

LEGAL DUALISM AND INCONSISTENCY REGARDING INMATES' RIGHTS: A REVIEW OF THE IMPLEMENTATION OF GOVERNMENT REGULATION NUMBER 99 OF 2012

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Abstract

In 1999, the Government of Indonesia established Government Regulation (GR) 32/1999 on the Procedures for the Implementation of the Rights of Inmates which has been most recently amended by GR 99/2012. However, the establishment of GR 99/2012 creates complication and unfairly discriminates against inmates committing extraordinary crimes (terrorism, drug abuse, corruption, crimes against the security of the state, crimes against humanity and other transnational organized crimes) impeding such inmates to file for remission and parole. This paper examines the consistency between the implementation of GR 99/2012 and the concept of criminal punishment in Indonesia. It is a summary of empirical juridical research that reports on the influences of GR 99/2012 on inmates in correctional institutions. Data used for this research was obtained from interviews, observation, desk reviews and focus group discussion with government officials. Based on the findings, it can be inferred that GR 99/2012 has impeded the fulfillment of inmates' rights to file for parole and remission due to complicated procedures, additional fines, and multi interpretation of the regulation. Furthermore, it affects the aggravation of overcrowding, violations against inmates' rights, and illegal practices within the process. Based on the analysis discussed in this paper, GR 99/2012 is inconsistent with the concept of criminal punishment in Indonesia because it impedes inmates' reintegration into society. This paper proposes that GR 99/2012 should be revoked and revised in accordance with the spirit of Corrections Act and to create synergy among law enforcers in fulfilling inmates' rights.

Keywords: correctional institutions, extraordinary crime, inmates' rights, GR 99/2012, Indonesia, parole, remission.

Abstrak

Pada tahun 1999, Pemerintah Indonesia menerbitkan Peraturan Pemerintah (PP) 32/1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan dan terakhir telah diubah dengan PP 99/2012. Penerbitan PP 99/2012 memberikan kesulitan serta diskriminasi terhadap warga binaan yang telah melakukan kejahatan luar biasa (tindak pidana terorisme, narkoba dan prekursor narkoba, psikotropika, korupsi, kejahatan terhadap keamanan negara dan kejahatan hak asasi manusia yang berat, serta kejahatan transnasional terorganisasi) untuk mendapatkan hak pengajuan remisi dan pembebasan bersyarat. Penelitian ini mengkaji tentang konsistensi antara implementasi PP 99/2012 dengan konsep pemidanaan di Indonesia. Penelitian ini menggunakan metode yuridis empiris guna menjelaskan pengaruh PP 99/2012 terhadap warga binaan di lembaga pemasyarakatan. Data yang digunakan dalam penelitian ini diperoleh melalui wawancara, observasi, studi literatur dan focus group discussion dengan aparat pemerintah. Berdasarkan hasil temuan, dapat disimpulkan bahwa PP 99/2012 mempersulit pelaksanaan hak warga binaan dalam memperoleh pembebasan bersyarat dan remisi. Lebih lanjut, hal itu mempengaruhi kelebihan kapasitas di lembaga pemasyarakatan, pelanggaran hak-hak warga binaan, serta praktik-praktik ilegal dalam proses pelaksanaan hak warga binaan tersebut. Berdasarkan analisis dalam penelitian ini, PP 99/2012 tidak sesuai dengan konsep pemidanaan di Indonesia karena menyulitkan warga binaan untuk dapat kembali ke masyarakat. Penulis mengajukan saran agar PP 99/2012 tersebut dihapuskan dan direvisi sehingga sesuai dengan jiwa Undang-undang Pemasyarakatan dan agar tercipta sinergi antara para penegak hukum dalam melaksanakan hak-hak warga binaan.

Kata kunci: hak-hak warga binaan, Indonesia, kejahatan luar biasa, lembaga pemasyarakatan, pembebasan bersyarat, PP 99/2012, remisi.

I. INTRODUCTION

In Indonesia, the concept of criminal punishment in the form of confinement in jail or prison has evolved into corrections (*pemasyarakatan*) since 1995 with the enactment of Law Number 12 of 1995 regarding Corrections (“Corrections Act”). Recently, the system of imprisonment emphasizing retributive and deterrent elements has been gradually perceived as a system contravening the concept of rehabilitation and social reintegration.¹ The new approach is intended to ensure that inmates realize their wrongdoings and not repeat their crimes so that they become members of society who take responsibility for themselves, their family and the social environment. Imprisonment is, however, still one of the most frequent criminal punishments imposed on inmates compared to the other forms of punishment provided for under Article 10 of the Indonesian Penal Code.

In the course of its development, the practice of imprisonment tends to be more focused on guidance given to offenders rather than vengeance on them. It means that in principle the aim of the practice of imprisonment is to educate inmates to be good and responsible members of society and ensure that they do not commit crime in future. This change is in line with Saharjo’s view regarding inmates as people who have lost their way, but they still have time and opportunities to repent of their sins, hence they need to be guided. Therefore, the purpose of guidance to offenders is not to revenge their crimes, but to correct them.² Accordingly, correctional institutions serve as a place to accomplish such purpose through education, rehabilitation and reintegration.

Based on the concept of correction, inmates are perceived as persons who need to be guided in order to reintegrate them into their community once they are released from correctional institution. In addition, although they are in correctional institutions, they continue to have rights like other ordinary people. Such rights include, inter alia, the right to worship, obtain medical treatment and education. In order to provide inmates with such rights, the Government of Republic of Indonesia has stipulated Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates as first amended by Government Regulation Number 28 of 2006, and most recently amended by Government Regulation Number 99 of 2012 (“GR 32/1999”, “GR 28/2006” and “GR 99/2012” respectively).

Not only do inmates have the above mentioned rights, they are also entitled to remission and parole. However, in practice, law enforcement officials greatly complicate the fulfillment of those rights by setting forth various conditions which obstruct inmates in exercising such rights provided for under GR 99/2012. Moreover, GR 99/2012 unfairly discriminates against inmates committing so called extraordinary crimes – terrorist offences, drug abuse offences, corruption, crimes against the security of the state, crimes against humanity and other transnational organized crimes – whereby GR 99/2012 impedes such inmates to file for remission and parole; for instance, there are provisions requiring inmates found guilty of corruption not only to demonstrate good behavior, but also to become justice collaborators, pay fines and compensation as additional punishment before they are permitted to file for remission and parole.

At the same time there is legal dualism between GR 28/2006 and GR 99/2012 as expressly stated in Article 54 of GR 99/2012. The said article provides that GR 99/2012

¹ For more deep discussion see L. Goodstein, “Inmate adjustment to prison and the transition to community life,” *Journal of Research in Crime and Delinquency* 16, no. 2 (1979), pp. 246-72.

² Romli Atmasasmita, *Kapita Selektta Hukum Pidana dan Kriminologi [Selective Reading on Criminal Law and Criminology]* (Bandung: Mandar Maju, 1995), p. 83; See also N. H. Rafter, “The Social Construction of Crime and Crime Control,” *Journal of Research in Crime and Delinquency* 27, no. 4 (1990), pp. 376-380.

shall be applicable to inmates sentenced after November 12, 2012. In addition, there is an inconsistency between GR 99/2012 and all subsidiary regulations, such as Regulation of the Minister of Law and Human Rights Number 21 of 2013 (RMLHR 21/2013).

This paper examines the consistency between the implementation of GR 99/2012 and the concept of criminal punishment in Indonesia as well as new issues arising in connection with the enforceability of GR 99/2012. This paper is a summary of empirical juridical research that reports on the extent to which GR 99/2012 as statutory law has an impact on inmates at correctional institutions. Data used for this research was obtained from interviews and observation conducted by lecturers and students taking Legal Clinic Course at the Faculty of Law, University of Indonesia. Furthermore, secondary data was obtained from laws and regulations, court decisions, books and journals. In completing this research, the writers also openly discussed this study with community members in focus group discussion held by DKI Jakarta Regional Office of Law and Human Rights.

II. PAROLE AS PART OF THE CONCEPT OF CORRECTIONS

Corrections are perceived as a system of guidance for inmates. Its purpose is to achieve social reintegration of inmates in their capacity as human individuals, members of society and God's creatures.³ Under this system, offenders are not regarded as legal objects that can be treated arbitrarily; rather than that, they are considered as legal subjects that must be treated humanely based on their dignity and prestige as human beings. The system emphasizes supervision and guidance of persons who have been convicted of crimes through coaching and mentoring in physical, mental and social activities.⁴ Accordingly, the Government does not have authority to aggravate the condition of inmates.⁵

In addition, Adi Sujatno argues that the aim of correction is as follows:

1. Ensure that inmates become a good, responsible and fully independent person, realize their wrongdoings, reform themselves and not repeat their crimes.
2. Guarantee the protection of human rights of suspects confined in detention centers in order to expedite the process of investigation, prosecution and examination at trial.
3. Guarantee the protection of human rights of suspects and parties involved in the case as well as the safety and security of goods seized to be used for evidentiary purposes in investigation, prosecution and adjudication, and such goods are confiscated in the state interest under a court decision.⁶

With the achievement of the vision, mission, and purposes of correction it is expected that the correctional system can improve the personal quality of inmates in order to enhance social and national resilience.⁷

³ Adi Sujanto, *Pencerahan di Balik Penjara, Dari Sangkar Menuju Sanggar Untuk Menjadi Manusia Mandiri [Enlightenment Behind the Cells, from the Cage Towards the Studio to Become an Independent Human]* (Jakarta: Teraju, 2008), p.123.

⁴ Romli Atmasasmita, *Strategi Pembinaan Terhadap Para Pelanggar Hukum di Indonesia [Development Strategy for the Law Offenders in Indonesia]* (Bandung: Alumni, 1982), p. 14; See also E. Zamble "Behavior and Adaptation in long term Prison Inmates: Descriptive Longitudinal Result," *Criminal Justice and Behavior* 19, no. 4 (1992), pp. 409-25.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

Following the enactment of the Corrections Act, the guidance of inmates has been performed in three phases – through an integrated process – which are as follows:⁸

A. The Phase of Orientation

Every inmate who is imprisoned in correctional institutions is examined to obtain all information related to their life, including any factors causing them to have committed a crime. Information can also be received from their family, colleagues and other law enforcers handling the case. This phase is referred to as the preliminary guidance, in which observation, research and introduction of their environment are carried out to determine guidance programs that are suitable to their personality. Guidance in this phase is conducted in correctional institutions under constant surveillance (maximum security).

B. The Phase of Assimilation

After the process of guidance of inmates takes place over one-third of the period of imprisonment, and they can also show real improvement in their behavior and obey regulations stipulated by correctional authorities, they shall be entitled to receive freedom under loose surveillance (medium-security). In this stage, inmates are involved in social activities until they serve half of the period of the actual imprisonment.

After inmates serve half of the period of imprisonment and are able to show physical and mental improvement in their behavior and skills, the process of guidance proceeds to the next phase, namely assimilation. The said phase consists of two parts. The first part begins upon the completion of preliminary guidance reaching the first half of the period of imprisonment served by inmates. In this part, guidance continues to be conducted in correctional institutions, however under loose surveillance (medium security). The second part begins once the prior part is completed up to two-thirds of the period of imprisonment served. In this advanced stage, inmates will enter the phase of assimilation, and at the end they can be granted parole or pre-release facility (“*Cuti Menjelang Bebas*”) under loose surveillance, during which inmates are not placed in prison, but in a correctional center that provides them with programs to facilitate their gradual release to the community; typically such center is called *Balai Pemasarakatan* (Community Center) in Indonesia.

The assimilation process is an important one for inmates preparing them to return to their community. It is believed that this process can prevent inmates from being falsely labelled and rejected within society because, according to the concept of corrections, it is not intended to cause inmates confined in prison to become more malicious, but to educate them to become a better person.⁹

C. The Phase of Social Integration

The phase of social integration is called the final guidance to inmates, because

⁸ Dwija Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia [Imprisonment Sanction Implementation System in Indonesia]* (Bandung: Refika Aditama, 2006), p.99; Direktorat Jenderal Pemasarakatan, Surat Edaran No. KP.10.13/3/1 [Circulation Letter of Director General on Correctional Affairs No. No. KP.10.13/3/1] on 8 February 1965; See also Clear, T., Rose, D.R., & Ryder, J.A. (2001). T. Clear, D. R. Rose and J. A. Ryder, “Incarceration and the Community: The Problem of Removing and Returning Offenders,” *Crime & Delinquency* (2001), pp. 335-67.

⁹ Petrus Irwan Pandjaitan and Wiwik Sri Widiarty, *Pembaruan Pemikiran dr. Sahardjo Mengenai Pemasarakatan Narapidana [Renewal of the Thoughts of dr. Saharjo regarding Inmate Corrections]* (Jakarta: CV Indhill Co. 2008), p.47.

the process of guidance is conducted after two-thirds of the period of imprisonment or at least 9 months before a certain period of imprisonment is to end. During this phase, there are activities designed for inmates, such as planning and implementation of an integration programme, until the end of the term of imprisonment. Besides, in this phase, inmates are also entitled to get parole or pre-release facility. For inmates obtaining parole or pre-release facility, guidance is not conducted at the correctional institutions, but at the *Balai Pemasarakatan* (Community Center) that is subsequently referred as *Pembimbingan Klien Pemasarakatan* (Guidance of Community Client).¹⁰

III. PROCEDURES FOR THE IMPLEMENTATION OF REMISSION, ASSIMILATION, PRE-RELEASE FACILITY AND PAROLE

For implementation of the above described rights of inmates, the Government stipulated GR 32/1999 as subsequently amended by GR 28/2006 by reason that there was urgency to review provisions regarding the granting of remission, assimilation, pre-release facility and parole. Such amendment was based on the development of law and a sense of justice within modern Indonesian society, typically related to inmates committing a crime causing considerable and widespread damage to the state, people and a large number of victims, as well as causing sudden panic, dismay and terror within the society.

In 2012, several articles of GR 32/1999 were amended by the Government by stipulating GR 99/2012. Such amendment was made based on the following considerations:

- a) Terrorist offences, narcotic drugs and psychotropic substances offences, corruption, crimes against the security of the state, crimes against humanity as well as other transnational organized crimes are extraordinary crimes for such crimes cause enormous damage to the state, society or a large number of victims as well as cause panic, dismay or terror within society.
- b) The conditions and procedures for granting remission, assimilation and parole to an offender committing terrorist offences, narcotic drugs and psychotropic substances offences, corruption, crimes against the security of the state, crimes against humanity as well as other transnational organized crimes shall be strictly regulated to fulfill the sense of justice within society.
- c) Provisions regarding the conditions and procedures for granting remission, assimilation and parole provided for under Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates as amended by Government Regulation Number 28 of 2006 regarding the Amendment to Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates do not adequately reflect national security interests, public order and a sense of justice felt by the people recently.

A. Inmates' Right to Remission

A reduction of the time that an offender has serve in prison (remission) has been practiced since Dutch Colonial Rule in Indonesia. It was intended to encourage inmates to follow all guidance programs conducted at correctional institutions. During the period of Dutch Colonial Rule, remission was granted on Queen's Day (*Koninginnedag*)

¹⁰ The implementation of parole is granted to inmates that have served two-thirds of the term of imprisonment pursuant to Article 15a (1-6), Article 15b (1-3), Article 16 (1-4) and Article 17 of the Indonesian Penal Code.

each year.¹¹ After Indonesian Independence, such practice of remission has been continued under the Corrections Act and regulated further under the following laws and regulations:

- a. Presidential Decree Number 156 of 1950 regarding Release of Any and All Punishment on August 17 Each Year.
- b. Presidential Decree Number 120 of 1955 regarding Special Remission in Each Two Decades of the Proclamation of Indonesian Independence, enacted on July 23, 1955.
- c. Presidential Decree Number 5 of 1987 regarding Remission.
- d. Presidential Decree Number 69 of 1999 regarding Remission.
- e. Presidential Decree Number 174 of 1999 regarding Remission.
- f. Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates.
- g. Government Regulation Number 28 of 2006 regarding the Amendment to Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates.
- h. Government Regulation Number 99 of 2012 regarding the Second Amendment to Government Regulation Number 32 of 1999 regarding Conditions and Procedures for the Implementation of the Rights of Inmates enacted on November 12, 2012 and promulgated in State Gazette of the Republic of Indonesia of 2012 Number 225.i.

There is a difference between the practice of remission imposed under Dutch Colonial Rule and the Government of Republic of Indonesia. Previously, remission was considered as a coveted prize for inmates during Dutch Colonial Rule. However, recently it has been deemed to be the right of inmates based on the concept of corrections. In practice, only inmates who are able to demonstrate good behavior and take part in activities held by correctional institutions during the period of imprisonment shall be eligible for remission.¹²

Although the conditions for granting remission are provided for under GR 32/1999, there is discriminatory treatment of offenders who have committed (1) terrorist crimes, (2) drug-related crimes, (3) corruption, (4) crimes against the security of the state, (5) crimes against humanity and (6) other transnational organized crimes after the enforceability of GR 28/2006 and GR 99/2012. As a result, such offenders face enormous difficulty in obtaining remission due to the conditions set out in GR 28/2006 and GR 99/2012 which are more heavily and strictly regulated for granting remission to them as opposed to other offenders who have committed ordinary crimes. The differences among the said Government Regulations are indicated in the following table.

¹¹ Based on *Gouvernementsbesluit* in August 10th, 1935 regarding *remissieregeling* 1935 (*bijblad* in *staatblad* Number 13515); and *Gouvernementsbesluit* in July 9th 1941 Number 12 (*bijblad* in *staatblad* Number 14583) and Januari 26th regarding the Amendment to *Gouvernementsbesluit* in August 10th 1935 regarding *remissieregeling* 1935 (*bijblad* in *staatblad* Number 13515).

¹² R. Achmad S. Soemadipradja and Romli Atmasasmita, eds., *Sistem Pemasyarakatan di Indonesia, [Correction System in Indonesia]* (Bandung: Binacipta, 1979), p.18.

Table 1.
Differences in conditions for granting remission under GR 32/1999, GR 28/2006 and GR 99/2012 respectively

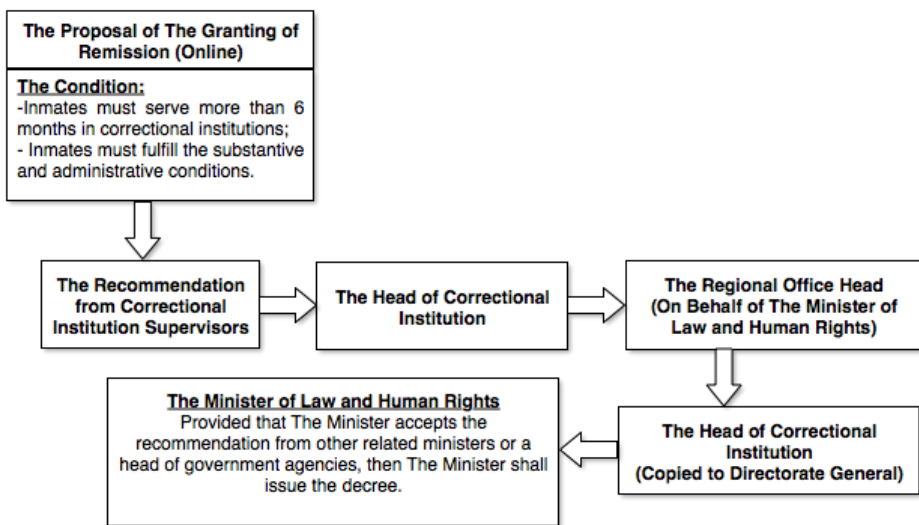
	GR 32/1999	GR 28/2006	GR 99/2012
The government agency having authority to grant remission			The Minister of Law and Human Rights
The conditions for granting remission	Inmates must have good behavior	<ol style="list-style-type: none"> 1. Inmates must have good behavior; 2. Inmates must have served more than 6 months in correctional institutions; 3. Inmates must fulfill the requirement of participating in activities conducted in the correctional institution concerned. 	<ol style="list-style-type: none"> 1. Inmates must have good behavior (not imposed with any disciplinary sanctions in the last 6 months);¹³ 2. Inmates must have served more than 6 months in the correctional institution.
Additional conditions for granting remission	<ol style="list-style-type: none"> 1. Inmates must perform national service to the state; 2. Inmates must provide good advantages to the state or humanity; 3. Inmates must participate in activities conducted by the correctional institution. 	<ol style="list-style-type: none"> 1. Inmates must have good behavior; 2. Inmates must have served one-third of the term of imprisonment. 	<ol style="list-style-type: none"> 1. Inmates must be disposed in writing to collaborate with legal enforcement officers to investigate a criminal case; 2. Inmates must make full payment of fines and compensation; 3. Inmates must follow and complete deradicalization programs held in the correctional institution and/or the National Counterterrorism Center and make a pledge related to such issue.
Other government agencies		The Directorate General of Corrections must provide its consideration before the Minister of Law and Human Rights grants remission.	The granting of remission is stipulated under the Decree of the Minister of Law and Human Rights. The Minister of Law and Human Rights grants remission after ministers and/or a head of department provide consideration. Such consideration shall be issued within twelve days from the time at which the request for the consideration is submitted.

The proposal concerning granting remission is submitted by the Head of the Correctional Institution, the Head of the Detention Center or the Head of the Branch

¹³ As before the date of the granting of remission, as well as inmates have followed and completed the guidance programs held in Correctional Institutions with the great accreditation.

of the Detention Center to the Minister of Laws and Regulations (recently called Minister of Law and Human Rights) through the Head of the Department of Laws and Regulations in accordance with Article 13 Paragraph 1 of Presidential Decree Number 174 of 1999. The Decree of the Minister of Laws and Regulations regarding the approval of remission is notified to inmates and young inmates on the Anniversary of the Proclamation of the Independence of the Republic of Indonesia on August 17 each year or holy days celebrated by such inmates. Procedures for Filing for Remission provided for under Article 11 to Article 17 of the Regulation of the Minister of Law and Human Rights Number 21 of 2013 are indicated in the following figure:

Figure 1.
Procedures for Filing for Remission under the Minister of Law and Human Rights Regulation No. 21 of 2013



B. The Inmates’ Right to Parole

Parole is a process of guidance to inmates conducted outside of correctional institutions after they have served at least two-thirds of the term of the imprisonment with a minimum of 9 months of the term of imprisonment pursuant to Article 7 point 7 of GR 32/1999. In principle, parole is one of the guidance programs aimed at reintegrating inmates into society after they meet the conditions. Moreover, similarly to the conditions for granting remission, conditions for parole also vary in GR 28/2006 and GR 99/2012. The differences in the conditions for parole are indicated in the following table:

Table 2. The conditions for parole

	GR 32/1999	GR 28/2006	GR 99/2012
The conditions	Inmates must have served at least two-thirds of the term of imprisonment. Such period is not less than 9 months.	<ol style="list-style-type: none"> 1. Inmates must have served at least two-thirds of the term of imprisonment. Such period is not less than 9 months; 2. Inmates must possess good behavior at least within the last 9 months of the term of imprisonment prior to the date of two-thirds of the sentence. 	<ol style="list-style-type: none"> 1. Inmates must have served at least two-thirds of the term of imprisonment. Such period is not less than 9 months 2. Inmates must possess good behavior at least within the last 9 months of the term of imprisonment prior to the date of two-thirds of the sentence; 3. Inmates must follow and complete guidance programs correctly, diligently and enthusiastically. 4. The society may agree on the guidance programs for inmates.
The authority	Decree of the Minister of Law and Human Rights requested by the Head of Correctional Institution.		Decree of the Minister of Law and Human Rights
Additional conditions		<ol style="list-style-type: none"> 1. Inmates must have served at least two-thirds of the term of imprisonment. Such period is not less than 9 months; 2. Inmates must possess good behavior at least within the last 9 months of the term of imprisonment prior to the date of two-thirds of the sentence. 3. Inmates must obtain consideration from the Directorate General of Corrections. Such consideration must focus on national security interest, public order and a sense of justice within society. 	<ol style="list-style-type: none"> 1. Inmates must be disposed in writing to collaborate with legal enforcement officers to investigate a criminal case; 2. Inmates must have served at least two-thirds of the term of imprisonment. Such period is not less than 9 months; 3. Inmates must assimilate within the society at least half of the period of the obligatory imprisonment; 4. Inmates must realize and regret their mistakes that caused them to be punished; 5. Inmates must make a pledge: <ul style="list-style-type: none"> – Inmates must express in writing their loyalty to the Republic of Indonesia if such inmates are Indonesian Citizens; – Inmates must agree in writing not to repeat terrorist crimes if such inmates are foreign citizens found guilty of terrorist crimes.
The authority		Decree of the Minister of Law and Human Rights	Decree of the Minister of Law and Human Rights

In addition to the above, recommendation required under GR 99/2012 is provided by other related government agencies, such as:

1. The Police Force of the Republic of Indonesia, the National Counter Terrorism Agency (*Badan Nasional Penanggulangan Terorisme*) and/or the Attorney General of the Republic of Indonesia to inmates convicted of terrorist offences,

crimes against the security of the state, crimes against humanity as well as other transnational organized crimes;

2. The Police Force of the Republic of Indonesia, the National Narcotics Agency (*Badan Narkotika Nasional*) and/or the Attorney General of the Republic of Indonesia to inmates convicted of drug-related crimes;
3. The Police Force of the Republic of Indonesia, the Corruption Eradication Commission (*Komisi Pemberantas Korupsi* abbreviated to KPK) and/or the Attorney General of the Republic of Indonesia to inmates convicted of corruption.⁴

The above mentioned related government agencies shall provide recommendation in writing within 12 working days after receiving the proposal for recommendation from the Directorate General of Corrections. In the event that the recommendation is not issued within such period of time, the Directorate General of Corrections may directly submit the consideration for parole to the Minister of Law and Human Rights.

C. Procedures for the Submission of Request for ParoleD.

The administrative procedure for submitting request for parole is as follows:

- a. A photocopy of an excerpt of the court decision and a report of execution of such court decision;
- b. A report on the progress of guidance prepared by the relevant Corrections Officers or a result of risk assessment and needs assessment undertaken by an assessor.
- c. A social research report prepared by Corrections Officers and confirmed by the Head of the Correctional Institution concerned.
- d. A notification letter about the proposal concerning parole for inmates that shall be submitted to the District Prosecutor;
- e. A counterpart of registration F from the Head of Correctional Institution;
- f. A counterpart of a list of change/reduction of the prison sentence from the Head of Correctional Institution;
- g. A statement letter that the Inmate or Looked After Child concerned shall not commit crimes;
- h. A guarantee letter from an inmate's family confirmed by a head of sub-district or village head or other names related to such position stating that the inmates concerned shall not escape and/or commit crimes, and such parties are disposed to assist in mentoring and supervising inmates during the period of parole.

E. The Inmates' Right to Assimilation

Assimilation is a form of guidance to inmates conducted outside of correctional institutions. Provided that they are able to fulfill particular conditions, they are not to be placed in correctional institutions again, rather, they are to be integrated in society (Article 6 paragraph 1 of Corrections Act). At first, assimilation begins by introducing the inmates to visitors from outside correctional institutions either government or private institutions. (Article 37 paragraph 1 of GR 32/1999). The following conditions must be satisfied by inmates:

Table 3. The conditions for assimilation

GR 32/1999	GR 28/2006	GR 99/2012
1. Inmates must have served half of the term of imprisonment;	1. Inmates must possess good behavior.	1. Inmates must possess good behavior.
2. Inmates must appropriately follow and complete guidance programs;	2. Inmates must appropriately follow and complete programs ;	2. Inmates must appropriately and actively follow and complete guidance programs;
3. Inmates must possess good behavior.	3. Inmates must have served half of the term of imprisonment.	3. Inmates must have served half of the term of imprisonment.
	1. Inmates must possess good behavior;	1. Inmates must possess good behavior;
	2. Inmates must appropriately follow and complete guidance programs ;	2. Inmates must appropriately and actively follow and complete guidance programs;
	3. Inmates must have served two-thirds of the term of imprisonment;	3. Inmates must have served two-thirds of the term of imprisonment;
	4. Inmates must obtain consideration from the Directorate General of Corrections. Such consideration shall focus on national security interest, public order and a sense of justice within society.	4. Inmates must obtain consideration from the Directorate General of Corrections. Such consideration shall focus on national security interest, public order and a sense of justice within society.

In addition to the above, the recommendation that is required in accordance with GR 99 of 2012 is provided by other related government agencies, such as:

1. The Police Force of the Republic of Indonesia, the National Counter Terrorism Agency (*Badan Nasional Penanggulangan Terorisme*) and/or the Attorney General of the Republic of Indonesia to inmates convicted of terrorist offences, crimes against the security of the state, crimes against humanity as well as other transnational organize crimes;
2. The Police Force of the Republic of Indonesia, the National Narcotics Agency (*Badan Narkotika Nasional*) and/or the Attorney General of the Republic of Indonesia to inmates convicted of drug-related crimes;
3. The Police Force of the Republic of Indonesia, the Corruption Eradication Commission (*Komisi Pemberantas Korupsi* abbreviated to KPK) and/or the Attorney General of the Republic of Indonesia to inmates convicted of corruption.4.

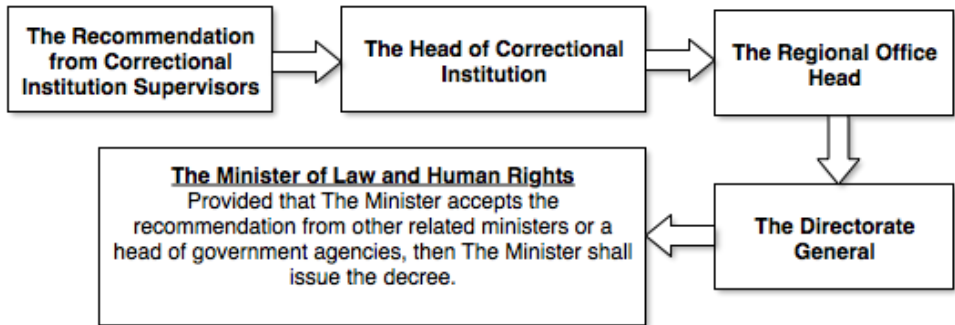
The above specified related government agencies shall provide recommendation in writing within 12 working days after receiving the proposal for recommendation from the Directorate General of Corrections. In the event that the recommendation is not issued within such period of time, the Directorate General of Corrections may directly submit the consideration for assimilation to the Minister of Law and Human Rights.

In addition to meeting the above mentioned conditions, inmates are also required to additional conditions provided for under Article 23 of RMLHR 21/2013, namely as follows: *“Assimilation may be granted to Inmates and Looked After Children subsequent to full payment of fines and/or compensation in accordance with a court decision.”*

F. Procedures for the Submission of Request for Assimilation

The procedures for submitting the application for assimilation pursuant to Article 21 to Article 29 of RMLHR 21/2013 are briefly described in the following figure:

Figure 2.
Procedures for Assimilation Application Submission



IV. THE ISSUES AND IMPACTS OF GR 99/2012 (THE RESULT OF OBSERVATION OF INMATES AT PONDOK BAMBUI DETENTION CENTER)

In the last amendment to GR 32/1999 (GR 99/2012), several discriminatory conditions are imposed on inmates who have committed terrorist crimes, drug-related crimes, corruption, crimes against the security of the state, crimes against humanity and other transnational organized crimes. Under GR 99/2012, procedures for granting remission, parole and assimilation are strictly regulated with details of the conditions as follows:

Table. 4
Conditions for granting remission, parole and assimilation under GR 99/2012

The inmate's rights	The conditions
Remission ¹⁴	1. Inmates must possess good behavior; 2. Inmates must have served more than 6 months of the term of imprisonment; become a justice collaborator; 3. Inmates must pay fines (for inmates convicted of corruption); 4. Inmates must make a pledge; 5. Inmates must obtain recommendations from related government agencies.

¹⁴ Indonesia, *Peraturan Pemerintah tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 32 tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan [Government Regulation regarding the Second Amendment to the Government Regulation Number 32 of 1999 on the Terms and Procedures for the Implementation of Right of the Inmates]*, PP No. 99 tahun 2012 LN No. 225 TLN No. 5359 (GR No. 99 of 2012, SG No. 225 of 2012), Art. 34; hereinafter referred as "GR 99/2012".

¹⁵ *Ibid.*, Articles 43 and 43 A

¹⁶ *Ibid.*, Articles 36, 36 A, and 38 A.

Parole ¹⁵	<ol style="list-style-type: none"> 1. Inmates must have served at least two-thirds of the term of imprisonment; 2. Inmates must possess good behavior; 3. Inmates must become a justice collaborator; 4. Inmates must assimilate within society at least half of the period of the obligatory imprisonment; 5. Inmates must obtain consideration from the Directorate General of Corrections; 6. Inmates must obtain recommendations from related government agencies.
Assimilation ¹⁶	<ol style="list-style-type: none"> 1. Inmates must possess good behavior; 2. Inmates must appropriately follow and complete guidance programs; 3. Inmates must have served two-thirds of the term of imprisonment; 4. Inmates must obtain consideration from the Directorate General of Corrections; 5. Inmates must obtain recommendations from related government agencies.

Most of the inmates at Pondok Bambu Detention Center have complained about such discriminatory conditions set out in GR 99/2012 because they feel they are greatly impeded in exercising their rights under such conditions. Approximately 67 percent of the occupants at Pondok Bambu Detention Center are inmates and detainees involved in drug-related crimes, for which the minimum imprisonment is five years, and the penalty for such offence is a Rp.800,000,000 fine so that they must complete additional phases that are more difficult with a complicated process under GR 99/2012. In 2015, as many as 173 inmates at Pondok Bambu Detention Center subject to GR 99/2012 submitted application for justice collaborator. However, in fact, the applications of only 45 inmates were approved while the applications of 29 inmates were rejected, while the rest of them are still in process. The following table indicates the data on proposals concerning the granting of remission during the last three years.

Table 5.
Data on the proposal for granting remission to Inmates at Pondok Bambu Detention Center

No.	The classification of remission	2013		2014		2015	
		Proposed	Approved	Proposed	Approved	Proposed	Approved
1	General Cases	647	647	1002	1002	1033	62
2	Legal cases related to GR 28/2006	210	210	169	166	88	2
3	Legal cases related to GR 99/2012	11	11	103	55	160	11
Total		868	868	1274	1223	1281	75

As evident from the table above, the total number of remission recipients has declined year by year. Such decline has not only occurred with regards to inmates who have committed terrorist crimes, drug-related crimes, corruption, crimes against the security of the state, crimes against humanity and other transnational organized crimes pursuant to GR 99/2012, but also inmates convicted of ordinary crimes. In 2015, the applications of two inmates subject to GR 99/2012 were rejected because they did not fully comply with the administrative requirements. Hence, the low level of the submission of remission or parole has been caused by strict requirements for granting remission or parole.

A. Issues Related to GR 99/2012

A detailed description of the issues identified in GR 99/2012 is as follows:

1. The Administrative Arrangements for Fulfilling the Conditions Must Be Completed by Inmates Themselves

Inmates or their family members must complete all administrative arrangements for the granting of remission, assimilation and parole by themselves whereas corrections officers may only provide administrative assistance in preparing the documents. Similarly, in relation to the arrangement for justice collaborator, corrections officers do not have authority to determine whether the application for justice collaborator is approved so that inmates or their family members must complete all administrative arrangements for justice collaborator by themselves. Practically, the application for justice collaborator is submitted by inmates after several stages that are as follows: (1) the court decision has become final and binding (no further legal remedies available); (2) a dossier of the execution of the court decision has been delivered to the inmate concerned and (3) a dossier of a change of the status from accused person to inmate. Subsequently, inmates must make a statement in the form that is provided under the Circular Letter of Directorate General of Corrections Number PAS-142.PK.01.05.06 Of 2013, and then they request a cover letter from the correctional institution or detention center concerned to face the first investigation agency. Such agency shall prepare a statement letter concerning whether the inmate concerned has been cooperative in investigating a crime. If it is officially declared that the inmate concerned has been cooperative in investigating a crime, corrections officers will assist in preparing the application for remission to inmates who possess good behavior.

Similarly, the process of administrative arrangement for assimilation must be conducted by inmates or their family members. Inmates themselves must seek social institutions that are located close to the detention center, whereas corrections officers may only provide administrative assistance in preparing the documents, the Memorandum of Understanding (MoU) between the detention center and social institution concerned in the form of a custody agreement for inmate concerned personally. Accordingly, if an inmate wishes to submit a request for assimilation, corrections officers will only assist to prepare the new MoU for him/her.

The arrangement for the payment of fines is not undertaken in correctional institutions. However, inmates or their family members are required to pay fines to the office of the public prosecutor by themselves. First of all, they must obtain and copy the court decision, and then they must pay such fines to the public prosecutor. Subsequently, they will receive a receipt that is submitted to corrections officers to administer remission or parole. Furthermore, provided that they are not able to pay the fines, they can submit B3S – a statement that they are unable to pay the fines – so that such punishment can be converted into additional term of imprisonment.

2. Complicated Process of Submission

One of the obstacles experienced by inmates in completing arrangements for justice collaborator is that there is no time limitation for first investigation agencies to respond to the application for justice collaborator submitted by inmates, thus resulting in a protracted process. There was only one inmate at Pondok Bambu Detention Center who had submitted application for assimilation as a requirement for parole in the case of corruption. Such application, however, was not processed as the time frame between the acceptance of the Decree regarding Assimilation and Parole was only nine days, and at the same time there were also changes of management in the social institution as well as a highly bureaucratic process, so that instead of receiving approval of assimilation, the inmate concerned obtained directly approval of parole.

Even though the assimilation was not carried out, it has not impacted the life of the inmate concerned and the agreement with the third party in the detention center.

Other obstacles in the arrangement for justice collaborator include, *inter alia*, the highly bureaucratic process for concluding a cooperation agreement, the anxieties in social institutions over inmates potentially causing problems, the escort for inmates as well as the examination of inmates in social institutions which does not form part of the main tasks and functions of detention centers.

3. Mandatory Requirement on Fines a Complicating Factor for Impoverished Inmates

Under GR 99/2012, inmates who are unable to pay an imposed fine are prohibited from obtaining remission or parole. The reason for not paying such fines is not limited to financial limitations and heavy financial penalties; it may also be due to the consideration that serving a prison term is more beneficial as opposed to paying the fines. Most of the inmates at Pondok Bambu Detention Center are inmates convicted of drug-related crimes coming from middle and lower class income background. Under their court decisions, they were not only sentenced to imprisonment, but were also imposed with additional punishment, namely the payment of fines involving a large amount of money. In addition, Law Number 35 of 2009 concerning Narcotics sets forth a minimum imprisonment of 5 years and a minimum fine of Rp800,000,000. As a result, inmates have strongly objected to the provision requiring them to pay fines due to the large amount of money involved.

Provided that inmates are unable to pay fines, such portion of the punishment will be substituted with imprisonment for a certain period of time. However, when they submit an application for assimilation and parole, they are still required to pay such fines, and are obviously unable to satisfy such requirement due to financial reasons, not to mention that there are also some inmates who had been trapped. In other words, although inmates may have chosen to serve substitutive light imprisonment, they remain obligated to pay the fines in accordance with laws and regulations. Besides, they told us that they would rather bribe the public prosecutor at first to close the case than pay the heavy fines. Therefore, GR 99/2012 has the potential to trigger corruption practices in the criminal justice system.

4. Different Interpretation of Justice Collaborator

There is a different perception of the definition of justice collaborator among government agencies although the Circular Letter of Supreme Court Number 4 of 2011 provides for justice collaborator, which will be discussed further in the subsequent subchapter. Moreover, not all investigation agencies are disposed to granting approval of justice collaborator such as KPK which has never granted such approval to inmates committing corruption. It means that KPK is most likely to refuse the application of justice collaborator submitted by such inmates. The reason is that the approval of justice collaborator may not be granted to a sentenced person as it shall apply to a suspected or accused person. Hence, the submission of remission, assimilation and parole for offenders convicted of corruption has been completely overlooked. For example, Angelina Sondakh, who was sentenced to 12 years in prison and a fine of Rp50 billion that would be substituted for 5 years of imprisonment if the fine were not paid, must serve 17 years of imprisonment because she would be never be eligible to be granted an application as a justice collaborator.¹⁷

¹⁷ This example was explained by Suwaryoso, a social practitioner/advocate in *Focus Group Discussion* "Peningkatan Pemahaman Perundang-Undangan Bagi Masyarakat dan Instansi Terkait [Legislation Understanding Improvement for the Community and Related Agency]", held on 9 July 2015 at DKI Jakarta Regional Office of Law and Human Rights.

5. Inconsistency between GR 99/2012 and All Subsidiary Regulations

Under GR 99/2012, inmates are not to be imposed with paying fines in arranging assimilation. Only inmates committing corruption are required by law to pay fines in order to earn remission. However, there are conditions regarding the payment of fines and compensation, as explained previously, pursuant to Article 23 and Article 24 paragraph 1 sub-paragraph (b) of RMLHR 21/2013. It is evident that there is an inconsistency between a government regulation and a minister's regulation whereas according to Hans Kelsen's theory, namely the *Stufenbau der Rechtsordnung Theorie*, inferior norms must be consistent with superior norms. In fact, the requirements provided for under GR 99/2012 have complicated the process of assimilation for inmates. In addition, they have also been complicated further with the additional requirements provided for under RMLHR 21/2013. Moreover, the additional requirements regarding the full payment of fines and compensation pursuant to GR 99/2012 are only applicable to inmates found guilty of corruption. On the other hand, RMLHR 21/2013 provides that such additional requirements shall be a requirement to earn assimilation so that it is also automatically a requirement to obtain parole. It is because assimilation is one of requirements to obtain parole.

C. The Impacts of GR 99/2012

Instead of following the instructions stipulated under the Corrections Act, GR 99/2012 has negative impacts on both inmates as well as Correctional Institutions as a government agency.

1. Overcrowding

In fact, overcrowding is not a new problem faced by correctional institutions or detention centers in providing guidance to inmates in Indonesia as imprisonment remains a favorite punishment imposed on inmates. The number of inmates and detainees at Pondok Bambu Detention Center as of July 8, 2015 was 1,093 people with the maximum capacity of 619 people. Practically, a cell which has the capacity of accommodating only 10 people is inhabited by 20 people or less. It is caused by the fact that the number of inmates/detainees leaving is not equal to the number of inmates coming in. Besides, there are new detainees/inmates coming in or placed at Pondok Bambu Detention Center almost every day, while the number of inmates released is very small as data in the previous subchapters indicate. The difficulties in earning remission or obtaining parole have been the cause of the increasing number of inmates at correctional institutions or detention centers.

2. Violations of Inmate's Rights

Violations of human rights occur as a domino effect of overcrowding. A cell with the capacity of accommodating only 10 people is inhabited by 20 people or less which leads to inhumane treatment such as the absence of privacy in the cell.

3. Inmates that Become Frustrated and Sickly, Suffer a Loss of Hope and Tend to Become Suicidal

Based on observation at Pondok Bambu detention center, most of the inmates have become frustrated and sickly. They suffer a loss of hope because they are facing greatly complicated processes to fulfill preconditions to obtain their rights, and they also assume that they must stay in prison until the end of the term of imprisonment. Some inmates have even attempted to commit suicide by taking CTM (*Chlorfeniramin Maleate*) – a drug used to relieve allergic and influenza symptoms – and pesticides.

4. Violations of the Rules of Correctional Institution

Furthermore, based on observation at Pondok Bambu detention center, inmates, who are frustrated due to the loss of hope to be released earlier, often commit violation of the rules of correctional institution, such as using a cellular phone and causing disruptions at the detention center. They argue that despite their good behavior they do not receive any rewards and are unable to submit any applications. In addition, the violation of rules is also used by inmates as a way to be placed in the room of violators because they can get some privacy and sleep comfortably without jostling with other inmates.

5. New Business Related to Justice Collaborator/Illegal Levy

In principle, the arrangement for a justice collaborator is not charged to inmates. However, in this research it has been found that there are transactions in the arrangement for a justice collaborator. Several investigators, either in the local police or the district office of public prosecutor, charge fees to inmates who wish to submit an application of justice collaborator. Such fees range from Rp200,000 to Rp5,000,000. Besides, the manner in which such fees are demanded is also variable; for instance, there are investigators who expressly charge fees for the service or threat to impede the process of the arrangement if they are not paid. On the other hand, once inmates pay them, such investigators automatically prepare a statement letter regarding cooperative behavior.¹⁸

6. Double Punishments: Fines and Substitutive Light Imprisonment

As discussed previously, most of the inmates at Pondok Bambu Detention Center are inmates committing drug-related crimes who mainly come from middle to lower class families. They were not only sentenced to imprisonment, but they were also punished to pay heavy fines. Because they were unable to pay such fines, they had to substitute the fines with substitutive light imprisonment for a certain period of time.

Even though they had made a statement that they were unable to pay the fines and had been disposed to substitute the fines with substitutive light imprisonment, they remain obligated to pay the fine when they submit application for remission, assimilation or parole; if they are unable to satisfy such requirement for payment, they must stay in prison until the end of term of imprisonment.¹⁹

V. GR 99/2012 FROM THE LEGAL PERSPECTIVE BASED ON THE CONCEPT OF PUNISHMENT IN INDONESIA.

In essence, GR 99/2012 was stipulated in implementation of the instruction of Article 14 paragraph 2 of the Corrections Act, to serve as guideline in helping inmates to exercise their human rights. However, as the data above indicates, the provisions of GR 99/2012 make it increasingly complicated for inmates to obtain their rights, in particular the right to earn remission, assimilation and parole. The said Government Regulation contains discriminatory provisions as it contains unequal and unfair treatment for inmates who have committed serious crimes. Because inmates are not to be granted remission, we reasoned that they will not receive a reduction of the term of imprisonment hence they must stay in prison until the end of such term. It is evident that this fact is not in line with the concept of corrections promoting reintegration

¹⁸ Based on interviews with some Pondok Bambu Detention Center's inmates, due to safety purpose their identities are hidden.

¹⁹ *Ibid.*

programs that are designed to reintegrate inmates into society and help them to be a good person and take active part in development. Moreover, the concept adopted in GR 99 of 2012 contains retributive and deterrent values which have been principally abandoned in the concept of criminal punishment in Indonesia.²⁰ Recently, the concept of correction adopted in Indonesia is based on the philosophy of rehabilitation and social reintegration that encourages the government to prepare inmates to return to their family and society. In principle, the granting of remission has a strategic value because it may provide and improve motivation in order to ensure that they will maintain good behavior while serving time at correctional institutions so that they can become a good person. Hence, the additional condition with the complex process stipulated under GR 99/2012 does not support such strategic value at all.

GR 99/2012 does not only impede inmates in obtaining their rights, it also undermines the authority of the Directorate General of Corrections and the Minister of Law and Human Rights to grant remission because inmates must obtain recommendation from other government agencies. The requirement to obtain recommendation from other government agencies impedes the Directorate General of Corrections and the Minister of Law and Human Rights in fulfilling inmates' right to obtain remission, parole and assimilation, while the Directorate General of Corrections, rather than other government agencies, is the only government institution which comprehends inmates' attitude and development through corrections and detention centers officers as well as the Head of the Correctional Institution and the Head of the Detention Center.²¹

Although the cases related to GR 99/2012 are serious and extraordinary crimes, once such cases are settled by the court, the government agency that has the authority over such inmates is the Directorate General of Correction based on the concept of corrections as set forth in the Corrections Act.²² The concept of serious and extraordinary crimes is applied as from the process of investigation to the process leading to court decision due to the level of complexity and seriousness of the case. After the case is settled by the court, inmates committing the crime are supposed to be guided and treated equally and fairly. It is suggested that although there is special treatment that applies to particular inmates or in particular cases, Correctional Institutions should be given authority and encouragement to provide particular interests and guidance to accomplish the purpose of correction. Serious crimes should be responded to through the maximum sentence. On the other hand, in the event that inmates are able to demonstrate good behavior, they are entitled to obtain their rights stipulated under laws and regulations. If inmates are not granted their right to earn remission, it must be regulated under laws and regulations as an exception in order to create legal certainty. The opinion that refuses the granting of remission to inmates who have committed serious crimes has emerged due a certain misunderstanding of the paradigm shift that has taken place from imprisonment to corrections adopted since 1964. In addition, there has also been a misunderstanding about the retributive theory which has been abandoned by most countries in the world, including Indonesia.

Didin Sudirman argues that remission has certain functions in the concept of corrections which are intended to minimize the impact of imprisonment, accelerate the process of responsibility within society, decrease overcrowding and achieve the

²⁰ It is also stated by Gatot Goei, a representation of Central Detention Study, in *Ibid*.

²¹ The same opinion was also stated by Suwaryoso, a corrections practitioner/advocate in *Ibid*.

²² Markus Hardianto, a representation of Directorate General of Laws and Regulation, in *Ibid*.

efficiency of state budget.²³ The difficulty in earning remission after the stipulation of GR 99/2012 clearly contravenes the functions of the remission itself.

The discriminatory treatment between particular crimes provided for under GR 99/2012 and other crimes is a violation of human rights. It is clearly articulated in the Declaration of Human Rights. The longer a person stays in prison, the more he/she is falsely stigmatized within society. Apparently, GR 99/2012 has caused great problems in providing guidance towards social reintegration while a government regulation should have been designed to implement a law effectively rather than impeding the appropriate implementation of such law.

VI. CONCLUSION

Based on the analysis as discussed previously, it could be inferred that GR 99/2012 has had negative impacts on the fulfillment of inmate's rights. The implementation of inmate's rights in view of obtaining remission, parole, and assimilation is impeded by GR 99/2012 thus resulting in aggravation of overcrowding at Correctional Institutions. Therefore, GR 99/2012 is inconsistent with the concept of guidance and the purpose of corrections in Indonesia because it impedes the process of inmates being reintegrated into society.

According to the result of this research, GR 99/2012 should be revoked and revised in accordance with the spirit of the Corrections Act. Furthermore, it should be noted that there is a need for synergy among law enforcement agencies in fulfilling inmates' rights in order not to lead to legal uncertainty.

²³ Didin Sudirman, *Masalah-Masalah Aktual Bidang Pemasyarakatan [Some Actual Issues in the Correctional Fields]* (Jakarta: Pusat Pengkajian dan Pengembangan Kebijakan Departemen Hukum dan Hak Asasi Manusia Republik Indonesia), p. 118.

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