

Review of Remission and Assimilation in the Correctional System with the Foundation of Human Rights

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Abstract

This research is related to the granting of remission and parole rights on the basis of the value of justice in accordance with human rights. This research was conducted to find out about the embodiment of justice in the granting of remissions and parole to convicts. Both criminals and corruption convicts. This research will also review the arrangements regarding the granting of such remissions and also the ideal concepts regarding the granting of such remissions and parole. This research will use empirical normative legal research methods that emphasize philosophical, dogmatic and conceptual sides. The data collected in this study was carried out by means of literature and document studies. Data analysis used a qualitative descriptive method. This research presents that the embodiment of justice in granting parole and release to prisoners is not entirely fair and equitable. The regulatory process regarding granting remissions and conditional release should be in accordance with the norms and not contradictory. The concept of granting remissions and parole must be balanced in terms of justice and also balanced in coaching.

1. Introduction

Indonesia is a country that has legal principles and is not a country that relies solely on power like the monarchy in the past. This is stated in the elucidation of the 1945 Constitution which states this. The Republic of Indonesia has the basis of Pancasila and the 1945 Constitution and also upholds human rights and also guarantees that all citizens have the same position before the law. Basically the law can specify what must be done and what is prohibited. The law has a goal so that people are more obedient to the legal basis in Indonesia. And the law can also deal with any activities that may occur and is also a tool for the state in acting based on law. The legal system itself is a form of law enforcement in force.

In the law in Indonesia itself has a criminal law that regulates all crimes or actions that are prohibited in Indonesia. And of course there are very strict criminal sanctions for people who violate these regulations. There are procedures that must be followed by competent parties in the enforcement process. Criminal law in Indonesia is based on the Criminal Code and the Criminal Procedure Code as well as other criminal laws and regulations that will specifically regulate it.

In Article 10 of the Criminal Code, there are 2 types of punishment consisting of principal and additional punishments. The main punishment itself is imprisonment which makes violators of the rule of law must receive sanctions. And they are also known as convicts. Criminal law has the main task and function as public protection against crimes that arise as a result of violations of the law. In practice, criminal law has the goal of improving the perpetrators of crimes so that they are aware and not repeat it.

In achieving the goals of criminal law, of course, it requires a criminal justice system consisting of various types of police, prosecutors, courts and correctional institutions. And this has the following objectives:

- a. Prevent people from becoming victims of crime
- b. Resolving crime cases that arise in the midst of society so that justice can be resolved and upheld
- c. Ensure that people who commit crimes do not repeat these crimes.

In this integrated justice system, it is regulated how the criminal law is enforced. This system can regulate the process of a case from investigation to correctional. Meanwhile, on the legal side, there are far fewer legal studies regarding the penal sub-system than other studies. This correctional facility itself was introduced by Sahardjo in 1963. This system was used as part of the purpose of imprisonment. These ideas and ideas will be formulated in detail and deeper as a system of guidance for convicts in Indonesia. This system will displace the fostered system which was inherited from the Dutch colonial where they put forward a prison system that was quite cruel to convicts. And there is no Human Rights and justice side to the system.

There is a foundation regarding Corrections, namely RI Law No. 12 of 1995 that there are laws and regulations that are related to the implementation of imprisonment which are able to present activities to provide guidance to citizens. This system itself is an order that relates to boundaries and also ways and directions regarding the development of correctional inmates with the foundation of Pancasila which is carried out in an integrated manner between the coaches and also those being fostered. So that people can realize their mistakes and also improve themselves so that they decide not to repeat these actions while in correctional facilities.

This system itself has provided convicts' rights based on Article 14 paragraph (1) of the Correctional Law where there is a right to obtain remission which is part of the convict's coaching efforts before later reintegrating into society with certain conditions based on the law. Remission is a reduction in the time spent serving a sentence given to convicts and also criminal children so that they can fulfill the

conditions specified in the laws and regulations. Remission and assimilation is one of the processes of coaching convicts and correctional students which is carried out by making convicts mingle in the community environment.

The history of remission itself began during the Dutch colonial era. This reduced sentence stems from the birthday celebration of the Queen of the Netherlands. This celebration made the Dutch Colonial government provide sentence reductions or remissions to convicts. And this was then used by the Indonesian government on the basis of the Presidential Decree of the Republic of Indonesia States No. 156 of 1950.

While the convicts themselves have an understanding of convicts who are undergoing punishment or sanctions so that their life independence is lost. And these convicts are in Correctional Institutions which have rights that are still protected by Human Rights and also the Law of the Republic of Indonesia. One of these rights is by granting remissions to the state. Remission is essentially a right for all convicts which can apply to anyone who has the right for all convicts. And it can also apply to anyone as long as the convict is serving the sentence.

This positive law in Indonesia regulates remission on the basis of Law no. 12 of 1995 concerning Corrections, Government Regulation no. 32 of 1999 which contains the Terms and Procedures for the Implementation of the Rights of Correctional Families. The legal basis is a reference for the legal system in Indonesia. Remission and assimilation are important decisions for the freedom of prisoners. Assimilation of convicts has a very important role in the implementation and also efforts to approach convicts to society. This is done for readjustment after these convicts leave the Penitentiary. In addition, the implementation of coaching can be carried out separately and also closed from the outside community before later these ex-convicts can integrate or regroup in the community.

Remission and assimilation for convicts is a very important part in achieving the goals of correctional facilities and is also a right that must be protected for convicts who meet the requirements. This correctional coaching system has principles consisting of:

- a. Able to nurture
- b. Equality of service and also treat
- c. Education
- d. Guidance to prisoners
- e. Respect for human dignity and worth
- f. Loss of independence that becomes suffering for convicts
- g. Guaranteed rights in relation to family and closest people.

In this development, arrangements regarding remission and assimilation of convicts have distinctions against convicts regulated in Government Regulation no. 99 of 2012. This regulation regulates changes regarding Government Regulation no. 28 of 2006 in conjunction with Government Regulation 32 of 1999 regarding the Requirements and Procedures for the Implementation of the Rights of Correctional Families, which include criminal acts of terrorism and also narcotics to crimes against

state security. Then it regulates human rights crimes and also transnational organized crime.

From criminal law to the correctional system and human rights, studies are carried out that make correctional facilities part of an integrated criminal justice system. This makes the penitentiary system a very important part of achieving the ultimate goal of the criminal justice system in Indonesia. Theory of Criminal and Punishment is one of the theories used as a review process related to crime and also types of punishment with the aim of imposing criminal penalties on the perpetrators of crimes. Meanwhile, the penal system is fundamental to the procedures and implementation system of imprisonment in Indonesia, which consists of a correctional system with the aim of punishment in accordance with the law.

Human Rights have a definition or understanding as basic human rights that are inherent to every person even if the party commits a crime. And these human rights are still lived by convicts in prison in the correctional system. This is stated in the 1945 Constitution which has the concept of general and specific state objectives. Where the goal of this country is to protect the entire nation and state as well as promote general welfare and educate the nation's life which means protecting human rights including the Indonesian people.

Talking about punishment and transference, in general, they have objectives that can be classified into 2 theories consisting of:

a. Absolute theory

This theory will emphasize that punishment is given to someone who commits a crime and also a crime according to Muladi & Nawawi (1984). Every crime must be prosecuted under criminal law which is non-negotiable and also cannot be left out in its implementation.

b. Relative Theory

This theory has the view that crime is not just retaliation for the perpetrators of crime alone. But there are certain goals that have the benefit of not repeating the same offense in the future. The sentence is imposed not as *quia peccatum est* or for committing a crime, but as *ne peccatum* or not returning to commit a crime.

In the development of this crime, predictions about the next theory will appear, namely the combined theory which will assume that retaliation is the principle of punishment which of course cannot go beyond fair retribution. This crime puts forward the stand regarding punishment which has the conviction that crime has an effect, among other things, the improvement of things that are damaged in people's lives and also general prevention according to Muladi (1984). Criminal law in Indonesia has a tendency to adhere to the theory of punishment which consists of a combination theory.

The theory of the penitentiary system in Indonesia is a shift in the prison sentence implementation system from the prison system which was changed to a correctional system capable of presenting major changes in the concept of sentencing. This prison system has an emphasis on the element of revenge for the actions of criminals. Practically making an institution that serves as a prison is of

course not in line with the concept of rehabilitation and also social reintegration so that convicts have awareness of the mistakes they have made.

In this Correctional Law it is stated that this penitentiary system is an integral part of criminal law enforcement. Therefore this implementation cannot be separated from the development of the general conception of the said financing. The issue of sentencing has become a problem that has received less attention in the course of the law. This of course must be set aside because this law has to do with the conditions that must be met for the possibility of imposing a sentence which makes the problem completely inseparable and forgotten.

The criminal system is a very important part of the Criminal Code which can become a benchmark and reference regarding the civilization of a nation. This rule has provisions regarding the type of punishment and rules relating to the size and implementation of the punishment . From the type, size and implementation, one can see the attitude of a nation through laws and the government that regulates the lives of citizens and foreigners who are proven to have violated the laws and regulations in force in a country.

This penal system is an attempt to return convicts to the community and mingle in that environment as before they were punished for the crimes they committed. According to knowledge from the Indonesian language, it can be said that correctional itself comes from the basic word society which means as an organism in the unity of a group of people who have integrated and assimilated characteristics among one another.

In Law no. 12 of 1995 in Article 1 paragraph (2) states regarding the penal system that an order that has direction and boundaries is based on Pancasila which can be carried out in an integrated manner between the community and supervisors in order to improve the inmates of the penal system. This coaching is more about the implementation of coaching from convicts which has a definition as an activity in improving the quality of attitudes, behavior, intellectual and also professional as well as physical and spiritual health of convicts.

For arrangements regarding the rights of convicts, it is regulated in RI Law No. 12 of 1995 Article 14 paragraph (1) regarding Corrections which consists of:

- 1) Have the right to worship according to religion
- 2) Get spiritual and physical care
- 3) Get education from the state
- 4) Adequate health and food services from the state
- 5) Have the right to complain
- 6) Have the right to read, view media broadcasts and others
- 7) Have the right to work performed in the form of wages and or premiums
- 8) Get the right in visits from family
- 9) Has the right to get remission
- 10) Getting the chance to visit family is assimilation
- 11) Have the opportunity to get conditional release
- 12) Has rights in accordance with the applicable Perpu

In this coaching process, there are various kinds of coaching activities in terms of personality and also independence which consists of several aspects related to:

- 1) Piety to God Almighty
- 2) Awareness of the state and also the nation
- 3) Intellectualism related to self
- 4) Behavior
- 5) Spiritual as well as physical health
- 6) Legal awareness in accordance with the Act
- 7) Healthy reintegration with the community environment
- 8) Work skills
- 9) Production and work training that is useful when returning to the community environment.

While assimilation is defined as the assimilation of a culture followed by the loss of the characteristics of the original culture and forming a new culture in a community. This assimilation is followed by efforts to reduce differences within a group. In order to reduce these differences, of course assimilation can include efforts to strengthen unity of action as well as feelings and attitudes that do not forget to pay attention to common goals. Assimilation also exists within the rights of convicts. This right has a meaning as a prisoner coaching system which is implemented by inviting convicts to mingle with society and carry out activities in the community according to narratives and research from Poerwanto (2020).

Then the right of remission itself has the meaning as a reduction in the period in serving a sentence given to convicts who meet the conditions specified in the legislation. In the process of coaching convicts, remission can be one of the motivations and also hopes for convicts to improve themselves in accordance with the guidance applied in the law and the penitentiary system in Indonesia. Of course remission and assimilation are related to human rights according to Law no. 39 of 1999. These human rights are basic rights that must be given to humans with universal characteristics. These human rights must be protected and respected. And should not be ignored by the government and also seized by anyone. These human rights are basic freedoms inherent in humans as a gift from God.

Therefore the state and government have an obligation to protect human rights without discrimination. The protection of these human rights has the meaning as a guarantee from the state that is pro-active in carrying out protection in various kinds of regulatory policies against violations of human rights. All moral rights originate from humanity in guaranteeing inseparable human dignity.

2. Research Method

This research uses normative empirical method which is research by using a way of examining written literature as well as secondary data that supports this research process. This method puts forward primary data that tells about the law in force in a country. In this study, conclusions can be drawn regarding the law of

literature used to present a complete and detailed research. The data which is the source of this research data has relevance and attachment to human rights as well as punishment and correctional institutions such as statutory regulations and also the Criminal Code. Then there are also international provisions that have a correlation with the protection of human rights for convicts or detainees. Secondary data consisting of literature on law and human rights where there are several research and scientific works consisting of documents such as articles to news in other media. Other sources of data that can be used are interviews and documentation with officers in correctional institutions as well as inmates up to the Regional Office of the Ministry of Law and Human Rights.

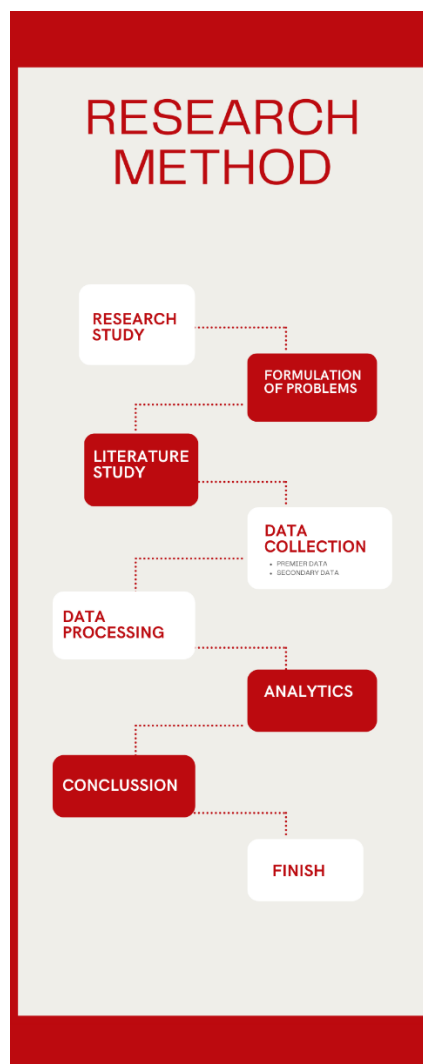


Figure 1. Research Methods

3. Results and Discussion

The correctional system is an implementation system within prison sentences

that has a history and also different implementation procedures in each country. There are several terms such as the Pennsylvania system, Auburn, The Mark System, and also The Irish Progressive System to the Elmira System. Meanwhile in Indonesia, the penitentiary system is a substitute for the prison system which is a legacy of the prison system from the Dutch and Japanese colonials.

This system has been a substitute for the term imprisonment since 1964 which was mandated by President Soekarno who announced that there was a Service Conference of Prison Officers to be held in Lembang, Bandung. Of course this change is to make changes to the prison system which is a legacy from the colonial era which is not in accordance with the personality of Pancasila. Of course, this change has a very noble task and is in accordance with the goals of the penitentiary in carrying out its duties as a bridge link for policies regarding social protection in the direction of achieving social welfare in the community according to Poernomo (1993). This system can provide success in the desire to stabilize social order in society and also the state. This is due to the fact that the system is not just a complementary tool. However, as the main tool in carrying out effective and efficient criminal law in order to enable convicts to mingle back into society after fulfilling criminal requirements.

This penitentiary system has a role in an arrangement regarding boundaries and also directions as well as coaching regarding penitentiary citizens in accordance with the Pancasila foundation and can be carried out in an integrated way between coaches and individuals who are fostered and the community which can improve the quality of the inmates. This is a way of realizing mistakes and also improving oneself so as not to repeat criminal acts or crimes. So that they can be accepted back to live in the community environment, and can participate in the development of the community environment.

Of course this requires a system to foster convicts in accordance with the goals of the system. The development of these convicts has a very important role in treating individuals with convict status so that they can become good individuals. The purpose of this coaching certainly has a close correlation with the goals of the criminal justice system. This system is a system in society to deal with crime according to the narrative of Mardjono (1984).

While the other goals are as a way of resocializing and also rehabilitating criminal offenders as well as controlling and preventing crime which can provide opportunities to improve people's welfare in accordance with the draft Criminal Law in Indonesia according to Muladi's narrative (1998). This system is also a way of forming inmates from correctional institutions so they can reflect on themselves and improve themselves so they don't make mistakes again. And of course so that they can be accepted back when they return to society.

The function of this penitentiary system is contained in Article 3 of the Correctional Law which states that this function is assigned as a way to prepare residents of correctional facilities to carry out healthy integration within the community. And of course can play an active role as an individual who is free with responsibility to the community environment. This training has several objectives

consisting of:

- a. The purpose of coaching in general is divided into 2 aspects, namely:
 - 1) Strengthening on the side of faith as well as mental resilience for the inmates of the correctional facility
 - 2) Fostering citizens so that they can integrate in the community and also groups after completing the criminal terms assigned to them.
- b. Specific coaching objectives consist of 4 aspects, namely:
 - 1) Strengthening the self-esteem and self-confidence of the inmates so that they have an optimistic side for their future lives.
 - 2) Can gain knowledge and skills as a provision for their life later in development in the community environment
 - 3) Can gain knowledge about the law so that they understand and comply with the law which can be reflected in disciplined and orderly behavior.
 - 4) Have an obedient soul and also the spirit to serve the country.

In the Laws and Regulations in Article 5 it is stated that there are principles of fostering convicts which have several aspects and factors, including the following:

- a. Protection is an action for the inmates in the aspect of protecting the community so that they do not repeat crimes or criminal acts that have been committed by them. In addition, providing life provisions to the inmates is one way for them to develop in the community.
- b. Obtaining equality in terms of treatment and service will certainly prevent inmates from being discriminated against. The same treatment and service can make residents not feel inferior if they return to the community environment.
- c. Inmates receive education and guidance on the basis of Pancasila which includes a family side, spiritual education, skills and also opportunities to perform worship according to their religion and beliefs.
- d. The inmates receive respect for human dignity which can make them feel as whole human beings
- e. The loss of independence is certainly one of the sufferings for the inmates. This can make them feel depressed. Therefore, the inmates will still get their rights like humans in general. The civil rights of the inmates such as eating, drinking to clothing and also beds are guaranteed by the state
- f. The rights of inmates to relate to family members are still given. In addition, they should not be isolated from the community. As well as having the opportunity to gather with friends and family.

Human Rights are highly respected in Indonesia. And this is stated in RI Law no. 39 of 1999 concerning Human Rights which contains basic freedoms and basic rights for citizens which cannot be denied as nature and also a gift from God. Indonesia itself is a constitutional state with the foundation of Pancasila and the 1945 Constitution which is the reference in the rules of Human Rights and guarantees that all citizens have the same position in government and also the law and are obliged to uphold this law.

While the main basis for the implementation of this criminal law is contained

and listed in RI Law No. 8 of 1981 concerning the Criminal Procedure Code where the implementation of this crime is regulated in RI Law No. 12 of 1995 concerning Corrections which is also the foundation of Human Rights. Prisoners are humans like other Indonesian citizens. And on the basis of the law it is stated that the inmates of this correctional facility are human beings who must receive good and humane treatment in an integrated coaching system. Therefore the Correctional Law adopts basic human rights which are an appreciation in terms of human dignity as human rights that are inherent in him as a human being.

One manifestation of human rights is remission and assimilation. Remission in the correctional system is a sentence cut for convicts who are considered in accordance with the requirements set by the state. According to KBBI or the Big Indonesian Dictionary, remission is a pardon given to people who are considered to have violated criminal law according to Darminto (1984). Remission is defined as partial or complete release for people who have received criminal punishment. Likewise for prisoners who were charged with life imprisonment which was turned into a limited sentence that occurred because of remission according to Andi Hamzah's narrative. And usually this remission occurs at the commemoration of the Independence of the Republic of Indonesia on August 17th.

Remissions have been enforced since the Dutch colonial era to the Regulation of the Minister of Law and Human Rights No. 3 of 2018 which contains terms and procedures for remission, assimilation and also leave to visit family, conditional leave, conditional leave and leave before release. During the Dutch colonial period, remission was a gift given on the birthday of the Queen of the Netherlands which was then continued every anniversary of Indonesian Independence or other events. Remission itself has a very deep meaning where the decision is expected to motivate prisoners to behave well in coaching and the process. And remission is a tribute to the humanity of the inmates of the correctional facility.

Remission is the right of convicts which is usually done by announcing religious holidays and the Independence of the Republic of Indonesia. And the announcement is made nationally in accordance with Article 14 paragraph (1) in Law no. 12 of 2005 which regulates correctional facilities. In addition, regulations regarding remission are also mentioned in PP no. 32 of 1999 regarding the conditions and procedures for implementing the rights of correctional inmates in Article 1 paragraph (6).

The right to remission of inmates of this correctional facility is regulated in article 34 which contains:

1. Correctional inmates have the right to achieve remission
2. Remission will be given to inmates with the following conditions:
 - a. Have good behavior while being inmates
 - b. Served a criminal term of more than 6 months
3. The requirements related to this good behavior must be proven as follows:
 - a. Did not undergo disciplinary punishment during the last 6 months commencing before the date of granting remission

- b. Participate in a coaching program organized by Correctional Institutions with a good predicate.

The right to remission for inmates of the correctional facility is stated in Law no. 12 of 1995 and also PP no. 32 of 1999 which is regulated in Article 34 which is divided into:

1. Remissions that can be obtained if these residents are related to:
 - a. Having service to the country
 - b. Doing actions that have benefits for humanity, especially for the country
 - c. Have actions that are useful and help Penitentiary
2. The provisions for obtaining remission rights are of course obtained while serving the punishment imposed on the inmates.

According to Presidential Decree No. RI. 174 of 1999 regarding remissions, it is stated that there are 2 types of remissions consisting of:

1. General Remission

This remission is given every anniversary of the Independence of the Republic of Indonesia

2. Special Remission

This remission is given every religious holiday that is adhered to by the residents who want to be given the remission.

3. Additional Remission

This remission is given to inmates who have rendered services to the state and have also performed deeds that are beneficial to the state and society

4. Human Remission

This remission is given to inmates on seniors day for those aged 70 years and also on world health and national children's day.

5. Follow-up Remission

This remission has 2 aspects, namely general and special follow-up remissions which will be given to inmates who previously did not pass administration

6. Remission of changes

Usually given to prisoners who are subject to death penalty to life imprisonment

7. Remission of the Decades

This remission will be given once every 10 years since 1955 on 17 August

8. Remission of extraordinary events

This remission is given to inmates who help save lives, property and state inventory when natural disasters occur around the Penitentiary.

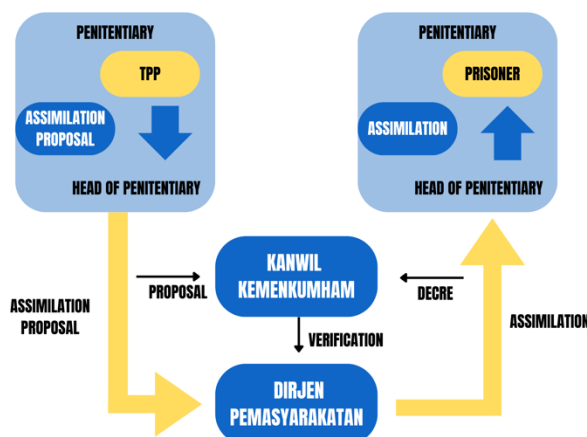


Figure 2. Remission Flow

Granting remissions for inmates involved in cases of terrorism, drugs to corruption and crimes against national security and human rights, of course, must meet several requirements to obtain remissions from the government, which consist of:

1. Willing to cooperate with law enforcers in dismantling cases regarding criminal acts related to their criminal acts
2. Paying the fine in full and the replacement money is in accordance with the court's decision for the prisoners of corruption
3. Have participated in the deradicalization program held by the BNPT and also Correctional Institutions which are also equipped with a pledge of loyalty to the Unitary State of the Republic of Indonesia and also do not repeat the crime.

While assimilation is a right given to convicts in accordance with Law no. 12 of 1995. Assimilation is also part of the coaching process for the inmates. And the stages regarding the development have the following stages:

1. The initial stages of coaching in accordance with Article 9 PP No. 31 of 1999 which consists of:
 - a. Observation and introduction as well as environmental research carried out for a maximum of 1 month
 - b. Planning regarding the personality development program and the independence of the inmates
 - c. Implementation of personality development programs and also the independence side of the inmates
 - d. Assessment of the implementation of the coaching program at the initial stage
2. The second stage of coaching consists of:

- a. Advanced program planning
- b. Implementation of the program
- c. Assessment of the implementation of the coaching program
- d. Program planning and implementation
3. The final stage of development consisting of:
 - a. Integrated program planning
 - b. Program implementation
 - c. The final process of the coaching program
4. The stages of coaching are determined through a trial conducted by the Correctional Observer team
5. Cross-over results are considered by the Observer team and also the Head of Correctional Institutions
6. The Ministerial Decree will regulate the form and type of coaching program in accordance with paragraphs (1), (2) and also (3).

The arrangements regarding assimilation are more about technical operations regulated in the Regulation of the Minister of Law and Human Rights No. 3 of 2018 which discusses the Terms and Procedures for granting Remission, Assimilation, Leave for inmates. And in the special arrangements regarding assimilation it is stated as follows:

1. Assimilation to terrorism, drug and corruption convicts is granted with the following conditions:
 - a. Have good behavior and not undergo discipline for 9 months
 - b. Actively participate in coaching programs conducted by Correctional Institutions
 - c. Has served two-thirds of the sentence in a short period of 9 months.
2. For citizens assisted by terrorism, must meet the following requirements:
 - a. Has participated in the Deradicalization program from BPNT and also Correctional Institutions
 - b. Already stated the pledge to the Unitary State of the Republic of Indonesia
3. Meanwhile, for the people who are fostered by corruption, they have paid in full the fines and compensation money according to the court's decision

4. Conclusion

Remission and assimilation are the rights of prisoners who are one of the supports for the correctional system as the operator of imprisonment in Indonesia. This remission and assimilation are also manifestations of the International Covenant on Civil and Political Rights as a form of protection for human rights. And this remission arrangement is spread out in several rules that are not in a comprehensive regulation which makes there is no legal certainty regarding the implementation of remissions. Both of these policies have a fairly good perspective in the realm of Human Rights which has a basis for the value of recognition of human dignity and worth. This remission and assimilation can help convicts as a basis for

human rights for those who have improved themselves.

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