

PAROLE IN PENITENTIARY SYSTEM VIEWED FROM THEORY OF DIGNIFIED JUSTICE

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Abstract

The purpose of this study was to analyze how parole in terms of dignified justice. Type research uses normative legal research with the approach of legislation and approach to the concept. The data used is secondary data which comprise a source of primary law and secondary law material. The research results show that the granting of parole to prisoners intended that the inmate can be directly adapted himself to the public before the end of its life criminal. Granting parole intended for inmates to realize the error and the community to accept their presence in public life, useful and responsible.

Keywords: correctional system, development inmates, parole; dignified justice.

INTRODUCTION

Indonesia based on Pancasila, new ideas about the function of punishment which is no longer simply a deterrent, but also a rehabilitation and social reintegration of prisoners have given birth to a guidance system for more than thirty years ago was known and called the correctional system,¹ Their coaching model for inmates at the Correctional Institution is inseparable from a dynamics, which aims to give more supplies for the prisoners in facing life after the completion of their prison terms (free). As was the case much earlier, prison terms had been changed into a penitentiary. About the birth of the term Penitentiary selected in accordance with the vision and mission of the

institution was to prepare the inmates back into society. This term was first coined by Sahardjo, who served as Minister of Justice of the Republic of Indonesia at that time.²

Correctional expressed as a coaching system against offenders and as a manifestation of justice which aims to achieve social reintegration or the restoration of the unity of the relationship between prisoners and society. In a further development correctional system implemented since 1964, sustained by Act No. 12 of 1995 concerning Penitentiary. Penal Law that strengthens efforts to realize a correctional system that is

¹ Common Explanation Act No 12 of 1995 Concerning Panitentiary.

² Heru Susetyo, 2012, *Sistem Pembinaan Narapidana Berdasarkan Prinsip Restorative Justice*, Laporan Penelitian, Jakarta: Badan Pembinaan Hukum Nasional Kemenkumham, p. 2

an order of formation for Citizens Patronage of Corrections.³

With reference to the idea, former Justice Minister Hamid Awaludin said that the penitentiary is a process of coaching is done by the state to prisoners and detainees to be a man who realized his mistake. Further guidance is expected to enable them to repair themselves and not to repeat the criminal act he had ever done. Activities within the LP is not just to punish or keep inmates but includes a coaching process that inmates aware of the mistake and improve themselves and do not repeat their offense.⁴ Based on the description above, the problem in this research is how parole viewed from the perspective of dignified justice?

RESEARCH METHODS

Type research uses normative legal research with the statute approach and conceptual approach. The data used is secondary data which comprise a source of primary law and secondary law material.

DISCUSSION

Dignified Justice Theory

Dignified justice theory is a theory of law which was built in Indonesia with referral sources or legal materials (materials) in Indonesia mainly sourced to Pancasila. It should be stressed that although the dignified

Justice theory built as a scientific endeavor, to prioritize the legal materials in Indonesia, Dignified Justice theory is not an allergy, or the nature antipathy and thus be immediately refused offhand to the comparative approach (comparative law approach) that pay attention to legal materials, experience in other parts of the world, not least in the Western world.⁵

However, the legal materials used in constructing a theoretical perspective that is new to understand, explain and even justify a legal phenomenon that occurred in Indonesia must first be filtered by the values of Indonesia, in order to conform with the taste or the ideals of Indonesian law. As we have already received with, as a first agreement, the values of the filter in filtering the thoughts that were constructed using legal materials in the other hemisphere, in the spirit of Pancasila as the nation (*Volksgeist*) Indonesia.⁶

By pointing to the Pancasila as the source of all sources of law in Indonesia, then in fairness dignified central values contained socio-political, economic and cultural contained in Pancasila.⁷ In a dignified justice perspective, the law creates a dignified society that law is able to humanize humans

⁵ Teguh Prasetyo dan Tri Astuti Handayani, 2018, *Theory Of Dignified Justice As A Legal Foundation Of Law Reform In Indonesia*, Surakarta Law And Society Journal, Vol. 1, No. 1, p. 47.

⁶ *Ibid.*

⁷ Teguh Prasetyo, 2018, *Pengantar Ilmu Hukum*, Depok: Rajawali Pers, p. 214.

³ *Ibid.*, p. 3.

⁴ *Ibid.*

(*nguwongke wong*) means that the laws that treat and uphold human values according to the nature and purpose of his life. This is because humans are noble creatures as creatures of God Almighty as stated in the Second principle of Pancasila, which is just and civilized humanity. This precept has the value recognition of the dignity of the human being with all the rights and obligations and equitable treatment as a human being, against oneself, the surrounding nature and God.⁸

Dignified Justice sense of justice but not a legal theory that give hints on purpose in any legal institutions. In fairness dignified, the purpose of any legal institution causing systemic characteristics and then referred to the legal system.⁹ in perspective dignified justice theory, adopted a principle; that the measure of goodness in the law was only justice alone. In the justice according to the law already automatically in it the certainty and expediency¹⁰,

According to perspective dignified justice in law what is just is always a sure thing or always contains a certainty and is always beneficial. In the perspective of dignified Justice is no justice in the law if there are

⁸ *Ibid*, p.. 215

⁹ *Ibid* p.. 213.

¹⁰ Teguh Prasetyo, 2016, *Pembentukan Peraturan Perundang-Undangan Yang Berkarakter Keadilan Bermartabat*, Jurnal Rechtstaat Nieuwe, Vol. 1, No. 1, p. 1.

doubts, confusion and uncertainty. Indecision and uncertainty it is technically known as the concept of disorder and irregularities. Where there is a lack of disorderly and irregular then there is no certainty, and also automatically no justice and no justice. Law only when there is certainty, that all that completely orderly, regular or order.¹¹

Similarly, there is no justice in the law if the results arising from the development and implementation of a per-rule of law is the *convenienc-dharatan* and *futility*. *Kemudharatan* it is technically known judicial inefficiency, both for the human individual and for people in society. In the perspective of dignified Justice, recognized the existence of a postulate that is a sign for justice according to law, in which it is automatically contain the certainty and expediency.¹²

Parole

According to Act No. 15 of 1995 on penal meant by parole is free inmates after serving at least two-thirds of its criminal past with the provisions of the two-thirds of not less than nine (9) months. Based on Chapter 82 of the Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 03 of 2018 Concerning Terms and Procedures for Granting remission, Assimilation, leave Visiting Family, Parole,

¹¹ *Ibid*.

¹² *Ibid*, p. 2.

Leave Towards Free, And leave Conditional (hereinafter referred to Permenkumham No. 3/2018) states that the conditional exemption may be granted to prisoners who have qualified:

- a. has been undergoing a period of a minimum of 2/3 (two thirds), provided that 2/3 (two thirds) of the criminal past of at least nine (9) months;
- b. good behavior for a period of a minimum of nine (9) months prior to the date of the last measured 2/3 (two thirds) criminal past;
- c. have followed the formation program with a good, diligent, and passionate; and
- d. the public can receive Prisoners program development activities.

Terms of granting parole evidenced by documents.¹³

- a. photocopy excerpts judge's decision and the minutes of the execution of court decisions;
- b. fostering progress report signed by the Head of the Prison;
- c. social research report made by the Community Mentors are known by the Head Bapas;
- d. a notification letter to the District Attorney about the plan of the Parole of Prisoners Correctional concerned. In the case of the

notification referred to in paragraph (1) letter d did not get a reply from the State Attorney maximum of twelve (12) days from the date of the notification letter was sent, the Parole still be given.

- e. a copy of the register F of the head of the prison;
- f. a copy of the list of changes from the Chief Prison;
- g. statements from the prisoners will not do anything against the law; and
- h. letter of guarantee ability of the family, guardian, social institutions, government agencies, private institutions, or foundations that are known by the headman or village head or any other name which states that:

- 1) Inmates will not escape and / or do not do anything against the law; and
- 2) assist in guiding and supervising prisoners during the Parole program.

Terms Parole Inmates For foreigners, the narcotic crime, terrorism and criminal acts of corruption.

Prisoners for foreign nationals other than qualifies as mentioned above, also must complete the document:

- a. letter of guarantee do not escape and will comply with the requirements determined from:
 - 1) embassy / consulate of the country;
 - and

¹³ Chapter 83 Permenkumham No. 3/2018.

- 2) Family, person or corporation responsible for the existence and activities of inmates, while in Indonesia.
- b. a letter from the Director General of Immigration or a designated immigration officer stating that the person concerned was released from the obligation to have a residence permit. Certificate submitted by the Director-General to the Director General of Immigration. Director General of Immigration and submitted a statement as referred to in paragraph (4) not later than twelve (12) days. and
- c. certificate is not registered in a red notice and other organized transnational criminal networks of the Secretariat of NCB-Interpol Indonesia.

Granting parole for prisoners who commit terrorist acts in addition to meeting the requirements as referred to in Article 82, must also meet the following requirements:

- a. willing to cooperate with law enforcement to help dismantle the criminal case he does;
- b. have undergone at least 2/3 (two thirds) criminal past, provided that 2/3 (two thirds) of the criminal past of at least nine (9) months;
- c. Assimilation has undergone at least 1/2 (one half) of the remaining period of the criminal who must be lived; and

d. have shown awareness and remorse for the mistakes that led to sentenced and declare the pledge:

- 1) loyalty to the Republic of Indonesia in writing for Convicts Indonesian citizens; or
- 2) will not repeat the acts of terrorism in writing for Convicts foreign nationals.¹⁴

Meanwhile, Article 85 Permenkumham No. 3/2018 determines that granting parole to convict sentenced to imprisonment for a minimum of five (5) years for committing a criminal offense of narcotic drugs and psychotropic substances and precursors, in addition to meeting the requirements as referred to in Article 82 must also meet the following requirements:

- a. willing to cooperate with law enforcement to help dismantle the criminal case he does;
- b. have undergone at least 2/3 (two thirds) criminal past, provided that 2/3 (two thirds) of the criminal past of at least nine (9) months; and
- c. Assimilation has undergone at least 1/2 (one half) of the remaining period of the criminal who must be lived.

As for granting parole for prisoners who commit criminal acts of corruption, crimes against state security, human rights

¹⁴ Chapter 84 Permenkumham No. 3/2018.

violations were severe and other transnational organized crime, in addition to meeting the requirements as referred to in Article 82 must meet the following requirements:

- a. willing to cooperate with law enforcement to help dismantle the criminal case he does;
- b. have undergone at least 2/3 (two thirds) criminal past, provided that 2/3 (two thirds) of the criminal past of at least nine (9) months; and
- c. Assimilation has undergone at least 1/2 (one half) of the remaining period of the criminal who must be lived.¹⁵

According to the provisions of Article 87 Permenkumham No. 3/2018, a condition of parole for prisoners who had been convicted of the crime of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security, human rights violations are severe, as well as other organized transnational crime as defined in Article 84 to Article 86 is evidenced by the following documents:

- a. certificate willing to work together to help dismantle the criminal act he was doing stipulated by law enforcement agencies;
- b. photocopy excerpts judge's decision and the minutes of the execution of court decisions;

- c. fostering progress report signed by the Head of the Prison;
- d. social research report made by the Community Mentors are known by the Head Bapas;
- e. a notification letter to the District Attorney about the plan of the Parole of Prisoners concerned. In the event that the notification letter did not get a reply from the State Attorney maximum of twelve (12) days from the date the notice is sent, the Parole still be given.
- f. a copy of the register F of the head of the prison;
- g. a copy of the list of changes from the Chief Prison;
- h. statements from the prisoners would not escape and do not do anything against the law; and
- i. letter of guarantee ability of the family, or the mayor, or the Social Institution, or government agencies, or private agencies, or foundations that are known by the headman or village head or any other name which states:
 - 1) Inmates will not escape and / or do not do anything against the law; and
 - 2) assist in guiding and supervising prisoners during the Parole program.

Prisoners for foreign nationals other than attaching the documents referred to in

¹⁵ Chapter 86 Permenkumham No. 3/2018.

paragraph (1), must also attach the following documents:

- a. letter of guarantee do not escape and will comply with the requirements determined from:
 - 1) Embassy / consulate of the country; and
 - 2) Family or any person or corporation that is responsible for the existence and activities of Prisoners or the Child while in the territory of Indonesia;
- b. a letter from the Director General of Immigration or a designated immigration officer stating that the person concerned was released from the obligation to have a residence permit. Certificate submitted by the Director-General to the Director General of Immigration. Director General of Immigration and submitted a statement later than twelve (12) days; and
- c. certificate is not registered in a red notice and other organized transnational criminal networks of the Secretariat NCBInterpol Indonesia.¹⁶

For those prisoners who had been convicted of criminal acts of terrorism, in addition to attaching the documents referred to in Article 87 paragraph (1) also must attach a letter has been following Deradicalisation of Chief Prison Program and / or the Head of the

¹⁶ Chapter 87 verse (3) Permenkumham No. 3/2018.

National Agency for Combating Terrorism.¹⁷ As for prisoners who had been convicted of corruption must also attach proof has paid fines and restitution.¹⁸

Terms Granting Parole For Children

A condition of parole for children according to the provisions of Article 89 Permenkumham No. 3/2018 that parole may be granted to the Son who is undergoing imprisonment in LPKA who have qualified:

- a. have undergone a criminal past at least 1/2 (one half) criminal past; and
- b. good behavior for a period of a minimum of 3 (three) months prior to the date of the last measured 1/2 (one half) criminal past.

In the event that the Son was sentenced to a cumulative form of imprisonment and criminal fines, criminal penalties to be replaced with job training. Job training carried out in accordance with the provisions of the legislation.¹⁹ Children who obtain advance parole can carry out the job training before undergoing Parole. Job training conducted at other institutions designated under Community Advisor recommendations.²⁰ During the replacement job training Children penalty, Children live

¹⁷ Chapter 88 verse (1) Permenkumham No. 3/2018.

¹⁸ Chapter 88 verse (2) Permenkumham No. 3/2018.

¹⁹ Chapter 90 Permenkumham No. 3/2018.

²⁰ Chapter 91 Permenkumham No. 3/2018.

with their parents / guardians, social agencies, or other designated agencies.²¹

Terms of granting parole as referred to in Chapter 89 proved by documents:

- a. photocopy excerpts judge's decision and the minutes of the execution of court decisions;
- b. a photocopy of a birth certificate or a letter from the Chief LPKA explaining that Children under 18 (eighteen) years;
- c. fostering progress report signed by the Heads LPKA;
- d. social research report made by the Community Mentors are known by the Head Bapas;
- e. a notification letter to the District Attorney about the plan of the Parole against Children is concerned. In the event that the notification letter did not get a reply from the State Attorney maximum of twelve (12) days from the date of the notification letter was sent, the Parole still be given.
- f. a copy of the register F of the Head LPKA;
- g. a copy of the list of changes from the Chief LPKA;
- h. a statement of the child will not commit illegal acts; and
- i. letter of guarantee ability of the family, guardian, social institutions, government

agencies, private institutions, or foundations that are known by the headman or village head or any other name which states that:

- 1) Children will not escape and / or do not do anything against the law; and
- 2) assist in guiding and overseeing the Child during the Parole program.²²

For the Son of foreign nationals in addition to qualify as mentioned above, also must complete the document:

- a. letter of guarantee do not escape and will comply with the requirements determined from:
 - 1) embassy / consulate of the country; and
 - 2) Family, person or corporation responsible for the existence and activities of the Child while in Indonesia.
- b. a letter from the Director General of Immigration or a designated immigration officer stating that the person concerned was released from the obligation to have a residence permit. Certificate submitted by the Director-General to the Director General of Immigration. Then Director General of Immigration and submitted a statement later than twelve (12) days; and

²¹ Chapter 92 Permenkumham No. 3/2018.

²² Chapter 93 verse (1) Permenkumham No. 3/2018.

- c. certificate is not registered in a red notice and other organized transnational criminal networks of the Secretariat of NCB-Interpol Indonesia.

Procedure for Parole

Granting Parole implemented through correctional information system. Correctional information system is an information system integrated correctional between Correctional Technical Implementation Unit, Regional Office, the Directorate-General.²³ While the procedure for granting parole for prisoners and children done by: a correctional officer and inmate records that will be proposed Children Parole. Documenting performed on a condition of parole, and documentation requirements. The documents shall be requested after seven (7) days and Child Prisoners are in prison / LPKA. The documents shall be fulfilled at the latest:

- a. 1/2 (one half) criminal past Prisoners are in prison; and
- b. 1/3 (one third) Kids criminal past is in LPKA.²⁴

Prison correctional observer team / LPKA recommend the proposal granting parole to prisoners and the Son to the Head of Prison / LPKA based on data Prisoners and Children who have fulfilled the requirements. In the case of the Head of Prison / LPKA

approved a proposal granting parole, the Head of Prison / LPKA had proposed granting parole to the Director General with a copy to the Head of Regional Office.²⁵ Head of Regional Office verifies the proposal granting parole copies as referred to in Article 96 paragraph (2) no later than 3 (three) days from the date of the proposal received from the Chief Parole prison / LPKA. The verification results Parole proposal referred to in paragraph (1), presented by the Head of Regional Office of the Director-General.²⁶

Director General of the verification proposal granting parole than 3 (three) days from the date of granting parole proposal received from the Head of Prison / LPKA. In the event that there have been improvements based on the results of verification, the Director-General to restore the proposal granting parole to the Head of Prison / LPKA to be repaired with a copy to the Head of Regional Office. Head of Prison / LPKA shall conduct repairs Award Parole proposal no later than 3 (three) days from the date of granting parole refund proposal is accepted. Results repair granting parole proposal resubmitted by the Head of Prison / LPKA to the Director General for approval with copies to the Head of Regional Office.²⁷

²³ Chapter 94 Permenkumham No. 3/2018.

²⁴ Chapter 95 Permenkumham No. 3/2018.

²⁵ Chapter 96 Permenkumham No. 3/2018.

²⁶ Chapter 97 Permenkumham No. 3/2018.

²⁷ Chapter 98 Permenkumham No. 3/2018.

In the case of the Director-General agreed with the provision of Liberation, the Director-General on behalf of the Minister shall determine the decision to grant parole. The decision to grant parole to Head Prison / LPKA to notify inmates or Child with a copy to the Head of Regional Office. The decision to grant parole printed prison / LPKA with an electronic signature of the Director General on behalf of the Minister.

Meanwhile, with regard to the procedures for granting parole to convict a criminal act of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security, human rights violations are severe, as well as other organized transnational crime, Article 99 Permenkumham No. 3/2018 stipulates that correctional officers who will be proposed to record inmate parole. Documenting performed on a condition of parole, and documentation requirements. The documents shall be requested after seven (7) days Prisoners are in prison. The documents shall be fulfilled not later than 1/2 (one half) criminal past Prisoners are in prison.

Parole In Dignified Justice Perspective

According to Petrus Irwan and Pandapotan Simorangkir is the lost prisoners who have the time and opportunity to

repent.²⁸ Penance can not be achieved with torture, but with the coaching. Inmates guidance implies treating someone with the status of prisoners to be built in order to rise up into a good person. On the basis of the understanding guidance so that the targets that need to be fostered is a personal and moral Prisoners were encouraged to evoke a sense of pride in themselves and others, and to develop a sense of responsibility to adjust to the life of a peaceful and prosperous society, and The next potentially high and morals.²⁹

Implementation of correctional guidance is based on the principles of the penal system to care for, nurture, educate and guide the inmates in order to be good citizens and useful. Coaching is best for the success of inmates in a sentence and can return to society and not to repeat his actions is coaching from the inside of the inmates themselves.

Correctional conception is not merely formulate the goals of imprisonment, but rather a guidance system, a methodology in the field of "Treatment of Offenders". Multilateral correctional system is oriented,

²⁸ Petrus Irwan Panjaitan dan Pandapotan Simorangkir, 1995, *Lapas Dalam Perspektif Sistem Peradilan Pidana*, Pustaka Sinar Harapan, Jakarta, p.. 72.

²⁹ Donny Michael, 2017, *Penerapan Hak-Hak Narapidana Di Lembaga Pemasyarakatan Klas I A Tanjung Gusta, Sumatera Utara Ditinjau Dari Perspektif Hak Asasi Manusia*, Jurnal Penelitian Hukum De Jure, Vol. 17, No. 2, p. 252.

with an approach centered on the potentials that exist on offenders (prisoners). Prisons as one part of a sub-system of criminal justice in Indonesia aimed to provide guidance to inmates.³⁰

Understanding it is clear that the coaching inmates can not be done by force, but in ways that respect human rights of prisoners. This is in line with the theory of justice with dignity, a prisoner still be treated as a whole person, in the sense that an inmate should still be given their rights. Therefore diadakanlah parole as one of the development efforts of prisoners in prisons. It is as set forth in Article 14 of Criminal Code, which stipulates that prisoners are entitled:

- a. worship according to his religion or belief;
- b. treatment, both spiritual and physical care;
- c. education and teaching;
- d. health services and decent food;
- e. lodged a complaint;
- f. get reading materials and following other mass media broadcasts that are not prohibited;
- g. a wage or premium for work performed;
- h. receive family visits, legal counsel, or other particular person;
- i. get a reduction in criminal past (remission);

- j. get a chance to assimilate including home leave;
- k. parole;
- l. get time off ahead of the free; and
- m. acquire other rights in accordance with the legislation in force.

One of the prisoners' rights in order to develop as stipulated in Article 14 of Criminal Code is parole. A prisoner who had behaved well during training and are qualified as determined to give parole decisions are based on several considerations, among others:

- a. The nature of the offenses does
- b. Personal and biographical inmates
- c. The behavior of prisoners during the coaching
- d. The possibilities to get a job after he was released
- e. Public reception where he will reside.

Granting parole to inmates aims to make inmates can directly adjust himself to the public before the end of its life criminal. Granting parole to inmates certainly have a good purpose, especially the inmates themselves. Efforts coaching inmates serving parole implemented by the correctional system. Functions and duties of correctional guidance to prisoners, especially prisoners be implemented in an integrated manner with the goal of keeping the convict after completion of a sentence can be a good citizen.

³⁰ Adi Sujatno, 2004, *Sistem Pemasyarakatan Indonesia (Membangun Manusia Indonesia)*, Departemen Kehakiman dan HAM RI, Jakarta, p. 21.

The granting of parole aims to make prisoners aware of wrongdoing and the community accepts their presence in community life, is useful and responsible. R. Soesilo stated that the purpose of parole is the same as the conditional release in Article 14a of the Criminal Code, is an education for the convicted who is given the opportunity to improve it.

This is in line with the theory of dignified justice, that the law must recognize human dignity, namely the law must be able to humanize humans. In the sense that granting parole in order to treat and uphold the human values of an inmate according to the nature and purpose of his life. This is because even though an inmate has made a mistake or a crime, the prisoner is still a noble creature created by God Almighty. So that prisoners still have their dignity and dignity as human beings with all their rights and obligations and get fair treatment as human beings, towards themselves, the natural surroundings and to God.³¹

CONCLUSION

The granting of parole to prisoners is intended so that prisoners can immediately adjust themselves to the life of the community before ending their criminal term. The granting of parole aims to make prisoners

aware of wrongdoing and the community accepts their presence in community life, is useful and responsible. So that the provision of parole is one way to humanize prisoners, namely giving prisoners the dignity and dignity of human beings with all their rights and obligations as well as getting fair treatment as human beings, towards themselves, nature and God.

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³¹ Teguh Prasetyo, *Pengantar Ilmu Hukum, Op Cit*, p. 215.

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