



The Problematics of conditional release decisions in law enforcement for corruption crimes in Indonesia

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ARTICLE INFO

Keywords:

Corruption,
Criminal Act,
Parole.

Article history:

Received Dec 29, 2023;
Revised Jan 2, 2024;
Accepted Jan 8, 2024;
Online Jan 30, 2024.

ABSTRACT

The granting of conditional release decisions to prisoners with corruption cases who have fulfilled the conditions for release from the sentence period in Indonesia has become a controversial event that is considered by the public in general. The granting of parole can make it easier for prisoners to be free without having to serve the full legal period imposed by the judge. This can actually be very detrimental to the state in various sectors such as the economy, education, investment, industry, finance and others. Especially if the perpetrator of corruption is a state official who is authorized to maintain welfare and legal justice in the community. The status and position of a perpetrator will be of concern to many people, especially in granting conditional release in Indonesia. This research is a normative juridical research with a statutory approach and conceptual approach. From the results of the research it is obtained that in order to grant the rights of prisoners, namely conditional release decisions, especially for corruptors, it must be accompanied by supervision from all levels and accompanied by careful consideration so as not to injure the principles of justice, certainty and usefulness in society.

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1. Introduction

The eradication of corruption is continuously carried out by all institutional elements, including the executive, legislative, judiciary, and judiciary (Leasa, 2020). The crime of corruption is a form of dishonesty in a position that harms state finances in the state budget (APBN) for personal gain. Corruption is a crime that is growing very rapidly in a country, but can only be committed by people who have strong access to state power with the ruler (Riyady, 2018). The perpetrators are capable people with strategic positions. Therefore, corruption can harm the state both directly and indirectly, starting from a small nominal to a large nominal.

In Indonesia, the eradication of corruption has been carried out, but the public is often dissatisfied because the enforcement of the law is not in accordance with the expectations

of the community. Criminal law enforcement is essentially present to regulate people's lives in order to create public order. For this reason, the process of imposing severe criminal sanctions on the perpetrators should be carried out (Yustia & Palito, 2021).

Prisoners receive witnesses of punishment or sentenced to imprisonment according to the judge's decision which reads: "where anyone who unlawfully commits an act of enriching himself or another person or a corporation that may harm the state finances or the state economy, shall be sentenced to imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)". From the sound of the verdict, corruption convicts receive at least 20 years of imprisonment. However, there will be legal remedies in the form of parole. Parole is a conditional sentence that aims to help the convicted person to be free from punishment with conditional freedom (Nugraha dkk., 2021).

Parole also includes a guarantor who is a person responsible for the prisoner selected by the state (Rahmasari, 2020). The crime of corruption is categorized as an extraordinary crime, because it can harm the finances of the state, such as bribery, embezzlement, sale of office, fraudulent acts and gratuities (Darmadi, 2018). The granting of parole is indeed the right of every prisoner. However, the granting of parole must also pay attention to matters related to social, economic, political and cultural, which live in society. Parole is given to perpetrators who have been convicted with legal relief given to corruption convicts to cooperate in reducing the sentence period and a sense of justice for them (Ary Ardiansyah, 2021).

The role of judges here also cannot avoid the laws or norms and regulations that live in society (Sulistyo, 2019). When giving a judge's decision, the judge will consider the things that form the basis of a punishment, including conditional release decisions. Judges must also see and pay attention to several points of view such as social, economic, environmental and others. The punishment and process of conditional release must be in accordance with the actions of the perpetrator and make the perpetrator deterrent and change towards a better direction, as well as helping law enforcers realize security and peace in society (Abidin, 2015). All statutory regulations on substantive criminal law such as formal criminal law and its implementation can be seen as a unified system of punishment. The judge's decision makes the right step in the punishment of convicts to impose conditional punishment in order to avoid bad influence for corruption convicts. The form of application of criminal sanctions can be imprisonment with conditional punishment by considering the positive or negative impacts of corruption (Prismawan, 2022).

The implementation of parole can be carried out in a community institution with permission from the president through the ministry of law and human rights, with guidance and guidance that can be given to those who have committed a criminal offense. Conditional release decisions provide an opportunity for prisoners to restore their right to freedom. The function of punishment aims to maintain a balance between the individual and the interests of society in the direction of order and welfare together as well as nation and state. So that the granting of conditional release decisions is not abused for the provision of law enforcement to corruption convicts for good treatment during their detention to reduce the prison sentence that they have done to the detriment of many people and even the state. Therefore, the author is then interested in researching entitled "PROBLEMATICS OF CONDITIONAL FREE DECISIONS IN THE LEGAL ENFORCEMENT OF CORRUPTION CRIME IN INDONESIA".

Considering previous research that examines conditional release decisions, namely research by Dini Bursa in 2020 which examines the implementation of conditional release as an effort to foster prisoners in the Padang class IIA correctional institution (Bursa, 2020). Research by Sunarwan in 2023 which examines the supervision of the implementation of

justice-based conditional release decisions (Sunarwan, 2023). Research by Yohana Anggieta in 2021 related to the role of the prosecutor in supervising parole (Anggieta dkk., 2021). And research by Made Harun Pratiwi in 2023 which examines parole according to the regulations of the Minister of Law and Human Rights during the Covid-19 pandemic (Harun Pratiwi dkk., 2022).

In contrast to other previous research articles, this article has significant differences as well as advantages, namely discussing specifically the problematics of conditional release decisions in law enforcement against corruption in Indonesia. The gap analysis of this research lies in the emergence of problematic conditional release decisions in law enforcement, especially against current corruption crimes (*das sollen*), which should be accompanied by a solid legal substance, adequate legal structure to a good legal culture (*das sein*). Based on the background described above, the problems raised by the authors in this study are: 1). How is the regulation of conditional release decisions against perpetrators of corruption in Indonesia?; 2). How is the application of legal arrangements for conditional release decisions against perpetrators of corruption?. The expected implication of this research is that there is an improvement in the granting of conditional release in law enforcement, especially corruption crimes in Indonesia by paying attention to the three values of legal objectives, namely justice, certainty and usefulness. This research contributes to legal science, especially in solving the problems of granting conditional release decisions to prisoners with corruption crimes in Indonesia.

2. Method

This research uses normative legal research (doctrinal). The types of approaches used in this research are statutory approaches and conceptual approaches (Disemadi, 2022). The statutory approach is an approach that focuses on the provisions of the legislation used as reference material in this research to sharpen the study or research that will be answered with legal problems or legal issues that occur, namely Law Number 20 of 2001 on the amendment of Law Number 31 of 1999 concerning Eradication of Corruption. This law is the basis of the punishment regulations for someone who commits an act of corruption in Indonesia. Article 28 of the 1945 Constitution concerning the rights of every Indonesian citizen, Article 14 of Law Number 12 of 1995 concerning Corrections and Regulation of the Minister of Law and Human Rights Number 7 of 2022 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Ahead of Release and Conditional Leave.

Conceptual approach is an approach used to understand the theories and concepts that serve as the basis for this research. The data used in this research is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials obtained from literature studies (library research) which are then analyzed descriptively-qualitatively. The reasoning used is deduction reasoning which functions to solve specific problems (Tan, 2021).

3. Analysis and Results

3.1. Arrangement of Conditional Release Decision for Corruption Offenders in the Criminal Law Perspective

Corruption is an act that involves the abuse of power or position in a government or organization to obtain unlawful personal gain. Corrupt acts involve unethical and illegal practices, such as bribery, extortion, nepotism, misuse of public funds, or acts of abuse of trust in a particular position (Bunga dkk., 2019). Corruption is even one of the crimes that cannot be separated from the problems of the state, state officials or people who have an honorable position in society. Many countries have laws and regulations that regulate corruption and even impose strict penalties for corruption (Alhakim & Sopyonyono, 2019).

Criminal law is a punishment that regulates offenses and crimes against the public interest, which actions are punishable by sanctions or penalties (Zulfikrie, 2021). Laws are like rules for human behavior that are currently still valid and used in Indonesia as positive law and man-made products, some of which are even legal products of Dutch colonial heritage, for example, such as the Criminal Code (KUHP) which was adopted into national law which is still enforced today (Agustinus Pohan, Topo Santoso, 2020). Punishment is a suffering that is deliberately imposed on people who commit acts by fulfilling certain conditions. According to Prof. Moeljatno, criminal law is part of the law that applies in the state to provide a basis and rules for determining actions that can and cannot be done, accompanied by threats or sanctions in the form of certain punishments for anyone who violates it (Sari, 2020).

Every crime committed by the perpetrator and establishing him as a suspect must have a basis in the form of a decision by a judge. The judge's decision is the final process of a criminal case or other offense in a trial that has a strategic role to examine, decide and resolve disputes between members of society and society, between communities or government agencies (Sandro Unas, 2019). The court decision will determine the relationship between the winning and losing litigants. A court decision according to article 1 point 11 of the Criminal Procedure Code (KUHAP) is a judge's statement in open court delivered in the form of punishment and freedom from all legal charges in accordance with the law. The judge's freedom in its application must be limited by the values of justice, because justice is one of the objectives of law in addition to legal certainty and expediency (Adinda Anisa Putri Noor Oetari & Ade Mahmud, 2022). The judge's decision is the culmination of the criminal case and is expected to contain values of justice that are related to the mentality and morals of the judge (Mulkam, 2021).

During the development of prisoners, there are several forms given, one of which is parole (Suyanto, 2016). Conditional release is an action recognized in legal provisions that provide opportunities for convicted persons not to serve their full sentence. Article 15 of the Criminal Code states that if the convicted person has served two-thirds of the sentence or at least nine months, then conditional release can be granted (Hukum, n.d.). The purpose of parole is to develop the convicted person by providing an opportunity to improve themselves. Then article 15a paragraph 6 explains that convicts must fulfill the requirements if they are given conditional release during the probation period and violate the conditions of release then the conditional release can be revoked. The procedure for conditional release is carried out with a three-month probation period and if during the three-month probation period the convicted person commits a criminal offense, then the right to parole can be revoked and continue to carry out the sentence (Rahman, 2021).

Meanwhile, in corruption cases, a convicted person often receives leniency such as parole. The perpetrator is given leniency by the panel of judges of the court by cutting the sentence period and then only serving the remaining sentence and being free by fulfilling the elements that can release him, such as having to serve 2/3 of the sentence or 9 months of the law, behaving well during the detention period, and can cooperate with law enforcement according to the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning the terms and procedures for granting remission, assimilation, leave to visit family, parole, pre-release leave and conditional leave, Junklak Number 22 of 2022 on the fulfillment of conditional rights for prisoners and Law Number 22 of 2022 concerning corrections (Harum Pratiwi dkk., 2022). This is very good and positive because it can open up corruption cases that have not been revealed, if a perpetrator can find out about parole and can fulfill the elements of parole, the perpetrator does not need to be afraid to be punished because the perpetrator believes he can be free from punishment with the parole given by the state. This can also lead to many corruption cases occurring in the future because of the ease with which a corruptor can get out of his sentence (Firdaus, 2020).

For example, Prosecutor Pinangki was proven to have legally violated the law and committed the crime of corruption and was sentenced to imprisonment for 10 years. However, the panel of judges at the Central Jakarta District Court cut the sentence to 4 years with the judge's consideration that Prosecutor Pinangki was a mother who had to take care of a young child and other considerations alleviated Prosecutor Pinangki to cut her prison sentence. Prosecutor Pinangki was declared conditionally free because he had carried out 2/3 or for 9 months the shortest period of punishment, behaved well during his time as a prisoner, and had participated in the coaching program. In accordance with Article 82 concerning the conditions for granting parole for prisoners of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning the conditions and procedures for granting remission, assimilation, leave to visit family, parole, pre-release leave, and conditional leave. Which is indeed regulated by the state as a form of freedom rights for prisoners to be able to become good behavior and turn into a useful person for society (Helianny & Manurung, 2019).

The entire process and conditions of parole have been carried out with reference to regulations such as Article 15 and Article 16 of the Criminal Procedure Code (KUHP), Law No. 22 of 2022 concerning Corrections, Government Regulation No. 31 of 1999 concerning the guidance and guidance of WBP, Government Regulation No. 32 of 1999 concerning the terms and procedures for exercising the rights of WBP. 31 of 1999 concerning the guidance and mentoring of WBP, Government Regulation No. 32 of 1999 concerning the terms and procedures for exercising the rights of WBP. Whereas article 31 of the regulation of the minister of law and human rights Number 32 of 2020 contains that there are several prisoners who cannot be granted parole, namely leave before release and conditional leave which is not given to prisoners who commit criminal acts of narcotics, narcotics precursors, and psychotropic drugs, terrorism, corruption, crimes against state security, human rights crimes and other transnational organized crimes (Lasnita, 2023). The background of the granting of parole reflects the injustice in sanctioning, injuring the substance of the law which should have a deterrent effect, to a good legal culture.

3.2. The Implementation of Conditional Release for Corruption Crimes in Indonesia Has Not Reflected Justice

In Indonesia, conditional release decisions in corruption cases have been an ongoing debate. Although the state has made great efforts to fight corruption by imposing severe sanctions, there are problems in the application of conditional release decisions against perpetrators of criminal acts. There are several examples of conditional release decisions against perpetrators of corruption in Indonesia that are questionable to the point of undermining the sense of trust in society. For this reason, the question arises whether this decision truly reflects the principles of justice that should be upheld by the Indonesian justice system (Andryan & Kodya, 2020). One of the main criticisms of conditional release decisions in corruption cases is that they are often seen as unfair and sometimes defendants involved in massive corruption scandals are given relatively light sentences or even declared conditional release, while other criminals involved in smaller acts receive heavier sentences (Ariyanti, 2019). This creates inequality in the application of the law which makes public trust in justice not working properly. Laws that are directed as a tool for the progress and welfare of society based on the desire and awareness of each individual in society can run as aspired by the community itself, namely upholding a peace and order in life together. Because Indonesia is a state of law and every criminal offense committed by a person will be imposed a penalty regulated by the regulation itself (Fariaman laila, 2022).

While Permenkumham Number 7 of 2022 makes it easier for corruption convicts to be granted parole, Permenkumham Number 32 of 2020 concerning the terms and procedures for granting assimilation, parole, pre-release leave, and conditional leave for prisoners and children in the context of preventing and overcoming covid-19, regulates that corruption crimes cannot be granted parole. This application may allow corruption convicts to escape

their sentence, even though the criminal offenses committed are very detrimental to the state and even the people themselves. This is very unfair where these prisoners can fulfill the elements set by the regulations to be free and live with the community (Sulianto, 2019). Various efforts have been taken to prevent and eradicate corruption simultaneously, considering that corruption is known as an extraordinary crime. All efforts have been made to create justice in Indonesian society (Firdaus, 2020).

In order to realize legal certainty, expediency and justice, the government should review Law Number 19 of 1999 on the amendment to Law Number 20 of 2021 concerning Eradication of Corruption and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2020 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Ahead of Release, and Conditional Leave in Corruption cases in Indonesia. So that anyone who is a defendant in a corruption case can be threatened and sentenced properly without parole because they have behaved well during the 2/3 of the criminal period that must be passed with at least 9 months and have undergone assimilation for at least 1/2 of the remaining criminal period that must be served (Muharatulloh, 2023). Justice is an expectation in law enforcement that is subjective, individualistic and does not generalize. Law enforcement should not focus on the value of justice alone, but must look at the value of benefit and legal certainty, so that the law can run properly (Hasaziduhu Moho, 2019).

Pinangki prosecutor case based on the defendant's decision Decision Number 10/PID.SUS-TPK/2021/PT DKI the defendant was legally and convincingly proven guilty of committing the crime of corruption as charged in the first indictment - Subdidiar, which is punishable in Article 11 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 said imprisonment of 1 year and a maximum of 5 years and a maximum fine of 250,000. 000 (two hundred and fifty million rupiah) for a public servant or state administrator who receives a gift or promise when it is known or reasonably suspected that the gift or promise was given because of the power or authority related to his/her position and money laundering as charged in the second indictment and conspiracy to commit a criminal act of corruption as charged in the third indictment - Subsidiary which says Every person who gives a gift or promise to a public servant in view of the power or authority attached to his/her position or position, or by the giver of the gift or promise is considered to be attached to the position or position, shall be punished with imprisonment of up to 3 (three) years and or a maximum fine of 150. 000,000.00 (one hundred and fifty million rupiah). So that the results of the appeal level decision in the Pinangki prosecutor case judged that the Pinangki prosecutor was found guilty by imposing a sentence of 4 years and a fine of 600,000,000 (six hundred million rupiah) with the provision that if the fine is not paid it is replaced by imprisonment for 6 (six) months, but the Pinangki prosecutor instead received remission with parole (Iswardhana, 2023).

While the former governor of Jambi province on behalf of Zumi Zola Zulkifli in accordance with the high court verdict number 72/Pid.Sus-TPK/2018/PN.Jkt.Pst has been legally proven to have committed a criminal act of corruption with the first indictment and the second indictment by imposing a prison sentence of 6 years and a grudge of 500,000,000 (five hundred million rupiah), but the former governor of Jambi filed a review to the Supreme Court with verdict number 339 PK/Pid.Sus/2022 then the Supreme Court judge still rejected the review of the former governor of Jambi. But the former governor of Jambi instead received parole in 2022 by being in prison for approximately 4 years from his legal period and has fulfilled the elements according to the law. This injustice makes the corruptors free, whereas the law itself must be able to provide fair certainty in society in order to create prosperity for all (Mbeo, 2023).

While the Pinangki Prosecutor as a law enforcement officer or a prosecutor should also know something about the rules or laws governing parole, therefore the Pinangki

prosecutor can behave well and fulfill the elements or rights as a defendant in fulfilling parole in accordance with applicable regulations. And the former governor of Jambi province alias Zumi Zola also did not reflect the figure of a state official who gave bribes to his staff to smooth out his corrupt actions. This could potentially make mistakes in future corruption crimes, where corruption convicts could have committed and fulfilled the elements or conditions in obtaining conditional release by behaving well and being cooperative in the trial process which made the legal process run smoothly and become light, while state losses could not be eliminated from the actions taken by the corruption convict (Putra, 2022). This is a bitter fact that there are still injustices, especially in sanctions, until the weak legal substance, inadequate legal structure and poor legal culture.

4. Conclusion

The application of law can move towards a fairer and more effective justice system in combating corruption cases in Indonesia, so that conditional release decisions will truly reflect true justice in people's lives. In considering conditional release decisions, especially against corruptors, a solid legal substance, adequate legal structure and a good legal culture are needed. The existence of various provisions which are then made by mutual agreement to strengthen integration and togetherness in eradicating corruption, in turn, will have a positive impact on optimizing corruption eradication in Indonesia. In addition, what is no less important is the commitment of law enforcers in carrying out law enforcement firmly, consistently, and integrated in order to be able to produce law enforcement that is just, provides legal certainty, and benefits the community by optimizing an eradication of corruption in addressing corrupt behavior in Indonesia, and in the success of eradicating corruption has a good impact on Indonesian citizens, because corruption shows an act that is not justified and damages finances and the state. Corruption also poses a threat to stability and security that can undermine democratic institutions and values and justice in sustainable development. This research contributes to legal science, especially in solving the problems of granting conditional release decisions to prisoners with corruption crimes in Indonesia. The limitation of this research is that it is only within the scope of several viral verdicts on social media and suggestions that can be made by future research can analyze the problems of national and international acquittals using comparative legal methods.

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