THE POLITICAL OF LAW TO THE GOVERNMENT POLICY ABOUT REMISSION

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Abstract: *The law refers to a rule of life in accordance with the ideals of living together and the principles of justice. The content of the rule of law should be fair. Without justice, law is only formalized violence. The law is felt to be important when dealing with injustice. Through a political perspective, law is viewed as a product or output of a political process or the result of consideration and formulation of public policy. However, besides law as a product of political consideration, there is political law which is the basis or basis of policy for determining the laws that should apply in the state. As mandated by the Constitution, one of which produces a remission regulation, Remission is essentially the right of all prisoners and applies to anyone as long as the prisoner is serving a life sentence. The problem that arises is that the application of remission requirements is not in accordance with the expected objectives. Thus, the purpose of this study is to determine the implementation of remittances in Government Regulation Number 99 of 2012 concerning Terms and Procedures for the Implementation of the Rights of the Convicted; and analysis of Political Law and Government Policy on Remissions in Government Regulation Number 99 of 2012 concerning Remissions in Article 34A seen from Article 34. This type of research is qualitative using secondary data. The research results are if we look at the corners of the hierarchy of the laws and regulations stipulated in Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, then the provisions for granting the remission of corruptors in Government Regulation Number 99 of 2012 are contrary to Article 5 of the Law on Corrections. This is because the substance contained in Article 34 Paragraph (1) a and b of this Government Regulation is a new norm that is contrary to the philosophy, objectives, vision and mission of the Law on Corrections itself which prohibits discriminatory treatment and treatment of prisoners.*

Keywords: *legal policy, remission, remission requirement*

The Introduction

Political law in the country is the rule that makes the planning and development of national law in Indonesia. Achievement of legal development will encourage the achievement of legal objectives which in turn lead to the creation of state objectives. The purpose of law to create justice, benefit, order and legal certainty is not easily fulfilled because in every existing law, there is a state objective. Legal politics is

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a legal policy or official line (policy) regarding the law that will be enforced either by new legal actions or by replacing old laws, in the context of achieve the goals of the State. Thus, political law is a choice regarding laws that will be repealed or not enforced, as well as choices about laws that will be revoked or not enforced, all of which are intended to achieve the goals of the State as stated in the preamble to the 1945 Constitution (Ismatullah & Nurjanah, 2018: 30).

Politics and law are two things that influence each other. In the process of forming the rule of law by political institutions, the role of political forces that sit in political institutions is very decisive. Where the legal position is more decisive than politics, political activity is regulated by and must comply with the rule of law. On the other hand, when politics is more decisive than law, then law is a product of political will that interact and even compete with one another. However, the ideal system is one where law and politics are in balance. In such conditions, it is possible to achieve order (Salam, 2015).

The concept of Islam also emphasizes that discrimination in the field of law is not justified, everyone is equal before the law (equality before the law), regardless of status or position. Thus, someone is not found guilty before being convicted by a judge based on strong and reliable evidence (Manan, 2016: 201). This is contained in the Qur'an in Surah An-Nisa verse 58, as follows:

إِنَّ ٱللَّهَ يَأۡمُرُكُمۡ أَن تُؤَدُّواْ ٱلۡأَمَٰنَٰتِ إِلَىٰٓ أَهۡلِهَا وَإِذَا حَكَمۡتُم بَيۡنَ ٱلنَّاسِ أَن تَحۡكُمُواْ بِٱلۡعَدۡلِۚ إِنَّ ٱللَّهَ نِعِمَّا يَعِظُكُم بِهِۦٓۗ إِنَّ ٱللَّهَ كَانَ سَمِيعَۢا بَصِيرًا

"*Indeed, Allah instructs you to convey a message to those who have the right to receive it, and (instructs you) when establishing laws among humans so that you determine it fairly. Verily, Allah will give the best teaching to you. Allah is All-Hearing, All-Seeing*".

Dealing to crimes which in this case get an exception, namely by tightening the terms and procedures for granting Remissions, based on Government Regulation Number: 99 of 2012 concerning the second amendment to Government Regulation Number: 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens. It is stated that tightening the terms and procedures for granting Remissions is enforced for perpetrators of criminal acts, including terrorism, narcotics, corruption, serious human rights crimes or crimes against humanity as a type of crime regulated in Article 6 and Article 7 "Rome Statute Of International Court, a form of gross human rights violations according to the statute. Rome is a crime of genocide, crimes against humanity, war crimes and crimes of aggression as stated in article 5 of the Rome Statute.

The purpose of giving Remission in Indonesia is as a motivator or stimulation for good behavior, to reduce the negative impact of the sentences imposed (Hasan et al.,2017).

Based on the above background, according to the author, there are still certain dimensions that have not been the object of study regarding

remissions, namely based on the rights of prisoners who receive remissions and Government Regulation Number 99 of 2012 Article 34A which is inconsistent with Article 34.

Based on the background description above, the main problem of the research or problem statement is that the implementation of the remission requirements is not in accordance with the expected goals. So in the formulation of the problem in this study are as follows: how is the implementation of Remittances in Government Regulation Number 99 of 2012 concerning the Terms and Procedures for the Implementation of Rights of Convict? And, how is the Political and Legal Analysis of Government Policy on Remissions in Government Regulation Number 99 of 2012 concerning Remission of Remissions in Article 34A seen from Article34?.

Research methods

This type of research used by the author in this study is qualitative. The data used are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Data collection in this study was carried out by conducting literature studies. In this case the researcher collects legal materials by reading, quoting, taking notes and studying reading materials related to the research problem. The data that has been collected is set forth in the form of a description. The data analysis used in this research is descriptive qualitative analysis.

Discussion and Results

Theory of Justice According to The Law

Justice there are several views of some experts on the theory of justice, including The Theory of Justice According to Plato, The Theory of Justice According to John Rawls, and The Theory of Justice According to Hans Kelsen. Plato was an abstract idealist thinker who recognized forces beyond human capabilities so that irrational thinking was included in his philosophy. Likewise with the issue of justice, Plato argues that justice is beyond the capabilities of ordinary humans. The source of injustice is a change in society. Society has principal elements that must be maintained, elements that Palato divided, namely: A strict class separation; for example, a ruling class filled with shepherds and guard dogs should be strictly separated from human sheep,; Identification of the destiny of the country with that of the ruling class; special attention to this class and its unity; and adherence to its unity, rigid rules for the maintenance and education of this class, and the strict supervision and collectivization of the interests of its members (Erwin, 2015: 292).

Several concepts of justice put forward by the American philosopher at the end of the 20th century, John Rawls, such as A Theory of justice, Politcal Liberalism, and The Law of Peoples, have had a considerable influence on the discourse of the values of justice (Faiz, 2009).

Rawls argues that what causes injustice is the social situation, so it is necessary to re-examine which principles of justice can be used to form a good community situation. Correction of injustice is carried out by returning (call

for redress) the community to its original position (people on original position). It is in this basic position that an original agreement is made between members of the public on an equal basis.

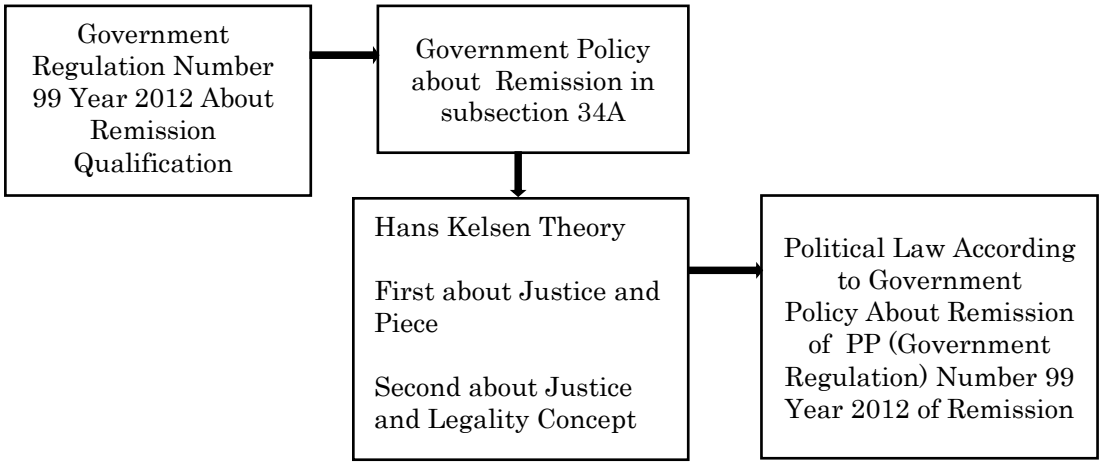
Hans Kelsen in his book general theory of law and state views law as a social order that can be declared fair if it can regulate human action in a satisfactory way so that it can find happiness in it (Kelsen, 2011: 7). Hans Kelsen's view is a view that is positivist in nature, the values of individual justice can be identified by legal rules that accommodate general values, but still fulfill the sense of justice and happiness that is intended for each individual.

Two more things about the concept of justice put forward by Hans Kelsen which make justice equalize the position of justice, namely: First about justice and peace. Second, the concept of justice and legality. This concept of justice and legality is applied in the national law of the Indonesian nation, which means that national legal regulations can be used as a legal umbrella (law unbrella) for other National legal regulations according to their level and degree and that legal regulations have binding power to the materials contained in the legal regulations (Law Number 12 of 2011).

Justice Perspective in National Law

The view of justice in national law comes from the basis of the state.Pancasila as the basis of the state or state philosophy (fiolosofische grondslag) has been maintained the Indonesian state. Axiologically, the Indonesian nation is a supporter of the until now and is still considered important for values of Pancasila (the subscriber of the values of Pancasila). It is the Indonesian nation that is godly, humane, united, committed, andsocially just. As a supporter of values, it is the Indonesian nation that respects, recognizes, and accepts Pancasila as a value.

Tabel I. The Thought Frame
The Political of Law According to Government Policy About Remission



The Data is Processed by The Author

Implementation of Remissions in Government Regulation Number 99 of 2012 Concerning Terms and Procedures for the Implementation of the Rights of Convict

The legal basis for the provision of Remittances has undergone several changes, even in 1999 thePresidential Decree No.69 of 1999 was issued and has not been implemented yet but was later revoked by Presidential Decree No. 174 Year 1999 Decree of the Minister of Law andLegislation No.M.10.HN.02.01 Year 1999 concerning Delegation of Authority to Give SpecialRemissions.The provisions that are still in effect are the latest provisions, number five (e) butthese provisions are still being added with several other provisions, so that the provisions thatstill apply to the current Remittance are:

1) Presidential Decree 120 of 1955, 23 July 1955 on Special Forgiveness.
2) Decree of the Minister of Justice of the Republic of Indonesia No.04.HN.02.01 Year1988 Date May 14 Year 1988 Regarding Additional Remissions for Prisoners Who Become Body Organ Donors and Blood Donors.
3) Decree of the Minister of Law and Legislations RINo.M.09.HN.02.01 Year 1999 regarding the implementation of Presidential Decree No. 174 Year 1999.
4) Decree of the Minister of Law and Legislation RINo.M.10.HN. 1999 regarding Delegation Authority Granting Special Remission.
5) Circular 02.01 YearLetter No.E.PS. 01-03-15 Date 26 May 2000 concerning Changes to thePenalty of Lifetime Prison to Temporary Prison.

There is an explanation of the terms of provision of Article 34 and 34 A, paragraphs, 1 and 2 of PPNumber 99 of 2012 concerning the Terms and Procedures for the Implementation of Citizen Rights Correctional Development: *First*, Good behavior is regulated in Article 34 paragraph 2 letter (a) As for what is meant by prisoners who have performed well are prisoners who comply with the prevailing regulations and are not currently undergoing disciplinary sentences within the last 6 (six) months, counting before the date of granting of crimes and also having good deeds which can be proven smoothly following a well-established development program. Good behavior is meant not only to behave well at a glance or in obedience only, but that good behavior must be demonstrated in several ways. In daily behavior with the same prisoners, in worship, in giving good examples to other prisoners, inhelping the smoothness of the order in the breath, the routines that are involved. Good behavior is to continue to be responsible for otherhelping to ensure the smoothness of the conditions in the breath, the routines that are involved. Good behavior is to continue to be responsible for other prisoners, inprisoners, in order to help ensure the smoothness of the conditions in the breath, the routines that are concerned. Good behavior is to continue to beresponsible for the breathing party, routines in order to supervise and properly assess the appropriate measures.

Second, has served a criminal period of more than 6 (six) months Article 34 Paragraph 2 letter (b). This period of enjoinment is considered as a transitional and adaptable for a convict of corruption in serving his sentence.However, during this period, corruption is still in a stressful state with its new world, so it is not clear how the development of a prisoner is.

However, after serving six months of detention, it can be seen and assessed the behavior and activities of a convict of corruption in carrying out all the rules and regulations in a prison, remand center.

Third, willing to work together with law enforcers to help uncover criminal cases being committed.Article 34A Paragraph 1 Letter (a). Willingness to cooperate as intended must be stated in writing and stipulated by the law enforcement agency in accordance with statutory provisions. 4. Has paid in full the replacement money fine in accordance with the decision Court Article 34AA Paragraph 1 Letter (b) In addition to the above conditions, the prisoner must pay a fine in replacement money in accordance with a court decision.The amount of replacement money for each prisoner varies according to the crime committed. Where each person is inaccurate, and the amount corrupted is also different.So pay the replacement money in line with the court's verdict that has already sentenced him.

Legal Political Analysis of Government Policy on Remissions in Government Regulation Number 99 of 2012 concerning Terms and Procedures for Implementation of Community Rights To The Convict

To analyze the implementation of Legal Politics on Government Policy on Remission in Government Regulation Number 99 of 2012 concerning Remission in Article 34A, see Article 34.By using the Hans Kelsen theory approach, the writer uses this theory, the writer thinks that this theory is appropriate in assessing the patterns of justice used by legal institutions in Indonesia,As for the form of the theory of truth that Hans Kelsenada presented in two categories, namely the first about justice and peace.Second, the concept of justice and legality:

Hans Kelson Theory About Justice and Piece

To analyze the implementation of the Political Law on Government Policy on Remissions in Government Regulation Number 99 of 2012 concerning Remissions in Article 34A, see Article 34. With this, the author uses the Hans Kelsen theory approach on justice and peace.

Justice that comes from irrational ideals. Justice is rationalized through knowledge that can take the form of interests which in turn give rise to a conflict of interest. The resolution of these conflicts of interest can be achieved through an arrangement that satisfies one of the interests at the expense of the other's interests or by trying to reach a compromise towards a peace for all interests.

Hans Kelsen saw that justice is something very subjective. He argues that what is meant by the term justice is something which means the presence of a social condition where everyone gets satisfaction and happiness in general. Justice is something that has a meaning that is very synonymous with general happiness. According to Kelsen, law is something different from justice. The big mistake made by natural law thinkers is to enforce justice, which is included in the ideals of law (Kelsen, 1971: 6).

Government Regulation Number 99 of 2012 concerning the second amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants, which was passed on November 12, 2012, has provided limits on the granting of special remissions for certain crimes. These

limitations can be seen in Article 34A paragraph (1) of Government Regulation Number 99 of 2012 concerning Terms and Procedures for the Implementation of Rights of Correctional Assisted Citizens.

Referring to the provisions of Articles 34 and 34 of Government Regulation Number 99 of 2012 above, those who get remission are those who can meet the following requirements: Not currently running disciplinary law 6 (six)the last month, starting from the date of remission; Has followed the development program carried out by LAPASwith a good predicate; Have served a sentence of more than 6 (six) months; Willing to work with law enforcement to help dismantlethe criminal case he had committed; and Have paid in full and replacement money according to a decision court.

The provisions stipulated in Government Regulation Number 99 of 2012, in principle, limit and supervise the provision of remissions and parole to one of the special crimes between prisoners and corruption, so that only corruption that collaborates with law enforcers (justice collaborators) or information givers or trumpet blowers (whistleblower) only, which benefits are given remuneration is considered to have injured people's sense of justice.

With this, according to the authors, in the opinion of the problems that occurred with the issuance of Government Regulation Number 99 of 2012, especially in Article 34A, especially the terms of remission and the approach of Hans Kelsent's theory of justice and peace, it is necessary to change or revise Government Regulation Number 99 of 2012, according to the author that there are 3 basic reasons why there is a need for change, among others:

First, The occurrence of discrimination against those caused by the provisions of Article 34A PP No. 99 of 2012 concerning remission for criminalism, narcotics and narcotics precursors, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes; there should be no discrimination for all prisoners in obtaining the right to remission, as stipulated in Law Number 12 of 1995 concerning Corrections in article 14 paragraph (1) letter i which guarantees the right of all prisoners to obtain remission And equality before the law is one of the human rights guaranteed in Article 27 paragraph (1) and Article 28 D paragraph (1) of the 1945 Constitution. Togetherness Rights of law and life.

Second, By tightening the rules for the conditions for remission as regulated in PP. 99 of 2012 regarding remission requirements for criminal terrorism, narcotics and narcotics precursors, psychotropic drugs, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes, this will lead to new problems, namely the occurrence of over capacity occurring in the current Lapas because the number of narcotics convicts is around 50.87% of the total number of prisoners with the increasing number of prisoners with at least reduced remissions given to inmates, this will increasingly burden the state's money in terms of operations and the limited capacity of correctional institutions so that it becomes a threat to security and order. Correctional Institution.

Third, In PP. 99 of 2012 regarding remission requirements for criminal terrorism, narcotics and narcotics precursors, psychotropic drugs, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes, one of the objections is justice collaborators, namely prisoners who work together with law enforcement

agencies. law to disclose a criminal act the same which is imposed on a prisoner, which seems to be forced as an absolute requirement, shifts the burden of law enforcement officials in efforts to disclose a criminal act of terrorism, narcotics and narcotic precursors, psychotropic drugs, corruption, crimes against state security, crimes of rights. serious human rights, as well as other transnational organized crimes, should be placed in court proceedings, not as a condition for receiving remissions that are in the process of implementing court decisions. The regulation regarding the willingness to become a justice collabolator is an application of Article 37 paragraph (2) of the Anti-Corruption Convention which has been ratified by Indonesia with Law No. 7 of 2006 concerning Ratification of the United Nation Convention Against Corruption However, in the provisions of this article, the reduction of sentences given by the state is intended for defendants who assist in the investigation or prosecution process, so this provision is basically aimed at defendants in the process of investigating and prosecuting corruption.

Hans Kelson Theory of Justice And Legality

To analyze the implementation of the Political Law on Government Policy on Remissions in Government Regulation Number 99 of 2012 concerning Remissions in Article 34A, see Article 34. With this, the author uses the second Hans Kelsen theoretical approach, namely the concepts of justice and legality.

According to Hans Kelsen, the meaning of "Justice" means legality. A general rule is "fair" if it is actually applied, while a general rule is "unfair" if it is applied to one case and not to another similar case. There is a change in the meaning of the conception of justice in line with the existence of an individual tendency to address issues of justice in the areas of insecure subjectivity. Individuals who carry out a subjective judgment enforce it above a certain social order.

The existence of this discriminatory treatment raises a hopeless attitude for inmates who commit criminal acts as referred to in Government Regulation Number 99 of 2012. Even though they have done good while serving their sentences, it will not affect the possibility of awarding a sentence in the form of a cut in sentence (remission) (BPHN, 2014: 92-93). Obviously these conditions are unfavorable for the correctional institution. Correctional officials will also experience difficulties in building them so that they can become good people, useful, aware of their mistakes, and can return to the community. Feeling distrustful of discriminatory law enforcement, especially if in the judicial process they also experience various pressures and criminal disparities, then the attitude of refusing to be sure will emerge at any time. As such, the function as a guidance institution will not function completely.

Hierarchy is what states that the legal system is arranged in stages and levels like steps. Relations between norms that regulate the actions of other norms and other norms are called super and subordinate relations in the spatial context, the norm that determines the actions of other norms is superior, while the norm which performs the action is called the inferior norm. Therefore, actions performed by higher (superior) norms become the reason for the validity of the entire law which forms a unity (Indrati, 1998:

25). Indonesia, this legal chain is actualized into a hierarchy of statutory regulations as regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. 1) The 1945 Constitution of the Republic of Indonesia; 2) Decree of the People's Consultative Assembly; 3) Law/Government Regulation in Lieu of Law; 4) Government Regulations; 5) Presidential Regulation; 6) Provincial Regulations; 7) Regulations of the Regency/City.

The following describes each type of statutory regulation based on the general provisions in the Law on the Establishment of the Prevailing Laws. Law is the Legislation which is formed byThe House of Representatives with the joint approval of the President. Government Regulations in Lieu of Laws are Legislations which are established by the President in compelling emergency situations. Government Regulation is the stipulated Legislation by the President to carry out the Law properly. Presidential Regulation is the Legislation which is stipulated by the President to carry out the higher order of Legislation or in exercising government power. Provincial Regulations are Legislation which is formed by the Provincial Regional People's Representative Council with the joint approval of the Governor. As for Regency/City Regional Regulations are statutory regulations established by the Regency/City Regional People's Representative Council with the joint approval of the Regent/Mayor.

Furthermore, Article 7 paragraph (2) of Law No.12 of 2011 determines that the legal force of legislation is in accordance with the hierarchy as in Article 7 paragraph (1). This means that the 1945 Constitution of the Republic of Indonesia (UUD NRIT Tahun1945) is used as a basic norm as according to Kelsen or the basic rule of the state (Staatsgrundgesetz) as Nawiaky views. Therefore, the consequences are: first, the 1945 Constitution of the Republic of Indonesia overrides all lower regulations (applies the lex superiori derogat legi inferiori principle) and secondly, the contents of the 1945 Constitution of the Republic of Indonesia become a source in the formation of all laws, so that the MPR Decree and District Regional Regulations / City must not contradict the 1945 Constitution of the Republic of Indonesia.

If we look from the point of view of the hierarchy of laws and regulations and the correctional development system which must fulfill the principles that exist in defeating the citizens of the correctional development, then the regulation of the provision of remittances is corrupt in Government Regulation No.99 of 2012 against Article 5 Laws on corruption, crime and precautionary crimes against criminal convictions, drug abuse, drug abuse, criminal drugs state security, serious human rights crimes in Government Regulation No. 99/2012 are considered contradictory because the substance contained in Article 34A paragraph (1) letters a and b of the Government Regulation is a new norm that contradicts the philosophy, objectives, vision and mission of the Law on Corrections. itself which prohibits discriminatory treatment and services against prisoners.

While it is clear that the emergence of this revision of the new Governmental Regulationsnamely Government Regulation No. 99 of 2012 raises discrimination for the community and prisoners because there are significant differences in the terms of the granting of premiums compared to the previous Government Regulation, namely Government Regulation

Number 28 Year 2006. Provisions for the provision of remittances which are significant in comparison to the previous Government Regulations, namely Government Regulation Number 28 Year 2006. The requirements for the granting of coruptorary rights which are contained in Article 34 Paragraph (1) letter and b of the Government Regulation Number 99 of 2012 are subject to more attention in terms of the terms of the provision of this premium also contradicts Article 28 Paragraph (1) of the 1945 Constitution, which reads: "Every person has legal rights, legal guarantees, legal guarantees.

According to the author, it is true that Government Regulation Number 99 of 2012 carries out the mandate of the Law on Corrections, where in this Government Regulation limits the granting of premiums to corruptors by tightening the conditions that must be met by prisoners and corruption. But what is contained in the Government's philosophy The correctional facility itself. If there is a need for a restriction on the provision of corrupt premium as stipulated in Article 34 Paragraph (1) letter and b of the Government Regulation Number 99 of 2012, the limitation of such human rights can only be carried out by law on society and not under the statutory regulations under it.

Conclusion

Remission is the right of prisoners to get a reduction in punishment if during the course of training in good behavior.Meanwhile, the remission requirements for prisoners convicted of committing criminal acts of terrorism, narcotics and narcotics precursors, psychotropic drugs, corruption, crimes against state security, serious human rights crimes, and other transnational organized crimes, are covered by Government Regulation No. 99 of 2012 as stipulated in Article 34 A.

If we look from the corner of the hierarchy of laws and regulations set out in Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, then the regulation of the provisions for granting permission to corruptors in Government Regulation No. Penalty itself which prohibits discriminatory treatment and treatment of prisoners. In addition, this is also in accordance with the purpose of relative punishment. In fact, revocation of rights for convicted people of corruption is a form of injustice and discrimination against the convicted person. The cons views on granting remissions for convicted terrorists, narcotics and narcotics precursors, psychotropic drugs, corruption, crimes against state security, serious human rights crimes, as well as other transnational organized crimes, base their position on the categorization of corruption as an extraordinary crime that also requires extraordinary methods of control. On the other hand, there is a viewpoint that granting a policy against corruption convicts is precisely the opposite of the purpose of criminalization of all developmental institutions in correctional institutions.

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