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Paradigm for Conditional Liberation Prisoners in Perspective Civil Rights

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Abstract
The existence of a tightening of the rules after the issuance of Government Regulation No. 99 of 2012 on the Terms and Procedures for the Implementation of Rights of Correctional Residents has resulted in differences in the requirements and treatment in the granting of parole relief for prisoners. The legal issues presented in this paper include what makes the difference in the granting of parole for prisoners under Regulation 99 of 2012 and how to apply the rights of prisoners, from a human rights perspective. This study is a normative legal research and law empirical study that examines the legal norms and empirically examines paradigms of parole for prisoners. The approach used is the approach of legislation, conceptual approach and sociological approach. The technique of collecting legal materials is done through literature study and Conclusions drawn deductively. The results of this study conclude that there are indeed differences in the granting of parole for prisoners, both in terms of the terms and implementation. Suggestion that the Government Regulation No. Immediately 99 of 2012 is revised so that there is no difference in the treatment of prisoners Because it is clear that in Law No. 12 of 1995 on Corrections stated that there should be no difference in the treatment of prisoners.
Keywords: Paradigm, Parole, Prisoners

1. Introduction

Law enforcement through the criminal justice system in Indonesia, still need to reform the identity. Law enforcement contained in the Criminal Procedure Code which upholds human dignity was not fully implemented by our law enforcement officers. Still the difference in treatment between justice seekers with each other because of differences in the position of social, economic and political inherent in the person. Indonesian state as state law does not lag in formulating human rights into its legislation, which it can be seen in the preamble, the general rule and his explanations especially regarding the requirement that officers in the law at the same time upholding human rights. Penitentiary as part of the Criminal Justice System in Indonesia has an important role in the realization of the ultimate goal of the Criminal Justice System that is rehabilitation and reintegration of offenders. Along with the development of legal problems, many problems occurred in prisons, a small sample of what often happens is the fight that led to the uprising caused less viable facilities and over capacity in the prisons. An example is the incident that occurred in Rutan beehive Humpback Pekanbaru Riau, where one of the main causes are over capacity. Rutan capacity that should only be able to accommodate 335 people inhabited by 1,870 prisoners and detainees by the number of security guards were only 5 people in one team. A number of very irrational and very possible occurrence of various types of violations and irregularities by officials and inmates themselves. Viewed from the side the obvious fulfillment of human rights of prisoners and detainees rights will not be accommodated in these conditions. Of residents amounted to 1,870 people, as many as 448 people to flee. This incident is very serious and needs special attention. On the other hand, the occurrence of over-capacity can not be separated well from integration programs, especially the Parole program that could not run optimally as a result of the enactment of Government Regulation No. 99 of 2012.

Along with the enactment of Government Regulation No. 99 of 2012 is very clear there is a difference in the granting of exemption conditional between general and specific inmate. In terms of special requirements apply only to inmates must complete additional requirements of justice include colaborator, already paid pay fines and restitution and is already implementing assimilation. Government Regulation No. 99 Year 2012 is teleological and grammatical turns used only to "extend the penalty period" convict corruption, terrorism and drugs not for individual deterrent effect. Due to the stringent requirements of the regulation adds unnecessary suffering and beyond the limits of universally recognized human in the treatment of offenders. [1]

In the United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955) which has been ratified and embodied in Law Number 12 Year 1995 on Penal (Penal Law) [2]And based on Law No. 12 Year 1995 on Penal stated that "for the Indonesian state based on Pancasila, new ideas about the function of punishment which is no longer simply the imprisonment but also a rehabilitation and social reintegration of prisoners have given birth to a function of punishment that decades ago known and called the Correctional System ".[3]

[1] Right of Prisoners=Human Right (*Hak Napi=HAM*). https://nasional.sindonews.com/read/762024/18/hak-napi-ham-1374037507. Accessed on November 8, 2017
[2] Ibid.
[3] General Elucidation of Law Number 12 Year 1995 regarding Corrections (*Penjelasan Umum atas Undang-undang Nomor 12 Tahun 1995*

Correctional in this case in line with the philosophy of social reintegration which assumes crime is the conflict between the convict with the community, so the sentencing aims to restore or reunite convict conflict with the community without violating their basic rights. Philosophically, social reintegration embraced by the penal system emphasizes the aspect of return inmates to society. It is as set forth in Article 3 of Law No. 12 Year 1995 on Penal who "serves the correctional system to prepare prisoners to be able to integrate in a healthy society, so that it can play a role again as a member of a free society and responsible".[1]

In Government Regulation No. 99 of 2012 states that the crime of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security and human rights violations are severe, as well as transnational crime other organized an extraordinary crime as causing substantial losses to state or society or heavy casualties or causing panic, anxiety, or fear outstanding to the public.[2]

Conflict between the Government Regulation No. 99 of 2012 by Law No. 12 of 1995 on the Penal because the substance is a new norm that is contrary to the philosophy, objectives and mission of Penal Law itself. If desired, there are restrictions, not justified contrary to Article 28 J 1945 which confirms that the limitation of rights can only be done by law and may not be with the regulations under[3]it.

In addition to differences in the treatment and care of their rights as prisoners special criminal cases there are also differences in the granting of parole. Before the prisoners were undergoing parole then first he must undergo a period of assimilation with ½ of parole that will be undertaken with prior approval and assimilation decree of the Minister of Justice and Human Rights. Having finished running the assimilation of inmates before the special criminal offense can undergo parole.

Meaning here is clear there was a difference of treatment and care of prisoners and it is certainly no longer in line with Law No. 12 of 1995 concerning Corrections. "Further when linked with social justice as a human right, then justice must be linked with the social relations. Social justice can be interpreted as

1. Restoring the rights lost to the beneficiary
2. Crackdown keaniayaan, fear and rape and entrepreneurs
3. Merealisaskan equation for the law among individuals, entrepreneurs and posh people who got the unnatural.[4]

"From the description above , it can be formulated some problems, namely: What causes the difference in granting parole for inmates under Regulation 99 of 2012 and how the implementation efforts of prisoners' rights in terms of a human rights perspective?

2. Methods

In this study the authors used two methods of research that is normative and empirical jurisdiction to take the material and legal data necessary primary and secondary. In addition, materials and data that is analyzed by qualitative analysis method and the method of deductive approach. Data collected by collecting primary legal materials, secondary and tertiary.

The reason the author uses normative juridical research as it aims to examine and analyze the legal basis for granting parole for inmates to test whether the postulates normative that there may or may not be used to solve a specific legal issue as legal research clinical,[5] and also using empirical juridical as to identify how the implementation of the granting of parole for inmates under Government Regulation No. 99 year 2012. the objectives to be achieved in this study are:

a. to identify and analyze what the cause of the difference in granting parole for inmates under Regulation 99 in 2012.
b. to find out and analyze how the implementation efforts of prisoners' rights in terms of a human rights perspective.

In order to know more deeply, the author intends to conduct a study on how the level of technical and operational units of Corrections to implement these rules in an effort to meet the prisoners' rights terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security and human rights crimes that weight, as well as transnational organized crime more in accordance with the principles of correctional itself with the title "the paradigm of the parole for inmates in the Perspective of Civil Rights."

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tentang Pemasyarakatan)

[1] Article 3 of Law Number 12 Year 1995 on Corrections (*Pasal 3 Undang-undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan)*

[2] General Elucidation of Government Regulation No. 99/2012 concerning the second amendment to Government Regulation Number 32 Year 1999 Concerning the requirements and procedures for the implementation of the right of the prisoners of the penitentiary (*Penjelasan Umum atas Peraturan Pemerintah Nomor 99 Tahun 2012 tentang perubahan kedua atas Peraturan Pemerintah Nomor 32 Tahun 1999 Tentang syarat dan tata cara pelaksanaan hak warga binaan pemasyarakatan)*

[3] Ibid..

[4] Maksum Hadi Putra. 2016. Criminal sanctions against children committing criminal proceedings, Law and Justice Studies (*Sanksi Pidana terhadap anak yang melakukan pengulangan tindak pidana,Kajian Hukum dan Keadilan)* IUS vol 4 no 2. p. 51.

[5] Amirudddin & Zainal Asikin. 2013. Introduction to legal research methods (*Pengantar Metode Penelitian hukum).* PT. Raja Grafindo Persada. Jakarta. p. 126.

3. Discussion

3.1. Terms Granting parole for prisoners of general and specialized

Parole given to prisoners (client correctional) must formerly serving two thirds of his sentence, which is at least nine months. If convicted criminal must undergo a criminal in a row then it is regarded as a criminal act (Article 15 (1) of the Criminal Code).

Parole become one of the alternative measures to tackle overcapacity in prisons / detention. Data as of June 2017 noted that the number of prisoners in Indonesia as many as 153 312 people. The capacity that can be accommodated only 122 114 inmates. The overall mean prison overcrowding in Indonesia has reached 84 percent. Figures are more severe in Class I Cipinang Prison. As of June 2017, Cipinang filled by 2,926 prisoners and detainees, although its capacity is only for 880 inmates.[1]

Parole can be interpreted as the final part of the criminal who did not run in the prisons. Parole can not be given to those who meted life imprisonment. Unless the life imprisonment with "pardon" was changed to imprisonment for a while, and then do pemeberian beryarat liberation. Granting parole is also unlikely given they are subject to imprisonment. During the trial period that prisoners (client) "forced" to fulfill the terms of a particular life. The process of granting parole is given also to the general requirement is that inmates (client) that parole would not commit a criminal act and any other act that is not good. It also may be added to the special requirements of the conduct of inmates (clients), provided that does not reduce the freedom of religion and freedom of politics, usually special conditions was held for the crime committed is a crime, special, or because the client correctional are foreign nationals.[2]

Each client receives permission penitentiary parole in certain stages of receiving a probationary period, as well as the conditions that must be met during the trial period. Probation or parole period of running the program, it is equal to the remaining length of time that has not endured imprisonment plus one year. If the inmate is in custody then it does not include a trial period (Article 15 (2), (3) of the Criminal Code).

For parole for prisoners who have met two-thirds of the time the sentence that at least nine (9) months as described in Article 15 of the Criminal Code, before the application is submitted to the Regional Office of the Ministry of Justice and Human Rights of the Republic of Indonesia must first meet the requirements as specified in Decree of the Minister of Justice of the Republic of Indonesia Number. M.01.04.10 1999 concerning Assimilation, leave nearing release and parole, which was amended by Regulation No. Meneteri. M2. PK. 04-10 of 2007 on the terms and Procedures for Assimilation, Parole, Cuti Cuti Towards Free and Conditional and renewed again by Minister of Law and Human Rights No. 21 Year 2013 on Terms and Procedures for Granting remission, Assimilation, Cuti Visiting Family, Parole, Cuti Towards Free, And leave is conditional, as follows:

1) Terms Substantive (Article 49 paragraph (1) of the Regulation of the Minister of Law and Human Rights No. 21 2013)
   a. has been undergoing a period of a minimum of 2/3 (two thirds), provided that 2/3 (two thirds) of the criminal past of at least 9 (nine) months;
   b. Good behavior during his criminal past at least 9 (nine) months calculated prior to the date of 2/3 (two thirds) criminal past;
   c. Have followed the formation program with a good, diligent, and passionate; and the
   d. Community can receive Prisoners program development activities.
2) Terms Administrative / Documents (Article 50 paragraph (1) of the Regulation of the Minister of Law and Human Rights No. 21 of 2013)
   a. Copy quote Judge's decision and the minutes of the execution of court decisions;
   b. Fostering progress report made by trustee correctional or assessment of risk and needs assessment conducted by the assessor;
   c. Social research report (Litmas) made by community mentors were noted by Head of the Penitentiary (BAPAS);
   d. The notification to the District Attorney about the plan of the Parole of Prisoners and Correctional Learners concerned;
   e. A copy of the register F of the head of prisons;
   f. Salina change of Chief prisons;
   g. Affidavit of inmates or correctional protege would not act against the law;
   h. Letter of guarantee ability of the families who are known by the village chief or headman other names

[1] Overcrowding that haunts prisons in Indonesia (*Overcrowding yang menghantui Lapas di Indonesia). http://nasional.kompas.*com*/read/2017/07/07/12130041/.overcrowding.yang.menghantui.lapas.di.indonesia*. Accessed on November 08, 2017.

[2] Silaen Franklin Ruba. 2015. Conditional Exemption and Rate of Offenses committed by the Correctional Client *(Pembebasan Bersyarat dan Tingkat Pelanggaran yang dilakukan oleh Klien Pemasyarakatan (Riset Bapas Klas I Medan),* University of Northern Sumatra. p. 29 *http://repository.usu.ac.id/bitstream/handle/123456789/49078/Chapter%20II.pdf;jsessionid=AD12F1CCC79C660EF34D0BDAC98BC876?sequence=3*. Accessed on November 8, 2017

stating that:

1) inmate or correctional protege would not escape and / or do not do anything against the law; and
2) Assist in guiding and supervising inmates or correctional protege during the conditional release program.

In addition to the provisions governing the requirements for granting parole to the above, in Article 16 of the Criminal Code also provides for the authorities to establish the administration in the revocation of parole. The provisions in Article 16 of the Criminal Code are as follows:

Article 16

1) provision of parole set by the Minister of Justice on the proposal or after receiving word from the management of the prison where the convicted person, and after receiving information from the prosecution point of origin of the convict. Before determining, first asked the opinion of the Council should Reklasering Center, which shall be guided by the Ministry of Justice (now the Ministry of Justice).
2) Conditions revoke parole, as well as matters referred to in article 15a paragraph 5, set by the Ministry of Justice (now the Ministry of Justice) on the proposal or after receiving word from prosecutors convict origin. Before deciding, should ask to the opinion of the Board Reklasering Center.
3) During the liberation still may be revoked, at the request of the prosecutor where he is, people who dilapaskan conditional may be detained in order to maintain public order, if there is an allegation that reason that that person during the probation period has been doing things that violate the terms of the letter detachment. Prosecutors should immediately notify the detention to the Ministry of Justice (now the Ministry of Justice).
4) A maximum detention period of sixty days. If detention followed by a temporary cessation or revocation of parole, then that person is deemed to continue to undergo criminal from detention period.

Parole can only be granted to prisoners sentenced to imprisonment while, not confinement. When giving parole, determined also a trial period, and set out the conditions that must be met during the probationary period. Determination of the parole granted by the Ministry of Justice when inmates or correctional clients have undergone a criminal past over the terms of article 15 of the Criminal Code. The length of a sentence in question is not including the length of provisional detention. In the sense that the length of detention while not counted in determining the terms of 2/3 (two thirds) or 9 (nine) months, although the verdict is always determined that the sentence imposed was cut by a period of temporary custody.[1]

R. Susilo gives the following example: A[2]

1) person who was sentenced to nine months in prison, although it has undergone a 2/3 (two thirds) sentence (six months), can not be released on parole, and therefore not meet the minimum requirement of 9 months.
2) The man who was sentenced to 9 years in prison, if it has served for 6 years, may be granted parole, if well behaved. If the instance after 1 year were released, then violated the agreement or the terms that have been determined, it has to undergo more remaining term of 3 years, so the time he was in freedom for 1 year was not counted as a sentence.
3) The trial period is determined one year longer than the rest of the sentence has not been served, so if someone was convicted nine years in prison, and he has already served 2/3 (two thirds) is 6-year prison sentence, so in this case a longer trial period is (9 - 6) + 1 = 4 Year.

Article 15 (a) of the Criminal Code determines that the parole granted to the general requirement that the convicted person will not commit criminal acts and other acts that are not good. Moreover, it also may be added to the specific terms of the conduct of the convicted person, if only not reduce religious freedom and political independence. In order for these conditions are met, can be held supervision or special guardianship solely should aim at providing assistance to the convict.

During the trial period, the terms can be altered or deleted, or may be held at the specific requirements of the new, so too may be held under special supervision. Special supervision it can be handed over to other persons or parties who have influence around correctional clients. Further determined that the person who gets parole given a letter containing the conditions that must be fulfilled.

Delegation of the terms and procedures for the implementation of the prisoners' rights under Article 14, paragraph 2, which states that "the provisions concerning the terms and procedures for the implementation of the rights of prisoners referred to in paragraph (1) shall be further regulated by Government Regulation." Cite by the

[1] Silaen Franklin Ruba. 2015. Conditional Exemption and Rate of Offenses committed by the Correctional Client *(Pembebasan Bersyarat dan Tingkat Pelanggaran yang dilakukan oleh Klien Pemasyarakatan (Riset Bapas Klas I Medan),* University of Northern Sumatra. p. 29 *http://repository.usu.ac.id/bitstream/handle/123456789/49078/Chapter%20II.pdf;jsessionid=AD12F1CCC79C660EF34D0BDAC98BC876?sequence=3.* Accessed on November 8, 2017

[2] R. Soesilo. 1992. The Criminal Code (KUHP) as well as his comments are complete chapter by chapter. *(Kitab Undang-undang Hukum Pidana (KUHP) serta komentar-komentarnya lengkap pasal demi pasa).* Bogor. Politea. p. 47.

government as an excuse that the prisoners' rights tightening regulation of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security, human rights violations are severe, as well as other organized transnational crimes as stated in Government Regulation No. 99 Year 2012 is the legal policy. But on the other hand, as the wording of Article 5 of Law No. 12 of 1995 on the Penal stated that the correctional system is implemented based on the principle:

a. Shelter;
b. Equality of treatment and care;
c. Education;
d. Mentoring;
e. Respect for human dignity;
f. Loss of independence is the only one suffering; and
g. Secure rights to keep in touch with family and certain people.

In Article 5 paragraph b of Law Number 12 Year 1995 on Penal above clearly stated that the distinctions in the coaching process is not allowed, though prisoners' rights as stated in Article 14 in the process of fulfillment there is a requirement, it can be said that the settings are not allowed to do a distinction which only applies to certain cases only (special crimes), therefore timbulah assumption that the tightening of the terms stipulated in Government Regulation No. 99 Year 2012 could be regarded as a punishment of prisoners stipulated in the Government Regulation. According Yasona Laoly the Ministry of Justice of the Republic of Indonesia period 2014-2019 "as part of the criminal justice system, the Directorate General of Corrections has a slightly different philosophy to other law enforcement agencies. Directorate General of Corrections looked at sentencing rather than incarceration but to provide guidance inmates in order to later be able to return to society as a better human being.[1]

"Healso explained that punishment is in the hands of judges, while the Directorate General of Corrections in charge of fostering the prisoners, so if you want to reduce the rights of prisoners, reduction of the rights set forth in the judge's decision.[2]

The judges' verdict is of significant importance, especially for those seeking justice (justitiabelen) and for society in general. For those seeking justice, the judge's decision is the end of the process of seeking justice in the case that it faces. For the general public, the judge's decision may be referred by another magistrate (jurisprudence) and become part of the applicable penalty system itself.[3]

The Laoly Yasona statement also suitstatement **John Griffiththat the** protection of the rights of suspects to determine evidence of the crimes and mistakes someone has to go through a trial.[4]

Meanwhile, according to **Thurmond Arnoldtenor** justice in society should focus on the trial and the effectiveness of law enforcement in the courts become a major concern.[5]

Humans (in context with the approach of the religion of Islam) is the most perfect creature created by God Almighty with all the knowledge that God has given mankind obtain the highest position in comparison with other creatures. Human rights are rights that must be protected and upheld in the habitable world.[6]

Government Regulation No. 99 Year 2012 on the Terms and Procedures for the Implementation of the Right People Patronage Correctional governing the rights of prisoners for special crimes such as terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, human trafficking, genocide, and transnational organized crime more will have an impact on the higher charge capacity over prisons. One of the special crimes related to the government regulation that narcotic drugs and psychotropic substances. Prisons in Indonesia is dominated narcotics cases, and since the enactment of the Law on Narcotics latest Act No. 35 of 2009, in the dominance of Article 111 for narcotics and Article 112 for substances with punishment average of 4 years and the average fine at least 800 million rupiah. [7]

Based on Government Regulation No. 99 Year 2012, inmates can obtain the remission of narcotics cases if:

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[1] Together with the authority to revoke the right of remission and parole (*Utak-atik kewenangan pencabutan hak remisi dan pb)*, *http://www.hukumonline.com.* Accessed on November 6, 2017.

[2] *Loc.cit*

[3] Moh. Eka Kartika. 2016. justice: the formation of the law by judges (*hukum yang berkeadilan : pembentukan hukum oleh hakim*). Jornal IUS, Vol IV No. 3 December 2016. p. 384

[4] Muhadar, Edi Abdullah dan Husni Thamrin. 2009. Witness & Victim Protection in the Criminal Justice System *(Perlindungan Saksi & Korban Dalam Sistem Peradilan Pidana)*. Putra Media Nusantara. Surabaya. p. 249.

[5] Lilik Mulyadi, Toward a Contemporary Criminal Justice System Without Minutes of Examination (ME) and Minutes of Meeting (MM) (*menuju Sistem Peradilan Pidana Kontemporer Tanpa Berita Acara Pemeriksaan (BAP) dan Berita Acara Sidang (BAS))*. http://pn-kepanjen.go.id/index.php?option=com_content&task=view&id=169, Accessed on Februari 05, 2016.

[6] Zahratul Ain Taufik. 2017. Settlement of cases of serious violations through the pattern of reconciliation after the Constitutional Court's decision (*Penyelesaian kasus pelanggaran ham berat melalui pola rekonsiliasi pasca putusan MK 2006*). Journal IUS, vol 5 no. 2 2017. p.204.

[7] Hsu, PP No.99/2012 Will Make Rutan and Mutually Overload (PP No.99/2012 Akan Membuat Rutan dan Lapas Semakin Overload). https://www.kompasiana.com/su.he/pp-no-99-2012-akan-membuat-rutan-dan-lapas-semakin-overload_552e33756ea8343d1f8b456d , Accessed on November 18, 2017.

willing to assist law enforcement to uncover a drug case; convicted drug minimum sentence of 5 years can get a remission if paid the fines. If there is little or no drug cases prisoners unable to pay fines, has been ascertained that the inmates will run additional penalties for non-payment of fines. By not paying the fine, the convict criminal drug cases over 5 years will not get remission.

Minister of Justice and Human Rights of the Republic of Indonesia Yasonna H. Laoly assess the emergence of Government Regulation No. 99 Year 2012 has been shown to trigger conflicts in prisons. Therefore, the rule is far leeway prisoners to get remission and parole. Yasonna convey, "government regulation is made without in-depth study by experts in constitutional law and without involving the criminologist. Publication of the rules had been violated. I checked, not procedure legislation, very fast, does not make the Director General of Corrections. If government regulation is revised, Yasonna want the rule of remission for inmates drugs, corruption and terrorism re-use of Government Regulation No. 32 of 1999.[1]

"Withthe tightening of rules in granting remission and parole makes occupants of prisons has not diminished. In fact, most prisons already exceeded the capacity and impact even frequent riots. Heavy or absence of a convicted punishment depends on the judge's decision and not at the stage of development at the Ministry of Justice and Human Rights of the Republic of Indonesia. Remission and parole, the right of every prisoner who had already qualified and should be given. Regarding the completeness of the requirement in the form of Justice Collaborator (JC), it was at the time of judgment and punishment is the authority of the court, while the Ministry of Justice and Human Rights of the Republic of Indonesia is not a place of punishment but a place coaching inmates.

In sentencing in Indonesian politics has clearly stated that the punishment / punishment is the jurisdiction of the police, prosecutors, and judges in their hands criminal punishment prescribed process, mild or severe depending on their authority. At the time of entry into treatment / guidance that the authority of the Ministry of Justice and Human Rights of the Republic of Indonesia cq.Dirjenpas, meaning inmates coaching business has been included in the authority of the Ministry of Justice and Human Rights of the Republic of Indonesia, including the affairs of remission, parole, conditional leave, leave nearing release, assimilation etc. In this case the Government Regulation No. 99 of 2012 does not comply with this order because it raises a variety of issues including:

1. From the hierarchy of legislation, Regulation No. 99/2012 contrary to the Penal Law in 1995 because the substance is a new norm that is contrary to the philosophy, objectives and mission 1995 Penal Law itself;
2. Conditions *justice collaborator* in Government Regulation No. 99/2012 is a mistaken policy and not relevant to the future development of inmates for justice collaborator requirement should part of the investigation strategy aimed dismantle criminal organizations with compensation for leniency or exemption from prosecution;
3. Government policy Regulation No. 99/2012 is the executive authority which has restricted the rights of inmates who should have the legislative authority to amend the Act unless the Correctional first;
4. The apparent contradiction in a legislation, especially against legislation that higher is null and void and the implication is a violation of their social, economic, political rights of inmates so that these regulations null and void.[2]

In Article 43A Paragraph (2) Regulation No. 99 of 2012 states that inmates who had been convicted of the crime of narcotics and precursor drugs, parole provisions shall only apply to prisoners shall be imprisoned for at least five years. Parole granted by the Minister of Human Rights Law draft after consideration by the Director General of Corrections, taking into account the interests of security, public order, and sense of justice.

Considerations for parole must be accompanied by a written recommendation from: the Police, BNPT, and / or the Attorney General's Office in the case of prisoners had been convicted of criminal acts of terrorism, crimes against humanity, human rights violations are severe, and / or other organized transnational crime; Police, National Narcotics Agency (BNN), and / or the Attorney General's Office in the case of inmate committed the crime of drug; Police, Attorney General, and / or the Corruption Eradication Commission (KPK) in inmates had been convicted of corruption. Recommendation referred to be submitted in writing not later than 12 working days from receipt of the request recommendations from the Director General of Corrections, as stated in Article 43B paragraph (4) of the Government Regulation.

Government Regulation No. 99 of 2012 which regulates the tightening remissions for convicted corruption, drugs and terrorism that violates the hierarchy of legislation? Article 34 A paragraph (1) letter (a) and (b), Article 36 paragraph (2) letter (c), Article 43 paragraph (1) letter (a) (b) (c) of Regulation No. 99 The year 2012 is considered contrary to Article 5 of Law No. 14 of 1995 on the Penal prohibit discriminatory treatment and care of prisoners. And also contrary to Chapter XA 1945, about the constitutional rights of every citizen, including suspects, defendants and prisoners where there is no discrimination in the treatment

[1] Revision of PP 99 of 2012 (*Revisi PP 99 tahun 2012*). *http://www.pemasyarakatan.com-.* Accessed on Maret 20, 2016.
[2] Right of Prisoners=Human Right (*Hak Napi=HAM*). *https://nasional.sindonews.com/read/762024/18/hak-napi-ham-1374037507*. Accessed on November 8, 2017

Of the corner of the hierarchy of legislation, PP 99 In 2012, Contrary to the Law No. 14 Year 1995 on Penal Because The substance is a new norm that is Contrary to the philosophy, objectives and mission of the 1995 Penal Law itself. [1] If any desired no restrictions, not justified Contrary to Article 28 J 1945 the which confirms that the limitation of rights can only be done by law and may not be with the regulations under it. If there are restrictions on the rights as set out in Regulation 99 of 2012 that should be based on the provisions of Law or Court decision and should not be based on the provisions under the Act or the only directive solely in the form of regulation (PP) or a ministerial regulation or the rules of the Supreme Court (Perma). This has been stipulated in the 1945 Constitution (Article 28 A) and Law No. 12 Year 2011 on the Establishment Regulations, as well as according to the laws of the doctrine.

Penal Law 1995 was a *lex* of purpose of punishment (Article 10 of the Criminal Code) in conjunction with Article 103 of the Criminal Code so that it can not be defined settings that are "lex" again with the laws that are lex. Government policy PP 99 The year 2012 is the executive authority which has restricted the rights of inmates who should be the legislative authority except to amend Penal Law first. The apparent contradiction in a legislation, especially against legislation that higher is null and void and the implication is a violation of their social, economic, political rights of inmates.

Correctional Law itself is the embodiment and the ratification of the United Nations Congress on the Prevention of Crime and the Treatment of offenders (1955). The Convention Act has been no implementation except for the Prohibition of Trafficking in Persons Protocol so that the provisions regarding *the terms justice collaborator* (JC) in PP 99 In 2012 specifically for inmates corruption and for terrorists and drug-using inmates too early and there is no legal basis the regulation. In addition, the provisions of the UN Convention mentioned above always refers to the principle of national laws and the Constitution of the Parties, while the principle of legality including general principles of national criminal law for a long time.

The process of granting parole Inmates Special Crime.

Regarding procedure, better known by the nomination procedure of parole, the Criminal Code does not fully explain. This is explained further in the Minister of Law and Human Rights No. 21 In 2013, the Article 55 up to 57. The procedure of granting parole implemented through correctional information system. The information system is an integrated system of correctional technical and operational units, regional offices, with the Directorate General of Corrections.

The initial stage of the issuance of the decision is an attempt by the screening officer of the Correctional Institution inmates who are qualified to be able to get the filing of parole. Based on interviews with Ms. Erniwati, SH stated that the essential requirements usually is what was stated in article 15 of the Criminal Code that have passed a minimum of 2/3 of its criminal past or at least 9 months and has been considered good behavior based on observations of prison officers. In the case of the petition filing correctional officer also apply to the State Attorney relating to prisoners to be known about the presence or absence of certain other matters relating to inmates who applied for it.

After applying to the prison, then the next party to the Central Prison Correctional request to carry out Research Society (Litmas) associated with a list of inmates who filed / applied for, to be known the actual condition of the neighborhood of each of the prisoners. If found irregularities at the time of Litmas, it is possible that the request will be rejected temporary prisons to be repaired. Then if Litmas have completed the trial continued with TPP (correctional Observer Team) from the prison to conduct an evaluation of the results of these Litmas.

At the trial stage TPP held by the prison aims to ensure on the things that are considered vital or important, such as the following:

a) Presence Client Guarantor;
b) Security certainty that a minimum should be known by the employees of the village;
c) Certainty address prisoners.

The next stage if the trial TPP concluded that inmates were "worthy" or approved for parole proposal, then proceed with the proposed exemption besyarat, the Regional Office of the Ministry of Justice. Then to follow up on the request in the Regional Office also convened TPP, and if based on the results of the trial are considered feasible it will be forwarded to the Director General of Corrections. After the proposal is within the authority of the Director General of Corrections, the petition will also be presented in court TPP, to check the correctness and completeness of the application file, if deemed feasible, it will be issued a decree parole hand loomed the Ministry of Justice.

Once that process is completed, then followed by a phase handover of prisoners into prison officers to the Prosecutor as supervisor and as a mentor to the Correctional Center, inmates after the handover process, is no longer called inmates but was referred to as a correctional clients.

Government Regulation No. 99 Year 2012 regarding the Second Amendment to Government Regulation

[1] Idid.

No. 32 of 1999 on the Terms and Procedures for Citizens Rights Patronage of Corrections. Government regulations are the regulations established by the president and serve to enforce the provisions of the Act both the explicit and are not expressly call. Government regulations required to manage more things are still generally arranged in an Act.

In an Act if there are any rules or regulations requiring that further implementation of the arrangement and the arrangement desired by government regulation. In the framework of the implementation of regulations in the Penal Law ditetapkanlah ie Government Regulation Government Regulation No. 32 of 1999 on the Development and Mentoring Citizens Patronage of Corrections. Furthermore PP 32 of 1999 amended by Government Regulation No. 28 Year 2006 regarding Amendment to Government Regulation No. 32 of 1999 on the Terms and Procedures for Citizens Rights Patronage of Corrections.

Government Regulation of the Law of Penal again experienced a change that through Law 99 Year 2012 regarding the Second Amendment to Government Regulation No. 32 of 1999 on the Terms and Procedures for Citizens Rights Patronage of Corrections. In PP 99 In 2012 further tighten the terms of parole for inmates special crimes that include corruption. In the preamble to weigh PP 99 In 2012 direct mention corruption as one of the outstanding criminal offenses in the granting of rights of inmates (such as the right to parole) need to be tightened again. So other than as the implementing regulations of the Penal Law, PP 99 The year 2012 was also based on further regulate the terms and procedures for prisoners' rights stipulated in the Act Corrections.

Government Regulation No. 99 Year 2012 regarding the Second Amendment to Government Regulation No. 32 of 1999 on the Terms and Procedures for Citizens Rights Patronage of Corrections is not retroactive, or so-called non-retroactivity.

The principle of non-retroactivity stipulated in the Article 28 Paragraph (1) of the 1945 Constitution: "The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted based on retroactive law is a human right that can not be reduced under any circumstances ".

Through Article 14 Paragraph (1) k Act No. 12 1995 parole is one of the prisoners' rights which must be respected. Liberation besyarat also called conditional release is not imperative or automatically. It says "may" be given parole.[1]

In this provision the word "may" indicates that parole may not be given to inmates. Regulations on parole in PP 99 In 2012, under Article 43, Article 43A and Article 43B. Article 43 Paragraph (2) of the Parole referred to in paragraph (1) shall be provided with the following requirements:

a. It has been undergoing a period of a minimum of 2/3 (two thirds) on condition that 2/3 (two thirds) of the criminal past of at least 9 (nine months;
b. Good behavior for a period of a minimum of nine (9) months prior to the date of the last measured 2/3 (two thirds) criminal past;
c. Have followed the formation program with a good, diligent, and passionate; and the
d. Community can receive Prisoners program development activities.

In addition to the general requirements mentioned above, parole for inmates who dipidanann for committing a criminal act of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security and human rights violations are severe, as well as transnational crimes other organized must meet several requirements Special order to obtain parole as provided for in Article 43A paragraph (1), namely:

1. Willing to work closely with law enforcement to help dismantle the criminal case it does. Willingness to cooperate should be based on a written statement by a law enforcement agency in accordance with the provisions of the legislation.
2. Have undergone at least 2/3 (two thirds) criminal past, provided that 2/3 (two thirds) of the criminal past of at least nine (9) months.
3. Assimilation have undergone at least 1/2 (one half) of the remaining period of the criminal who must be lived.
4. Have shown awareness and remorse for the mistakes that led to sentenced and states pledge:
   - Loyalty to the unitary republic of Indonesia in writing for inmates Indonesian citizens, or
   - Not to be repeated acts of terrorism written for inmates foreign nationals.

Parole will be granted by the Minister after consideration by the Director General Pemasyarkatan. Director General of Corrections before granting this inmate had to ask for a recommendation from the relevant authorities in advance. On the corruption of the Director General of Corrections shall request a recommendation to:

1. Indonesian republic police,
2. the Supreme Court, and
3. the Corruption Eradication Commission

[1] Andi Hamzah. 2012. Principles of Criminal Law in Indonesia and its development. Sofmedia, Jakarta. p 286.

The Government Regulation No. 99 Year 2012 as giving a different treatment to inmates special crimes such as corruption, narcotics, terrorism and other transnational crimes. Whereas the Act No. 12 Year 1995 on Penal already guarantee that every inmate eligible for parole. Inmates special crimes such as corruption, narcotics, terrorism and transnational criminal others who want to get parole addition to the general requirements also have to meet special requirements are already a justice collaborator and obtain a letter of recommendation of the Director General of Corrections with the consideration of the State Police Indonesia, the Attorney General and / or the Corruption Eradication Commission.

These requirements impede inmates as special crimes such as corruption, narcotics, terrorism and other transnational crimes who want to get parole. The rules regarding parole specific requirements to be met by prisoners a criminal offense not specifically regulated in Law No. 12 of 1995 concerning Corrections.

Application of the law to specific criminal acts such as corruption, narcotics, terrorism and other transnational crimes is also very different than other crimes, it is a logical consequence of the predicate crime of corruption as an extraordinary crime. So naturally if there are tightening the terms of the parole to inmates of the special crimes. But keep in mind that the criminalization in Indonesia at this time is no longer adheres to the penal system and the incarceration system used legislation still uses the penal law was very appropriate in the fulfillment of the rights of prisoners and also appropriate from the perspective of human rights. So there is no excuse for not carrying out the penal system.

3.2. Benefit Parole.

a) Benefits to Correctional

Institution correctional So the benefit to be described as follows:

1) Reduce the possibility of rebellion and perkelahiaan between inmates, because it has been motivated to be nice to be able to get permission parole.
2) Maximizing the process of coaching and mentoring in the prisons.
3) Increase opportunities faster release of inmates from prisons that can lead to lack of impact of over-capacity in the prisons.
4) Increase the likelihood of achieving the new criminal system, namely convictions that are coaching and mentoring (rehabilitation).
5) Maximizing the self-improvement process of prisoners with a desire to follow the coaching and mentoring.

b) Benefits of the Family / Community

Therefore, the community and family is one of the parties that will affect the success of the process of parole. Likewise, if the process goes well then the community and families will also get many benefits from this policy, such as the following:

1) Prevent people trying to victims of crimes of a criminal offense.
2) Society no longer surprised by the presence of an inmate, because the clients / inmates guided gradually.
3) Families easier to pay attention to the clients / inmates as one of the family members.
4) The community can be assured that the client / convict has changed and will not finance the same action again.
5) Community views will convict or ex-convict will slowly improve.

c) Benefits to the Client / Prisoners

1) Inmates quickly gather with family
2) More diligent and eager to undergo the program in prisons as it will be eligible for parole
3) Minimize breach discipline in prisons

3.3. Efforts implementation of prisoners' rights in terms of a human rights perspective

Human rights are basic rights that brought humans since birth as a gift of God Almighty, it is necessary to understand that human rights are not derived from the state and the law, but solely sourced from the Almighty God as creator of the universe and its contents, so that human rights can not be reduced (non doragable rights). Therefore, what is needed from the state and law is a recognition and guarantee the protection of the human rights.[1]

In the application of the rights of prisoners, the prison has a very important role in the application where prisoners' rights are based on the Law of Corrections as part of efforts to uphold human rights. There are a lot of prisoners' rights contained in the Penal Law include the right to parole. Of course one is right then it is clearly illustrated that every prisoner is entitled to parole after fulfilling the requirements in accordance with existing regulations. Every inmate who has fulfilled the requirements are eligible to get this right, and there should be no

[1] Rozali Abdullah and Siregar. 2002. *Human Development and Justice existence of human rights in* Indonesia. Ghalia Indonesia. Jakarta. p. 10.

difference in its application.

In its application the correctional guidance system implemented based on the principle of equality of treatment and care. So it is very clear it should not happen in this case the difference in treatment between general and specific inmate in granting parole. If there is a distinction then it is contrary to the principles contained in the Act pemsyarakatan.

4. Conclusion

parole or parole an inmate coaching process outside prison 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. The parole is the right of inmates who are part of the functions of the Penitentiary, which is one of the ultimate goals of the Indonesian criminal justice system, the police, prosecutors, courts and correctional.

Government Regulation No. 99 Year 2012 can be said to break the law and violate human rights because they lead to differences in treatment and service in the provision of prisoners' rights in particular parole program.

Objectives set out in Regulation 99 of 2012 had been good, but the implementation procedures still need to be evaluated. When explored further policies aimed at increasing the deterrent effect against perpetrators of corruption, narcotics, terrorism and other transnational crime is not in accordance with the legal framework granting of remission and parole for the convicted person.

Indeed, loss of independence is the only one suffering, so that if there are differences in treatment and care in granting parole, especially between inmates general and also prisoners specifically in terms of both the requirements and the application of course not in accordance with the principle of the fulfillment of the rights of prisoners if viewed from the perspective of human rights.

The unmet adequate facilities and infrastructure, as well as poor understanding of correctional officers regarding the fulfillment of human rights for prisoners lead to fulfillment of human rights of prisoners can not be maximized.

5. Advice

Advice writer that Regulation No. 99 Year 2012 is soon revised so that the fulfillment of human rights of prisoners related to the right to get equal treatment and special services between prisoners and common prisoners can be realized in accordance with Law No. 12 of 1995 concerning Corrections. In this case of course the right to acquire the same parole between general and specific inmate.

Efforts that can be taken in the implementation of prisoners' rights is through the rearrangement of existing regulations of the PP 99 in 2012 so there is no difference in the application of the rules of parole between general and specific inmate.

The hierarchy of legislation still serve as the main guidelines in making regulations so that there are no rules to the contrary between the existing rules under the existing rules thereon.

Need to improve the infrastructure of the government as one of the responsibilities of the state, as well as the dissemination to the existing correctional officers regarding the fulfillment of human rights for prisoners in order optimalisasinya fulfillment of human rights for prisoners.

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