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The Remission and Detention Policy as an Effort to Overcapacity of Detention and Prison in Indonesia

Berlian Simarmata
Lecturer, Department of Law, St Thomas University of North Sumatera, Indonesia
Janus Sidabalok
Lecturer, Department of Law, St Thomas University of North Sumatera, Indonesia

Abstract:
There are 2 (two) factors as causing of Detention and Prison experiencing overcapacity, there are detainees and prisoners. Prisoners are entitled to Remission, in the form of a reduction in the life of a criminal judge. Detainees have no right to remission, but the Criminal Procedure Code provides restrictions for a suspect to be subject to detention. The Criminal Procedure Code does not require a suspect to be detained, especially in cases that are less severe. The Criminal Procedure Code only provides that a suspect committing an offense punishable with imprisonment of 5 (five) years or more may be subject to detention. The word of 'can' means non-compulsory, The Criminal Procedure Code gives freedom to the investigator, prosecutor or judge to do or not to arrest the suspect.
Many small cases are relatively small objects whose suspects should not be detained, but in practice are often detained by investigators, prosecutors or judges. Suspects of minor offenses do not need to be detained so that the overcapacity of prisons and detention can be overcome. Immediate detention is carried out for major crimes that endanger the interests of the people and the state, so the government does not need to be preoccupied with the overcapacity of Detention and Prison, which in turn can lead to fights and commotion in Detention and Prison. Removing a remission is one of the denials of a judge who has imposed a punishment to prisoner.

Keywords : *Remission, detention, overcapacity*

1. Background of the Problems

During the last five years, the Government of Indonesia through the Ministry of Justice and Human Rights often complain that almost all prisons in Indonesia, especially those locate in the overcapacity. The existing Prisons are no longer able to accommodates prisoners. Although the capacity of prisons is always added every year, even setting up new prisons, but the fact shows that prisons are still unable to accommodate excess.

On April 27, 2009, the Minister of Justice and Human Rights, Andi Mattalatta,[1] said that the high occupancy rate its prisons is a problem that still continue to be addressed. Almost all prisons and detention centers in Indonesia have been experiencing overcapacity. The available data show that the number of prisoners and detainees reached 137.172 peoples, while the capacities of prisons are only for 88.559 peoples. Over capacity condition is certainly very influential on the quality of life of prisoners and detainees, who must live by jowl in a space that is increasingly cramped and stuffy. So, in 2009, the average overcapacity conditions of prisons in Indonesia are about 48.613 peoples (54.89%).

In 2010, this condition improved slightly. According to Untung Sugyono,[2] Director General of Corrections Ministry of Justice and Human Rights the capacity of all prisons is 90.853 peoples, and 132.372 peoples currently filled, it resulting in overcapacity as many as 41.789 peoples (45.99%), but in the big cities like Jakarta, prisons overcapacity reached 300 percent. The same thing also continued in 2011, 2012, 2013, 2014, 2015, and 2016. Another problem that arises is that overcapacity is not uniform. The Prisons in the capital of the province and the state capital have a much higher overcapacity capacity.

In Prison of Class II A Jambi,[3] it should have a capacity of approximately 200 peoples, but the reality today shows that Prisons are inhabited by approximately 800 peoples, either prisoners or inmates, meaning that there is overcapacity of about 400 percent. Detention in Dumai[4] which have capacity of only 132 people, it is inhabited by 423 prisoners and detainees,[5] about 220.45 percent above the capacity. Prison Muaro, Padang city are inhabited 700 people, though its maximum capacity is 300,[6] meaning the overcapacity reach 400 people (133%).

[1] http://www.humascilacap.info/?pilih=news&mod=yes&aksi=lihat&id=723, diakses tanggal 25 April 2011.
[2] Lapas dan Rutan Over Kapasitas 300 Persen, http://bataviase.co.id/detailberita-10470900.html; diakses pada tanggal 25 April 2011.
[3] http://www.jambiekspres.co.id/utama/15218-lapas-di-jambi-over-kapasitas.html; diakses pada tanggal 25 April 2011.
[4] Salah satu daerah Kabupaten di Provisi Riau.
[5] http://www.riaumandiri.net/rm/index.php?option=com_content&view=article&id=7172:rutan-dumai-dihuni-423-napi-dan-tahanan&catid=52:dumai&Itemid=59; diakses pada tanggal 25 April 2011.
[6] Lapas Muaro Padang Over Kapasitas, http://www.padang-today.com/?mod=berita&today=detil &id=26342; diakses pada tanggal 25 April 2011.

Detention in Jakarta as the Capital city of the Republic of Indonesia,[7] have an overcapacity which is much higher, an average overcapacity is 200%. The Head of Cipinang Prison, Edi Kurniadi said that Rutan Cipinang accommodate 1800 prisoners, but ideally it accommodates only 392 prisoners, the rooms are ideally occupied by 1-7 people, filled by 20 people. Cipinang Prison, which ideally 1,040 prisoners, has to accommodate 3,600 prisoners. Detention Pondok Bambu in Jakarta, accommodate 1,500 inmates, ideally it accommodates 504 inmates. Detention Salemba in Jakarta is overloaded by around 2,650 prisoners. Salemba prison holds 3,500 prisoners from the ideal number of 850 prisoners. Consequence friction among prisoners which trigger fray.

As a result of overcapacity of the prisons, in 2015 and 2016, there were several riots in prisons. The main cause of the riot is over capacity. To avoid riots detention and prisons the government through the Ministry of Justice plans to adopt policies to facilitate the provision of remission, including the inmates' extraordinary crimes, such as corruption, terrorism, and narcotics, which have traditionally been tightened by Government Regulation No. 99 Year 2012 on Terms and Procedures for Citizens Rights Patronage of Corrections (PP No. 99 Year 2012). The government's plan finally got reactions, society in general does not agree that the extraordinary crimes, such as corruption, terrorism, and narcotics were also granted remission under the same conditions for the remission of other crimes.

Over capacity in prisons make the coaching as the goal of the institute as correction of the behavior not optimal. Prison officers (warders) have orientation more on to the 'safety and comfort, no fuss', and not on coaching to change the inmates (also prisoners) into society. Prisoners who do not make fusses or did not participate fuss in making considered good, and are entitled to remission in the Proclamation of Independence Day, on August 17 and the great religion of the most celebrated, like Eid for the Muslims and Christmas for Christians. As a result, the provision of Remission incompatible with the purpose of administration for prisoners that is for those who have changed the behavior from bad to good one, and not just making no fuss. The impression then was that remission is like a big sale with the aim reduce overcapacity of the prisons.

In Indonesia, theoretically the same, in case to prisons is district from to detention, but in practice, both prison one and detention one accommodates prisoners. In fact, theoretically, detention is a place to detained the suspect or the accused, meaning the case is still under the process of integration, and prison is a place to execute the sentence that has been decided by the court, and it has been legally binding. On the other hand, in practice, in detention there are detainees and prisoners, and in prisons there are also detainees and prisoners. In general, prisoners who then shall be punished with imprisonment of not more than 2 (two) years has already been prisoner) would be allowed to remain in detention to undergo criminal. The separation of prison from detention are generally made only in the State Capital and the Capital city, while in the District/City there are only prisons or detention.

The Criminal Procedure Code as a criminal procedure law gives broad discretion to law enforcement personnel, namely Investigators (Police), public prosecutors, and judges to make an arrest to detention. Article 21 of the Criminal Procedure Code allows the investigator, prosecutor and judge if the actions are presupposed or charged to a suspect or defendant is punishable by imprisonment of 5 (five) years or more. In fact, the crimes set out in the Criminal Code and that often happens in the community is very much subject to imprisonment of 5 (five) years or more. Therefore, the Criminal Code only set maximum criminal penalty only for an act, but the act does not necessarily cause serious harm to society, such as stealing, torturing, cheating, embezzling, destroying the goods of others, gambling, and so forth.

These crimes could not have resulted in serious consequences for the victim, but Article 21 of the Criminal Procedure Code provides chance for investigators, prosecutors, and judges to make an arrest to detention. Requirement to make an arrest is often not considered by investigators, prosecutors, and judges in detention. Consideration of investigators, prosecutors, and judges is more often on highlight aspects of subjective than objective aspect. Detention institutions is sometimes used as material for a commodity to be traded, with the hope that after a person is arrested, there will be an attempt to invoke the suspension of detention or switching the types of detention into city arrest or house arrest by paying. As a further result, many suspects or defendants detained in prisons or detention, which is unnecessary or there is no strong reason to resist. As a result of a sequel, prisoners who should have not been detained earlier should be punished with the same length of time with his incarceration in order to avoid claims for compensation by the state being detained without good reason.

2. Problems

Based on the background of the above problems, the question is:

Is the giving of remissions which is rather lose criminals is the best solution to overcome the problem of overcapacity detention and prisons in Indonesia?

Is the detention policy providing a solution to address the overcapacity of prisons in Indonesia?

3. Discussion

3.1. Definition and Types of Detention

According to Article 1, point 21 of the Criminal Procedure Code detention is the placement of the suspect or accused in a particular place by the investigator, or the prosecutor or judge with his commencement, in terms and in the manner set forth in this law (The Criminal Procedure Code). Detention is intended for the suspect or the accused. The suspect is a man who because of his actions or the circumstances, based on preliminary evidence reasonably suspected as a perpetrator of criminal acts, while the accused is a suspect who is examined and tried in court. Status of the suspects is

[7] http://cangkang.vivanews.com/aff/news/read/56204-rutan_di_jakarta_over_kapasitas_200; diakses pada tanggal 25 April 2011.

intended for someone whose case is still being investigated by the investigator in the police station, and the status of the accused as intended for someone whose case has been processed in the prosecutor's office until it is decided in a court by a decision that has legally binding (*in kracht van gewijsde*).

If an accused has been sentenced to punishment by a court decision (judges) and the it has been accepted by the accused and the prosecutor, the decision can no longer be appealed or a cassation, brought into and …. the status of accused will be change into prisoner. Convicted person is a convicted by a court decision that has obtained permanent legal force.

Detention is done in certain places, meaning that there are few alternatives in places of detention. According to Article 22 of the Criminal Procedure Code, that kind of detention may be a detention in the house of the state detention, detention at house, and the detention of the city. Detention in the house of the State detention is done in the house of the state detention. Detention houses is convicted in the residence of the suspect or the accused by conducting surveillance against him to avoid anything that could lead to difficulty in the investigation, prosecution or examination in the court. Detention of the city implement in town of the residence of the suspect or the accused, with the obligation for the suspect or accused to report himself at the appointed time. Detention can be transferred from one type of to another type of detention.

3.2. Crime That Can Be Worn Detention

Article 21 of the Criminal Procedure Code limit the suspect or accused that may be subject to detention. Not all perpetrators of criminal acts may be subject to detention, there is a limitation. Article 21 of the Criminal Procedure Code determines:

The order of detention or continued detention made against a suspect or accused is alleged to have committed a criminal act based on sufficient evidence, in terms of the circumstances which give rise to concerns that the suspect or the accused will escape, damage or destroy evidence or repeat the criminal act;

Detention or continued detention carried out by the investigator or the prosecutor against the suspect or defendant in providing the arrest with a warrant or the determination of judges including the identity of suspects or accused and mentioning the reasons for the detention as well as a brief description of the case presupposed as well as where he was detained;

A copy of the warrant of detention or continued detention or the determination of a judge referred to in paragraph (2) should be given to his family;

The detention can only be imposed on a suspect or accused of committing criminal offenses and or trial and providing assistance in the offense in terms of:

The criminal offense as punishable by imprisonment of five years or more; crime referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379 A, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of the Criminal Law Code, Article 25 and Article 26 Rechtenordonnantie (violation of the Ordinance of Customs and Excise, last amended by Gazette 1931 Number 471), Article 1, Article 2 and Article 4 of Law Immigration Criminal Act (Act No. 8 Drt. In 1955, the State Gazette 1955 No. 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47 and Article 48 of The Code on Number 9 of 1976 on Narcotics Code (State Gazette of 1976 Number 37, State Gazette Number 3086).

Based on Article 21 of the Criminal Procedure Code above, there are 2 (two) categories of offenses the suspect or the accused may be subject to detention, which otherwise had been committed was punishable by imprisonment of 5 (five) years or more, and the crimes have certain limited manner specified in Article 21 paragraph (4) point b. However, according to Article 21 paragraph (4) of the Criminal Procedure Code that detention is '*can*' only be imposed on the suspect or the accused, the detention was not a requirement.

The word 'can' mean a suspect or accused may be subject to detention, should not be must not be detained even if the offense against him presupposed or punishable by imprisonment of 5 (five) years or more, or an offense specified in point b. This understanding is consistent with the detention arrangements as one of the forceful measures in the Criminal Procedure Code. Detention is one of the five forceful measures set out in the Criminal Procedure Code.

Principally, the implementation of forceful measures of detention is contrary to the Human Rights, namely the right to liberty (freedom). The right to live freely is the human rights that should not be contested. The rights to freedom as human rights have already been recognized by the United Nations through Article 3 of the Universal Declaration of Human Rights: 'Everyone has the rights to livelihood, liberty, and safety of individuals'. The something is also provided in Article 18 clause 1 of the Indonesian Act of Human Rights of 1999 Number 39 (Human Rights Act). Thus, containment is not an effort that must/should be done against a suspect or accused, but rather is an attempt that is used for the smooth process of law, namely that the suspect or the accused does not flee, does not complicate the examination, dose not destroy evidence, and not repeat the acts does suspect or indicted to him. As long as those three reasons has no potential in a suspect or accused, the detention is not necessary.

In some developed countries the detention is not an act that is prioritized for a suspect or accused, they even prioritize the use of the '*bail's system*', so that a suspect or accused does not need to be detained, on conditions will not complicate the legal process faced against him, even at the Green Land they do not have a jail or penitentiary, the inmates shall only be subject to the obligations of social work, and he is let free under the surveillance the '*eyes*' of the whole people around him.[8]

[8] Achmad Ali, Penahanan Sebagai Mode, http://www.mediaindonesia.com/berita.asp?id=140360; Diakses, 2 Sept 2010.

3.3. Authority, Purpose and the Reason of Detention

Article 20 of the Criminal Procedure Code determines:

For the purposes of the investigation, the investigator or investigators assistant at the behest of the investigators as referred to in Article 11 is authorized to make an arrest;

For the purposes of prosecution, the public prosecutor is authorized to make arrests or to continue the detention;
For the purpose of the investigation by the judges at his pawn authority can in the trials, make an arrest.

Based to Article 20 of the Criminal Procedure Code above, there are 3 (three) institutions which have authorities to make an arrest: the investigator or investigator assistant in the police, prosecutors, and judges. The investigator or investigators assistant detention for the purpose of investigation, prosecutors make an arrest for the purpose of the prosecution, and judge make an arrest for the purpose of examination in court. So, the detention is intended for the benefit of self proceedings against the suspects or the accused.

Investigators or investigators assistant, prosecutors, and judges do not need to arrest a suspect or accused if it does not interfere with the legal process that is being carried out. Detention will only be carried out by the investigator or investigators assistant, prosecutor or judge if it is deemed necessary to expedite the legal process. That is why the arrests are considered as forceful measures, namely an effort that will on be done if considered as a must to be done for the benefit of the smoothness of the judicial process. The application of the detention should be selective, that is its only be done if is considered absolutely necessary and unavoidable for the judiciary.

The problems arise from the formulation of Article 21 paragraph (1) of the Criminal Procedure Code: the order of detention or continued detention made against a suspect or accused is alleged to have committed a criminal act based on sufficient evidence, in terms of the circumstances which give rise to concerns that the suspect or the accused will escape, damage or destroy evidence or repeat the crime. This provision requires law enforcement agencies (the investigator, prosecutor, or judge), because this provision 'may' give freedom for the law enforcers to interpret and apply them to the suspect or the accused.

The arrest of the suspects or defendants '*alleged*' committing a crime, based on *'insufficient evidence*', as well as the circumstances that created a '*concern*' that the suspect or the accused will *escape, damage or destroy evidence, and/or repeat crime*. There are at least 2 (two) reasons for the arrest of the suspect or defendant, namely that:

The accused alleged to have committed a crime, and …… allege must be based on sufficient evidence.

There are fears that the suspect or the accused will escape, damage or destroy evidence, or repeat crime.

The meaning of sufficient evidence on the first reason has been confirmed by the Chief of Police, which refers to Article 183 the Criminal Procedure Code. Sufficient evidence must be understood as at least 2 (two) evidences of five (5) evidences that …….. Article 184 the Criminal Procedure Code. So, in order that a suspect or accused may be subject to arrest, there must 2 (two) evidences.

The word '*concern*' is intended as a concern of the authorities to make an arrest, the investigators, prosecutors, or judges. Concern is very subjective. Assessment is solely based on subjective assessments of investigators, prosecutors or judges. The subjective assessments will be difficult to objectively monitored. In fact, as an act or law, all provisions in the Criminal Procedure Code should be assessed objectively, because the law must be objective.

Assessing the concerns of investigators, prosecutors, or the judges themself would be very difficult, because a person's level of concern over a situation can be different. A situation of concern to someone, but not for others. ….. investigator, prosecutor, or the judge may state that he is concerned that the suspect will flee, damage or destroy evidence, or repeat a crime, but objectively the investigators, prosecutors, or judges concern is unreasonable and not objective. Investigators, prosecutors, or judges solely based on the sense of subjectivity and not on something which is objective.

The concerns of investigators, prosecutors, or judges that a suspect or accused will flee can be assessed objectively on the ability of the suspect or the accused to escape, whether a suspect or accused has the ability to escape in the sense of having the ability of financial terms in the refuge, or whether the cost of having to flee. An old lady named Minah was detained by investigators on the ground of fear that she would escape, but objectively the old woman was living wretched (very poor), so it was impossible to escape, even to eat for every single day is very difficult. I had no fund to escape other words the cost to escape did not exist, let alone to the cost of living in a refuge or hiding.

The concerns of the investigators, prosecutors, or judges that a suspect or accused will damage or destroy evidence can be assessed objectively on the circumstances, the situation and mastery of evidence. If the evidence has been seized by investigators, then objectively there no need to be carried that the suspect or the accused would impair or eliminate the evidence. If the evidence has been seized and under the control of the investigators, the it is no longer possible for the suspects or accused to impair or eliminate the evidence. If the evidence has been controlled by the investigators, it is not unreasonable to mention the concerns the investigators have no reason be worried that the evidence would be destroyed or removed by the suspect or the accused.

The concerns of the investigators, prosecutors, or judges that a suspect or an accused will repeat the crime can be assessed objectively on the position of the person in a public position or a guarantee or supervision of the public or certain people. In corruption, fears of investigators, prosecutors or judges that the suspect or accused will repeat the crime is unobjective if the suspect or the accused has been dismissed from his post. The criminal act would only be done if the suspect or the accused was holding his position.

3.4. Remisi

3.4.1. The Basis of Law of Remission in Indonesia

The law basis for granting remission in Indonesia are:

The Act of 1995 Number 12 concerning Corrections, Article 14 letters i: Inmates are entitled to a reduction of punishment in criminal past (remission).

The Government Regulation of 1999 Number 32 concerning The Terms and Procedures for Citizens Rights Patronage of Corrections, Article 34 (1): Every Prisoner and Criminal Child who did good during criminal past are entitled to remission.

The Government Regulation of 2006 Number 28 concerning Regarding Amendment to Government Regulation of 1999 Number 32 concerning the Terms and Procedures for Citizens Rights Patronage of Corrections, Article 34 (1): Every Prisoner and Criminal Child are entitled to remission.

The Government Regulation of 2012 Number 99 concerning The Second Amendment to Government Regulation of 1999 Number 32 concerning The Terms and Procedures for Citizens Rights Patronage of Corrections, Article 34 (1): Every Prisoner and Criminal Child are entitled to remission.

The President Decree of 1999 Number 69 concerning The Criminal Reduction Period (Remission), Article: Every inmate or criminal Child who underwent temporary imprisonment, and imprisonment, can be granted a reduction in criminal past if the person concerned has done good during his imprisonment.

The President Decree of 1999 Number 174 concerning Remission, Article 2 and Article 3: Remission consists of a general remission, special remission and additional remissions.

The Regulations of the Minister of Justice and Regulation of 1999 Number M.09-HN.02.01 concerning The Implementation of Indonesian President Decree of 1999 Number 174 concerning Remission.

The Decree of the Minister of Justice and Human Rights of the Republic of Indonesia of 2000 Number M.04.HN.02-01 2000 concerning The Remission Supplement for Inmates and Children Code, Article 1: Every Prisoner and Criminal Child undergoing temporary punishment, either imprisonment may be granted remissions if the relevant additional services in the country do, do something useful for the country or humanity, or do anything that helps develop activities in the Institute at detention.

The Decree of the Minister of Justice and Human Rights of the Republic of Indonesian of 2001 Number: M.01.HN.02.01 concerning The Special Remission being Delayed and Special Remission under Conditional Supplemental Sera.

3.4.2. The Meanings and Kinds of Remission

Remission is reduced on sentences given to those being convicted. The Act of Corrections of 1995 Number 12 does not give the notion of remission. The understanding of remission is found in Article 1 point 6 of Government Regulation of 1999 Number 32 *juncto* The Government Regulation 2006 Number 28 *juncto* The Government Regulation of 2012 Number 99, which specifies that the remission period is the reduction of a sentence given to Prisoners and Criminal Children who meet the requirements specified in the legislation. So, basically remission implies reduction at the length at sentence at a prison.

According to Article 2 *juncto* Article 3 of the President Decree of 1999 Number 174 concerning Remission, remission is consisted of general remission, special remission and additional remissions. General Remission is reduced sentence given to a convict on the anniversary of the Proclamation of Indonesian Independence Day on August 17. Special Remission is a reduction at punishment given to an inmate on religious holidays embraced by Inmates and Children Criminal concerned, holiday to be with the provision that if a religion has more than one religious holiday in a year, then selected is the greatest day of that is most venerated by religion follower. Additional Remission is the reduction of the punishment given to an inmate who do service to the country during his punishment period, do something useful for the country or humanity, or do anything that helps to do guidance activities in the prison.

Special Remission can still be given in the form of delayed Special Remission and conditional Special Remission. Delayed Special Remission is special remission granted to prisoners and criminal execution children gift made after the relevant change status of the person concerned change from detention to prisoner and the sentence is the maximum of one year (of prisoners) was a prisoner and a maximum size of 1 (one) year. Delayed Special Remission given to prisons why have fulfilled a substantive requirement yet at this still a detention so that he cannot be proposed to obtain remission. Remission is be proposed after the cannot person in charge has a status of Prisoners, and a maximum duration of 1 (one) month. A Conditional Special remission is a special remission granted on condition to prisoner or criminal child in which at the time of his religious festivals are concerned, not enough time to undergo criminal 6 (six) months.

In order that a prison may obtain remission, it must meet, are of good character and has undergone the criminal past more than 6 (six) months. Good conduct evidenced by not undergoing disciplinary punishment within a period of 6 (six) months, commencing before the date of grant of remission, and has attended coaching courses organized by prisons with a good rating.

Especially for prisoners who did for a crime of terrorism, narcotics and precursors of narcotics, psychotropic drugs, corruption, crimes against state security, human rights violations which is severe, as well as other organized transnational crimes, they must also meet the requirements such as willing to cooperate with law enforcement to help dismantle criminal case he does to pay fines and restitution in accordance with the decision of the court for convicted of committing corruption, and to follow the de-radicalization programs organized by prisons and/or the National Counter

Terrorism Agency and to pledge allegiance the Unity of Republic of Indonesian in writing for Indonesian citizen Convicts, or not to repeat acts of terrorism written for foreign Convicts. Willing to cooperate must be stated in writing and set out by law enforcement agencies in accordance with the provisions of the legislation. Inmates who had been convicted criminal offenses of narcotics shall only apply to inmates who shall be punished with imprisonment of at least 5 (five) years.

3.4.3. Magnitude or Remission Length Each Year

Based on Article 4 of Presidential Decree Number 174/1999 about Remission, the amount of remission is grouped into 4 categories, namely:

The amount of general remissions each year is:

In the first year, those who have served a crime for 6 (six) months before 12 (twelve) months are given 1 (one) month remission, and for prisoners who have been sentenced to 12 (twelve) months or more are given 2 (two) month.

- In the second year, there is a 3 (three) month remission.
- In the third year, remission is given 4 (four) months.
- In the fourth and fifth years, each is given 5 (five) months remission.
- In the sixth year onwards, there is a 6 (six) month remission.

The amount of special remissions each year is:

- In the first year, those who have served a crime for 6 (six) months before 12 (twelve) months are given a 15-day remission, and for prisoners who have served a sentence of 12 (twelve) months or more are given 1 (one) month.
- In the second and third years, respectively, they are given 1 (one) month remission.
- In the fourth and fifth years each is given 1 (one) month 15 (fifteen) days remission.
- In the sixth year onwards, remission is given 2 (two) months.

The amount of additional remissions each year is:

½ (one parent) of general remissions obtained in the year concerned for prisoners committing service to the state or performing acts of benefit to the state or humanity, and

1/3 (one third) of the general remissions obtained in the year concerned for inmates who have committed acts that assist the fostering activities in the Penitentiary as a leader.

Magnitude of above Remission can be simplified in the following Table:

Number	Kinds of Remission	Remission in 'th (days)					
		I	II	III	IV	V	VI
1	General Remission	30	90	120	150	150	180
2	Special Remission	15	30	30	45	45	60
3	Add Remission (a/b)	15/20	45/60	60/80	75/100	75/100	90/120
	J u m l a h (maximum)	65	180	230	295	295	360

Table 1

In addition to remission, a prisoner still has the right to conditional parole. Conditional Parole is granted to an inmate who has undergone two thirds of his sentence. If the magnitude is illustrated remission, and are associated with the right to parole, then the prison sentence imposed on a prisoner for 10 years, he will undergo just about four years more of his sentence. It can briefly can be illustrated in the following Table.

Number	Years'th	Punishment (Days)	Punishment Dijalani (Days)	Maximum Remission (Days)	Sisa Punishment (Days)
1	I	3.650	365	65	3.220
2	II	3.220	365	180	2.675
3	III	2.675	365	230	2090
4	IV	2090	365	295	1430
5	V	1430	365	295	770

Table 2

Note: Parole Is Obtained after Serving a Sentence, Including Remission for 2/3 X 3650 = 2,434 Days, Or the Remaining 1216 Days

Based on the above Table it appears that an inmate sentenced to jail for 10 years, if he gains the maximum remission, then in the fifth year he does not to undergo a criminal sentence until the end of the year. In the fifth year at his sentence, he can directly obtain parole at the time of obtaining general or special remissions and no need to wait for the remission. Inmates do not need to undergo half of the 10 years of his sentence. This means that a remission is very significant accelerate an inmate to get out of the Prison, or it is significant enough to cope up with overcapacity of prisons or detention.

3.4.4. Remission and the Trias Politica

On the other hand, an issue arises: the task of the judge/court as a judicial institution that has sentenced for inmates is easily reduced by the Minister of Law and Human Rights (executive). Based on the illustration above, the sentences that have been imposed by judiciary could be reduced by more than half by the executive.

The sentences handed down by the judge/court must be in line with the crime committed by the convict (actor). The judge sentences in the facts of the trial. The sentences are very much influenced by circumstances inherent with a perpetrator revealed during the hearing. Therefore, research can be done and need to be done: do the judges who pass the sentence a perpetrator (prisoners) considers that at the time of undergoing the punishment that the inmate will receive remission. In other words, when the judge sentences an offender to prison for 10 years, do the judge realize that the prisoner will only about 4.5 months, or about half of the sentence grew.

If the above question is not included in consideration of the judge, then the remission can be considered as a deviation or a betrayal of the executive against the judiciary. As to its name 'remission' or reduction of sentence, it does not make sense if remission is greater than the length of sentence that should be undertaken.

On the third year, the remission has been obtained by inmates of to be 230 days from 365 days that he should live in. Undergoing to 365 days (one year) is considered to be the same as undergoing a sentence for 595 days, or undergoing to 365 days will earn 230 days (63%).

3.4.5. Detains, Remission and Overcapacity of Detention and Prison

The change of the term of 'Prison' to 'Correctional Institution' since 1964 brings the change of his behavior for better consequence a prisoner or detainee must receive more humane treatment in prison/detention. One way to create a more humane treatment towards prisoners and detainees is to avoid the overcapacity of occupants of prisons/detention. However, lowering the capacity or tackle over the capacity should not be done with the close out of remission. Even a remission is given to prisoners, but as the name suggests 'remission', remission though should not be larger than the criminal sentence that should be lived in just 10 to 20 percent, depending on change towards the better. So, remission given to one criminal may be different from the one given to another.

Reducing occupant of prisons/detention or reducing over capacity can be done by reducing the detention. Reduction of overcapacity prisons/detention can be done by the tightening of the implementation of the arrest, both at the level of investigation, prosecution and examination before the court. Although Article 21 of the Criminal Procedure Code has provided conditions that are subjective to the investigator, the prosecutor, or the judge in detention, but the terms which are subjective must can still be assessed objectively. Similarly, to the objective requirements of detention, namely that detention could be done against the perpetrators of criminal acts who are punishable to imprisonment of 5 (five) years or more.

Investigators, prosecutors, or judges who easily makes detention is need to be monitored and tested whether objectively then decision rendered detention can be justified objectively. The assessment of subjective reasons can be seen from the grounds to make an arrest, and the investigator, prosecutor, or judge shall explicitly state the reason and the urgency of detention in the Warrant. Inclusion of reason and urgency of detention will be used as a tool to test the implementation of detention.

If the reason for the detention is for the purpose of examination, then as long as there is guarantee that a suspect or accused is cooperative in the investigation, the detention that he may urgent. If the reason for the detention is due the fact that suspect or accused that he may, then as long as there is guarantee that a suspect or accused will not escape, the detention becomes not urgent. If the reason for the detention is due to a suspect or accused ……. eliminate or destroy the evidence, then as long as the evidence has been seized by investigators then detention becomes not urgent. If the reason for the detention is due to a suspect or accused will repeat his actions then along as the suspects or defendants has been dismissed temporary or permanently of an office, then detention becomes not urgent.

There one so many perpetrators of minor crimes, such as theft of the object which is relatively small, or gamblers using relatively little money, and others are detained in prisons/detention, which should not be detained because here is not enough reason which assessable objectively. Fact, none of the accused was 'forced' to be punished with imprisonment which is 'very' light, which is equal to the length of his detention only because the investigator, prosecutor, or judge already detaining suspects or accused. Had the suspect or the accused was not arrested earlier, most likely the judge will not punish him. Light punishment or equal to the period of imprisonment is green by a judge just for the sake that the suspect or the accused does not require compensation from the state for illegal detention.

4. Conclusion

The simplified remissions which can be even greater than the punishment that should be lived by a prisoner is not the best solution to overcome the problem of overcapacity in prisons and detention in Indonesian. A side from the illogical in reduction of sentence (remission) because it is larger than the penalty followed, remissions can also be considered as a deviation from theory of Trias Politica, or it can be even considered as a betray to the judiciary conducted by the executive. The detention policy, being subjective in nature, should be possible to be assessed objectively and therefore can result in a solution to the overcapacity at the prison in Indonesia. The Reasons for detention must explicitly be state by the investigators, prosecutors or judges so that it can be monitored objectively by the employer or by an expert. Any arrest made by the investigators, prosecutors, or judges must be tested objectively, so that the detention cannot easily manipulated which makes prison or detention to be overcapacity.

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