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CONDITIONAL RELEASE OF RECIDIVISTS IN CLASS IIA TENGGARONG WOMEN'S CREATE

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ABSTRACT

Conditional release aims to return prisoners to society, hoping they will not repeat their crimes. However, a convict who has been released can commit crimes again (recidivist). In this regard, it raises the notion that convicts do not have a deterrent effect on criminal sanctions, so they need legal certainty that regulates this matter. This study aims to: (1) Provide an elaboration and explanation of the Legal Policy on Parole for Recidivist Convicts in Class IIA Tenggarong Women's Correctional Institution that is currently in effect and (2) Know the factors that hinder the implementation of parole-granting activities for these Recidivist Convicts. This research is qualitative research with an empirical normative approach. Data collection was carried out using the Interview Method. The research results show that the legal policy towards Parole for recidivists in Class IIA Tenggarong Women's Prison refers to Law Number 22 of 2022 concerning Corrections. Lack of Human Resources (Staff), the Correctional Information System, which runs slowly, the family as a guarantor, and prisoners' behaviour are the inhibiting factors in granting conditional release to recidivist convicts at Class IIA Tenggarong Women's Penitentiary.

KEYWORDS

Correctional Institutions, Convicts, Recidivists, Parole.



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INTRODUCTION

Correctional Institutions provide rights and obligations to convicts in carrying out their functions. One of these rights is obtaining Parole which is also the final stage in the coaching program as stipulated in the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Parole with the addition in Regulation of the Minister of Law and Human Rights Number 7 the Year 2022 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Parole.

Parole is a program that aims to enable convicts to improve their quality of personality and independence and improve themselves to be better than before with the hope that they will not repeat their crimes.

In reality, a convict who has been released or is currently undergoing a coaching program outside the Penitentiary must have the costs to make ends meet and be self-satisfied. Meanwhile, finding a job is not easy. This can result in them committing crimes again, which causes Correctional Institutions to experience overcrowding (overcapacity).

In connection with the repetition of criminal acts committed by convicts, this raises the notion that convicts do not have a deterrent effect on criminal sanctions, so they require legal certainty governing this matter.

The aims of the study were: (1) to provide an elaboration and explanation of the current legal policy on Parole for recidivists in the Class IIA Tenggarong Women's Prison and (2) to find out the factors that hinder the implementation of Parole granting of these recidivists.

LITERATURE REVIEW

A. Theoretical Basis

1. Legal System Theory

The legal system is a unity of interrelated parts of the law that work together to achieve social justice and social order [1].

Legal System Theory states that A legal system in actual operation is a complex organism in which structure, substance, and culture interact. A legal system is a union of "primary rules" and "secondary rules." Primary rules are norms of behaviour; secondary rules are norms about those norms- how to decide whether they are valid, how to enforce them, etc. [2].

Related to the above, it can be interpreted that a legal system in operation is a complex matter consisting of three interrelated elements, namely structure, substance, and culture, so that it will determine the effectiveness and success of law enforcement.

The structure becomes one of the primary and fundamental elements of the legal system. The legal form is a robust framework that maintains the institution so the legal process can run according to the set boundaries. Describing the legal system will be tied to the number of judges, the composition of the courts, and the parties involved in a trial [3].

The substance comprises rules and regulations regarding how these institutions must operate. Actual conditions, norms, and patterns of human behaviour rule the substance in question. Thus, the meaning is a rule in a law book and a legal practice recognized in society [1].

Legal culture is an essential part of social attitudes and values. The social value itself is used as the background of the legal culture.

2. Theory of Punishment

Imposing sanctions on someone who has committed a violation is through a process of punishment or can also be called punishment. Punishment comes from the word criminal, who etymologically comes from the Dutch language, strap. Using the term criminal is more appropriate than punishment (recht).

Three main points of thought are the goals to be achieved from a punishment: to improve the criminal's personality, deter people from committing crimes, and make certain criminals unable to commit crimes [2].

Concerning the purpose of punishment is divided into 3 (three) significant categories [4], namely:

1. Theory of Revenge or Absolute Theory or Retributive Theory (VergeldingTheorien), namely the purpose of revenge based on the satisfaction of the general public and victims and on criminal sanctions given to perpetrators who have committed crimes as a form of justice.
2. Purpose theory or Relative Theory (Doel Theorien) or Utilitarian Theory (De Relative Theorien), namely theories based on upholding legal norms in people's lives to protect society and prevent people from committing crimes.
3. Combined Theory (VerneginsTheorien), which is a theory that combines the two approaches so that they become one unit that prioritizes a balance between these two elements.

B. Correctional System Concept

1. Overview of Correctional Institutions

Based on Article 1 point 1 of the Correctional Law Number 22 of 2022 concerning Corrections, it is explained that the definition of Corrections is a subsystem of criminal justice that carries out law enforcement in the field of treatment of Detainees, Children and Convicts.

It is stated in Law Number 22 of 2022 concerning Communities Article 2 related to the implementation of the Correctional System as a goal to provide guarantees for the protection of the rights of Prisoners and Children, as well as to improve the quality of personality and independence of the Prisoners so that they are aware of mistakes, improve themselves, and not repeat crimes, so that it can be accepted again by the community, can generally live as good citizens, obey the law, be responsible, and can play an active role in development, and at the same time provide protection to the community from repetition of criminal acts.

The correctional functions include service, coaching, social guidance, treatment, security, and observation. Institutions or places to foster convicts are correctional institutions or, from now on, referred to as prisons. Correctional institutions, as the spearhead of implementing the principle of protection, are a place to achieve the goals of correctional institutions by providing guidance and coaching through education, rehabilitation and integration [5].

2. Overview of Prisoners

Convicts based on Article 1 Number 6 of Law Number 22 of 2022 are convicts serving prison sentences for a specific time and for life or death row convicts awaiting execution of the verdict undergoing training in correctional institutions. The definition of a convict is further clarified in the Criminal Procedure Code, which is contained in Article 1 Number 32, that a convict is a person convicted based on a Court Decision that has obtained permanent legal force.

Based on Law Number 39 of 1999 concerning Human Rights Articles 3 and 5, everyone is born with the same and equal dignity and worth, so they are entitled to recognition, guarantees, protection and legal protection without discrimination.

The rights of convicts are listed in Article 9 of Law Number 22 of 2022 concerning Corrections; Prisoners have the following rights:

1. Carry out worship according to their religion or belief;
2. Receive treatment, both physical and spiritual;
3. Get an education, teaching, and recreational activities as well as opportunities to develop potential;
4. Get proper health services and food on nutritional needs;
5. Obtain information services;
6. Obtain legal counselling and legal assistance;
7. Submit complaints and complaints;
8. Obtaining reading material and participating in mass media broadcasts that are not prohibited;
9. Receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all actions that endanger the physical and mental;
10. Obtain work safety guarantees, wages, or work premiums;
11. Get social services; And
12. Accept or refuse visits from family, advocates, assistants and the community.

Strengthening the rights of convicts is also regulated in Article 10 of Law Number 22 of 2022 concerning Corrections as an additional right for convicts, namely Parole with certain conditions.

3. Overview of Parole

Conditional release is the process of coaching convicts outside the Prison to integrate with their families and communities. They were reaffirmed in Article 2 of Regulation of the Minister of Law and Human Rights Number 7 of 2022 concerning the Second Amendment to Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Terms and Procedures for Granting Parole that Parole must be beneficial for Prisoners and their Families and given by considering the interests of development, security, public order, and a sense of justice in society.

Specifically regarding the granting of Parole, a convict must meet the requirements accompanied by the documents' completeness. In connection with these conditions listed in Article 82 and Article 83 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 Terms and Procedures for Granting Parole are as follows:

1. Have served a criminal period of at least 2/3 (two-thirds), provided that 2/3 (two-thirds) of the illegal period is at least 9 (nine) months;
2. Have good behaviour while serving the criminal period for at least the last 9 (nine) months counted before 2/3 (two-thirds) of the illegal period;
3. Have followed the coaching program properly, diligently, and enthusiastically; And

4. Communities can accept convict coaching activity programs.

The complete documents that must be fulfilled are as follows:

1. A copy of the excerpt of the judge's decision and the minutes of the implementation of the court's decision;
2. Report on the development of development by the Prisoner's assessment system for fostering, which is signed by the Head of the Correctional Institution;
3. Community research reports made by Community Advisors known to the Head of the Bapas;
4. Letter of notification to the district attorney regarding the plan to propose the granting of Parole to the correctional convict concerned (if no reply is received no later than 12 (twelve) days from the date the letter was sent, then Parole will still be granted);
5. Copy of register F from the Head of Correctional Institution;
6. Copy of list of changes from the Head of Correctional Institution;
7. A statement letter from the convict will not commit any unlawful act; And
8. A letter of guarantee of ability from the family, guardian, social institution, government agency, private agency, or foundation known to the village head, village head, or other names stating that:
 - a. Convicts will not run away and will not commit unlawful acts; And
 - b. Assist in guiding and supervising convicts while participating in the parole program.

Follow-up on the conditional release is carried out through the Correctional Information System. This system is integrated between Correctional Technical Implementation Units, Regional Offices, and the Directorate General.

C. General Understanding of Recidivist

Recidivist comes from French, where two Latin words are taken: re and co; re means again, and cado means fall. So recidivism means a tendency that is repeatedly punished because one has frequently committed crimes, and regarding recidivism is talking about laws that are repeated as a result of the same and similar actions Zara and Fallington, in their book Criminal Recidivism say that: "recidivism is the official criminal involvement (base on criminal records) of a person who, after having been convicted for a previous offence, commits a new crime for which they incur another conviction." [6].

The definition above can be interpreted as a recidivist being someone who has been convicted of a previous crime, is involved in a new offence and has official criminal law certainty based on official crime records [7].

Recidivists are convicts who have been residents of correctional institutions more than twice or have committed crimes again, so they are subject to criminal punishment again in correctional institutions [8].

Recidivists and Samenloop have similarities and differences, including (1) The similarities are that both the Samenloop and recidive occur when someone commits several criminal acts. While the difference is: in the case of a samenloop between one criminal event and another, it is not interrupted by a judge's decision, while in recidive between one criminal event and another, there is already a judge's decision in the form of a crime [7].

RESEARCH METHODS

A. Time and Place of Research

The research was carried out from February to May 2023 at the Tenggarong Class IIA Women's Penitentiary located on Jl. Imam Bonjol, Malay Village, Tenggarong District.

B. Types of research

The type of research used is Empirical Normative Research which leads to normative legal provisions, namely laws related to the facts of legal events that occur in people's lives.

C. Techniques for Collection and Processing of Legal Materials

The technique for collecting and processing legal materials used is the library research method and the field research method.

D. Sources of Legal Materials

The sources of legal materials used are (1) the Criminal Code (KUHP), (2) the Criminal Procedure Code (KUHAP), (3) the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, (4) Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections, (5) Regulation of the Government of the Republic of Indonesia Number 31 of 1999 concerning Guidance and Guidance of Inmates, (6) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018, (7) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2022.

RESEARCH RESULTS AND DISCUSSION

A. Legal Policy Against Conditional Release for Recidivist Convicts in Class IIA Tenggarong Women's Prison

The results of an interview with MsJuari, the Head of the Prisoner/Protect Guidance Section (Kasi Binadik) Class IIA Tenggarong Women's Prison, stated that Parole is the final stage of the coaching program after convicts undergo advanced stage coaching, namely having experienced 2/3 (two thirds) minimum of 9 months in Prison. Through this conditional program, it is hoped that convicts can return and be accepted into society.

In this regard, the implementation regarding granting conditional release at the Tenggarong Women's Prison is based on Law Number 22 of 2022 concerning Corrections. Then in more detail, it is regulated in the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Conditional Release with the addition held in Regulation of the Minister of Law and Human Rights Number 7 of 2022 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Human Number 3 of 2018.

Based on the research results and according to the conditions in the Tenggarong Class IIA Women's Prison, there are no differences regarding the conditional release of convicts, except for convicts of terrorism crimes so that every convict has the right to take part in the coaching program in question, namely the Parole Program without any discrimination.

A recidivist convict who returns to Prison will be accompanied by a correctional caretaker after 12 (twelve) days of undergoing an environmental familiarization period (Mapenaling). The Correctional Guardian is tasked with assisting and assessing the Prisoner concerned during the coaching process in Correctional Institutions. This assessment includes an assessment of the

behaviour and coaching programs attended by the convict concerned while at the Women's Prison. Furthermore, the assessment will be reported monthly as a consideration in applying for Parole.

In principle, if the Recidivist Prisoner has fulfilled the requirements by Article 82 and Article 83 of the Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Parole, the Integration Officer will inform the Correctional Foster Guardian regarding the proposal in the Parole Program for the Prisoner concerned to report the Prisoner Development Assessment System (SPPN) for the last 3 (three) months and the Prisoner's Development Development Report.

Recidivist convicts that convicts can apply for parole 2 (two) times. Administratively, recidivist convicts who have used for Parole and received revocation of Parole must include a decision to revoke release in the Correctional Information System. If not, the convict cannot be proposed for Parole because the Correctional Information System rejects it. This system is called the Correctional Database System; in principle, this system is managed by the Technical Implementation Unit, which is integrated between the Technical Implementation Unit (UPT), Regional Offices(Kantor Wilayah) and the Directorate General of Corrections (DirektoratJenderalPemasyarakatan).

The implementation of conditional release for recidivist convicts is carried out in a very selective process of stages, both from the Tenggarong Class IIA Women's Prison and the Social Counselor from the Correctional Center.

It was confirmed through the Indonesian Recidivist Risk Assessment (RRI) results regarding the eligibility of recidivist convicts with low-risk assessment results from both the Prisoner's guarantor and the personality of the Prisoner concerned to get the parole program.

Based on the description above, it can be stated regarding Parole that the Class IIA Women's Penitentiary seeks to recidivate convicts in the Tenggarong Class IIA Women's Prison to get Parole the same as prisoners in general with the hope that these convicts can gather more quickly with their families and be accepted back by the community with a better personality.

The legal policy at the Tenggarong Class IIA Women's Penitentiary regarding Parole, especially recidivist convicts in the context of the legal system theory, has fulfilled the elements of the legal system. This can be seen through the role of the Foster Guardian as a Legal Structure, Law Number 22 of 2022, concerning Corrections which is described in Article 10 with more detailed administrative requirements stated in the Regulation of the Minister of Law and Human Rights Number 3 of 2018 in Article 82 and Regulations Minister of Law and Human Rights Number 7 of 2022 is listed in Articles 83 to Article 87 as Legal Substance and the involvement in evaluating the attitudes and ethics of Prisoners as a condition for Parole is by the Legal Culture.

B. Inhibiting Factors in Granting Conditional Release to Convicts at Class IIA Tenggarong Women's Prison

The provision of the parole program to recidivist convicts at the Tenggarong Class IIA Women's Penitentiary has been run by established laws and regulations. Still, during the implementation process, there were several obstacles. Based on the results of an interview with MsJuari as Kasi Binadik, there are several obstacles encountered in granting Parole for recidivist convicts, namely as follows:

1. Family Factors (Guarantor)

The whereabouts of the families of these convicts are unknown; apart from that, several families do not want to become guarantors because they do not want to be responsible for convicts undergoing coaching outside the Prison. In addition, for recidivist convicts, Correctional Institutions and Bapas are more selective in determining the eligibility of families who will become guarantors because the family will be responsible for the economy, residence and even the environment around the inmates who will be released later.

2. Administrative Factors (Correction Information System)

The decree on release is still progressing slowly because the Community Information System oversees all prisons and detention centres in Indonesia, so both officers and prisoners have to wait a long time for the decree to be issued from the Center.

3. Human Resources (Employee) Factors

Currently, in the Tenggarong Class IIA Women's Prison, only one employee manages the integration of all Tenggarong Class IIA Prisoners. Hence, prisoners have to wait and take turns if they want to apply for Parole.

4. Discipline Factor

Several convicts still violate the Prison order, so the proposal for Parole is postponed and even cancelled.

Thus it can be concluded that based on the facts and results of interviews with the Head of the Prisoner/Protect Guidance Section, as well as the results of the author's interview with the Prisoner concerned that the behaviour of the Recidivist Prisoner and the role of Correctional Foster Care is fundamental in determining the granting of Parole to be served by Recidivist Prison Convicts Class IIA Tenggarong women.

It can be stated that the most dominant factor related to the inhibiting factors in Parole is the factor of the convicts themselves. This aligns with the Theory of Punishment as a deterrent effect for convicts who commit violations in granting Parole.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

1. The legal policy on Parole for recidivists at the Tenggarong Class IIA Women's Prison refers to Law Number 22 of 2022 concerning Corrections and Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Parole and Regulation of the Minister of Law and Human Rights Number 7 of 2022 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 3 of 2018. There is no difference in granting a parole program to each Prisoner, and the Prison always makes optimal efforts to give Parole to all prisoners.
2. Factors that become obstacles in granting conditional release to recidivist convicts at Tenggarong Class II Women's Prison are the lack of human resources (employees), the Correctional Information System, which is the Center of all prisons and detention centres, apart from that from the recidivist convicts themselves both from their families as well as the behaviour of convicts while undergoing coaching at the Class IIA Tenggarong Women's Penitentiary.

B. Suggestion

The Tenggarong Class IIA, Women's Prison, should provide integrated counselling with related Technical Agencies to Recidivist Convicts regarding the importance of Parole, as well as improve the quality of coaching that recidivist Prisoners will undergo so that they are released through Parole to become better individuals and Class IIA Women's Lapas should Tenggarong to coordinate further with the East Kalimantan Legal and Human Rights Regional Office regarding the urgency of adding human resources in the Tenggarong Class IIA Women's Prison environment.

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Regulations:

Law Number 22 of 2022 concerning Corrections

Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Parole and

Regulation of the Minister of Law and Human Rights Number 7 of 2022 concerning the Second Amendment to Regulation of the Minister of Law and Human Rights Number 3 of 2018.