

A Review of Legal Justice: Parole in The Indonesian Prison System



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ABSTRACT: This research aims to examine analyze and review the parole arrangements in the correctional system in Indonesia. In addition, to study and analyze the implementation of parole in order to ensure legal justice. This research uses normative legal research that focuses on the review or study of positive law. The research approach is a method or way to conduct a study so that researchers get information from various aspects to find the issues they are looking for answers to. In accordance with the type of research, namely normative juridical, the research approach used in this research is the Normative/Statute Approach, Conceptual Approach, conceptual approach and Case Approach. The results of this study indicate that there are regulations regarding parole in the correctional system in Indonesia, but these rules are not in line with their implementation so that solutions need to be given in these problems in order to ensure legal justice in parole in the correctional system in Indonesia.

KEYWORDS: Community Institutions; Parole; Correctional System.

I. INTRODUCTION

The prison system was already known before Indonesia was colonized. The prison system before Indonesia was very different from the current prison system which is better known as permasyarakatan, because there are certain ruling factors related to policies in the prison system.¹ As an institution, prison in this context can be understood that the writing of the history of prison cannot escape from the concentration of value systems that are intertwined and have a relationship with the punishment of loss of freedom. Particularly the implementation that took place during a certain period of time and is historical evidence in the development of Peno-Correctional philosophy from time to time. In addition to the connection with the previous implementation of the punishment of loss of freedom which is oriented towards a certain Peno-Correctional philosophy, imprisonment is also a reality in which something exists and as something that exists it has its causes to exist. By something that exists, it is a system, namely the system of treatment of those who have been convicted of something prohibited by law, involved in criminal proceedings and in particular those who have been found guilty and sentenced to loss of liberty.

Correctional as a system, involves correctional in context both in essence and in substance, and also involves correctional in action. In essence, the correctional system is based on a philosophy that is very consistent with the view of the Indonesian nation in treating human lawbreakers, including how to handle them. This philosophy is a manifestation of Pancasila which is the philosophy of life of the Indonesian nation. Society in its substance will not be separated from society in its essence. Although the substance shows perspectives that point to the influence of enculturation (the process of learning cultural values and norms). Socialization in action is also inseparable from socialization in its essence and socialization in its substance which manifests as a system of gotong royong.

At the stage in the Correctional System relating to problems in law enforcement today, it becomes a separate assessment by every citizen. Although then each society with its own characteristics, may provide its own style of problems in the framework of law enforcement. However, every society has the same goal to achieve peace in society as a result of formal law enforcement.²

The development of life and development in society brings social changes, including changes in values, attitudes and patterns of behavior. This has caused a shift in the view of the actions of community members. The shift in norms in society can

¹ S. Rahayu, S., 2017, *Konflik Rasial Antara Etnis Tionghoa Dan Pribumi Di Surakarta*, Jakarta: Buana, p.46.

² Iqraq Sulhin, "Filsafat (Sistem) Pemasyarakatan", *Jurnal Kriminologi Indonesia*, Vol. 7 No.1, 2010, p.140.

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trigger various conflicts in society, both between individuals and individuals, individuals and groups, as well as conflicts that occur between community groups. This, directly or indirectly, will result in the destruction of the community order in various fields, especially in terms of the security of citizens living in conflict areas.

It is generally understood that prisons are institutions designed to imprison or change and reintegrate prisoners. Prisons are intended to shape the character or behavior of prisoners for a better life after imprisonment. Therefore, prisons should ideally be institutions capable of providing care and training to prisoners, with the hope of reducing the risk of recidivism. Reintegration in the form of treatment and training is the key to reducing recidivism, as expressed by Ksenija Butorac in a journal on crime recidivism as follows: The behaviour of re-offenders can often be linked to substance abuse, mental illness, lack of job skills, learning disabilities and lack of education. Prison sentences for less serious crimes often result in shorter sentences. Thus, even if prisons offer treatment and support for offenders while indetention, less time in prison can limit access to these services. In order to stop the cycle of recidivism what is crucial is reintegration programmes which offer treatment and support to these prisoners after their release.³

Seeing the over crowded conditions that occur in prisons and detention centers throughout Indonesia, it certainly has a major influence on the success of Guidance and Guidance from the Correctional System, so it is concluded that there is no significant difference between Guidance for all Prisoners. Some of the factors that affect the coaching and mentoring include the lack of budget, human resource capacity, limited facilities and infrastructure in the implementation and supervision of the implementation of activities so that it can affect the pattern of coaching and mentoring.

Thus, in an effort to maintain order in social life, the law must be enforced, which means that every crime and violation of the law must be sanctioned according to the level of the crime and violation itself. Sanctions consist of various forms that aim to provide justice, not only to victims but also as a value system that binds the order of social life.

The rise of law violations that occur in society, both in the form of minor offenses such as theft, as well as other offenses such as persecution and murder, to the category of serious crimes such as terrorism, narcotics and other transnational crimes. So many of these incidents, making the number of prisoners in the Correctional Institution (Lapas) and State Detention Center (Rutan), need special attention.

As a result of the emergence of various levels, forms, types, and behaviors of crime, both transnational crime, organizer crime, white collar crime, and economic crime, the implementation of correctional duties faces quite severe conditions, namely the high occupancy rate of correctional institutions (Lapas). Based on data available at the Directorate General of Corrections, the occupancy rate of correctional institutions continues to experience a fairly high increase. This condition is often referred to as overcapacity.

Conditional rights are of great concern to prisoners. Many prisoners hope for these conditional rights, so they try to behave well in prison. However, for prisoners who have difficulty receiving remission, they appear apathetic. They argue that there is no need to improve themselves in prison if they do not get their rights. Of course, the attitudes and statements of some prisoners give a tendency to have a selfish attitude or lack of awareness from them to improve themselves, and this can be said to be the attitude of humans in general and also for life imprisonment prisoners who will remain imprisoned for the rest of their lives, as long as they are still alive. If the prisoner has passed away or the president has granted a pardon or amnesty, the sentence will be completed. Prisoners serving life terms will not be eligible for parole, family visits, or rehabilitation programs. This is stated in Ministerial Regulation No. 21/2013 on the Necessary Conditions and Procedures for Parole, Free and Conditional Leave, as well as Remission, Assimilation, Family Visits, and Re-entry.⁴

It can be seen that if more and more convicts are serving a criminal period in the penitentiary, then the penitentiary will be increasingly full with new convicts. Moreover, if the inmate is sentenced to life imprisonment, then the correctional institutions in Indonesia will be increasingly full. Therefore, it is necessary to find a solution so that the purpose of the implementation of imprisonment can be achieved properly. Efforts to solve the problem of overcapacity are the implementation of the rights of prisoners, including through the acceleration of the granting of Parole (PB), Conditional Leave (CB) and Leave Ahead of Freedom (CMB). In general, parole entitles a prisoner to serve a sentence outside the prison walls. The conditions are: the sentence imposed is more than nine months, has served 2/3 of the sentence, and has behaved well during the coaching period'. Article 1 point (7) of Government Regulation No. 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Prisoners concludes: parole is a process of fostering prisoners outside prison after serving

³ Ksenija Butorac, *et.all*, "The Challenges in Reducing Criminal Recidivism", Public Security and Public Order, Vol. 18, No. 5, 2017, p. 155-131.

⁴Kamea, H.C., "Pidana Penjara Seumur Hidup dalam Sistem Hukum Pidana Di Indonesia", Lex Crimen, Vol. 2, No.2, 2013, p.43-55.

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at least 2/3 of the criminal period of at least 9 months. In essence, those who are entitled to parole rights are not prisoners sentenced to imprisonment.⁵

Conditional rights are also a concern for prisons because by obtaining the right to remission or PB, it will reduce the number of residents in prisons which has an impact on providing solutions to overcapacity in almost all prisons in Indonesia today.

For Prisoners to obtain these 2 (two) rights, the Ministry of Law and Human Rights has tightened the requirements by amending Government Regulation Number 32 of 1999 with Government Regulation Number 28 of 2006 and then refined with Government Regulation Number 99 of 2012 and currently replaced by Minister of Law and Human Rights Regulation No. 7 of 2022. The latest Government Regulation adds several special remission and PB requirements for special category prisoners such as drugs, terrorists, corruption and other transnational crimes.

The implementation of PB does not mean that the Ministry of Law and Human Rights will necessarily shorten the prisoner's sentence. Article 15 of the Criminal Code stipulates that a prisoner can be granted parole if he has served 2/3 of his sentence. As the name implies, prisoners who get PB rights can be released with various requirements which are currently regulated in Government Regulation Number 99 of 2012. The legal basis for parole is regulated in Article 15 of the Criminal Code which explains the conditional release for prisoners, namely first, if the prisoner has served two-thirds of the actual sentence or at least nine months.

Parole, remission, assimilation, and leave before release in the law are rights for all prisoners including life convicts. However, in Indonesia there is no regulation regarding life-long prisoners who can get their remission rights such as parole.⁶

Criminal acts allegedly committed by the suspect will be faced with the function of criminal law which determines the imposition of law on the perpetrator for sanctions for criminal acts that have been committed by a person. In the Criminal Code, it has been stipulated that there are main punishments, namely closure punishment, fine, confinement, imprisonment and death penalty. The type of punishment or criminal will be discussed by the author in this article which is based on normative legal research is life imprisonment. Talking about criminal law has an understanding that is one of the branches of law that has the main function and its use is played when the branch of law, the duration of problem solving, which later criminal law is the last resort (*ultimum remedium*). The main criminal sanction of imprisonment with a class of life sentence regulated in Article 12 paragraph (1) of the Criminal Code is not uncommon to be the choice of consideration for judges compared to imposing the death penalty.

The coaching program can actually run in accordance with the stages regulated in Government Regulation No. 31 of 1999 concerning the Guidance and Guidance of Prisoners, but in fact the recovery efforts have not been able to be carried out optimally due to several obstacles, including inadequate facilities and infrastructure that have resulted in the impact of over crowded in most prisons and detention centers, the ability and capacity of human resources employees in carrying out the functions of coaching and guidance, as well as the lack of budget which results in the effectiveness of program implementation.

The increase in the number of prisoners, which has a significant impact on over crowded prisons and detention centers, has the opportunity for the emergence of recidivists, when compared to the number of employees tasked with providing guidance to prisoners, as well as mentoring Correctional Clients. This condition becomes a phenomenon in itself, thus inviting the author's interest to be able to find an ideal formula in the regulation, implementation and function of Corrections with well-coordinated legal political efforts in the formation of norms in the correctional system in Indonesia. From the background mentioned above, the author is interested in compiling a discussion on parole in the correctional system in terms of legal justice.

II. RESEARCH METHOD

The type of research used is normative legal research which focuses on the review or study of positive law. Normative juridical research is legal research that places the law as a building system of norms. The system of norms in question is about principles, norms, rules from laws and regulations, court decisions, as well as doctrines or teachings.⁷ In accordance with the scientific character of normative law, the review of positive law includes a review of legal dogmatics, a review of legal theory,

⁵ Rico Vincent, 2010, *Pemberian Hak Pembebasan Bersyarat Bagi Narapidana (Studi Kasus Pada Lembaga Pemasyarakatan Kelas Iia Wirogunan Yogyakarta)*, Yogyakarta: Fakultas Hukum Universitas Atmajaya, p.8-9.

⁶ Soedjono Dirjosisworo, 1984, *Fungsi Perundang-Undangan Pidana dalam Penanggulangan Korupsi di Indoensia*, Bandung:PT. Sinar Baru, p. 17.

⁷ Retno Saraswati, "Desain Sistem Pemerintahan Presidensial yang Efektif", *Jurnal MMH*, Vol. 41 No. 1, 2012, p. 137.

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and a review of legal philosophy.⁸ At the level of legal dogmatics, the focus is on the identification of several laws and regulations related to the correctional system in Indonesia, while at the level of legal theory a review of theories that can be used to analyze the value of justice, the legal system, the operation of law and progressive law on parole arrangements in the correctional system. In terms of legal philosophy, the study focuses on parole arrangements for convicts based on the value of justice in the correctional system in Indonesia.

The research approach is a method or way to conduct a study so that researchers get information from various aspects to find the issues they are looking for answers to.⁹ In accordance with the type of research, namely normative juridical, the research approach used in this research is the Normative / Statute Approach, Conceptual Approach, conceptual approach and Case Approach. The types of legal materials that will be used in this research are primary legal materials, secondary legal materials, and tertiary legal materials. In this research, the method of collecting legal materials is carried out through a literature study of legal materials using a card system or document study (card system) and an electronic system (electronic system). The results of the analysis are poured in the form of descriptive qualitative descriptions, namely a description that describes the problems and solutions clearly and completely based on the legal materials obtained.

III. RESULT AND DISCUSSION

a. Arrangement of Requirements and Mechanisms for Parole in Correctional Institutions

The State of Indonesia is a State of Law regulated in the 1945 Constitution Article 1 paragraph (3) which states that Indonesia is a state of law, where the actions of the Government and other institutions including citizens must be based on law. The number of crimes that occur in Indonesia is increasing from time to time. The parole is part of the function of the Correctional Institution, which is one of the parts of the Indonesian criminal justice system, namely the Police, the Prosecutor's Office, and the District Court.¹⁰ The legal basis for parole is Article 86 of the Regulation of the Minister of Law and Human Rights Number 07 of 2022 which states that people who are convicted or imprisoned can be released by agreement.

The Criminal Code does not include a definition of parole, but based on the provisions of Article 15 of the Criminal Code, it can be concluded that parole is a legal institution that provides an opportunity for prisoners who have served two-thirds of their sentence. Two-thirds of the criminal period is at least nine months, to be outside the correctional facility by fulfilling certain conditions and remaining under supervision. In addition, parole can only be granted to prisoners sentenced to imprisonment. However, not all convicts sentenced to imprisonment who fulfill the provisions in Article 15 of the Criminal Code can be granted parole. This is related to life imprisonment inmates.

Therefore, conditional release is not possible with respect to life imprisonment, because 2/3 of the life imprisonment cannot be taken into account. If life imprisonment is to be imposed on a person sentenced to life imprisonment, then the life imprisonment must first be made a temporary imprisonment by clemency. Only then can a conditional release be granted.¹¹

When through two-thirds (2/3) of the actual sentence or at least nine (9) months of it. In essence, the granting of parole to prisoners is a gift of remission from the state for prisoners to be free in advance of their actual sentence. Parole for prisoners is one of the rights that must absolutely be obtained by prisoners provided that the prisoner has fulfilled certain conditions determined by Ministerial Regulation Number 07 of 2022, among others:

1. Has served at least 2/3 (two-thirds) of the criminal period, provided that 2/3 (two-thirds) of the criminal period is at least 9 (nine) months;
2. Good behavior during the criminal period of at least 9 (nine) months calculated before the date of 2/3 (two-thirds) of the criminal period;
3. Has participated in the coaching program well, diligently, and enthusiastically; and
4. The community can accept the prisoner's coaching activity program.

From the legal basis above, one of which is regarding parole for prisoners is an absolute right for prisoners as long as they fulfill the applicable terms and conditions that already exist in correctional institutions. The public perception when hearing the term convict is a person who, as a result of his actions, is punished in prison and the punishment is appropriate because of the consequences of his actions that violate the law. In this effort, the law as a fair legal medium is a law that binds humans in their consciousness because the law is an order. The state has the responsibility for prisoners through correctional

⁸ Hafrida, 2016, *Metode Penelitian Hukum*, Jambi: Fakultas Hukum Universitas , p.15.

⁹ Nico Ngani, 2012, *Metodologi Penelitian dan Penulisan Hukum*, Yogyakarta: Pustaka Yustisia, p. 178.

¹⁰ Suyanto, "Efektivitas Pelepasan Bersyarat dalam Pembinaan Narapidana", *Jurnal Pro-Hukum*, Vol 1, No 2., 2016, p. 40.

¹¹ Saleh Roeslan, 1983, *Stelsel Pidana Indonesia*, Jakarta: Aksara Baru, p. 37.

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institutions (lapas) to provide appropriate guidance to prisoners so that the prisoners are aware and do not repeat acts that violate the norms of the law so that they can be accepted back into the surrounding community. The issue of imposing punishment or punishment for prisoners is very important in criminal law and criminal justice, not a matter of abstract theory.

Moreover, as stated by Sudarto that, our Criminal Code does not contain general guidelines for the administration of punishment (strafosmetingselidraad), which is a guideline made by the legislator that contains certain principles that need to be considered by the judge in imposing criminal law, there are only rules for the administration of punishment (strafosmetingregels), for example the provisions regarding the reduction of punishment Article 33 of the Criminal Code also contains rules for the administration of punishment, namely the provision of deductions from the punishment with the period during which the defendant is temporarily detained. A person needs to be reviewed as to what the essence and purpose of punishment actually is. This raises several theories and brings us to the issues of why a crime is subject to a punishment. Below will be briefly described the purpose of the punishment that must be taken into account by the judge in imposing punishment. Broadly speaking, there are three theories on the purpose of punishment, namely:¹²

- a) Absolute Theory or Retaliation Theory. This theory assumes that every crime must be followed by punishment, without bargaining. A person gets punishment because he has committed a crime. It does not see any consequences that arise with the determination of punishment. It does not matter whether society might be harmed. Only looks to the past, not the future.
- b) Relative Theory or Goal Theory. This theory assumes that a crime does not absolutely have to be followed by a punishment. For this reason, it is not enough for there to be a crime, but the benefits of the crime for society or for the criminal himself must also be questioned. It is not only seen in the past, but also in the future. Therefore, there needs to be a further goal than just keeping the punishment away. This goal must be solely directed towards prevention (prevention) or so that the crime is not repeated. Prevention efforts are not only aimed at the criminal, but also at other people.
- c) Combined Theory. The theory combines the Absolute Theory and Relative Theory.

Correctional institutions are part of the correctional system. It is a place for inmates to undergo a criminal period and obtain training. Correctional institutions through the correctional system provide more humane treatment to prisoners through coaching patterns, this is different from the previous system, namely imprisonment, in Article 2 of Law No. 22 of 2022 concerning Corrections states that the correctional system is organized in the context of prisoners realizing mistakes, improving themselves and not repeating criminal acts, this is to prepare prisoners to integrate healthily with society.

The correctional system in Indonesia contains great ideals. Community development given to prisoners and correctional students must make prisoners who support the limitations and goodness in their respective communities, so that they become a complete society that has characteristics.¹³

- 1) To be a good, useful, and active and productive member of society; and
- 2) To be happy in this world and the hereafter.

In the process of implementation in correctional institutions, there are three things that must be first understood that the correctional process is organized and managed with great care and guidance rather than retaliation. That the correctional process includes the development of prisoners inside and outside. The correctional process requires participation, integration of correctional officers on inmates and correctional students and members of the general public. Parole is the release of convicts after passing at least two-thirds of the sentence with the provision that two-thirds is not less than 9 (nine) months. Every citizen, especially Indonesians, should have their rights protected. Parole is carried out in accordance with the principles in the implementation of the general duties of government and development as well as guidance education, respect for human dignity, loss of independence is the only suffering and the right to contact with family and certain people is guaranteed.

Parole must be beneficial for the person and family of the convict and juvenile offender and not contrary to the public interest and sense of justice of the community. Parole is held with the intention of holding a transitional period between imprisonment and full freedom in the community. The rights of prisoners are entitled to integration services, one of which is the granting of parole as stated in Law Number 22 Year 22 concerning Corrections. Parole is a process of fostering prisoners by integrating or mixing prisoners and correctional students who are in accordance with existing and predetermined requirements so that prisoners can interact directly, adjust to the new environment and restore the human values that exist in prisoners so that society can accept them again after serving their sentence. Therefore, parole is detained who is discharged from the correctional organization before completing his detention period with a commitment to meet the specified conditions and is charged to the detainee. Parole (voorwaardelijkenvriheidstelling) delivers prisoners who have fulfilled for the provisions of the

¹² Marlina, 2011, *Hukum Penitensir*, Bandung: PT Refika Aditama, p. 41-45

¹³ Marlina, *Op.Cit.*, p. 124-125.

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parole requirements based on the provisions of Article 15 of the Criminal Code is if it has passed the period of detention or 2/3 of the period of detention or at least 9 months of it. Prisoners and correctional students are authorized to obtain parole, one of the conditions that have passed 2/3 of the sentence is not the only requirement for a person to apply for release.¹⁴ The granting of parole in its implementation is not all prisoners can obtain it.

In the implementation of assisting the process of re-integration of prisoners to be able to adjust back in society while still paying attention to the provisions that apply while undergoing guidance at Bapas, because if the prisoner commits a violation or does not comply with the provisions in Bapas, then the revocation of the re-integration program that he has undergone with the consequence of re-serving the remaining period of punishment in prison, revocation of parole, leave before release, and conditional leave as regulated in Ministerial Regulation Number 7 of 2022 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave, referred to in Article 138.¹⁵

Parole is one of the rights of prisoners in the development program in correctional institutions, which aims to enable eligible prisoners to interact and socialize with the community outside correctional institutions. The procedure for obtaining parole is carried out in several stages through a coaching program by first fulfilling administrative and substantive requirements. The implementation process sometimes experiences several obstacles in fulfilling its requirements, both in terms of human resources on the officers and the prisoners themselves. In addition, other obstacles are caused by organizational factors, administration and social conditions of the community in supporting the implementation process. Therefore, success in fulfilling the requirements to obtain parole can be influenced by understanding and increasing human resources as a supporting factor.

In addition to the granting of parole, it is also necessary to understand the existing procedures, organization, coordination both within the correctional institution itself and by other related organizations such as the Attorney General's Office and the courts. The implementation of parole is in accordance with Regulation of the Minister of Law and Human Rights Number 7 of 2022. In the implementation of parole there are things that hinder such as the proposal of parole submission files and replies to letters from the Directorate General of Corrections office.

The obstacles that occur while waiting to get Parole are if they violate the discipline or rules of the Penitentiary such as fighting with fellow prisoners, their right to parole will be canceled and the process is long. Parole as the fulfillment of rights for prisoners is carried out by looking at the provisions of the detention period that has been carried out by prisoners, namely at least 2/3 or 9 months of detention. To receive this parole right, prisoners must carry out coaching activities both skills and independence in accordance with the specified time of at least 9 months of detention. In this coaching activity, an assessment is carried out to measure the level of readiness of prisoners to be able to rejoin the outside world and be accepted by citizens and make a good contribution to the nation and state. Not only that, the implementation of coaching is also carried out by implementing observations and supervision carried out by the Correctional Observation Team (TPP) to find out if there are violations committed.

By prisoners during the running of this coaching activity. However, it cannot be denied that in the distribution of parole as the right of prisoners there are still some obstacles that occur.¹⁶ Every implementation of coaching in prison. In coaching has a correctional officer appointed as a TPP officer (Correctional Observation Team) whose role is to oversee the development of prisoners who always behave well after serving 2/3 of their sentence and can make plans for reintegration into society. One of the rights of prisoners is parole which is one of the coaching where good behavior and requirements are given. One of the rights of prisoners is parole, parole in its implementation must be in accordance with Law Number 22 of 2022 concerning corrections in accordance with Article 9 which contains the rights of prisoners. Research with the formulation of the problem of the Application of the Granting of Parole as the Fulfillment of the rights of prisoners and obstacles to the Granting of Parole as the Fulfillment of the rights of prisoners. The application of granting parole must be in accordance with the existing rules where in the process there are still obstacles.

Some factors that hinder the implementation of parole include, among others, the procedure for proposing parole is still too complicated and is considered to take a long time so that it takes a long time to get a decision on parole either accepted or rejected. Prisoners are still limited by the rules and regulations regarding parole. The regulation only regulates the coaching

¹⁴Warmadewa, "Pembebasan bersyarat, Lembaga Masyarakat, Narapidana", Jurnal Analogi Hukum, Vol 1, No 3, 2019, p. 34.

¹⁵ *Ibid.*, p. 6.

¹⁶Muhammad Raja Haholongan, "Lembaga Masyarakat, Pembebasan Bersyarat, Narapidana", Jurnal Pendidikan Tambusai, Vol 6, No , 2022, p. 7.

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process and the procedure for obtaining the coaching. It has not been explained in detail about the supervision and guidance of prisoners in their parole activities in the community. This event often causes a mismatch in the purpose of parole coaching in the community so that it is not implemented and achieved properly and the slow process of proposing administrative completeness files, one of the reasons that inhibits the proposal for parole. parole is the process of releasing prisoners into the community before the expiration of the maximum sentence of prisoners from correctional institutions.

In administering parole from the government, the Correctional Institution carries out a number of functions including: maintaining/managing information on each inmate under the jurisdiction of the Correctional Institution, maintaining/managing records of each inmate during the parole period, guiding inmates during the parole period.

b. Parole in the Correctional System from the Aspects of Justice

In the process of enforcing criminal law, there are provisions regarding criminal sanctions in which the provision of criminal sanctions for convicted criminals has a purpose. The purpose of imposing criminal sanctions must function to foster, namely by making lawbreakers repentant and not functioning as retaliation. This view and understanding is in accordance with the nation's view of life (way of life) contained in Pancasila, which upholds human values.¹⁷

Meanwhile, according to Muladi, the purpose of punishment is to repair individual and social damage caused by criminal acts. This consists of a set of punishment objectives that must be met, with a note that the objectives that are the focus must be casuistic. The set of punishment objectives referred to consists of: Prevention (general and special); Community protection; Maintaining community solidarity; Compensation or balance.

The use of imprisonment as a community reaction to crime is an alternative to deterrence from the purpose of punishment. Because in addition to preventing the community from committing crimes, imprisonment in Article 10 of the Criminal Code is a crime prevention policy which by Sahardjo is adapted to Indonesian society with Pancasila ideology, by formulating the goal is correctional.¹⁸ This means that people sentenced to imprisonment are socialized through rehabilitation and resocialization before returning to society. In connection with the above, the existence of the Correctional Institution as the executor of the purpose of punishment in the correctional system as referred to in the Law, is a series of law enforcement aimed at making correctional prisoners realize their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted back by the community, can actively participate in development, and can live reasonably as good and responsible citizens.

The concept of goals in the Correctional Act is in line with the XIth UN congress in Bangkok, April 18-25, 2005 on Crime Prevention and Criminal Justice which took the main theme of "responsive and synergistic" efforts with a combinative strategy in ways of crime prevention and criminal justice with reference to the restorative justice system.¹⁹

In general, the granting of parole is carried out through the correctional information system which is an integrated system between the correctional technical implementation unit, regional office, and directorate general. The procedure for granting parole is regulated in Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave jo. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2022 The following author summarizes the procedures for granting parole, including:

- a) Correctional officers record inmates who will be proposed for parole. Data collection is carried out on the conditions for granting parole and the completeness of documents.²⁰
- b) Completeness of documents must be requested after 7 (seven) days the prisoner is in Correctional Facility/LPKA. Completeness of documents must be fulfilled no later than 1/2 (one-half) of the prisoner's criminal period in the correctional facility.²¹

¹⁷ Petrus Irwan Panjaitan dan Pandapotan Simorangkir, 1995, *Lembaga Pemasyarakatan Dalam Perspektif Sistem Peradilan Pidana*, Jakarta: Pustaka Sinar Harapan, p. 9.

¹⁸ Petrus Irwan Panjaitan dan Wiwik Sri Widiarty, 2008, *Pembaharuan Pemikiran Dr. Sahardjo Mengenai Pemasyarakatan Narapidana*, Jakarta: CV Indhill CO, p. 26.

¹⁹ Kuat puji prayitno, "Restorative justice untuk Peradilan di Indonesia: Perspektif Yuridis Filosofis Dalam Penegakan Hukum", *Jurnal Dinamika Hukum*, Vol. 12, No. 3, 2012, p. 10.

²⁰ Pasal 95 ayat (1) dan (2) Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²¹ Pasal 95 ayat (3) dan (4) Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

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- c) Then, the correctional observer team of the correctional facility recommends the proposal to grant parole for prisoners to the head of the correctional facility based on data on prisoners who have met the requirements.²²
- d) In the event that the head of the prison approves the proposal for granting Parole, the Head of the Prison shall submit the proposal for granting Parole to the Director General with a copy to the Head of the Regional Office.²³
- e) Then, the Head of the Regional Office verifies the copy of the proposal for granting Parole, the results of which are submitted by the Head of the Regional Office to the Director General of Corrections.²⁴
- f) The Director General of Corrections shall verify the proposal for granting Parole no later than 3 (three) days from the date the proposal for granting Parole is received from the Head of Correctional Institution.²⁵
- g) In the event that the Director General of Corrections approves the proposal for the granting of Parole, the Director General of Corrections on behalf of the Minister of Law and Human Rights shall issue a decision on the granting of Parole which shall be submitted to the Head of Correctional Institution to be notified to the prisoner or child with a copy to the Head of the Regional Office.²⁶

Therefore, parole can be applied for by fulfilling the requirements in accordance with the rules and following the process until the issuance of a decision to grant parole from the Director General of Corrections of the Minister of Law and Human Rights. In addition to having an obligation to carry out the punishment, prisoners also have rights that should not be ignored. At the stage of the implementation of the decision, human rights (HAM) that become indiscriminately become the rights of prisoners are still guaranteed and protected by law as a form of respect for human dignity. Article 10 of the International Covenant of Civil and Political Rights guarantees that -all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person||, therefore the human rights of prisoners must also be considered. Nowadays, parole has become the concern of the wider community, due to the large number of prisoners who receive parole either because they are considered to have committed a criminal offense that is considered serious by the community or because the case concerned has first received public attention.

The convicts who have obtained parole include the artist Nazriel Irham who is a convict of a pornographic video case, a convict of narcotics smuggling who is an Australian citizen Schapelle Leigh Corby, a convict of bribery against former Buol Regent Amran Batalipu, Sri Hartati Murdaya, and a convict of the murder of human rights activist Munir, Polycarpus Budihari Priyanto. In addition to being regulated in Article 14 paragraph (1) letter k of UURI No.12 of 1995 concerning Corrections, Parole is also regulated in Article 15 to Article 17 of the Criminal Code.

Where in the implementation in the field in accordance with Article 6 paragraph (3) letter b in conjunction with Article 42 paragraph (1) letter b of UURI No.12 of 1995 concerning Corrections, prisoners who obtain Conditional Release (voorwaardelijke invrijheidstelling) will undergo a series of guidance processes carried out by BAPAS so that it is hoped that the prisoner concerned is ready to return to the midst of society. In terms of supervision, Article 15a paragraph (3) in conjunction with Article 14d paragraph (1) of the Criminal Code states that the institution that supervises the implementation of Conditional Release is the institution that orders the execution of a decision that has permanent legal force, namely the Prosecutor's Office.²⁷

The importance of supervision in an implementation of Conditional Release is to ensure that prisoners who obtain Conditional Release can be accepted back by the community in addition to not violating the provisions of Conditional Release. Society in general still views that prisoners are part of society who are no longer wanted because they have committed acts that are reproached by society and the state. The labeling of prisoners directly or indirectly also affects the psychology and life of the prisoners concerned, including prisoners who obtain Parole, therefore supervision and guidance carried out by the Prosecutor's Office and BAPAS is a series of efforts to assist and monitor prisoners who obtain Parole in the community.²⁸

²² Pasal 96 ayat (1) Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²³ Pasal 96 ayat (2) Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²⁴ Pasal 97 Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²⁵ Pasal 98 Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²⁶ Pasal 99 ayat (1) dan (2) Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018 tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat.

²⁷ *Ibid.*, p. 25.

²⁸ *Ibid.*, p. 28.

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The implementation of inmate coaching during the parole period will not always be able to run smoothly well and smoothly, however, sometimes there will be obstacles in its implementation and there must be a solution to deal with obstacles. This is recognized by the officer that the submission process is sometimes constrained due to the slow process of other related agencies. For example, they have to wait for the community research report. Also included in this case are changes to some of the laws and regulations governing parole. obstacles in the implementation of parole are as follows:²⁹

- 1) Guarantor The guarantor from the family is unknown;
- 2) Disciplinary Factors;
- 3) For prisoners who violate the discipline or rules of the correctional institution, the prisoner is threatened with parole;
- 4) Community factors.

There is still a lack of public trust in prisoners. So that the local government sometimes rejects prisoners to parole. Because it can make the community uncomfortable and safe. And factors that hinder the implementation of parole outside the Penitentiary. As follows:

1) Community Factors

There are still many people who do not understand about parole and the paradigm of society is that former prisoners are bad people.

2) Prisoners' own factors

The person concerned is not pro-active in this matter, not obliged to report.

3) Employment Factors

Employment or livelihood, former prisoners are difficult to get a job and do not rule out the possibility of repeating criminal acts again.

The obstacles in the implementation of supervision of prisoners on parole in general can be categorized into juridical obstacles and non-juridical obstacles, including:

a) Juridical Constraints There are no clear rules regarding the implementation of supervision of prisoners on Parole by the Public Prosecutor's Office. The Criminal Code (KUHP) clearly regulates the institution of the Prosecutor's Office as a supervisory agency for the implementation of Conditional Release (*voorwaardelijke invrijheidstelling*) so that the Prosecutor's Office can be referred to as a juridical supervisory institution for the implementation of Conditional Release, but in practice in the field there are no clear implementing rules regarding further authority possessed by the Prosecutor's Office in conducting supervision of Conditional Release prisoners.

b) Non-juridical constraints

1) Supervision of Parole prisoners is not only carried out by the Prosecutor's Office, but can also be carried out by BAPAS and other agencies as stipulated in Article 48 of Government Regulation of the Republic of Indonesia No.32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Prisoners, so that coordination between these agencies is very important. If the coordination does not run optimally, the supervision carried out will also not run optimally. Coordination between agencies plays a very important role both directly and indirectly regarding the supervision of prisoners on parole, the lack of coordination between agencies related to the supervision of prisoners on parole can be seen from the absence of actions or proposals for revocation of parole by the Malang District Attorney against prisoners who do not carry out their obligations.

2) Limited officers available at the Malang State Attorney's Office. Human resources (HR) also play an important role, currently the number of officers at the Malang State Prosecutor's Office, both in the General Crimes Section and the Special Crimes Section who carry out supervision, is not proportional to the number of Parole prisoners being supervised.

Parole allows an inmate to serve part of their prison sentence in the community. During parole, a prisoner will be subject to conditions of parole and under supervision. Parole provides prisoners with a structured, supported and supervised transition so that they can adjust from prison back into society, rather than returning directly to society at the end of their sentence. By supporting prisoners to return to the community under supervision towards the end of their sentence, the primary aim of parole is to improve community safety:³⁰

Article 55

a) The procedure for granting parole is implemented through the correctional information system.

²⁹ W.A. Fauzi, "Pelaksanaan Pemberian Hak Pembebasan Bersyarat Bagi Narapidana Tindak Pidana Umum", Nusantara : Jurnal Ilmu Pengetahuan Sosial, Vol. 8, No. 2, 2021, p.229-239.

³⁰ H. Furqan, dan M. Sidiq, 2019, *Efektivitas Pembebasan Bersyarat terhadap Narapidana*, Jakarta: secret, p. 71-89.

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b) Correctional information system as referred to in paragraph (1) is an integrated system between the Technical Implementation Unit of Corrections, Regional Office, with the Directorate General.

Article 56

The correctional observation team of the correctional facility recommends a proposal for granting parole to the head of the correctional facility based on data on inmates and correctional students except civilian children who have met the requirements.

- a) In the event that the head of the prison approves the proposal for granting parole as referred to in paragraph (1), the head of the prison shall submit the proposal for granting parole to the head of the regional office based on the recommendation of the prison correctional observer team.
- b) The head of the regional office shall submit the proposal for granting parole based on the recommendation of the regional office correctional observer team to the director general.
- c) The proposal as referred to in paragraph (3) is in the form of a recapitulation of data on prisoners and correctional students by attaching:
 - 1) The results of the Regional Office correctional observer team hearing;
 - 2) Photo of the judge's decision and the minutes of the implementation of the court decision and;
 - 3) Salina list of changes from the head of the prison;
 - 4) The Director General on behalf of the Minister determines the granting of parole based on the recommendation of the Directorate General's correctional observer team.

Article 57

- a) The correctional observer team of the correctional facility recommends the proposal for granting parole to the Head of the correctional facility based on data on convicts and correctional students except for civilian children who have met the requirements. In the event that the Head of Correctional Facility approves the proposal for granting parole as referred to in paragraph (1), the Head of Correctional Facility shall submit the proposal for granting parole to the Head of Regional Office based on the recommendation of the correctional observer team of the Correctional Facility.
- b) The Head of the Regional Office submits the proposal for granting parole based on the recommendation of the correctional observer team of the Regional Office to the Director General.
- c) The proposal as referred to in paragraph (3) is in the form of a recapitulation of data on prisoners and Correctional Students by attaching:
 - 1) The results of the regional office correctional observer team hearing
 - 2) Copy of judge's decision and minutes of implementation of court decision, and
 - 3) A copy of the list of changes from the head of the correctional center.
- d) The director general on behalf of the minister determines the granting of parole based on the recommendation of the correctional observer team.

Article 58

- a) Correctional officers shall record inmates who have fulfilled the requirements as referred to in Article 51 through Article 53.
- b) Data collection as referred to in paragraph (1) is carried out on the conditions for granting parole and completeness of documents.

Article 59

- a) The correctional observer team of the correctional facility shall recommend a proposal for the granting of parole to the head of the correctional facility based on data of convicts who have met the requirements.
- b) In the event that the head of prison approves the proposal for granting parole as referred to in paragraph (1), the head of prison shall submit the proposal for granting parole to the head of the regional office based on the recommendation of the correctional observer team of the prison.
- c) The head of the regional office shall submit the consideration of granting parole based on the recommendation of the correctional observer team of the regional office to the director general.
- d) The director general submits consideration of parole to the minister based on the recommendation of the Directorate general's correctional observer team and recommendations from relevant agencies for approval.
- e) Recommendations from relevant agencies as referred to in paragraph (4), namely:
 - 1) The National Police of the Republic of Indonesia, the National Narcotics Agency, counter-terrorism, and/or the Attorney General's Office in the case of convicts convicted of terrorism, crimes against state security, serious human rights crimes, and/or other transnational organized crimes.

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- 2) The Indonesian National Police, the National Narcotics Agency, and/or the Attorney General's Office in the event that the inmate is convicted of committing a criminal offense of narcotics and psychotropic drug precursors; and
- 3) the Indonesian National Police, the Attorney General's Office, and/or the Corruption Eradication Commission in the event that the inmate is convicted of a corruption crime.
- 4) Approval of the granting of Conditional Release as referred to in paragraph (4) shall be stipulated by a Ministerial Decree.

Moreover, as stated by Sudarto that, our Criminal Code does not contain general guidelines (*strafmetingselidraad*), which is a guideline made by the legislator that contains certain principles that need to be considered by the judge in imposing criminal law, there are only rules for imposing punishment (*strafmetingeregels*), for example provisions regarding the reduction of punishment.³¹

Article 33 of the Criminal Code also contains rules on the provision of punishment, namely the provision of deductions from the sentence for the period during which the defendant is temporarily detained. A person needs to be reviewed as to what the essence and purpose of punishment actually is. This raises several theories and brings us to the issues of why a crime is subject to a criminal punishment.

The granting of parole must not only be beneficial for the convict, the child and his/her family, but must also fulfill several requirements such as the following:³²

- a) has served at least 2/3 (two-thirds) of the criminal period, provided that such 2/3 (two-thirds) of the criminal period is at least 9 (nine);
- b) has behaved well during the criminal period of at least 9 (nine) months calculated before the date of 2/3 (two-thirds) of the criminal period;
- c) has followed the coaching program well, diligently, and enthusiastically; and
- d) the community can accept the program of prisoners' coaching activities.

The conditions for granting parole must also be completed with several documents, including.

- a) Judges' verdicts and minutes of the implementation of court decisions;
- b) development report from the correctional facility;
- c) Community research report made by the Community Supervisor which is acknowledged by the Head of the Correctional Center (Bapas);
- d) Letter of notification to the State Attorney regarding the plan to grant parole to the prisoner concerned;
- e) A copy of the register from the Head of Correctional Institution;
- f) Copy of the list of changes from the Head of Correctional Institution;
- g) A statement from the prisoner that he/she will not commit any unlawful act; and
- h) A letter of guarantee from the family, guardian, social institution, government agency, private agency, or foundation known by the village head or village head or other name.

The above-mentioned guarantee letter contains a statement that the family guardian, social institution, government agency, private agency, or Foundation known by the lurah or village head or other name:

- 1) guarantee that the prisoner will not escape and/or not commit unlawful acts; and
- 2) The family will assist in guiding and supervising the prisoner during the Conditional Release program.

In accordance with Schepper's opinion, the granting of parole includes:

- 1) The nature of the offense. Regarding how the public opinion if given parole, whether arbitrary actions that can make justice and public order disturbed, for example consideration of public convention.
- 2) The personality and attitude of the prisoner, relating to the public perspective.
- 3) The behavior and attitude of the prisoner while incarcerated.
- 4) Review of the prisoner's livelihood afterward, regarding moral support and employment based on relatives.

Parole before being given to a convict, must go through careful consideration of the interests of the community receiving the former convict. In addition, it must also prepare employment opportunities that are in accordance with the skills and talents that have been obtained during the guidance provided by the Correctional Institution. Basically, the implementation of parole is the authority of the Correctional Institution, although it is the right of convicts who have fulfilled the administrative and substantive requirements of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.01.PK.04.10 of 2007. It is said so because those who conduct guidance and assessment of the behavior of

³¹ Zainal Askin, 2020, *Pengantar Ilmu Hukum*, Depok: PT Raja Grafindo, p. 90.

³² *Ibid.*, p. 82.

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prisoners are the Correctional Institution officers themselves. The procedure for granting parole, if analyzed, can be known:

1. Parole although the right of the convict, but to get it is not easy, many requirements must be met, as well as the Correctional Institution is also not to grant parole because the process involves many parties, in addition to internal corrections, also from external such as BAPAS.

2. (Correctional Center), Attorney, Police, Regional Office of Law and Human Rights and Directorate General of Corrections.

In granting parole, the implementation is carried out objectively, this can be seen from the TPP hearing which examines the requirements that must be met by the convict and takes into account input from various parties present at the TPP hearing. However, there is one thing that still needs to get attention is the absence of a grace period that regulates how long the parole decision comes down from the Ministry of Law and Human Rights. This does not rule out the possibility that the decision will take a long time to come down, considering that there are relatively many people who apply for parole, namely prisoners from all correctional institutions in Indonesia.

To be considered for parole, eligible prisoners must apply to the Penitentiary. An inmate can apply for parole if they are serving a sentence with a term without parole. The prison staff responsible for PB management provides information to eligible prisoners on how and when to apply for parole, and helps prisoners prepare for parole. If a prisoner applies for parole, the Board of Corrections determines whether to grant, deny or suspend parole. If granting parole, the Board will also determine the conditions of parole. Victims of crime can write to the Board at any time and the Board will take the views of victims into account when the Board considers whether to grant parole to a prisoner.

IV. CONCLUSIONS

In general, the granting of parole is carried out through the correctional information system which is an integrated system between the correctional technical implementation unit, regional office, and directorate general. The procedure for granting parole is regulated in Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave jo. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2022.

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