



## Remission of prisoners of theft cases (A research conducted in correctional centre of class IIA Banda Aceh)

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### Abstract

The Right to Remission granted to larceny convicts and other convicts in Correctional Institutions is based on Article 10 letter of Law Number 22 of 2022 regarding Corrections, which states that one of a convict's rights is to receive a reduced sentence. However, not all theft offenders satisfy the remission requirements. The research methodology employed is empirically legal. Empirical juridical analyzes of the applicable legal provisions and what actually occurs in a society still governed by existing legal principles and guidelines. This study aims to clarify the implementation of remissions for theft convicts and the obstacles associated with their implementation. Based on the research findings, granting pardons to larceny offenders in Banda Aceh's Class IIA Correctional Institutions has been implemented in accordance with the applicable laws and regulations. However, not all larceny offenders are eligible for commutation because other factors must be met in order to be granted a commutation. In addition to the convict's excellent behavior, the theft convict must have served at least six months in prison and not have been subject to disciplinary action recorded in Register F during the period calculated for granting remission. Some of the obstacles to instituting commutations for theft offenders at the Class IIA Penitentiary in Banda Aceh stem from juridical factors, institutional and human resource factors, facilities and infrastructure factors, offender behavior factors, and cultural factors.

**Keywords:** Remission, prisoners, theft

### Introduction

Law is a regulatory system that is used to regulate society, accomplish goals, and satisfy concrete societal needs <sup>[1]</sup>. Everything is governed by the applicable law in Indonesia, including the imposition of penalties for lawbreaking <sup>[2]</sup>. This implies that every individual in society and the state must abide by the standards established by the government. Theft is a criminal act that frequently results from human greed for a material target in the form of valuable objects that have a high market value and sell well. The perpetrators of this offense did not consider the age, gender, or sexual orientation of the victims. Theft is governed by Articles 476 to 481 of the Criminal Code (hereinafter referred to as the Criminal Code) of Law Number 1, 2023.

Law Number 22, 2022 concerning Corrections (hereinafter referred to as the Correctional Law) is the current corrections law; with the enactment of the Correctional Law, Law Number 12, 1995 concerning Corrections is no longer in effect. The Correctional Law contains all provisions for the operation of correctional facilities and is one of the legal foundations for correctional technical service units.

Prisoners who are serving their sentences in correctional institutions are granted certain privileges. As stated in Article 10 letter of the Correctional Law, one of the privileges of convicted individuals is to receive a reduced sentence (remission).

From the conditions for granting remission as stated in Government Regulation Number 99, 2012 concerning the Second Amendment to Government Regulation Number 32, 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Inmates,

various problems arise, including clauses of good behavior that must be demonstrated by participation in the program held by Correctional Institutions with a good predicate. The qualification requirements for remission regarding good behavior must be demonstrated by participation in a program organized by LAPAS (a correctional center) with an acceptable predicate, must have clear standards, and must be applied with firmness. So that it is not limited to the subjective perspective of the correctional observer team (hereinafter TPP), this is where there is a potential for violations, as TPP holds the sole authority to provide recommendations on interpretations of good behavior.

Remission in the correctional system is a topic that must be discussed at length. This pertains to the issue of guidance provided by Correctional Institution staff to inmates. Therefore, in the implementation of the penal system in Indonesia, remission has a very strategic position, as remissions cannot be granted if prisoners do not behave well (which is the foundation of effective coaching) and satisfy the conditions for granting remissions <sup>[3]</sup>.

Responding to the problems that exist in prisons throughout Indonesia, particularly the Class IIA Banda Aceh prison, particularly in regard to the implementation of granting remissions for theft convicts in class IIA prisons in Banda Aceh, is the primary cause for pursuing a deeper understanding of this topic.

### Research method

This research method incorporates empirical juridical research, which examines the applicable legal provisions and actual societal behavior <sup>[4]</sup>. Empirical juridical research focuses on enacting or implementing normative legal

provisions in every specific legal event in society <sup>[5]</sup>. This study was conducted at the Banda Aceh Class IIA Penitentiary.

### Results and discussions

The rule of law is a component of a democratic state and contains the substance of human rights, if there is no dread of losing its essence and if it does not serve as a tool for the government to suppress people and justify policies that violate human rights <sup>[6]</sup>. A convicted adult or juvenile as a prisoner has the right to clemency. The prison's decision to grant remission is in accordance with Article 26 point 3 of Minister of Law and Human Rights Number 7, 2022 concerning the second amendment to Minister of Law and Human Rights Number 3, 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Family Visiting Leave, Parole, Leave Approaching Release, and Conditional Leave, and is submitted in advance to the head of the Correctional Institution. Following that, it was proclaimed concurrently with the Republic of Indonesia's Independence Day or religious holidays <sup>[7]</sup>. Legal certainty is a guarantee that a given body of law contains justice. Norms that promote justice must actually be followed in order to be effective. According to Gustav Radbruch, justice, and legal certainty are enduring components of the law. For the security and order of a country, justice and legal certainty must be considered, and legal certainty must be maintained. In conclusion, positive law must always be followed. On the basis of the theory of legal certainty, the values to be attained are justice and pleasure <sup>[8]</sup>. Then Sudikno Mertokusumo argued once more that "legal certainty is a guarantee that the law is implemented, that those entitled by law can obtain their rights, and that decisions can be carried out" <sup>[9]</sup>.

The purpose of this commutation is to provide coaching that directs offenders toward development so that, after serving their sentence, they can be accepted back into the community. Therefore, the transient loss of liberty does not imply the denial of other rights to prisoners. Therefore, granting remissions is an effective means of mitigating the negative effects that may occur when prisoners are serving their sentences, as a result of crimes such as deprivation of liberty or criminal disparities that cause prisoners to feel like victims of injustice, thereby hindering their socialization process. The implementation of remissions will further encourage offenders to always behave well in order to expedite the process of social reintegration, and psychologically, the provision of remissions will help to alleviate the frustration of inmates in order to minimize disturbances to prison security and order <sup>[10]</sup>.

Based on interviews conducted with convicted thieves with the initials HA who have been granted remission rights. In 2022, the general remission is four months and the special remission is one month. According to him, there are no impediments to meeting the requirements for obtaining remissions, so the granting of remissions is an effective means of encouraging inmates to always conduct well. In addition, it can encourage prisoners who are serving their sentences in prison. Class IIA Banda Aceh Lapas has thus far made every effort to motivate and encourage theft offenders to conduct well through coaching in order to meet the requirements for granting remission rights to theft offenders.

The right of remission applies to all convicts, particularly theft convicts at the Class IIA Banda Aceh prison, and consists of two types of remission: General Remission, which is given every 17th to coincide with the commemoration of the Proclamation of Independence of the Republic of Indonesia, and Special Remission, which is given on the religious holidays as specified in article 2 of Presidential Decree Number 174 of 1999 Concerning Remission. In addition to these two kinds of remission, theft offenders may be eligible for humanitarian and additional remissions. The applicable laws and regulations specify the procedure for granting remissions in detail. There are various requirements and mechanisms that must be met before a thief's remission rights can be granted. This is to ensure that thieves are not promptly released <sup>[11]</sup>.

The implementation of remissions for theft offenders at Class IIA prison in Banda Aceh complied with the provisions of Presidential Decree Number 174 of 1999 concerning Remissions 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 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, and Leave to Work.

The procedure followed by the Class IIA Banda Aceh for granting remissions To issue a Decree specified by a Ministerial Decree, Lapas must complete a number of steps. The first stage of proposing remission begins with the evaluation of the Assessment Team, which is comprised of insiders or prison officers who have been designated as Correctional Guardians (Walipas) by a Decree of the Head of the Chief of Staff. This evaluation is based on the Prisoner Development Assessment System (SPPN) outlined in the Director General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia Decree No. PAS-10.OT.02.02 of 2021 regarding the Prisoner Development Assessment System.

In practice, the Correctional Guardian (commonly referred to as the Walipas) always oversees the granting of remissions because the Walipas's job is to assist the Head of Correctional Institutions in coaching prisoners, as stipulated in Article 40 of Law Number 22 of 2022 concerning Corrections. So that they can comprehend, recognize, and assess the attitudes and conduct of each prisoner. If there are convicts who make mistakes, it is the duty and responsibility of the Walipas to advise them to conduct well in order to prevent them from committing acts that violate prison regulations and are ineligible for remission rights <sup>[12]</sup>.

In general, law enforcement can be interpreted as the act of employing specific legal means to impose legal sanctions in order to ensure adherence to the stipulations <sup>[13]</sup>. Conceptually, the essence and significance of law enforcement lie in the activity of harmonizing relationships and values that are set out in solid principles, embodying and acting as a series of final-stage value translations to create, maintain, and preserve social peace <sup>[14]</sup>. This can be accomplished by granting pardons to theft offenders in order to create, maintain, and preserve social harmony.

Implementation Not only does the granting of remission not always go smoothly, but sometimes there are implementation issues as well. In Banda Aceh, the implementation of the granting of pardons in Class IIA institutions is impeded by a number of factors. This can be hindered by correctional officers, the detainees themselves,

or other factors. Based on the findings of interviews with relevant parties and research findings, a number of factors that impede the implementation of the granting of remission rights for larceny offenders at the Banda Aceh prison of Class IIA have been identified.

### 1. Juridical factor

There are still obstacles to the implementation of juridical remissions when viewed from a legal perspective. This obstacle is a result of the lack of statutory regulations and implementing regulations as a robust legal umbrella that should serve as a legal and structural foundation for supporting or underpinning the various operational provisions for supervising the granting of remissions.

### 2. Institutional aspects and human assets

There is no institution or institution that administers the granting of pardons to convicted individuals. This is essential to minimize the occurrence of delays in the granting of prisoners' rights, particularly remissions, and to minimize the occurrence of errors in remission granting. This is obviously accompanied by the existence of more specific remission conditions. In addition to a paucity of facilities for calculating remissions, there are a limited number of personnel who are competent in performing their primary duties and functions.

### 3. Facility and infrastructure considerations

Currently, the registration officer manually calculates remissions using the same tool that is used to compute Expiration (calculation of free/released prisoners) <sup>[15]</sup>.

### 4. Aspects of prisoner behavior

Involvement in disciplinary actions or other infractions of discipline or prison rules on the part of the convicts themselves is one of the impediments to granting remissions.

### 5. Cultural/cultural factors

There is a delay in filing remission requirements, such as excerpts of judgments from the District Court that decided the convict's case, so that the convict cannot always be proposed for remission despite having been sentenced by the court for a considerable amount of time. The execution of the district attorney's office was delayed, so the convict did not have permanent legal force and could not oppose the proposal for remission. The delay in the execution from the prosecutor's office is one of the factors preventing convicts from being recommended for pardon.

### Conclusion

The granting of pardons to larceny offenders at the Class IIA Banda Aceh prison has been implemented in accordance with the applicable laws and regulations. However, not all larceny offenders are eligible for commutation because other factors must be met in order to be granted a commutation. In addition to the convict's excellent behavior, the theft convict must have served at least six months in prison and not have been subject to disciplinary action recorded in Register F during the period calculated for granting remission.

Some of the obstacles to instituting commutations for theft offenders in Banda Aceh's Class IIA prison are caused by juridical factors, institutional and human resource factors,

facilities and infrastructure factors, convict behavior factors, and cultural factors.

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