Remission for Terrorist Convicts: Challenges and Solutions to the Indonesian Law

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Abstract
This article aims at discussing remission granted upon terrorism convicts. It has been debated among academics as to whether giving remission or reduction of sentence upon the perpetrator of an extraordinary crime is a wise policy or not. Some of them argue that Indonesia is a country based on law. Any policy, therefore, shall refer to laws which allow remission for any prisoners who have met certain conditions including terrorism convicts. Other academics, however, insist on argument that providing remission to terrorism convicts is nothing but to let to destroy the country for they (the terrorists) might hold radical views which are not recovered with imprisonment. In this article, the authors argue that the laws are still the main reference as long as the legal perspective is concerned. However, as the laws have not provided special regulation for granting remission upon terrorism convicts, this article proposed to amend or revisit the laws related to such issue. The revision or amendment is urgent in order to provide wiser regulation as long remission upon terrorism convicts is concerned.

Keywords: remission; terrorism convicts; Indonesian laws

A. Introduction
Providing remissions for perpetrators of terrorism is one of the
controversial issues, regarding especially with human rights vis-à-vis State security. It was Abu Bakar Ba’asyir, who recently attracted public attention because of a remission that was granted upon him for four months following the 73rd Independence Day of the Republic of Indonesia, 17 August 2019.\(^1\) The reason for granting remission is said to be humanitarian reasons. Director of Deradicalization of the National Counterterrorism Agency (BNPT), Irfan Idris, stated that he had no problem with the release of Abu Bakar Ba’asyir, who was considered to be quite old. Yusril Ihza Mahendra stated that the urgency of Ba’asyir’s release was a humanitarian factor while two thirds of his detention period had been completed.\(^2\)

In a legal perspective, the provision of remissions for prisoners is regulated in Indonesian law. Even in the new system of guiding prisoners, remission is placed as a motivation for inmates to foster themselves. Remission is neither intended as a part of punishment as in the correctional system, nor as a gift as in the prison system. Instead, it is a part of prisoner’s rights and obligations. This means that a prisoner who successfully made his obligation might be entitled to receive a remission as long as the requirements have been met.\(^3\)

Criminalization is essentially intended to isolate a criminal from the community as a mean of releasing his/her guilt. Besides, punishment is not aimed at depriving him/her from his human rights. Instead, as an application of a rule of law, the rights of prisoners shall be respected and protected. In this regard, one of the rights of prisoners is to receive a reduced sentence (remission), that is, for those who have met the requirements stipulated in the law.

Mandated by the Article 14 of the Law Number 12/995 concerning Corrections, which was also regulated in PP 32/1999, strengthened by Presidential Decree Number 174/1999 concerning Remis-

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\(^{1}\) http://www.tribunnews.com/nasional/2018/08/18/abu-bakar-baasyir-dapat-remisi-4-bulan


sions, and Government Regulation Number 28/2006 concerning Amendments to Government Regulation Number 32/1999 concerning the Terms and Procedures for the Implementation of the Rights of Prisoners, it can be understood that remission is an instrument that can encourage the prisoners to act in good manners in ways which are useful to develop their behavior.

Controversy concerning remissions granted upon terrorism convicts is inevitable. Some might argue that remission is a prisoner’s rights.}\(^4\) Granting remission for them is possible as long as they have demonstrated good deeds and are considered to have released their radical views.\(^5\) However, for some others, granting remission and release upon terrorism convicts would give them ways to repeat their action in other ways. As extraordinary crime, it is too danger to give ways and opportunity to such radical movements as terrorism.\(^6\) Granting remission might also reflect the weakness of the law. In such a way, this might open ways for terrorists to commit further crimes of terrorism.\(^7\)

A comprehensive study of the issue of granting remission for the convicts of terrorism is very urgent, yet it has been abandoned. Under the mission of the Indonesian State of Indonesia declares war on this crime, at the same time the issue of human rights is also an important part that needs to be put forward in the framework of nation building in a just and just humane. This research tries to put the problem from the point of view of criminal law with a legal-philosophical approach.


\(^5\) Ibid

\(^6\) See Abdurrahman Pribadi dan Abu Rayyan, Membongkar Jaringan Teroris, (Jakarta: Abdika Press, 2009), p. 25

\(^7\) More arguments have come to conclusion that only the perpetrators (lay terrorists) who are eligible for remission, after fullfiling certain conditions. Whilst, for the mistermind of terrorism, granting remission, by any means, is too risky. Ahmad Dani, “Remisi Bagi Teroris Perspektif Hukum Pidana Islam”, IN RIGHT Jurnal Agama dan Hak Azazi Manusia, Vol. 1, No. 2, Mei 2012.
B. Remission in the Perspective of the National Regulations

Basically, remission (reduction of sentence period) is a legal mean in the form of rights granted by law upon prisoners who have met certain conditions. The existence of the remission aims to realize the goals of the correctional system intended to rehabilitation and resocialization of prisoners through educational, corrective and defensive measures. Theoreticaly, according to the applicable law in Indonesia, convicts or juveniles who have met the requirements, including terrorism convicts, can apply for a remission. This provision is mentioned in the Article 14 of the Law Number 12/1995 concerning Corrections, which was later also regulated in PP 32/1999, strengthened by the Decree of the President Number 174/1999 concerning Remissions, and Government Regulation Number 28/2006 concerning Amendments to government regulation number 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Prisoners. According to Andi Hamzah, remission is an exemption from sentence for all or part of or from life to a limited sentence which is given every 17 of August.8

Following the shifting paradigm of a prison to a correctional system, the lawmakers have stipulated several rights for an inmate. The ultimate goal of the guidance in the correctional institutions is to change the behavior of the convicts from criminal to good deed.9 Whenever a prisoner has demonstrated changes in his/her behavior to a good one, he/she is given several rights aimed at reducing his suffering. The earlier changes made by a convict, the sooner the suffering will be ended or reduced. According to the Article 14 Paragraph (1) of the Correctional Law, the rights of prisoners include, among others, the right to perform worship according to their religion or belief, receive treatment (both spiritual and physical care), education and teaching, health services and proper food, material reading and following other mass media broadcasts that are not prohibited, ac-

8 Andi Hamzah, Kamus Hukum (Jakarta : Ghalia Indonesia, 1986), p. 503.
cepting visits (family, legal advisers, or certain other people), getting reduced sentences (remission), opportunities for assimilation (including leave to visit his/her family), parole, and leave prior to release.

Based on the Government Regulation of the Republic of Indonesia Number 32/1999, remission is a reduction of term of sentence given to convicts and criminal offenders based on the provisions of the applicable laws in Indonesia.\textsuperscript{10} The Decree of the President of the Republic of Indonesia Number 174/1999 on the Provisions and Procedures of Applying the Rights of the Prisoners is always referred to as long as the remission is concerned. However, the Decree does not provides any definition of “remission.” Rather, the Article 1 Paragraph 1 of the Decree provides that remission is granted to convicts and juvenile children who behave well while undergoing their imprisonment.\textsuperscript{11}

A remission is believed to have psychological effects of reducing the level of frustration so as to minimize disturbances of security and order in prisons, state detention centers and its branches, in such ways escaping, fights and other riots. Therefore remission is given as referred to in Article 1 of the Decree of the President Number 174/1999, Article 2 and 3 in four types of remissions, namely:

1. General Remission which is granted on the day of National Independence of the Republic of Indonesia, on 17 August.
2. Special Remission which granted in the religious celebration based on the religion of the respected convicts and juveniles under the conditions that if the religion has more than one holyday, only the greatest holyday shall be granted remission. Based on the Decree of the Ministry of Law and Regulations of the Republic of Indonesia Number M.09.HN.02.01 1999/ on the Application of the Decree of the President Number 1741999/, Article 3 Paragraph (2), it is stated that Special Remissions is

\textsuperscript{10} The Government Regulation of the Republic of Indonesia Number 32 / 1999 On the Term and Procedures of Implementing the Rights of the Prisoners, Article 1 Point 6.

\textsuperscript{11} The Decree of the President the Republic of Indonesia Number 174 / 1999 on Remission, Article 1 Point 1.
granted on:
1) Idul Fitri for convicts and juveniles whose religion is Islam;
2) Christmast Day for convicts and juveniles whose religion is Christianity;
3) Nyepi (Silence) Day for convicts and juveniles whose religion is Hinduism;
4) Vesak Day for convicts and juveniles whose religion is Budhism.
3. Additional Remission which is granted to Convicts and Juveniles who, during imprisonment, have:
   1) Done services to the state.
   2) Performed services which are beneficial to the state or humanity, or
   3) Done something which is beneficial for the corectional process in prisons.
4. Decade Remission for any convicts and is granted on the Independence Day of the Republic of Indonesia, on 17 August, but only once in a ten (10) years.

**C. Legal Basis for Granting Remissions**

In order to implement the objectives of the correctional system, one of the most important legal means is a remission to prisoners and juveniles. The following are the basis on why granting remissions to prisoners and juveniles are legal and mandatory:

1. The Law Number 12/1995 on Corrections.
4. The Decree of the President of the Republic of Indonesia Number 1741999/ on Remission.
5. The Decree of the Minsitry of Law and Legislation of the

12 Ibid
Republic of Indonesia Number M.09.HN 02.101999/ on the Implementation of the The Decree of the President Number 1741999/ on Remission.

The objectives of granting remission according to the The Decree of the President of the Republic of Indonesia Number 174/1999, are:

1. As a motivation and stimulant as well as a tool to remind convicts and juveniles to behave well while in the correctional institutions.

2. As an effort to reduce the negative impact and subculture of the place where the crime is committed, the disparity of crime and the consequences of deprivation of liberty. Remissions have psychological effects in reducing the level of frustration (especially for recidivist prisoners) so as to reduce or minimize disturbances to security and order in the correctional institution.

3. Special remissions granted during religious holidays are expected to stimulate the prisoners to raise awareness in accordance with the demands of religion in their daily lives.

To obtain a remission, prisoners shall have met several requirements. The requirements to obtain a reduction of sentence in Indonesia as referring to the Decree of the President of the Republic of Indonesia Number 174/1999 and the Decree of the Ministry of Law and Legislation Number M. 09 HN.02.01 Year 1999, are:

1. General Remission, granted when convicts or juveniles:
   a. Have been demonstrating good deeds during imprisonment.
   b. Are not on leave prior to release.
   c. Are not under substitional sentence of fine.
   d. Are not charged with death penalty or life imprisonment.
   e. Have undergone more than six (6) months of sentence.
   f. Are not undergoing discipline punishment.

2. Special Remission, granted when convicts or juveniles:
   a. Have been demonstrating good deeds during imprisonment.
   b. Are not on leave prior to release.
   c. Are not under substitional sentence of fine.
   d. Are not charged with death penalty or life imprisonment.
   e. Have undergone more than six (6) months of sentence.
f. Are not undergoing discipline punishment.

3. Additional Remission, granted when convicts or juveniles:
   a. Have done services to the state.
   b. Have performed services which are beneficial to the state or humanity, or
   c. Have done something which is beneficial for the corectional process in prisons.

D. Why Shall the Terrorism Convicts be Granted Remission?

Since 1964, the prison has been transformed into a corectional institution. Subsequently, the principles of treatment to lawbreakers, convicts and prisoners have changed from the principles of imprisonment to the principles of correction, which are later known as the correctional system. While the prison system still emphasizes on retaliation (to criminals) as the goal of punishment, the correctional system emphasizes more on “correction” which is intended to foster and return the offender (prisoners, inmates) to become a good member of society and back to a normal life like before he/she broke the law. Therefore, correction in this matter would mean returning to society as a good citizen and useful to society.

The correctional system emphasizes on guidance, instead of retaliation, through which the convicted person shall understand and realize his/her mistake. After being returned to the community, he hopefully will never repeat the act that violates the law. Therefore, since 1963, Sahardjo, the initiator of socialization, has argued that the lawbreakers are no longer referred to as criminals, but as stray people.\(^\text{13}\) As a consequent, people who are lost shall be trained in the correctional institution to help them free from their stray.

Referring to the legal basis for granting remissions, namely the Law Number 12/1995 concerning Corrections and Government Regulation Number 28/2006 concerning the Terms and Procedures for Implementing the Rights of Prisoners in Prisons there is nothing

\[^{13}\text{Romli Atmasasmita, Strategi Pembinaan Pelanggar Hukum dalam Konteks Penegakan Hukum di Indonesia, Alumni, Bandung, 1982, p. 12.}\]
wrong with granting remissions to convicts of terrorist and terrorism cases at the Anniversary of the Republic of Indonesia. Based on Article 14 of the Correctional Law, one of the rights of the convicted person is to get a reduction in the sentence (remission). PP Number 28/2006 as an implementing rule for the provisions of the Correctional Law stipulates the special requirements for giving remissions for convicted of terrorism, together with narcotics, corruption state security, serious human rights crimes, and other transnational organized crimes, namely of good behavior and having served 1/3 (one third) of the sentence.

Looking at the enthusiasm and desire to provide a deterrent effect on convicts of terrorism cases, PP Number 28/2006 is considered better than the previous PP which regulates the conditions for giving remissions for all convicts after serving a sentence of 6 (six) months including convicted of terrorism and corruption cases. The statutory provisions also stipulate that the granting of remissions does not apply to prisoners who receive a death sentence or life sentence.

Public concern over giving remissions for convicted terrorists is arguable. The fact that prisoners can use the conditions for having remissions to have good behavior during their criminal period at the prison is undeniable. However, the ex-prisoner of terrorism may potentially repeat the same crimes after receiving remissions and after enjoying the freedom as the criminal sanctions (punishment) imposed to convicted of terrorism might have not caused a deterrent effect of the perpetrators. Therefore, it is not an exaggeration to say that in the case of terrorism, for example, if one tries to learn that one of the four suspects in the JW Marriot and Ritz-Carlton bombers released by the police (19/08/09), namely Bagus Budi Pranoto alias Urwah, is known as a former convicted terrorist in a terrorism case because he was proven to have helped hiding Azahari and Noordin M Top in the 2003 bombing case at the JW Marriott Hotel. Indeed Bagus Budi Pranoto did not receive a remission, but if remission was given to a convicted terrorist in a terrorism case it would create an
even greater risk of bomb terror.\textsuperscript{14}

It is learned from the explanation elsewhere in this article that remission is a right for every prisoner who and it is an integral part of the criminal justice system. Eliminating the provision about the remission upon terrorism shall has actually damaged the structure of the Indonesian criminal justice system in the Criminal Procedure Code, ranging from the police, prosecutors, courts to prisons. Remission is a right that arises when prisoners are in a correctional facility. Therefore, the legal policy to remove remissions for convicted terrorists is not the right solution to provide a deterrent effect on convicts and the general public so as not to commit similar crimes. It would be wiser if the policy of granting remissions to prisoners in cases of terrorism that must be thoroughly reviewed and considered by the Minister of Law and Human Rights. First, the consideration of recommendations for granting remissions must be tighter, not only from the Director General of Corrections at the Ministry of Law and Human Rights but also considering the sense of security and public order as well as the sense of community justice. Second, through the revision of the Correctional Law and Government Regulation Number 28/2006, especially regarding the special requirements for granting remissions for convicts in cases of terrorism.

Terrorism has been classified as an extraordinary crime. Considering its very frightening and widespread impact to trans borders and victims, can occur anywhere and anytime and can affect anyone, including innocent people. The categorization of terrorism as an extraordinary crime becomes very logical because the perpetrators are classified as professionals, engineered products, are carried out as proof of intellectual, organizational skills, and are supported by large funds, the victims can be widespread involving people who are innocent, or even do not understand. terrorist crime itself. Not only does the crime of terrorism impose the dignity of the state and nation, but also results in innocent victims of the people. Terrorism crimes are

not limited by time, area or target so that it is difficult to anticipate.

Terrorism crimes require extra readiness to anticipate, overcome and overcome. The impact of acts of terrorism has caused deep trauma for both victims and their families. In addition, terrorism cases have troubled the community, harmed the nation and state and created instability in national security. Thus, seen from the impact and victims caused by criminal acts of terrorism, the granting of clemency to terrorism convicts is considered to injure the sense of justice for victims of acts of terrorism and society in general who demand the maximum punishment according to their actions. The sense of justice in society is disturbed when a terrorist who claims many innocent lives or causes widespread fear in real terms only serves two to three years of imprisonment in a correctional facility because after serving 1/3 of the sentence he is entitled to clemency. As an extraordinary crime, the community wants the punishment for terrorism convicts to be punished with the maximum penalty.

E. Conclusion

Based on the discussion and analysis about remissions for terrorists in Indonesia from the perspective of criminal law, several conclusions can be drawn, namely: First, as regulated in Article 14 of the Law No. 12 /1995 concerning Correctional Institution, and Presidential Decree of the Republic of Indonesia Number 174 / 1999 concerning remissions, and also Government Regulation Number 28 of 2006 concerning amendments to government regulation no. 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Prisoners in Prison, it is learned that the provision of remissions is one of the rights for every prisoner who has done good while in the correctional institution and fulfills certain other requirements. However, if it is related to a crime that is classified as extraordinary crime which potentially result in in extraordinary victims, granting remissions to convicts of this crime might be considered to have injured the sense of justice in the community who demand that terrorists be punished as severely as their actions. Besides, it is against
the spirit and commitment of the Indonesian state to eradicate terrorism.

Second, the prevention (elimination) of giving remissions for terrorism is one of the implementations of the sadd aż-żarīḥah principle (namely closing the path so that perpetrators of criminal acts of terrorism do not commit acts of terrorism again, and also closing the path so that other people do not commit the same criminal act) by maximizing the punishment imposed on the perpetrator of a criminal act without any reduction in punishment for the realization of the objectives of punishment. Third, regarding the prevention of remission for terrorism, it is necessary to provide limitations regarding which terrorist criminals can be given remission and not allowed to be given remission, namely:

1. Terrorism convicts who do not have a big share in acts of terrorism may receive remission if they meet the requirements as mandated by Government Regulation Number 26 /2006, which is of good character and has served one third of the total number of sentences imposed.

2. For terrorism convicts who act as the main character as well as the mastermind behind the occurrence of the action, they must not be given remission and be punished maximally according to their actions.

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