**Criminal Law Politics on the Granting of Remissions to Prisoners: Research on Class IIA Prison of Binjai**

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**Abstract**

Law is a set of rules and principles that regulate social interaction in society, aim to maintain order, and include various institutions and processes for implementing rules as a reality in society. The research was conducted in Binjai City at the Class II A Binjai Correctional Institution (Prison) Office. This research uses an empirical legal approach method, and data obtained in the field are presented descriptively using an empirical normative approach method. This study aims to determine the criminal law policy on granting Remission to inmates at Class II A Binjai Penitentiary and the obstacles faced in granting Remission to inmates at Class II A Binjai Penitentiary. Based on the results of the study, the author obtained that the fulfillment of the right to reduce the sentence (Remission) is based on existing laws and regulations, but to provide the fulfillment of rights (Remission) still requires improvements such as explaining to inmates (prisoners) about the requirements for obtaining Remission, as well as the obstacles faced by inmates (prisoners) in obtaining Remission, one of the factors is from the inmates themselves because the requirements for obtaining Remission are to behave well and be able to create a conducive environment.

**Keywords:** Legal Politics, Criminal, Remission, Correctional Institution Residents

**Introduction**

Law leads to a rule of life following the ideals of living together and the rules of justice. The contents of the legal rules must be fair. Without justice, the law is just formalized violence. Law is felt to be important when dealing with injustice (Sipayung & Wahyudi, 2024). Law is a whole set of rules and principles that regulate social interaction in society, aim to maintain order and include various institutions and processes for implementing rules as a reality in society (Pureklolon, 2020)v. Therefore, law is very important in maintaining balance and harmony between various interests in society. The Unitary State of the Republic of Indonesia is based on law, not just power. (Nuarsa et al., 2023)

This is emphasized in the Constitution of the Republic of Indonesia, which states that the Republic of Indonesia is a country of law stated in the 1945 Constitution of the Republic of Indonesia. Article 1, paragraph (3) reads, "The 1945 Constitution is the legal basis that Indonesia is a Unitary State and a State of Law based on the sovereignty of the people". In the state, the state system is regulated based on applicable and just laws and then arranged in a constitution. All will be subject to the law, both the government and the governed, so everyone will receive the same legal treatment. (Hariyanto, 2017)

All national and state life aspects must be based on applicable legal provisions. Thus, everything must obey the provisions of the law as a comprehensive effort to realize Indonesia as a democratic state of law, upholding human rights and guaranteeing the supremacy of law with no exceptions for anyone in the eyes of the law (Saragih et al., 2023). The existing legal regulations must be followed to ensure they can run smoothly and be accepted by the community. They must not conflict with the principles of justice of the community. (Rizki & Imron, 2020)

Emmanuel Kant, in his book Science of the State, said that the purpose of the state is to try to form and maintain the law, which guarantees the legal standing of individuals in society and also means that every citizen has the same legal standing and may not be treated arbitrarily by the authorities (Bagaskoro et al., 2023). Thus, every society before the law is the same; in other words, every Indonesian citizen has the same standing before the law and government. That, the law established by the authorized institution by involving the people applies to anyone without exception.

A mechanism for creating legislation is formed through Legal Politics desired and determined by the government. So, the mechanism for making laws in Indonesia today is based on the will and authority of the holder of power. Legal Politics can be described as the will or desire of the state towards the law. This means the purpose of the law being created, the purpose of its creation, and the direction to be headed. Legal Politics is a government policy regarding which laws will be maintained, which laws will be replaced, which will be revised, and which laws will be eliminated (Mia Kusuma Fitriana, 2015). Policies for making rules to achieve the interests of society are improvised in various ways by experts, which are influenced by specific problems they want to study. Besides that, each expert uses a different approach. (Ainun Najib, 2020)

Indonesia is a country of law. Thus, everything related to national and state life is based on law. On that basis, if a crime occurs, it will be prosecuted according to existing regulations. Perpetrators of crimes are lawbreakers (Prihantoro, 2020). It is only natural that these lawbreakers receive sanctions according to what they have done. Legal sanctions are based on the Criminal Code (KUHP). Perpetrators of crimes will not be called criminals if their actions are not revealed. However, if the crime is revealed, they will be called criminals because they are subject to criminal law. Perpetrators of crimes are called criminals because they violate criminal law. Committing a crime and serving a sentence is part of a crime. (Siddik, 2022)

The purpose of punishment is to correct evil deeds to maintain public order. This does not guarantee that crime can be eliminated, but it tries to minimize crime. Overcoming the problem of crime can be done through preventive and repressive actions. Preventive actions are obtained from formal education in schools and socialization in the family and environment that teaches about the values and norms adopted by society (Salles Tielle & de Araújo da Silva, 2023). Preventive actions sometimes fail, as evidenced by the occurrence of crime. Therefore, repressive actions are needed. Repressive actions include rehabilitation techniques. According to Cressey, quoted by Soerjono Soekanto in his book Introduction to Sociology, there are two conceptions of rehabilitation techniques:

1. Creating systems and programs that aim to punish these evil people. These systems and programs are reformative, such as conditional sentences, imprisonment, and prison sentences.
2. Emphasizes efforts to make criminals change into ordinary people (who are not evil).

The criminalization of citizens who commit crimes and are subject to legal sanctions based on the concept of rehabilitation and resocialization with the intention that after serving their sentence and returning to society, prisoners can realize their mistakes, no longer commit crimes, and be responsible for themselves, their families and their environment. However, in reality, former prisoners, after leaving prison, often get stigmatized by society that they are "socially disabled." Prisoners very much realize this predicate. (Maulana et al., 2023)

Prisoners are people who are punished for committing a crime. Prisoners serving their sentences in correctional institutions have lost their freedom of movement during their sentences, meaning that the prisoners concerned can only move within the correctional institution environment. Freedom of movement has been deprived for a certain period or even for life. (Ribeiro, 2023)

The purpose of treating prisoners has developed into legal protection, both for the community as the injured party and for the perpetrators of criminal acts as the harmed party. This aims to prevent both parties from taking the law into their own hands (Azed et al., 2023). The form of treatment is expressed in the efforts of the LAPAS to foster prisoners, which aims to prepare for the resocialization of prisoners. So that prisoners can know themselves, which means they can change themselves to be better and positive, no longer commit crimes, and develop themselves into people who benefit the nation, state, religion, and family. (Kamseno, 2022)

The Correctional Concept has been officially recognized as a success in treating prisoners. The prison system treats prisoners as mere objects. This means that the position of a prisoner is placed as an object. As an object, prisoners are given a number treated lower than other humans; their existence as humans is less appreciated. As an object, prisoners are not given guidance, but their energy is often used for the benefit of the prison, and a reduction in sentence is also given as a gift. (Heller & Benaglia, 2023)

The new prisoner development system applies prisoners' treatment as subjects and objects. There is something that needs to be underlined here, following the mandate of Law Number 22 of 2022 concerning Corrections, that the treatment of prisoners is as both subjects and objects, so the treatment in two forms of treatment into one is the ability of humans to continue to treat humans as humans, who have an existence that is equal to other humans (Widodo, 2022). So the subject here is equality parallelism, as humans, God's creatures, and specific creatures who can think and make decisions.

Based on the above, if we look at the phenomenon, the overcapacity of prisons/detention centers is the main problem of declining quality in prisons/detention centers. This results in a broader span of control between officers because the number of officers and prisoners who must be supervised is not comparable (Corrêa, 2023). Overcapacity also results in a decrease in the support capacity of facilities and infrastructure, which will have other impacts, such as drug trafficking, misuse of mobile phones, lack of health services, illegal levies, and illegal stalls. There are quite a few cases that prove that a prisoner controls drug transactions from within the prison. The prisoner contacts members of his network via mobile phone (HP). The rampant use of mobile phones (HP) by prisoners has been going on for a long time, and officers have also made various efforts through routine raids on residential rooms. Inmates have also received disciplinary action for the disciplinary violations they have committed. (Azed et al., 2023)V

For that, it is necessary to transfer prisoners from crowded prisons to prisons that are still possible. Although a prisoner is serving a sentence of loss of freedom in a prison/detention center, prisoners' rights must still be protected in the correctional system, namely to live decently (Putro et al., 2022). In addition, correctional institutions are also making breakthroughs in handling overcapacity by implementing optimization of remissions, conditional release, pre-release leave, and conditional leave. (Simarmata & Sidabalok, 2022)

Therefore, based on this phenomenon, optimizing the provision of Remission or reducing sentences for prisoners (prisoners) is a solution to overcome the high density of detention centers. Granting Remission can save the state budget. In 2021, at the Class II A Binjai Penitentiary, the budget successfully saved by providing a one-month remission reached IDR 1.4 billion (Kemenkumham). This amount was obtained from two types of Remission: general and special. Inmates who received general Remission in 2024 were 1075 people with Remission of 30 days. While inmates with special Remission in 2024 were 908 people with a Remission of 30 days.

 Based on the description above, the author is interested in conducting research titled "Criminal Law Politics on the Granting of Remissions to Prisoners: Research on Class IIA Prison of Binjai."

Based on the background above, the formulation of the problem in the discussion of this research is as follows:

1. What is the criminal law policy regarding granting Remission to Class II A Binjai Penitentiary inmates?
2. What obstacles are faced in granting Remission to Class II A Binjai Prison inmates?

**Literature Review**

The research discusses the policy formulation of Remission for corruption convicts in Indonesia's criminal justice system, emphasizing the importance of protecting prisoners' rights, including the right to Remission. The implementation of Government Regulation No. 99 of 2012 has sparked debate due to its stringent requirements for granting Remission to serious offenders, leading to calls for its revision by the Ministry of Law and Human Rights. (Zakaria, 2018)

The research identifies and analyzes the legal rules and effectiveness of remission policies for prisoners in Indonesia, highlighting that Remission is a legal right granted under specific conditions. The study finds that the current remission policies, governed by various regulations, are ineffective and may be susceptible to political manipulation for individual or group interests. (Al et al., 2021)

This article analyzes the mechanism for granting remissions to corrupt convicts under Law Number 22 of 2022 concerning corrections. It outlines that Remission, which reduces the sentence duration, requires good behaviour, active participation in rehabilitation programs, and a reduced risk level, with an additional requirement for corrupt convicts to fully pay fines or replacement money. (Fitri & Wahyudhi, 2023)

**Research Method**

In the study, the approach used to solve the problem is the empirical legal approach. The intended legal approach is that law is seen as a norm or das sollen), because in discussing the problem in this study using legal materials (both written law and unwritten law or both primary, secondary, and tertiary legal materials (Qamar et al., 2017). The empirical approach is to see the law as a social, cultural reality or das sein because this study's primary data is obtained directly from the research location. (Irwansyah, 2022)

The empirical legal approach intended in this study is that analyzing the formulated problems is done by combining primary, secondary, and tertiary legal materials (which are secondary data) with primary data obtained in the field, namely regarding criminal law policies regarding the granting of remissions to inmates at Class II A Binjai Penitentiary.

**Result and Discussion**

**Data on Prisoners Who Received Remission at Class II A Binjai Penitentiary in the Last 4 Years**

Based on the research results, prisoners and detainees who received Remission from 2021 to 2024 are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **NO** | **YEAR** | **GENERAL REMISSION** | **SPECIAL REMISSION FOR IDUL FITR** |
| **1.** | **2021** | **1171** | **1109** |
| **2.** | **2022** | **1357** | **1165** |
| **3.** | **2023** | **1052** | **982** |
| **4.** | **2024** | **1075** | **908** |

*Source: Class II A Binjai Penitentiary (Prison)*

The granting of remissions for prisoners also accelerates the return of prisoners (correctional inmates) to community life. In addition, granting remissions also reduces the number of correctional inmates, which continues to increase yearly. Meanwhile, the capacity of prisons is no longer able to accommodate the number of prisoners (Masirri et al., 2022).

The relationship between prisoners and prisoners with officers and teachers is generally reasonable. The different backgrounds of prisoners do not cause problems because they share the same fate of living part of their lives in the Correctional Institution. Despite the differences in background, they still have similarities, namely, the same livelihood before they became prisoners. (Masirri et al., 2022)

This is due to differences in character between prisoners. So far, the disputes can still be handled by prison officers. In this case, officers are supervisors, security, services, and care for prison inmates.

**Criminal Law Policy Regarding Granting Remission to Correctional Institution Residents**

The criminal law system cannot be separated from the subsystem of substance or material of criminal law legislation, the subsystem of structure or enforcement of criminal law, or the culture of society as users of criminal law. (Bagaskoro et al., 2023)

Thus, the criminal law policy or criminal law policy (penal police) is essentially how criminal law can be formulated well and provide guidelines to lawmakers (legislative policy), application policy (judicial policy), and implementation of criminal law (executive policy). Legislative policy is a decisive stage for the next stage because when criminal legislation is to be made, the direction to be taken has been determined, in other words, what actions are deemed necessary to be made as an action prohibited by criminal law. (Marques de Abreu et al., 2022)

It can be interpreted as determining a person's actions as an act that can be punished. This process ends with forming a law that threatens the act with a sanction such as a criminal penalty.

In this regard, the implementation of Remission is based on the applicable legal basis and is adjusted to the laws and regulations. The applicable legal basis is:

1. Decree of the Head of State of the Republic of Indonesia (President) No. 174 of 1999 concerning the granting of Remission
2. The existence of the regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M HH-01.PK. 02.02 of 2010, which states regarding the granting of follow-up remissions
3. The existence of Regulation No. 32 of 1999 concerning procedures and participation in the implementation of all correctional inmates.
4. Statement on correctional facilities as regulated in Law No. 22 of 2022 concerning Corrections

The use of criminal law as a means to combat crime does not seem to be a problem, and this can be seen from the practice of legislation so far, which shows that the use of criminal law is part of the policy or legal politics adopted in Indonesia (Haryono, 2018). Criminal law is considered natural and normal as if its existence is no longer questioned. The problem is what policy lines or approaches should be used in criminal law. This is related to human awareness of human rights, starting with awareness of self-esteem and dignity. (Masirri et al., 2022)

Human rights have existed since humans were destined to be born. Thus, human rights are nothing new. The Indonesian government, whose heart respects and recognizes human rights, is committed to protecting/fulfilling human rights at the stage of implementing decisions. The form of this commitment is the institution of supervisory and observer judges (WASMAT) as regulated in Articles 277 to 283 of the Criminal Procedure Code. The enactment of Law Number 22 of 2022 concerning Corrections is an activity to guide correctional inmates based on an institutional system and a method of guidance, which is the final part of the criminal punishment system in the criminal justice system. (Berutu et al., 2024)

Therefore, based on the results of the study on the relationship between criminal policy and the granting of Remission, as many as 1,983 inmates of Class II A Binjai Penitentiary received Remission in addition to providing general Remission of sentence reduction (RU) given on the Independence Day of the Unitary State of the Republic of Indonesia and special Remission (RK) given on religious holidays. Therefore, guarantees in the criminal case process are regulated in the International Covenant on Civil and Political Rights (ICCPR) 1996, Declaration on Protection From Torture 1975, Standard Minimum Rules for the Treatment of Prisoners 1957. (Joseph, 2022)

At the stage of implementing the verdict, the human rights of prisoners are still guaranteed and protected by law, which means respect for human dignity. Article 10 of the ICCPR emphasizes that all persons who lose their freedom are treated humanely and with respect for the personal dignity of their subordinates (Jasher. P & Neltje Saly, 2023). The prison system must be based on treating prisoners whose essence is social reform and rehabilitation. Juvenile offenders must be separated from adults and given proper treatment for their efforts and legal status. (Rustanto et al., 2023)

Thus, if criminal policy uses criminal law policy, steps must be made intentionally and consciously. Choosing and establishing criminal law to overcome crime must consider all factors supporting its functioning or working. Three meanings regarding criminal policy, namely:

1. In a narrow sense, the totality of principles and methods form the basis of reactions to law violations in the form of criminal sanctions.
2. In a broad sense, it is the entire function of the law enforcement apparatus, including the working methods of the courts and the police.
3. In the broadest sense (which he took from Jorgen Jepsen), the totality of policies carried out through legislation and official bodies aim to uphold society's central norms.

In this regard, based on the results of an interview with Enang Supriyadi Syamsi, Head of the Regional Division of the Ministry of Law and Human Rights of Southeast Sulawesi (November 26, 2016), stated that: "The prison system is old-fashioned, used during the colonial era, now is no longer the era of violence in handling prisoners (Jhody, 2022). Guidance for lawbreakers with rehabilitation and social reintegration suits society's current conditions. Granting Remission is a right of prisoners regulated in Law Number 22 of 2022 concerning Corrections (Darwis, 2020). Not all prisoners immediately receive Remission, and there are regulations governing the procedures for granting Remission, namely Presidential Decree of the Republic of Indonesia Number 174 of 1999 concerning Remission, and reinforced by Government Regulation (PP) Number 32 of 1999 and PP Number 28 of 2006 concerning Requirements and Procedures for Granting Rights of Correctional Inmates". (Nahdiyah & Rinaldi, 2023)

Based on this, in the author's opinion, regarding the criminal law policy for convicts who are serving a sentence of loss of liberty or corporal punishment based on a court decision with a definite determination in a Correctional Institution, it is desired that they remain part of society so that convicts do not give up hope of living together in society. (Kifli, 2022)

Prisoners in Correctional Institutions are placed as subjects in guidance, not objects of guidance. This means that prisoners are human beings whose rights are still respected. This is related to the use of the correctional system in Correctional Institutions.

**Obstacles Faced in Granting Remissions to Prison Inmates**

The criminalization of citizens who commit crimes and are subject to legal sanctions based on the concept of rehabilitation and resocialization with the intention that after serving their sentence and returning to society, prisoners can realize their mistakes, no longer commit crimes, and be responsible for themselves, their families and their environment (Suci & Ritonga, 2024). However, in reality, former prisoners, after leaving the Correctional Institution, often get stigma from a society that they are "socially disabled". Prisoners very much realize this predicate. (Rahail & Alamsyah, 2023)

Based on the research results, Guidance in Class IIA Binjai Penitentiary is performed in stages. Like the stages humans go through in their development, according to the theory of the eight stages of life. Everything that happens in human life is not instant. Likewise, fostering prisoners is not instant; it must go through stages. The stages of guidance are:

1. Each prisoner must begin the predetermined stages of development.
2. The stages of development for prisoners are determined based on the length of the sentence/development period of the person concerned.
3. The coaching process for prisoners whose remaining sentence is more than 1 (one) year consists of 4 (four) stages:
4. The first stage is initial guidance, preceded by observation, research, and familiarization with the environment (appealing) from acceptance until at least 1/3 of the actual criminal period.
5. Second stage: further development above 1/3 to at least ½ of the sentence.
6. Third stage: further development of more than ½ to at least 2/3 of the sentence.
7. Fourth stage: continued coaching above 2/3 until the end of the sentence
8. The coaching process for prisoners whose remaining sentence is up to 1 (one) year consists of three stages:
9. First stage: from receipt until at least ½ of the actual sentence.
10. Second stage: from ½ to at least 2/3 of the actual criminal term.
11. Third stage: from 2/3 until the end of the sentence.
12. Coaching for prisoners sentenced to death or life imprisonment is not carried out in stages except after their sentence has been changed to temporary imprisonment.

The purpose of treating prisoners has developed into legal protection, both for the community as the injured party and for the perpetrators of criminal acts as the harmed party. This aims to prevent both parties from taking the law into their own hands (Wibowo, 2020). The form of treatment is expressed in the efforts of the Correctional Institution to foster prisoners, which aims to prepare them for the resocialization of prisoners. So that prisoners can know themselves, which means they can change themselves to be better and positive, no longer commit crimes, and develop themselves into people who are more valuable to the nation, state, religion, and family. (Dewi Shinta Wulandari Lubis, 2023)

As discussed in the previous section, although, in general, the fulfillment of the right to reduce the sentence in the Correctional Institution has been implemented well (Zaini & Subroto, 2023), of course, there are still factors that influence and result in the obstruction of the granting of sentence reduction (Remission) to prisoners. In Law Number 12 of 1995 concerning Correctional Institutions. Article 14 states that prisoners have the right to (Agus Eka Mahardika, 2020):

1. Carry out worship according to your religion or belief.
2. Get treatment, both spiritual and physical.
3. Get education and teaching.
4. Get adequate health services and food.
5. Submitting a complaint

In this regard, from the results of research and several interviews conducted, the author found several factors that hinder the fulfillment of the right to reduce the sentence (Remission) for prisoners, including:

1. The prisoners themselves, because one of the requirements to get a reduction in sentence (Remission) is that they must behave well. According to the study results, most prisoners often encounter attitudes of unwillingness to be good and the absorption capacity in receiving educational guidance that varies from prisoner to prisoner.
2. A conducive environment, environment is an element that plays a crucial role in the implementation of the fulfillment of the right to reduce the sentence (Remission) for prisoners. Such as a good relationship between prisoners because if their relationship is not good, then there will be a dispute that can become a fight and result in the prisoner being unable to be given Remission.
3. The prisoners' indifference towards the administration of their sentences in correctional institutions.

Based on the research results, according to the author, the way to overcome the inhibiting factors in fulfilling the right to reduce the sentence (Remission) can be done by:

1. All essential components in prisoner development (prisoners, families, correctional officers, and the community) must work together and provide information to each other so that prisoner development can run well.
2. The relationship between prisoners and correctional officers with prisoners must continue to run well and help maintain a conducive environment.

Therefore, in guidance, a mentor must obtain special training so that assistance is valuable and responsible because it is closely related to changes in a person's life (Zaini & Subroto, 2023). From the definition above, it can be concluded that guidance is a compelling effort to assist educated and trained individuals in determining choices, adjustments, and problem-solving when carrying out their life activities. Guidance in guidance aims to get to know oneself better and develop the potential within oneself to overcome problems so that one can determine one's path in life responsibly.

Article 1, paragraph 6 of Government Regulation No. 32 of 1999 states that Remission can be interpreted as a reduction in the sentence given to prisoners and juvenile prisoners who have carried out all the conditions imposed in the laws and regulations. The same thing was stated by the Head of the Binadik Section of Class II A Binjai Prison, Andi Gultom (interview December 10, 2024), stating: "Prisoners in any crime who want to apply for remission must go through several special procedures and procedures so that their request is not rejected, 2 ways to get remission, namely General Remission, Follow-up General Remission, Special Remission, Follow-up Special Remission, Additional Remission, Decade Remission, & Humanitarian Remission"

Therefore, the concept of deterrence against perpetrators of crime is more appropriate if it uses systems and programs that emphasize efforts so that criminals can improve their actions so as not to commit crimes again. In the criminalization process, Correctional Institutions (LAPAS).

**Conclusion**

Criminal Law Policy on the Requirements for Granting Remission to Prisoners, namely the fulfillment of the right to reduce the sentence (Remission), follows existing laws and regulations. However, based on the results of research in the field, the fulfillment of the right to reduce the sentence (Remission) still needs to be improved, such as explaining to prisoners the requirements for obtaining Remission and creating a conducive environment so that nothing happens that can prevent prisoners from obtaining Remission.

Obstacles Faced in Granting Remission to Prisoners: namely one of the factors that hinder the fulfillment of the right to reduce the sentence (Remission) is the prisoner himself because one of the requirements for obtaining a reduction in sentence (Remission) is that the prisoner must behave well. Meanwhile, from the study results, most prisoners are hampered by an unwillingness to be good and the absorption capacity in receiving educational guidance that varies among prisoners.

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