the Views of Indonesian Criminal Law Experts Regarding Providing Remissions for Perpetrators of Corruption Crimes

In Islamic Criminal Law the argument for granting remission (intercession) is in An-Nissa: 16 "And against two people who commit an abominable act among you, then give punishment to both of them, then if both of them repent and improve themselves, then let them be. Indeed, Allah is the Most Accepting of repentance, the Most Merciful." And also because this corruption is included in the ta'zir finger, intercession or remission can be given

Meanwhile, in Indonesia, granting remissions to prisoners is regulated in Law no. 12/1995 concerning Corrections, especially Article 14 paragraph (1) point i "Convicts have the right to receive a reduction in their criminal term (remission)".

Many legal experts agree with the existence of a moratorium or temporary suspension of granting remissions to prisoners, including corruption prisoners, as stated by Mahfud MD as Chief Justice of the Constitutional Court who stated that, in fact, in the long term, the reward of sentence mitigation and conditional release for corrupt



prisoners needs to be eliminated through a legislative review. However, in practice the monatorium is not completely like what happens in the field.

The author here agrees with the granting of remission to prisoners, including perpetrators of criminal acts of corruption, in accordance with the conditions stated in the Law and the provision of intercession in accordance with QS An-Nisa 16.

Here, the main problem for the author regarding perpetrators of criminal acts of corruption is not whether or not they will be given remission, but rather the type of law which is considered too light and with such a punishment it is difficult to deter the perpetrator. Even though the monatorium is implemented or in other words remission will be removed, it will still not have a deterrent effect on prisoners, especially corruptors. In reality, there are many who receive special treatment in prison for corrupt people. Prison as a deprivation of liberty for the perpetrator should be sufficient to provide deterrence to the perpetrator if the prison is implemented properly without discrimination

In this case, the author is of the opinion that remission or reduction of the prison term for corruption convicts who are in prison is a gift that reflects the spirit of Islam which is oriented towards the benefit of the person who is punished, not the punishment, because Islam really appreciates people who repent and improve themselves in order to become human beings who are valuable before God and society so they can provide goodness by carrying out commands and abandoning prohibitions.

3. CONCLUSION

In the view of legal experts, remissions can be granted to corruption convicts, however, regarding the granting of remissions, there is talk about temporarily suspending remissions or what is more familiarly called a remission monatorium.

The remission monatorium is not applied if the perpetrator helps uncover several major corruption cases. In Islamic Criminal Law the arguments for granting remission (intercession) are explained in Surah An-Nissa verse 16.

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