



## **Problematic Dilemma of The Limitation of Granting Remission for Corruption Prisoners**

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### **Abstract**

*Corruption is an extraordinary crime, so the law enforcement for corruption cases must also be done extraordinarily. Therefore, the corruption prisoners or corruptors should be differentiated by their pattern of guidance in Penitentiary. The difference in the process of fostering in Penitentiary is in the form of limitation of granting remission for corruptors. The existence of such restrictive policy poses a problem dilemma to the guidance of current corruption prisoners based on Penitentiary System. This is because the penitentiary system essentially sees the crime of "deprivation of liberty" against a person is only "temporary" so that there is a reduction in criminal or remission for every prisoner. The problem is how to overcome the dilemma of granting remission for corruptors in the perspective of the correctional system. The research method is normative juridical with the regulation of law and doctrinal approach. The result of this research is to overcome the dilemma of granting remission for corruptors by revising Government Regulation Number 99 of 2012 on Terms and Procedures Implementation of Rights of Citizens Correctional Penitentiary that distinguishes the requirements for corruption prisoners that cause losses of state in the high or low nominal. For the corruption prisoners that doing corruption in the high nominal to get the special requirement for granting remission should be added in the high profile corruption prisoners are required to accomplish morality education on the nation and homeland*

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*patriotism at their expenses. While the lower profile ones are required to following the common standard coaching for general prisoners.*

**Keywords:** *Remissions, Corruption Prisoners, Corruption, Correctional System*

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## **A. Introduction**

The 1945 Constitution (UUD NKRI 1945) has provided a reasonable place to the legal status (*rechtspositie*) for each of its citizens, as provided for in Article 27 Paragraph (1) that "All citizens shall be equal before the law and government and shall be obliged to uphold such law and government without exceptions". The provision is in line with the provisions of Article 7 of The Universal Declaration of Human Rights, namely the right of equality before the law and for non-discrimination in its enforcement. Subsequent to Article 5 of that declaration is declared about the prohibition against cruel, inhuman or degrading treatment or punishment. The above legal principles are closely related to the enforcement of the criminal law which can be done by limiting the human rights of a person suspected of committing a criminal offense by the law as regulated in Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.<sup>1</sup>

Also, based on the principles of law above, in criminal law enforcement also refers to the philosophical thoughts of Pancasila both as a view of the life of the nation and as the foundation of the state of the Republic of Indonesia. Based on the above legal principles, the criminal law enforcement mindset should be based on the values of Pancasila. Therefore, in the National Criminal Law System, the basic concept of Indonesian criminal law that is oriented towards Pancasila, known as the Criminal Law of Humanity.

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<sup>1</sup> Article 28J Paragraph (2) of the 1945 Constitution provides that In exercising its rights and freedoms, each person shall be subject to the restrictions laid down by law with the sole intent of securing the recognition and respect of the rights and freedoms of others and to satisfy fair demands in accordance with moral development, religious values, security, and public order in a democratic society (Second Amendment to the 1945 Constitution of The Republic of Indonesia).

The embodiment of Humanitarian Criminal Law in the field of Criminal Implementation Law which is part of the criminal law<sup>2</sup>, namely the existence of a criminal law of humanitarian law through the Penal System institutionalized in Law No. 12 on 1995 of Corrections and other implementing regulations. Under the law, the implementation of prison in Indonesia upholds human rights for every prisoner. The Correctional System based on Law No.12 on 1995 is only oriented to convict committing ordinary crimes as set out in the Criminal Code (KUHP), whereas currently within the correctional has been inhabited by inmates who commit extraordinary crimes which caused many casualties in the society. These types of crimes such as terrorism, narcotics, and precursors of narcotics, psychotropics, corruption, crimes against state security and grave human rights crimes, as well as other organized transnational crimes.

The form of recognition/protection of the dignity of a human being which is criminally imprisoned is as regulated in Article 14 Paragraph (1) Sub-Paragraph I of Law No.12 on 1995 on Correctional, which determines that a prisoner is entitled to a reduction in criminal (remission). Under this provision, so in the correctional system known as Remission Law Institution as one means of fostering each prisoner by giving a detention reduction in the life of a criminal for a prisoner and a juvenile delinquent who has fulfilled the requirements to obtain remission as stipulated in the Government Regulation of the Republic of Indonesia No. 32 on 1999 on the Terms and Procedures for the Implementation of the Rights of Citizens of Correctional Facilities that have been amended by Government Regulation of the Republic of Indonesia No.28 of 2006 on Amendment to Government Regulation No. 32 of 1999 on Terms and Procedures of Implementation Right of Citizens of Correctional Prisoners, and lastly amended by Government Regulation of the Republic of Indonesia No. 99 Year 2012 on Second Amendment to Government Regulation of Republic of Indonesia No. 32 of 1999 on Terms and Procedures of Implementation of Right of Residents of Correctional Prison, In this article hereinafter referred to as Government Regulation No. 99 of 2012. While remission amount is regulated in Presidential Decree No. 174 of 1999 on Remission.

Dilemma of the implementation of remission in the process of guidance of prisoners began to arise in the presence of the policies set forth in Government Regulation No. 99 of 2012 which determines that the provision of Remission, Assimilation, and Conditional Liberation for certain offenders such as terrorism, narcotics, and narcotics precursors, psychotropic, corruption, Crimes against the state security and grave human

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<sup>2</sup> Criminal Law is a system consisting of sub-system of material criminal law, sub-system of formal criminal law, and sub-system of law of criminal implementation.

rights violations, as well as other organized transnational crimes are tightened by the terms and ordinances to fulfill a sense of community justice.

The reasons for such a tightening policy can be found out in the preamble of the government regulation that the criminal acts of terrorism, narcotics and precursors of narcotics, psychotropics, corruption, crimes against state security and serious human rights crimes, and other organized transnational crime is an extraordinary crime because it causes great harm to the state or society or a lot of victims or causing extraordinary panic, anxiety, or fear of the public.

In addition to the above reasons are also caused by the demands of society since the rolling Reformation Era in 1998 that the 'Corruptors' be subject to severe punishment even now there is a policy to impoverish the corruptors by applying the provisions of money laundering law. This public demand was responded by the Indonesian people with the enactment of Law No. 31 on 1999 juncto Law No.20 on 2001 of the Eradication of Corruption as a substitute for Law No. 3 on 1971. The new Corruption Law has aggravated criminal sanctions against corruptors, namely the use of types of capital punishment and additional crime in the form of state compensation for corruption. Also, to the process of corruption eradication more quickly and effectively then formed the Corruption Eradication Commission (KPK) through Law No. 30 on 2002, and the Court of Corruption through the Law No. 49 on 2009.

The existence of tightening policy of remission for certain prisoners as described above has resulted in an addition to the overcapacity of the number of prisoners in the correctional institution so that the apparatus of correctional is facing obstacles in the process of fostering the prisoners because of the imbalance between the number of officers and the number of prisoners. Even the existence of the commotion in various correctional institution lately one of the causes that are triggered by the policy limits of remission. There is jealousy and disappointment among prisoners because some get remissions and some do not get remissions. For prisoners who do not get remissions in their guidance process in Correctional Institutions are lackluster because there is no hope of getting a remission.<sup>3</sup> Therefore, the Ministry of Justice and Human Rights is currently discussing the draft Government Regulation on Terms and Procedures for the Implementation of the Right of Citizens of Correctional Facilities. The ministry reasoned that

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<sup>3</sup> Record of meeting result in the event of Forum Group Discussion, the Improvement of Government Regulation (Peraturan Pemerintah) No. 99 of 2012 at the office of the Ministry of Justice and Human Rights of Republic of Indonesia Lampung dated. July 6, 2015 in Bandar Lampung.

the Government Regulation (RPP) was made to reduce the chaos and overcapacity in a correctional institution.<sup>4</sup>

The existence of the Ministry of Law and Human Rights plans to revise the Government Regulation Number 99 of 2012, through the drafting of RPP, especially related to the granting of remission to corruption inmates. The RPP is widely rejected by the public, such as Indonesia Corruption Watch (ICW),<sup>5</sup> The Corruption Eradication Commission (KPK) and the recent rejection that came from 5 (five) Professors who sent a letter to the President of the Republic of Indonesia Joko Widodo whose contents rejected the revision plan of Government Regulation No. 99 of 2012 specifically about the plan to revoke the conditions of granting remission for corruptors. The draft Government Regulation benefits the corruptor because it seeks to provide many loopholes and opportunities for more and more corruptors out of jail.<sup>6</sup>

Based on the above description, then the issues to be discussed in this paper is how the effort to overcome the dilemma of remission for corruption prisoners from the perspective of the correctional system.

The problem approach in this research is the normative juridical approach. The normative juridical approach is the approach to legal principles, to the legal systematic, to the level of legal synchronization, legal history, and comparative law. Operationally, the normative juridical approach is made through literature study by studying legal principles, norms in legislation, legal opinion (doctrines), and legal and non-legal literature materials related to subject matter in this research.

## **B. Discussion**

In the current era of modernization and globalization, criminal and criminal matters which constitute one of the main issues in the criminal law should receive serious attention from the Indonesian nation. One type of crime that needs to receive serious attention is the imprisonment in various aspects both on the procedure of falling it by the judge and its implementation by the authorized institution. The importance of paying

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<sup>4</sup> *KPK Appreciation the Letter of 5 Professor to President for Rejecting Remission for Corruptor* (KPK Apresiasi Surat 5 Guru Besar ke Presiden Tolak Remisi Koruptor), <http://news.detik.com/berita/3291918/kpk-appreciation-letter-5-teacher-big-to-president-repelling-remission-corruptor>, accessed on 24 -09-2016.

<sup>5</sup> Indonesia Corruption Watch (ICW) also criticized the leeway for parole for prisoners of corruption cases. ICW researcher, Lalola Easter Kaban said the abolition of terms to justice collaborator (JC) not only had an impact on remission. But also the process of assimilation and parole against the inmates of corruption cases. This is indeed a kind of red carpet for corruptors, *Red Carpets For Corruptors* (Karpets Merah untuk Koruptor), Radar Lampung Newspaper, on 14-8-2016. p. 3.

<sup>6</sup> *Ibid.*

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attention to the imprisonment which is a deprivation against the independence of this person, considering on one hand there is a high percentage of judges who impose a criminal punishment to the defendant, on the other hand in its implementation need to pay attention to the humanitarian aspect as it concerns the dignity of the human being who becomes a prisoner and his position as a citizen of the Republic of Indonesia.

Based on the provisions of Article 1 point 2, the definition of the Correctional System is defined as a system of direction and boundaries and the way of guidance of Pancasila Correctional Prisoners which is implemented in an integrated manner between the mentor, who is nurtured and the community to improve the quality of the Correctional Citizens in order to realize mistakes, and not repeat the crime so that it can be accepted back by the community, can actively play a role in development, and can live fairly as a good and responsible citizen. The correctional system serves to prepare the Prisoners of Correctional Institution to integrate healthily with the community so that it can play a role as a member of a free and responsible society. For the Ten Prison Principles has been stipulated:

1. Nurturing and providing the provision of life so that they can run its role as a good and useful citizen.
2. Criminal detention shall not an act of state revenge.
3. Providing guidance instead of torture to repentance.
4. The state has no right to make detainees worse or worse than before being sentenced.
5. During the loss of freedom of movement, inmates and protégés should be introduced to and should not be alienated from society.
6. Promoting the rehabilitative, corrective and educative facilities in the correctional system. Prisoners and Juvenile Delinquent assignments should not be given only to meet the state services and interests in any basis. The given assignments shall comply with a common assignment in the community to increase production.
7. The consultation and education for prisoners and Juvenile Delinquent should be based on Pancasila.
8. Prisoners and Juvenile Delinquent as lost people are human beings should be treated as human beings.
9. Inmately and Juvenile Delinquent are only sentenced to missing the independence as one of the sufferings they experienced.
10. Inmates and Juvenile Delinquent should only limit the freedom of rehabilitative, corrective and educative functions in the Correctional System.<sup>7</sup>

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<sup>7</sup> <https://rutansambaskalbar.wordpress.com/data-statistik/sepuluh-prinsip-pemasyarakatan/>, accessed on 2-10-2016.

Based on the Ten Prison Principles above, to realize the objectives of the Correctional System, based on the provisions of Article 14 paragraph (1) of Law No. 12 on 1995 of Correctional. It is determined that Prisoners shall have the right:

1. Conducting worship according to the religion or belief;
2. Receiving treatment, both spiritual and physical care;
3. Getting education and teaching;
4. Getting health services and decent food;
5. Filling a complaint;
6. Obtain reading material and follow other mass media broadcasts that are not prohibited;
7. Getting a wage or premium for the work done;
8. Receive family visits, legal counsel, or other specific people;
9. Get criminal reduction (remission);
10. Get an assimilate opportunity including family visiting leave;
11. Get parole;
12. Get free time off; and
13. Obtaining other rights by applicable laws and regulations.

Whereas under the provisions of Article 14 Paragraph (2) stipulated that the provisions concerning the requirements and procedures for the implementation of the rights of the Prisoners as referred to in Paragraph (1) shall be further stipulated by the Government Regulation.

The provisions regulating the terms and procedures for remission are provided in Article 34 of Government Regulation Number 28 of 2006 on Amendment to Government Regulation Number. 32 of 1999 on Terms and Procedures for the Implementation of the Right of Residents of Correctional Institution namely:

1. Every Prisoners and criminal are entitled to Remission.
2. Remission, as referred to in Paragraph (1), shall be given to Prisoners and Criminals if they meet the following requirements: (a) well-behaved, And (b) has served a criminal term of more than 6 (six) months.
3. For prisoners convicted of committing acts of terrorism, narcotics and psychotropics, corruption, crimes against state security and severe human rights crimes, and other organized transnational crimes, Remission is granted if it meets the following requirements: (a) well-behaved; And (b) has undergone one-third (one third) of the criminal offense.
4. Remission, as referred to in Paragraph (1), shall be granted to Prisoners and Criminals if they meet the requirements of performing acts that assist the activities of Correctional Institution.

Based on the above provisions it can be seen that the remission or reduction of the criminal life is one form of rights for every prisoner who is serving a prison sentence in correctional institutional. Besides remission is

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also one form of renewal of prison imprisonment based on the Correctional System.

In the new system of guidance of prisoners based on the Correctional System, remission is used as a means to motivate inmates to self-help. In relation to the above, according to Harsono<sup>8</sup>, remission is not as a right as in a correctional system, nor as a gift as in the prison system, but as a prisoner's right and obligation means that if the prisoner performs his duty, he is entitled to a remission as long as other conditions are met.

In the remission system, this is a link of a correctional process which is the right of every prisoner. The right of this remission can only be obtained if the convicted prisoner can demonstrate good conduct during the coaching process according to the assessment of the Penal Observer Team and has complied with other requirements, the amount of remission is calculated based on the length of sentence it has been subjected to as set forth in Article 4, Article 5 and Article 6 of Presidential Decree Number 174 of 1999 on Remission.

Through this remission, the legal institution can find out the success rate of guidance of prisoner based on the correctional system which at the same time reflect the level of recognition of human rights of prisoners in the process of fostering in a correctional institutional. The more the number of inmates who receive remission in a coaching period means, the higher the level of successful guidance and the recognition of human rights of prisoners.

The dilemma of granting remission, especially for corruption prisoners arises in connection with the demands of the public to aggravate the punishment of the corruptors since corruption crimes in addition to time always increase in both quality and quantity, also related to the nature of corruption crimes as extraordinary crimes. One form of such demands is to limit the provision of remission to the corrupt. The reasons are reflected in the Government Regulation Number 99 of 2012 on the Second Amendment of Government Regulation Number 32 of 1999, it is stated that the provisions on the terms and procedures of remission, assimilation and discharge are regulated in Government Regulation Number 32 of 1999 on Terms and Conditions Procedures for the Implementation of Rights of Correctional Residents As amended by Government Regulation Number 28 of 2006 on Amendment to Government Regulation Number 32 of 1999 on Terms and Procedures for the Implementation of the Rights of Residents of Correctional Institutions, does not reflect the full interests of security, public

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<sup>8</sup> Harsono, C.I. *A New System of Coaching Inmates* (Sistem Baru Pembinaan Narapidana), Jakarta: Djambatan, (1996), p. 26.

order, and sense of justice perceived by society today, so it needs to be changed.

Embodiments of the demands of the community then made new provisions on the granting of remission as regulated in Article 34A of Government Regulation Number 99 of 2012 namely:

1. Granting remission of prisoners convicted of committing criminal acts of terrorism, narcotics, and precursors of narcotics, psychotropics, corruption, crimes against state security, grave human rights crimes, and other organized transnational crimes, also, to fulfilling the requirements referred to in Article 34 must also meet the requirements:
  - a. Willing to cooperate with law enforcers to help dismantle his criminal case;
  - b. Has paid the fine and replacement money by the court's decision to convict a prisoner for committing a criminal act of corruption; and
  - c. Has participated in a deradicalization program organized by correctional institution and National Agency for Counter-Terrorism, and declared a pledge:
    - 1) Allegiance to the Unitary State of the Republic of Indonesia in writing for Indonesian Citizens, or
    - 2) Will not repeat acts of terrorism in writing for foreign prisoners convicted of committing criminal acts of terrorism.
2. Inmates convicted of committing criminal narcotics and narcotics precursors, psychotropic substances as referred to in Paragraph (1) shall only apply to prisoners convicted with a maximum imprisonment of 5 (five) years.
3. Willingness to work together as referred to in Paragraph (1) letter a shall be declared in writing and stipulated by law enforcement agencies by the provisions of laws and regulations.

Based on the above provisions, against inmates of terrorism, narcotics and precursors of narcotics, psychotropics, corruption, crimes against state security, grave human rights crimes, and other organized transnational crimes, the requirements for obtaining Remission are differentiated from inmates other than those mentioned above. The additional requirement to obtain remission for certain prisoners, according to the authors is appropriate, considering that in addition to these crimes, especially corruption caused many victims, also related to the existence of legal politics to aggravate the punishment for the corruptors. This is reflected by the existence of special institutions in the eradication of corruption such as the establishment of the Corruption Eradication Commission (KPK) and the Corruption Court of Corruption. Therefore, the correctional Institution as part of Integrated Criminal Justice System beside Police, Attorney and Judicial Institution, also demanded that in conducting guidance to corruption

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prisoners must be in line with "spirit" of law enforcement of corruption perpetrated by law enforcement agency in the previous stage.

Law enforcement of "extraordinary crime" must be done by "extraordinary." This means that the law enforcement model against extraordinary crimes by all law enforcement agencies must be done remarkably as well. Therefore, the guidance of inmates who have committed extraordinary crimes including the Corruption Crime should be done extraordinarily as well, must be distinguished from convicts who commit ordinary crimes. Remembering Remission is basically reserved for ordinary prisoners. Therefore, it is reasonable if there is a policy that determines that for corruption inmates do not get remission, and if it gets a remission, of course, the requirements are not equated with the ordinary prisoners.

The guidance of inmates who incur major state losses or corruption prisoners of the "Kakap" class must be distinguished from "Teri" class corruption inmates who commit crimes more due to lack of "bribes" and "stupidity." As for the "Kakap" class, inmates commit crimes by "greed" and "aims to accumulate wealth" by using high-tech means. This is because the purpose of criminalization against perpetrators of Extraordinary Crimes cannot be equated with the purpose of criminalizing perpetrators of Ordinary Crimes. If the criminalization of the perpetrator of Ordinary Crimes is more oriented so that the perpetrator can return to live a good life in the community, but for the perpetrators of extraordinary crime the punishment is more oriented to restore the sense of justice of the community as a crime victim.

In this connection, according to Muladi and Barda Nawawi Arief, that should criminal law be used to combat socio-economic crimes<sup>9</sup>, the ultimate criminal purpose should be considered instead of rehabilitation and resocialization of convicts, but rather the moral effect and prevention of criminal sanctions. In this case, the offender has betrayed the greatest public trust, so the criminal should reflect the severity of the crime that the public denounces.<sup>10</sup> For that against the perpetrators of criminal acts of corruption should be more mental-spiritual coaching is dominant, in addition to the pattern of guidance on convicts in general.

The policy of tightening remission for corruption criminals is in line with the law of corruption eradication as contained in Law No. 31 on 1999 on the Eradication of Corruption to achieve a more effective objective to prevent and combat corruption, this sanctions in that law are heavier than the previous law. This law contains criminal provisions in the form of special

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<sup>9</sup> Socio-Economic Crime is a type of crime related to the economic activities of the society, including corruption.

<sup>10</sup> Muladi and Barda Nawawi Arief, *Bunga Rampai Hukum Pidana*, Bandung: Alumni, (1992), p. 5.

minimum criminal penalties, higher penalties, and the threat of capital punishment which is a criminal offense. Also, this Law also contains a prison sentence for the perpetrators of corruption that cannot pay additional crime in the form of state indemnity money.<sup>11</sup>

About the preceding, it is reasonable that a tightening policy of remission for convicted / corruption prisoners who have committed extraordinary crimes because of his actions has resulted in substantial financial losses for the state or society. The policy does not conflict with human rights principles because it is more oriented to meet the sense of community justice (human rights). However, the implementation of the policy creates a dilemma for the Prisoners in Correctional Institutions nowadays considering the guidance of prisoners through the Penal System mechanism based on the Correctional Law does not distinguish the treatment in the process of guidance of convicts either those who commit ordinary crimes or extraordinary. More specifically, the Correctional System is intended only for the guidance of convicts committing ordinary or conventional crimes.

Currently the Prisoners in the correctional Institutions experience a dilemmatic situation in the process of guidance of the prisoners because on the one hand in carrying out their functions must be based on correctional principles, on the other hand must distinguish the treatment of certain prisoners in this case "Corruption Prisoners" as extraordinary crimes based on the provisions of Government Regulation Number 99 on 2012 which deviates from the principles of the penal system adopted by the higher laws and regulations of Law No.12 on 1995.

The form of a dilemma of guidance on corruption inmates today is on the one hand, there is a repressive demand in the guidance of corruption prisoners, on the other hand when viewed from the idea of correctional, in essence, criminal "deprivation of independence" against a person is only "temporary" not for life.<sup>12</sup> In connection with that for the Indonesian state based on Pancasila, new ideas on the function of criminal punishment are no longer merely jurisdiction but also an attempt at the rehabilitation and social reintegration of the Correctional Prisoners who have given birth to a coaching system that since more than forty years ago is known and called a correctional system.<sup>13</sup>

Nowadays the criminal prosecution case becomes very complex as a result of efforts to pay more attention to the factors concerning human rights,

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<sup>11</sup> General Elucidation of Law No. 31 on 1999 of the Eradication of Corruption.

<sup>12</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bakti, (2002), p. 238.

<sup>13</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Bandung: Refika Aditama, (2013), p. 6.

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as well as to make the crime operational and functional. This requires a multidimensional approach that is fundamental to the impact of criminal prosecution, both on the impact of individual and social impacts. Such an approach leads to the necessity to choose an integrative theory of the purpose of punishment which may affect its function to overcome the damage caused by individual and social damages.<sup>14</sup>

Combined theories (integrative) based criminal on the principle of retaliation and the orderly principle of defense of public order, in other words, the two reasons that become the basis of the imposition of criminal. The combined theory is a combination of absolute theory and relativity theory. The combination of both theories teaches that the imposition of punishment is to maintain the rule of law in society and to improve the personality of the criminal.<sup>15</sup> This combined theory can be divided into two major classes, namely:

1. Combined theories of retaliation, but the retaliation must not exceed the limits of what is necessary and sufficient to maintain the order of society;
2. The combined theory that prioritizes the protection of public order, but the suffering over the penalty cannot be heavier than the acts committed by the convicted person.<sup>16</sup>

For that purpose there is an effort from the Ministry of Justice and Human Rights to revise the Government Regulation Number 99 of 1999, it is seen in some occasions Minister of Justice, and Human Rights Yosonna H. Laoly was objected to Government Regulation Number 12 of 1999. He called The regulation is contradictory to Law No. 12 on 1995 of Correctional.

The revision of Government Regulation Number 99 of 2012 on Terms and Procedures for the Implementation of Rights of Correctional Residents will have some consequences both positive and negative.<sup>17</sup>

1. Positive Consequences

- a. The conception of socialization, in this case, social reintegration is carried out by the appropriate process;
- b. The return of coaching authority for the Correctional Prisoners to the Ministry of Justice and Human Rights in this case especially in the Directorate General so that the guidance on the prisoner does not interfere with the other institution;

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<sup>14</sup> *Ibid.*, p. 27.

<sup>15</sup> Leden Marpaung, *Asas-Teori-Praktek Hukum Pidana*, Jakarta: Sinar Grafika, p. 107.

<sup>16</sup> Adami Chazawi, *Pelajaran Hukum Pidana I*, Jakarta: Raja Grafindo, (2010), p. 162.

<sup>17</sup> Record of meeting result in the event of Forum Group Discussion, the Improvement of Government Regulation (Peraturan Pemerintah) No. 99 of 2012 at the office of the Ministry of Justice and Human Rights of Republic of Indonesia Lampung dated. July 6, 2015 in Bandar Lampung.

- c. As a means to modify the behavior for the Correctional Citizens so that the Correctional Prisoners are motivated to always behave well during the coaching program at the correctional institution;
  - d. Eliminating discrimination in the granting of Right to correctional residents;
  - e. Minimizing human rights violations of correctional residents;
  - f. The existence of legal certainty in the granting of rights to the Prisoners of Correctional Institution;
  - g. Assist in realizing security and order in prison/detention;
  - h. Reduce the rate of over-capacity of shelter in prisons/detention;
  - i. State financial savings;
  - j. Coordination and cooperation between law enforcement remain intertwined;
  - k. The mechanism under the supervision of Law Enforcement Officials;
  - l. Reduce the potential of corruption about the handling of the requirements in the application of the right of the correctional residents;
  - m. The sense of community justice is maintained due to the provision of Remission, Assimilation, and Conditional Release if the respective prisoner has paid the fine and;
  - n. Reduce the occurrence of prisonization, stigmatization, and recidivism for correctional residents.<sup>18</sup>
2. Negative Consequences
- a. Negative reaction from the public that the Ministry of Law and Human Rights do not support the spirit of eradicating corruption (Pro-corruption);
  - b. Negative reaction from the community who think that the Ministry of Law and Human Rights are not sensitive or unresponsive to the eradication of corruption;
  - c. Negative reaction from the public that considers the quality degradation in the process of giving the Parole;
  - d. Negative reaction from the community that considers the decrease of cooperation among the law enforcement apparatus;
  - e. The existence of public perception that the revision of Government Regulation No. 99 on 2012 sponsored by Corruption Correctional Residents.<sup>19</sup>

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<sup>18</sup> The opinion of the Officials of the Ministry of Justice and Human Rights of the Republic of Indonesia Lampung in the event of Forum Group Discussion, the Improvement of Government Regulation (Peraturan Pemerintah) No. 99 of 2012 at the office of the Ministry of Justice and Human Rights of Republic of Indonesia Lampung dated. July 6, 2015 in Bandar Lampung.

The urgency of revision to Government Regulation No. 99 on 2012, especially about the requirement to get remission for corruptors, this is because in practice there is a case of corruption found with large state losses and nominal losses of small countries. The legal politics of corruption eradication with the nominal of small state losses received special treatment as reflected in Law No. 20 of 2001 on the Amendment to Law No. 31 on 1991 of the Eradication of Corruption.

Under the provisions of Article 12A Paragraph (1) of Law No. 20 on 2001 that the provisions concerning imprisonment and fine as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall not apply to criminal acts of corruption whose value is less than Rp 5.000.000,00 (five million rupiahs). General Elucidation of Law No. 20 of 2001 states that in this law also stipulated new provisions concerning maximum imprisonment and criminal penalty for criminal acts of corruption whose value is less than Rp 5.000.000,00 (five million rupiahs). This provision is intended to eliminate the sense of injustice for the perpetrators of corruption, in this case, the value is corrupt relatively small.

The existence of legal politics that distinguishes the treatment of corrupt criminal actors with small corrupted values based on Law No. 20 on 2001 can be used as a basis to distinguish the pattern of guidance on corruption class convicts 'Kakap' and 'Teri' classes in prisons. This is given the provisions of Article 12A Paragraph (1) of Law No.20 on 2001 aimed at every law enforcement officer in the Criminal Justice System of Corruption in which Penal Institution is one part, in addition to the Police, Prosecutors, Corruption Eradication Commission and the Court.

### **C. Conclusion**

Remission is basically a right of every prisoner who has successfully followed the guidance process in Penal Institution based on the correctional system. The existence of a policy of tightening Remission for corruption or corruption prisoners as regulated in Government Regulation Number 99 of 2012 is in line with the legal of corruption eradication adopted in Law No. 31 on 1999 of Eradication of Corruption, considering corruption as Extraordinary Crime must be eradicated with an exceptional criminal justice system as well.

The Correctional Institutions as part of the criminal justice system of corruption, it is reasonable to conduct guidance on corruption inmates is done in extraordinary way, so that the policy of remission of corruption inmates is done strictly with special requirements that are different from the policy of remission for prisoners in a general crime is an appropriate policy.

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<sup>19</sup> *Ibid.*

This is because the criminal act of corruption is an extraordinary crime so that the tightening of the terms and procedures for the remission is intended to fulfill the sense of social justice.

To overcome the existence of a dilemma of tightening remission for corruptors, it is necessary to revise the Government Regulation Number 99 of 2012 on Terms and Procedures for the Implementation of the Right of Citizens of Correctional Institution in the form of different requirements for corruption inmates who incur large and small nominal state losses. For the nominal corruption inmate is big then the special requirements to get remission should be added in the form of obligation to follow moral education about the Love of the Nation and the Homeland organized by special educational institutions as long as the concerned serve a period of punishment at his own expense. While small nominal corruption prisoners still follow the pattern of coaching like inmates in general.

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Indonesia Corruption Watch (ICW) also criticized the leeway for parole for prisoners of corruption cases. ICW researcher, Lalola Easter Kaban said the abolition of terms to justice collaborator (JC) not only had an impact on remission. But also the process of assimilation and

- parole against the inmates of corruption cases. This is indeed a kind of red carpet for corruptors, *Red Carpets For Corruptors* (Karpets Merah Untuk Koruptor), Radar Lampung Newspaper, on 14-8-2016.
- KPK Appreciation the Letter of 5 Professor to President for Rejecting Remission for Corruptor* (KPK Apresiasi Surat 5 Guru Besar ke Presiden Tolak Remisi Koruptor), <http://news.detik.com/berita/3291918/kpk-appreciation-letter-5-teacher-big-to-president-repelling-remission-corruptor>, accessed on 24 -09-2016.
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