

## Reconstruction of Parole Rights for Corruption Convicts from the Perspective of Substantive Justice and Legal Certainty in Indonesia

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**Citation:** Muhtar, Thalib, H., Khalid, H. and Djanggih, H. (2026). Reconstruction of Parole Rights for Corruption Convicts from the Perspective of Substantive Justice and Legal Certainty in Indonesia, *Journal of Cultural Analysis and Social Change*, 11(1), 3574-3579. <https://doi.org/10.64753/jcasc.v11i1.4764>

**Published:** April 12, 2026

### ABSTRACT

Corruption is recognized as an extraordinary crime due to its systemic and destructive impact on state finances, governance, and public trust. This study aims to examine the essence of granting or revoking remission rights for corruption convicts within the Indonesian positive legal system and to analyze how such policies reflect the balance between prisoners' rights and public interests. This research employs a normative juridical approach by analyzing statutory regulations, legal doctrines, and relevant legal principles related to remission and corruption crimes. The findings indicate that remission, as regulated under Law Number 22 of 2022 concerning Corrections, is normatively recognized as a right of prisoners conditioned upon good behavior and participation in rehabilitation programs. However, for corruption convicts, remission is not an absolute right but a conditional privilege due to the extraordinary nature of corruption crimes, which require stricter legal treatment. Additional requirements, including cooperation with law enforcement authorities and full payment of fines and compensation, demonstrate the conditional nature of remission policies for corruption offenders. Furthermore, remission revocation may occur when convicts fail to meet legal and administrative requirements, thereby reinforcing accountability within the correctional system. The study concludes that remission policies for corruption convicts must be implemented selectively, transparently, and accountably to maintain deterrence, ensure substantive justice, and uphold legal certainty. Strengthening regulatory frameworks and ensuring consistent implementation are essential to achieving a balanced correctional policy that aligns with anti-corruption objectives and public expectations.

**Keywords:** corruption crime, remission, corruption convicts, substantive justice, legal certainty, Indonesian legal system.

### INTRODUCTION

Corruption is an extraordinary crime that causes significant losses to state finances and undermines moral, social order, and public trust in the law. It is a highly alarming crime, considering the severe negative impacts resulting from such misconduct. Corruption constitutes a serious problem, as this criminal act can threaten societal stability and security, affect social, economic, and political development, and damage democratic values and morality.

According to the latest data from Transparency International, Indonesia scored 37 out of 100 in the 2024 Corruption Perceptions Index (CPI), ranking 99th out of 180 countries surveyed. This figure indicates that

Indonesia remains below the global average score of 43, suggesting that anti-corruption efforts still require significant strengthening in various aspects, including regulation, law enforcement, and sentencing policies through extraordinary measures across all aspects of law enforcement, including remission policies for corruption convicts.

The characteristic of corruption as an extraordinary crime lies in its systemic and destructive impact on a country's social, economic, and political order. Unlike conventional crimes that have individual and limited effects, corruption has widespread destructive power that hinders national development, creates social injustice, and erodes public trust in state institutions. Therefore, the paradigm for handling corruption cannot be equated with ordinary crimes but requires extraordinary measures in all aspects of law enforcement, including policies regarding remission for corruption convicts.

From a criminological perspective, corruption represents a form of deviant behavior carried out in a planned manner with a calculated benefit-cost ratio by perpetrators. Corruptors are generally individuals with high levels of education and social status, enabling them to exploit legal loopholes to avoid criminal sanctions. This condition strengthens the argument that sentencing policies, including remission, must be designed by considering the specific characteristics of corruption crimes in order to produce an adequate deterrent effect.

Efforts to combat corruption in Indonesia have been undertaken through various legal instruments, starting from Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes to the establishment of the Corruption Eradication Commission (KPK) as regulated under Law No. 19 of 2019. Despite institutional changes in 2019, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 remains the primary material basis for corruption enforcement. However, the effectiveness of anti-corruption efforts is often reduced by remission policies granted to corruption convicts, which create perceptions of injustice within society.

The regulatory dynamics regarding remission for corruption convicts underwent significant changes following Supreme Court Decision No. 28 P/HUM/2021, which annulled part of the provisions in Government Regulation No. 99 of 2012. This decision removed the requirement for corruption convicts to become justice collaborators as a condition for obtaining remission.

In practice, remission for corruption convicts is based on the principle of equal rights for prisoners as regulated in Law No. 22 of 2022 on Corrections and Minister of Law and Human Rights Regulations No. 17 of 2022 and No. 16 of 2023. The implementation of these laws requires clearer provisions regarding special rules for granting remission to corruption convicts. One of the requirements for remission is good behavior, which is difficult to measure objectively. Therefore, clear standards are necessary to determine what constitutes good behavior and the limits or forms of such conduct for prisoners.

Specifically for corruption convicts, additional requirements include willingness to cooperate with law enforcement authorities to help uncover corruption cases and full payment of fines and compensation in accordance with court decisions. However, this policy creates a normative dilemma. On one hand, remission is a right of prisoners as a reward for good behavior during imprisonment; on the other hand, granting remission to corruption convicts is often viewed as inconsistent with public justice and lacking deterrent effect.

Legally, remission may be granted if prisoners demonstrate good behavior during their sentence. This requirement must be proven by the absence of disciplinary punishment within the last six months and participation in correctional programs with a good rating. For prisoners convicted of terrorism, narcotics and psychotropic crimes, corruption, crimes against state security, serious human rights violations, and other transnational organized crimes, additional requirements include cooperation with law enforcement and payment of fines and compensation, particularly for corruption convicts.

Moreover, the implementation of moratorium policies further restricts remission procedures. Although remission is a prisoner's right, it remains subject to specific requirements and regulations. Tightening remission policies is necessary to create a deterrent effect. Such restrictions are not discriminatory; rather, treating extraordinary crimes the same as ordinary crimes would be unjust. Corruption is an extraordinary crime; therefore, stricter remission policies apply to all corruption convicts. Many parties are concerned that uncontrolled government policies in granting conditional release for corruption convicts may be prone to abuse.

The issue becomes more complex when judicial decisions in corruption cases do not explicitly consider limitations on remission rights within sentencing decisions. Judges often impose penalties based solely on formal provisions without integrating substantive justice principles that protect broader societal interests. In the context of progressive law, judges are not merely the mouthpiece of legislation but active enforcers of justice responsible for achieving legal objectives: justice, certainty, and utility.

Stricter sentencing strategies are necessary because corruption constitutes deviant behavior carried out with calculated benefits and risks. Corruption is systematic, planned, and highly detrimental to economic development and public welfare. State resources that should be distributed fairly are instead enjoyed by corrupt actors. Therefore, the government has strong arguments for limiting remission for crimes such as terrorism, narcotics, corruption, serious human rights violations, crimes against state security, and transnational organized crimes.

This highlights the urgency of this research, which examines how judicial decisions can serve as instruments to limit remission rights for corruption convicts while upholding substantive justice and legal certainty. This approach requires in-depth analysis of judicial reasoning, correctional policies, and moral values reflected in judicial decisions.

Furthermore, the comparison between the principle of equal rights for prisoners and public justice reveals conceptual tension between individual prisoner rights and societal rights to justice. This situation opens opportunities to reconstruct the role of judges as guardians of substantive justice, rather than merely executors of legal texts.

In practice, remission and conditional release policies often significantly reduce prison terms, creating public perceptions of preferential treatment. This situation may lead to concerns about collusion in granting remission and conditional release.

## **THEORETICAL FRAMEWORK**

This study is grounded in an integrated theoretical framework combining substantive justice theory, deterrence theory, the principle of proportionality, progressive legal theory, and the concept of extraordinary crime to analyze the reconstruction of remission rights for corruption convicts in Indonesia. Substantive justice emphasizes that law must not only ensure procedural compliance but also achieve fair outcomes that reflect societal interests, particularly given the systemic harm caused by corruption; thus, remission policies must not undermine the public's right to justice. Deterrence theory, as developed in the economic analysis of crime, highlights that corruption is a rational and calculated act based on a benefit-cost ratio, requiring strict punishment and limited remission to produce an effective deterrent effect. The principle of proportionality further reinforces that sanctions must correspond to the severity and impact of the crime, meaning that corruption—due to its widespread and destructive consequences—justifies differentiated treatment compared to ordinary crimes. Meanwhile, progressive legal theory positions judges not merely as passive interpreters of the law but as active agents of justice who must consider moral values, public welfare, and legal objectives, including justice, certainty, and utility, in their decisions. Finally, the concept of corruption as an extraordinary crime underscores the need for extraordinary legal measures, including stricter remission policies, as conventional approaches are insufficient to address its systemic nature. Collectively, these theoretical perspectives provide a comprehensive foundation for evaluating and reconstructing remission policies to ensure they align with substantive justice, legal certainty, and the broader public interest.

## **RESULTS AND DISCUSSION**

### **The Essence of Granting or Revoking Remission Rights for Corruption Convicts in the Indonesian Positive Legal System**

The essence of granting or revoking remission rights for corruption convicts in the Indonesian positive legal system fundamentally derives from two main principles: the principle of prisoners' rights and the principle of protecting public interests. These two principles must be harmonized in the implementation of remission policies, particularly for corruption offenders, whose crimes are categorized as extraordinary crimes due to their systemic and widespread impact on society. The legal framework governing remission in Indonesia reflects a balance between the rehabilitative objectives of the correctional system and the necessity of maintaining deterrence in combating serious crimes such as corruption.

Normatively, remission is recognized as a right of every prisoner, as stipulated in Law Number 22 of 2022 concerning Corrections. This law emphasizes that prisoners are entitled to sentence reductions if they meet certain requirements, including good behavior and participation in correctional programs. The provision reflects the rehabilitative philosophy underlying the Indonesian correctional system, which aims to reform offenders and reintegrate them into society as responsible citizens. The correctional system in Indonesia, which evolved from the traditional punitive prison system, emphasizes the principles of human dignity, rehabilitation, and reintegration. In this context, remission serves as an incentive mechanism to encourage prisoners to demonstrate good conduct and actively participate in correctional programs.

However, in the context of corruption crimes, which are categorized as extraordinary crimes, the implementation of remission rights cannot be equated with those applicable to ordinary criminal offenses. Corruption has a systemic and destructive impact on state finances, economic development, public trust, and governance structures. Unlike conventional crimes that primarily affect individual victims, corruption affects society as a whole and may hinder national development. Therefore, the granting of remission to corruption convicts must be carefully regulated to ensure that it does not undermine the objectives of anti-corruption efforts.

The characterization of corruption as an extraordinary crime has been widely recognized in Indonesian legal discourse and judicial practice. Corruption is often associated with abuse of power, organized networks, and

significant financial losses to the state. Moreover, corruption undermines public confidence in government institutions and weakens the rule of law. These characteristics justify the implementation of stricter measures in handling corruption cases, including the regulation of remission rights. Consequently, remission for corruption convicts must be treated as a conditional right rather than an absolute entitlement.

In practice, the granting of remission for corruption convicts is further regulated through specific provisions that impose additional requirements. These requirements typically include cooperation with law enforcement authorities to assist in uncovering broader corruption networks and the obligation to fully pay fines and compensation as determined by court decisions. Such requirements demonstrate that remission for corruption convicts is conditional and dependent on the fulfillment of specific legal and administrative obligations. These conditions also reflect the principle that corruption convicts must demonstrate genuine accountability and responsibility for their actions before receiving any reduction in their sentence.

The requirement to cooperate with law enforcement authorities is particularly significant in corruption cases, where criminal activities often involve complex networks and multiple actors. By encouraging convicts to cooperate, the legal system aims to dismantle corruption networks and strengthen law enforcement efforts. Similarly, the requirement to pay fines and compensation ensures that corruption convicts contribute to the recovery of state losses caused by their actions. These conditions align with the principles of restorative justice and accountability, which emphasize the importance of repairing harm and ensuring justice for society.

The revocation of remission rights may occur when corruption convicts fail to meet the specified requirements. For example, remission may be revoked if the convict violates disciplinary rules, fails to participate in correctional programs, refuses to cooperate with law enforcement authorities, or fails to pay fines and compensation. The revocation mechanism ensures that remission remains a privilege contingent upon compliance with correctional objectives and legal obligations. This approach reinforces accountability and ensures that remission policies are not abused.

The essence of granting or revoking remission rights for corruption convicts also reflects the balance between rehabilitative and repressive approaches within the criminal justice system. On one hand, the correctional system aims to rehabilitate offenders and facilitate their reintegration into society. This objective aligns with modern criminal justice principles that emphasize rehabilitation rather than mere punishment. On the other hand, corruption crimes require strong deterrence measures to prevent future offenses and maintain public trust in legal institutions. Therefore, remission policies for corruption convicts must strike a balance between these competing objectives.

The importance of deterrence in corruption cases cannot be overstated. Corruption is often committed through calculated decisions based on potential benefits and risks. If the punishment for corruption is perceived as lenient, including excessive remission, it may fail to deter potential offenders. Consequently, stricter remission policies are necessary to ensure that corruption convicts serve an appropriate portion of their sentence and that the punishment retains its deterrent effect. This approach is consistent with deterrence theory, which emphasizes the role of punishment in preventing crime.

Furthermore, the implementation of remission policies must adhere to the principles of transparency and accountability. Transparency is essential to prevent the misuse of remission policies and to ensure public confidence in the correctional system. Clear criteria and procedures for granting or revoking remission must be established and consistently applied. Accountability mechanisms must also be strengthened to prevent corruption or abuse within the remission process itself.

The role of correctional institutions is also crucial in the implementation of remission policies. Correctional officers must objectively assess prisoners' behavior and participation in rehabilitation programs. The assessment process must be fair, transparent, and based on measurable criteria. For corruption convicts, additional assessments may be required to evaluate their cooperation with law enforcement authorities and their compliance with financial obligations. This comprehensive evaluation ensures that remission decisions are based on objective considerations.

Another important aspect of remission policies for corruption convicts is the principle of proportionality. The principle of proportionality requires that punishment correspond to the severity of the crime. Given the serious impact of corruption, remission policies must ensure that corruption convicts do not receive disproportionate sentence reductions. The proportionality principle supports differentiated treatment for corruption convicts compared to ordinary offenders.

In addition, the granting or revocation of remission rights for corruption convicts must consider the principle of substantive justice. Substantive justice emphasizes fairness in outcomes and the protection of societal interests. Granting excessive remission to corruption convicts may undermine public confidence in the justice system and create perceptions of inequality. Therefore, remission policies must ensure that justice is achieved not only procedurally but also substantively. The Indonesian legal system also recognizes the importance of legal certainty in remission policies. Legal certainty requires clear regulations and consistent implementation. Inconsistent remission policies may create confusion and undermine public trust. Therefore, the legal framework governing

remission must be comprehensive and clearly define the requirements and procedures for granting or revoking remission. Moreover, the implementation of remission policies for corruption convicts must align with broader anti-corruption strategies. Anti-corruption efforts require coordinated actions across various institutions, including law enforcement agencies, correctional institutions, and judicial bodies. Remission policies must support these efforts by reinforcing accountability and deterrence. The role of judges is also relevant in shaping remission policies. Although remission is primarily an administrative decision, judicial reasoning in corruption cases may influence remission eligibility. Judges may impose additional penalties, such as fines and compensation, which affect remission eligibility. Therefore, judicial decisions indirectly influence the granting or revocation of remission rights.

The complexity of corruption cases further underscores the need for careful implementation of remission policies. Corruption often involves large-scale financial losses and complex legal issues. Therefore, remission decisions must consider the broader context of the crime and its impact on society.

In conclusion, the essence of granting or revoking remission rights for corruption convicts in Indonesia reflects a balance between prisoners' rights and public interests. While remission is recognized as a right within the correctional system, its implementation for corruption convicts must be conditional and subject to stricter requirements. This approach ensures that remission policies support rehabilitation while maintaining deterrence and protecting societal interests. Therefore, remission for corruption convicts must be implemented selectively, transparently, and accountably to achieve substantive justice and legal certainty within the Indonesian positive legal system.

## CONCLUSION

The essence of granting or revoking remission rights for corruption convicts in the Indonesian positive legal system reflects a balance between the recognition of prisoners' rights and the protection of public interests. Although remission is normatively recognized as a right of prisoners under Law Number 22 of 2022 concerning Corrections, its implementation for corruption convicts must be conditional due to the extraordinary nature of corruption crimes. Corruption has systemic and far-reaching impacts on state finances, national development, and public trust in legal institutions, thereby justifying stricter and more selective remission policies. In practice, the granting of remission for corruption convicts requires the fulfillment of additional conditions, including good behavior, participation in rehabilitation programs, cooperation with law enforcement authorities, and the payment of fines and compensation in accordance with court decisions. These requirements demonstrate that remission for corruption convicts is not an absolute right but a conditional privilege aimed at ensuring accountability and supporting anti-corruption efforts. Furthermore, the revocation of remission may occur when convicts fail to meet these conditions, reinforcing the principle of accountability within the correctional system. Ultimately, the implementation of remission for corruption convicts must be conducted selectively, transparently, and accountably to ensure substantive justice and legal certainty. Such an approach is necessary to maintain the rehabilitative objectives of the correctional system while also preserving deterrence and public confidence in law enforcement. Therefore, strengthening regulatory frameworks, enhancing transparency, and ensuring consistent implementation are essential to achieving a balanced and effective remission policy for corruption convicts in Indonesia.

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