

Granting Remission for Corruption Convicts Following the Supreme Court Decision Number 28P/HUK/2021: Human Rights Perspective

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ABSTRACT

Corruption is not an ordinary crime but is one of the crimes included in extra ordinary crimes. Corruption is a human rights crime and is included in the category of crimes against humanity. The emergence of Constitutional Court Decision No. 28P/HUM/2021 has an impact on the aim of providing a deterrent effect to corruption convicts. With the enactment of regulations on granting remissions to corruption convicts, there are pros and cons in society. Corruption itself is an extra ordinary crime which cannot be equated with ordinary crimes. The enactment of Law no. 22 of 2022 concerning corrections provides freedom for perpetrators of criminal acts of corruption. The provision of remissions destroys people's hopes of realizing justice for society.

Keywords: Remission, Corruption, extraordinary crimes

A. BACKGROUND

The Indonesian state is a legal state as formulated in the provisions of Article 3 of the Constitution¹. What is called a rule of law is a state that upholds the supremacy of law to create truth and justice and the realization of accountable power. In law enforcement itself, the basic principles of the rule of law are established, one of which is related to the protection of human rights, the provisions of which are regulated in the Constitution and explained further in Law no. 39 of 1999 concerning Guarantees of Human Rights (HAM). One of the principles in protecting human rights is that every person has the right to recognition, guarantees, protection and fair legal treatment as well as legal certainty and equal treatment before the law as explained in the provisions of the Constitution, Article 28D paragraph 1.²

The Indonesian state guarantees the constitutional rights of every citizen to obtain recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as explained in Article 3 paragraph 2 of Law no. 39 of 1999 concerning Human Rights (HAM). It is explained further in the provisions of Article 5 paragraph 1 of Law no. 39 of 1999.³

From these provisions, the State of Indonesia clearly and firmly regulates equality, treatment and protection before the law. This applies to everyone without exception. This protection of human

¹ People's Consultative Assembly of the Republic of Indonesia, 2010, *Panduan Pemasyarakatan Undang-Undang Dasar Republik Indonesia Tahun 1945*, Secretary General of the MPR RI, Jakarta, p. 46.

² Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, Republic of Indonesia State Gazette. 1999 Number 165 (hereinafter referred to as the Human Rights Law).

³ *Ibid*

rights applies to everyone, including every prisoner. The existence of granting remissions to perpetrators of criminal acts of corruption raises pros and cons among the public. Formally juridically, the legal umbrella relating to remissions has been created in the Corrections Law, Government Regulation no. 32 of 1999 concerning requirements and procedures for implementing the Rights of Correctional Inmates (PP No. 32 of 1999) as amended in PP No. 99 of 2012, Presidential Decree no. 174 of 1999 concerning Remissions, Decree of the Minister of Law and Legislation of the Republic of Indonesia No. M.09.HN.02.01 of 1999 concerning the implementation of Presidential Decree No. 174 of 1999 concerning Remissions, Minister of Law and Human Rights Regulation no. 21 of 2013 concerning conditions and procedures for granting remission, assimilation, leave to visit family, parole, leave before release and conditional leave.

Corruption is not an ordinary crime, but is a form of extraordinary crime. As one of the crimes which is included in extraordinary crimes, the handling process and institutions that handle it are specifically regulated differently from criminal acts in general. However, in the process of granting remission there is no different treatment between other prisoners. This is also explained in the provisions of Article 27 paragraph 1 of the 1945 Constitution which states that "every citizen has the same position under the law and government with no exceptions". The same thing is explained in Article 28 D paragraph 1 of the 1945 Constitution.⁴

On the other hand, the constitution also regulates the existence of distinctions or restrictions as long as they are stipulated in laws and other regulations to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society. Explained in the provisions of Article 28 j paragraph 2 of the 1945 Constitution.

Thus, seen from a human rights perspective, which is more appropriate in the treatment of corruption convicts in the mechanism for granting remission, should it be the same or should it be different as an effort to provide justice in accordance with moral considerations of religious values, security and public order?

The existence of granting remissions to prisoners still causes controversy, especially the granting of remissions to perpetrators of corruption cases. Granting remissions to perpetrators of criminal acts of corruption should be carried out proportionally, for example with certain conditions. The requirements for good behavior explained by the Ministry of Law and Human Rights are not enough, but there must be conditions or punishments that deter prisoners from their actions.⁵ The existence of granting remissions to convicts of criminal acts of corruption has damaged the public's

⁴ Evi Hartati, 2012, *Tindak Pidana Korupsi*, Second Edition, Sinar Graphics, Jakarta, p. 1.

⁵ Umi Enggarsari and Atet Sumanto, 2015, *Pemberian remisi terhadap Narapidana Dilembaga Pemasayarakatan*, Journal of the Faculty of Law, Wijaya Kusuma University Surabaya, Vol.XX, No. 2 of 2015 May Edition, p. 131.

hopes of realizing real law, namely the creation of justice. The frequent occurrence of corruption has made people in Indonesia agree that criminal acts of corruption are one of the things that hinders the realization of social welfare. Therefore, the government in this case has the right not to grant remissions to perpetrators of criminal acts of corruption. This stands to reason that perpetrators of criminal acts of corruption do not need to receive sanctions commensurate with those who commit other criminal acts.

The existence of corruption cases which are becoming more and more common every day, this indicates that the existence of this corruption at any time is becoming difficult to eradicate. The main mode often used by corruptors is very systematic and high quality, this can be seen from the involvement of law enforcement officers, government agencies and other officials. The Indonesian people themselves were the ones who initially eradicated cases of criminal acts of corruption, but with the existence of several government policies that seemed to legalize cases of criminal acts of corruption, this enthusiasm was fading every day.

However, the Supreme Court Judges have a different opinion, that the function of punishment is no longer just to imprison the perpetrator to deter them, but rather to attempt rehabilitation and social reintegration which is in line with the restorative justice model. The Supreme Court judge also added that the requirements for obtaining remission should not discriminate. This can actually shift the concept of rehabilitation and social reintegration and must pay attention to the impact of overcrowding in correctional institutions. The considerations given by this judge should not be the main reference in granting remission to perpetrators of extraordinary crimes.

With the Supreme Court's decision granting material review of a number of articles related to the rules for remission and conditional release as regulated in Government Regulation No. 99 of 2012, it can be seen as weakening the anti-corruption movement. This Supreme Court decision itself seems to be a paradox because in 2013 the Supreme Court itself rejected the judicial review of PP No. 99 of 2012, it was even explained that the applicants who considered the remission requirements to be contrary to the convict's rights were also rejected by the Supreme Court. The Supreme Court's decision itself will have an impact on the goal of deterring prisoners and corruption. Without tightening the requirements for remission, corruption convicts are the same as those convicted of other cases. So the meaning of what is called an extraordinary crime is also indirectly lost. The Supreme Court decision no. 28P/HUM/2021 also cannot accommodate the aspirations or desires of the public who hope that perpetrators of criminal acts of corruption receive severe punishment. In the latest case, in 2022, 23 corruption convicts received remission, like prisoners in general. In fact, in one day there were 10 corruption convicts who received reduced sentences. This fact cannot be separated from the consequences of the Republic of Indonesia Supreme Court Decision Number 28P/HUM/2021 dated

28 October 2021 which annulled the provisions on granting remissions for prisoners who do not have to fulfill the requirements of collaborating with law enforcement to help uncover cases of criminal acts they have committed, for convicted prisoners. for committing a criminal act of corruption.

This research is normative research by conducting library research or secondary data.⁶ In this research secondary data was used in the form of primary legal material, namely the 1945 Constitution of the Republic of Indonesia, Supreme Court Decision Case Number: 28 P/HUM/2021, Government Regulation Number 99 of 2012 concerning Second Amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Prisoners, Law Number 12 of 1995 concerning Corrections, Law Number 20 of 2001 concerning Eradication of Corruption Crimes. And secondary legal materials use books or legal literature. This research is descriptive in nature and collects information regarding the status of a variable or theme, symptoms or conditions that existed at the time the research was conducted.⁷

The author thus describes how granting remission to corruption convicts is an extraordinary crime (extra ordinary crime) seen from human rights. The data in this research was analyzed qualitatively, by interpreting the data to answer research problems.⁸

B. ANALYSIS AND DISCUSSION

Arrangements for granting remissions to those specifically convicted of corruption crimes.

In the explanation of the 1945 Constitution, the Indonesian state is a state of law which is regulated in the provisions of the 1945 Constitution. One of the characteristics of a rule of law is related to the guarantee of the rights of citizens. The protection provided by the state does not look at race, ethnicity, religion, ethnicity or the social status of the community so that protection of these rights must be prioritized. Protection of rights in this case is related to legal status. The legal status referred to here is whether he is a convict or not. In this case, the state may not refer to the rights of convicts as citizens, but the state must protect these rights in accordance with the provisions of the Constitution. One of them is by providing remission for prisoners.⁹

Remission is one part of the coaching facility which cannot be separated from other facilities, where the aim of coaching is providing sanctions, as well as giving gifts as one of the goals of coaching.

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Rajawali Pers, 2004), p. 13; Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1982), p. 52; and Soetandyo Wignjosoebroto, *Hukum, Konsep dan Metode*, (Malang: Setara Press, 2013), p. 69-70.

⁷ Suharsini Arikunto, *Manajemen Penelitian*, (Jakarta: PT Rineka Cipta, 1993), hlm. 309. Also Search Erna Widodo dan Mukhtar, *Konstruksi Ke Arah Penelitian Deskriptif*, (Yogyakarta: Avyrouz, 2000), p. 15

⁸ Maria S.W. Sumardjono, 1989, *Pedoman Pembuatan Usulan Penelitian*, t.p., Yogyakarta, p. 24

⁹ Hilman Nur, *Penghapusan Remisi Bagi Koruptor Dalam Perspektif UU Nomor 12 Tahun 1995 Tentang Pemyarakatan*, *Mimbar Justitia Journal*, Vol 1 No. 2 December 2015, Pg. 551.

However, the aim of the correctional system is to ensure that inmates do not repeat actions they have committed in the hope that in the future they will return and be accepted by society as members of society and can play an active role as members of other communities. The provision of remissions is not a form of mercy towards community inmates. Remission itself can be referred to as a reflection and responsibility of inmates towards themselves, namely as responsibility for the violations committed. Remission itself is not something new that the government has given to prisoners, because every day it is commonplace for prisoners to receive prizes for their behavior while in correctional institutions without distinguishing between what cases they are caught in, because the law does not differentiate between them.¹⁰

Prisoners who are entitled to receive remission in accordance with the provisions of Law no. 22 of 2022 concerning corrections, which explains that remission or reduction of prison terms is a right that all prisoners can obtain regardless of the crime they have committed.¹¹ Meanwhile, in the provisions of the 1945 Constitution, it is explained that every citizen has the same position in the eyes of the law regarding the right to receive remission as stated in the provisions of Article 10 letter a of Law no. 22 of 2022. In the provisions of Article 10 paragraph a of Law no. 22 of 2022 explains the right to receive remission which is confirmed by the issuance of PP No. 99 of 2012. The existence of PP no. 99 of 2012 concerning requirements and procedures for implementing the rights of correctional inmates, the requirements for applying for remission for convicts of special crimes such as corruption crimes are more stringent, namely that apart from fulfilling general requirements, there are also specific requirements. Provisions of PP No. 99 of 2012 tightens the granting of remissions to convicts of criminal acts of corruption, narcotics crimes and criminal acts of behavior that violates applicable laws and regulations, causing major harm. The conditions for granting remissions are as specified in Article 34 PP No. 99 of 2012, especially for corruption convicts, they must comply with the provisions of Article 34 A paragraph 1 letters a and b, Article 43A paragraph 1 letter a and Article 43 paragraph 3 PP No. 99 of 2012 as follows:

Article 34 A paragraph 1 letters a and b

Providing remission for convicts convicted of committing criminal acts of terrorism, narcotics and narcotic precursors, psychotropic substances, corruption, crimes against state security, serious human rights crimes and other organized transnational crimes, in addition to having to fulfill the requirements as intended in Article 34, they must also meet the requirements:

- a) Willing to cooperate with law enforcement to help uncover criminal cases committed.
- b) Have paid in full the fines and compensation money in accordance with the court decision

¹⁰ Ajarotni Nasution et al, 2008, *Tesaurus Bidang Hukum*, pengayoman, Jakarta, p 132

¹¹ Muhammad Sajidin dkk, 2021, *Formulasi Kebijakan Pemberian Remisi Narapidana Ditinjau Dari Aspek Politik Hukum*, Jurnal Kompilasi Hukum, Fakultas Hukum Universitas Mataram, Vol. 6, No. 2, p.128.

for convicts who were convicted of committing a criminal act of corruption.

Article 43 A paragraph 1 letter a

Granting conditional release to prisoners convicted of committing criminal acts of terrorism, narcotics and narcotics precursors, psychotropic substances, corruption, crimes against state security and serious human rights crimes, as well as other organized transnational crimes, in addition to having to fulfill the requirements as intended in Article 43 paragraph 2 must also fulfill the requirements as stated in article 43 paragraph 2 who are willing to cooperate with law enforcers to help uncover the criminal cases they have committed.

Article 43A paragraph 3

Willingness to cooperate as in paragraph 1 letter a must be stated in writing by the law enforcement agency in accordance with the provisions of statutory regulations.

In the mechanism for granting remissions, more emphasis must be placed on prisoners who can be categorized as good. Good behavior itself is something that, when measured qualitatively, must be concreted in relation to what indicators so that it can be said that prisoners have good behavior while in prison.

There are special regulations for convicts of criminal acts of corruption as explained in PP No. 99 of 2012 is not intended to discriminate against cases of criminal acts of corruption. Because if you look at the contents of the preamble to PP No. 99 of 2012, corruption is one of the extraordinary crimes that has quite large consequences and impacts on the country. After the Supreme Court (MA) granted the right to judicial review of a number of articles regulating remission and conditional release for corruptors contained in the provisions of PP no. 99 of 2012, then PP No. 99 of 2012 was replaced by Law no. 22 of 2022 concerning corrections and Perkenkumham no. 7 of 2022. The issuance of these two regulations does not mean that PP No. 99 of 2012 was abolished, there were only a few changes to its implementation. There has been no cancellation of PP No. 99 of 2012 contained in Article 34A paragraph 1 letter a and paragraph 3 and Article 43 A paragraph 1 letter a and paragraph 3 PP No. 99 of 2012 as a form of fulfilling the rights of inmates without reducing the essence of the points in the articles contained in PP No. 99 of 2012. In addition, the Regulation of the Minister of Law and Human Rights is implementable so that it can be implemented directly in the technical implementation unit (UPT) without waiting for technical instructions from the Regulation of the Minister of Law and Human Rights. Minister of Law and Human Rights Regulation No. 7 of 2022 has given rise to new innovations related to objectivity in carrying out prisoner development assessments, namely the Prisoner Behavior Assessment System which is expected to increase public trust in the development of prisoner behavior in Correctional Institutions (Lapas) and State Detention Centers (Rutan.).

Providing remission for Corruption Convicts as an Extra Ordinary Crime in View of Human Rights.

Corruption itself is a major threat faced by a country, so there must be fair handling and enforcement of the law in accordance with existing regulations. Remission is a prisoner's right which is strictly regulated in law.¹² According to the Thesaurus in the field of law, remission is forgiveness of punishment, reduction of law.¹³ Meanwhile, Andi Hamzah in his book *Criminal Law Terminology* argues that remission is a reduction in punishment by the state for prisoners with good behavior.¹⁴ According to PP no. 32 of 1999 Remission is a reduction in the period of serving a sentence given to convicts and criminal children who meet the requirements specified in statutory regulations.

The prison system places remission as a gift, meaning that remission is a gift from the government to prisoners. Only in 1950 based on presidential decree no. 156 of 1950 remissions are given every anniversary of the independence of the Republic of Indonesia. Referring to Andi Hamzah's view, remission is a release from a sentence in whole or in part or from life to a limited sentence which is given every August 17. Based on Republic of Indonesia government regulation no. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Inmates Correctional remission is a reduction in the period of serving a sentence given to prisoners and criminal children who meet the conditions specified in statutory regulations. Meanwhile, according to the provisions of Article 1 of the Presidential Decree of the Republic of Indonesia No. 174 of 1999 concerning remission, does not provide an understanding of remission, it only explains that "every prisoner and criminal child who is serving a temporary prison sentence or confinement sentence can be given a remission if the person involved is doing well while serving the sentence.¹⁵

The existence of remissions which are often given by the government are usually announced nationally at the same time as commemoration of National Independence Day and other religious holidays. Recently there has been a lot of discussion after the Minister of Law and Human Rights wanted to make changes to Government Regulation no. 99 of 2012, as far as we know, this PP tightens the opportunities for convicts in corruption cases to obtain remission. The Minister of Law and Human Rights does not agree with the provisions contained in PP no. 99 of 2012 with the pretext that no matter how bad the convicts in a corruption case are, they must be given the right to receive leniency in their sentences like in other cases. The policy made by the Ministry of Law and Human Rights has created a polemic in society. This opinion from the Ministry of Law and Human Rights was supplemented by the issuance of Constitutional Court Decision No. 41/PUU-XIX/2021 which states that every prisoner has the right to receive remission. From the confirmation of the Constitutional Court's decision, the

¹² Law Number 12 of 1995 concerning Corrections Article 14 paragraph 1 point 1 explains about remission.

¹³ Ajratni Nasution et al, 2008, *Tesaurus Bidang Hukum*, Pengayoman, Jakarta, p. 132.

¹⁴ Andi Hamzah, 2007, *Terminologi Hukum Pidana*, Sinar Graphics, Jakarta, p. 132.

¹⁵ Dwidja Priyatno, 2009, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, PT Refika Aditama, Bandung, pp. 133-134

Ministry of Law and Human Rights considers that the remission given to corruptors is in accordance with the principle of non-discrimination.¹⁶

Apart from that, the Ministry of Law and Human Rights also explained that the provisions contained in PP no. 99 of 2012 has been tested at the Supreme Court (MA). So on October 29 2021, the Supreme Court granted a judicial review of a number of articles in this regulation. From the existing provisions, the government adjusted this judicial decision in the new Corrections Law, namely Law no. 22 of 2022. The new Corrections Law does not regulate strict regulations for corruptors. The provisions of this new law restore all convicts without any discrimination, so if you look at the provisions of Law no. 22 of 2022, the Ministry of Law and Human Rights emphasized that the conditional release given to corruptors is in accordance with existing regulations.

A number of articles contained in the provisions of PP no. 99 of 2012 which regulates the tightening of conditions for granting remission and other prisoner rights, such as those related to parole and leave before release (CMB), has also been revoked. The Supreme Court itself stated that PP no. 2012 is in conflict with Law no. 12 of 1996 concerning Corrections because the requirements for granting remissions cannot be discriminatory unless the court has revoked them. Therefore, the Supreme Court also removed the justice collaborator (JC) requirement for corrupt convicts to get a reduced sentence.

We can all know that the purpose of this Supreme Court decision is to provide equality before the law. Equality of legal status itself is one of the most important principles in modern law. This principle is one of the cornerstones of the doctrine in the Rule of Law concept which also spreads to developing countries such as Indonesia.¹⁷ This principle before the law is a principle where there is a law, a principle where there is equality in the law for every individual without any exceptions. The 1945 Constitution itself expressly guarantees that "every citizen who has the same position in the law and government is obliged to uphold that law without exception." Therefore, this article conveys the meaning that every citizen, regardless of whether he is a native or not, comes from an educated class or a commoner who struggles with poverty, must be served before the law. This explains that position means placing citizens to receive equal treatment before the law. So that with equal status there are no privileges given by law to legal subjects, if there is a legal subject who has the privilege of placing that legal subject above the law.

¹⁶ <https://nasional.tempo.co/read/1632347/23-napi-korupsi-bebas-bersyarat-menkumham-pemerintahtak-bisa-melawan-putusan-ma> Accessed on 12-6-2023, 10.35 WIB.

¹⁷ Brian Z. Tamahana, 2004, *On the Rule of Law, History, Politics, Theory*, Cambridge University Press, p. 9.

The principle of Equality Before the Law cannot be separated from the principle of the supremacy of law and human rights because this is a concept of the rule of law.¹⁸ Based on this conception, the policies made must prioritize human rights aspects. The rules of human rights that are inherent in every human being are regulated through a set of existing legal rules.¹⁹ In Indonesia, the implementation of human rights regulations is contained in Law no. 39 of 1999 concerning Human Rights which is one of the sets of rules governing human rights in Indonesia. As a country based on the rule of law, it highly upholds human rights.

Meanwhile, what we all know is that the criminal act of corruption is an extraordinary crime that requires special attention.²⁰ With the policies issued by the government such as the issuance of Supreme Court decision no. 28P/HUM/2021 and approval of Constitutional Court decision no. 41/PUU-XIX/2021. With these two Supreme Court and Constitutional Court decisions, the government has approved the granting of remissions to perpetrators of criminal acts of corruption and the passing of a new law, namely Law no. 22 of 2022 concerning Corrections. The existence of this remission provides freedom for perpetrators of criminal acts of corruption. So far, extra ordinary crimes have not received remission, one of which is because of the tightening of procedures contained in the provisions of PP No. 99 of 2012. Providing remissions for perpetrators of criminal acts of corruption is not appropriate to implement because it is classified as an extra ordinary crime. So, if we refer to the provisions of the principle of equality before the law, crimes of corruption which fall into the category of extra ordinary crimes cannot be equated with ordinary crimes, therefore it is not appropriate to grant remissions to perpetrators of criminal acts of corruption. Even though remission is the right of prisoners, there must also be criteria for granting remission so that the regulations regarding remission can be felt to be fair to all people. Corruption itself is classified as an extra ordinary crime. Even the United Convention Against Corruption (UNCAC) classifies corruption as a human rights crime and is included in crimes against humanity. Corruption has an impact, causing damage on a very wide scale. Therefore, extraordinary efforts should be applied to corruptors. One way is to eliminate the remission rules for corruptors. If you pay attention, prison is not a place for revenge. However, prison is also not a place where an official can enjoy privileges, including getting remission. Punishing a corruptor to the maximum is not only a lesson for the convict himself, but also for people outside prison so that they do not have the intention to commit criminal acts of corruption.

¹⁸ SF Marbun, *Dimensi-Dimensi Pemikiran Hukum Administrasi Negara*, UII Press, Yogyakarta, 2004, p. 8

¹⁹ A. Mansyur Effendi, *Perkembangan Dimensi Hak Asasi Manusia dan Proses Dinamika Penyusunan Hukum Hak Asasi Manusia*, Ghalia Indonesia, Bogor, 2005, p. 32. Berlian Simarmata, 2011, Providing Remissions to Corruptor and Terrorist Convicts, *Mimbar Hukum Journal*, Faculty of Law, Gajah Mada University, Vol. 23, no. 3, p. 513.

²⁰ Berlian Simarmata, 2011, *Pemberian Remisi Terhadap Narapidana Koruptor Dan Terrorist*, *Mimbar Hukum Journal*, Faculty of Law, Gajah Mada University, Vol. 23, no. 3, p. 513.

Light sentences coupled with remission and parole facilities have pampered the corrupt. The government must continue to tighten the provision of remissions so that equality before the law can be achieved so that human rights enforcement in this case can be achieved optimally.

C. CONCLUSION

After the issuance of Constitutional Court Decision No. No. 41/PUU-XIX/2021 which was accompanied by the granting of the judicial review of PP No. 99 of 2012, the Supreme Court issued Supreme Court decision 28P/HUM/2021 which granted the right to judicial review of a number of articles and conditional release for corruptors. Regulations regarding remissions themselves are regulated in the provisions of Law no. 22 of 2022 concerning correctional services, which to this day still raises pros and cons in the community. The crime of corruption itself is an extra ordinary crime which cannot be equated with ordinary crimes. So, if we refer to the principle of equality before the law, the crime of corruption cannot be equated with ordinary crimes, therefore it is not appropriate to grant remissions to perpetrators of corruption crimes. Corruption is also a human rights crime and is included in crimes against humanity. The existence of granting remissions to convicts of criminal acts of corruption has damaged the public's hope of being able to realize real law, namely the creation of justice for the entire community.

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