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Legal Protection of Female Inmates in Pregnancy, Childbirth, and Breastfeeding in Correctional Institutions

Kusumo Wahyu Bintoro¹, Budi Santoso², Budi Ispriyarso³,

Abstract

This research aims to analyze the condition of imprisoned women who are pregnant, giving birth, and breastfeeding within correctional facilities by examining the relevant regulations and case observations. This research uses a normative-empirical approach. This research is conducted by reviewing literature data supported by the studied cases. The data obtained are analyzed by qualitative methods and presented descriptively. The conclusions of the research are: 1) The rights of these prisoners are not fully met. There is an imbalance in facilities and treatment among different prisons. 2) The regulations on the rights of prisoners who are pregnant, giving birth, and breastfeeding in Indonesian law are still inadequate and insufficient as outlined by international convention.

Keywords: Prison, Prisoner, Pregnant women, Human Rights.

Introduction

Article 1, paragraph 7 of Law No. 12 of 1995 concerning Correctional Services states that inmates are convicts who are serving a sentence of loss of independence in Correctional Institutions ("Prisons"). It is generally known as a person who has been deprived of his independence and confined in a detention room. However, this deprivation does not necessarily place the prisoner as a party who has lost all his rights. (Silaban et al., 2021). As Sahardjo argues, the loss of freedom is the only suffering experienced by prisoners, while other rights should not be reduced.

This is in line with the 1948 United Nations ("UN") Declaration of Human Rights ("HAM") which regulates the right to livelihood and personal safety; Prohibitions on inhibition, slavery and the slave trade; Prohibition of imposing cruel treatment; The right to legal recognition; The right to equality before the Law and/or non-discrimination in its application; Right to restoration; Prohibition of arbitrary arrest, detention or exile; The right to a fair trial; Presumption of innocence and prohibition against the law *ex post facto*; The right to choose citizenship; The right to own wealth; The right to think, conscience and religion. Indonesia, as a member state of the United Nations, ratified these basic rights into Article 4 of Law No. 39 of 1999 concerning Human Rights. (Alirezai & Roudsari, 2020).

The nature of human rights that cannot be reduced under any conditions, so for an inmate the protection of human rights has been regulated in Article 14 paragraph (1) of Law No. 12 of 1995

¹ Faculty of Law, Universitas Diponegoro, Semarang.

² Faculty of Law, Universitas Diponegoro, Semarang. Email: budi_tmg1@yahoo.com

³ Faculty of Law, Universitas Diponegoro, Semarang. Email: budiispriyarso@gmail.com



concerning Correctional Services which affirms that prisoners have the right to perform worship according to their religion or belief; Receive spiritual and physical care (Friedman et al., 2020); Receive education and teaching; Getting proper health and food services; Submit complaints; Getting reading materials and participating in other mass media broadcasts that are not prohibited; Get wages and premiums for the work done; Accepting visits from family, legal counsel or other persons; Getting remission and assimilation including leave before release; and other rights and interests by the prevailing laws and regulations (Simamora & Siregar, 2024).

In fulfilling the rights of prisoners, there is one right that is very crucial and must be fulfilled, namely the right to get proper health services and food. (Kresnadari, 2018).

Talking about health services. Female inmates are biologically different from male inmates. This is related to the menstrual cycle, pregnancy, childbirth, and breastfeeding. Based on these differences, female inmates have urgent and specific needs in health services, especially when entering pregnancy to breastfeeding in prisons.

The number of female inmates in Indonesia has increased. According to data from the Indonesian correctional database system, in April 2024, there were 5,000 female inmates, an increase compared to April 2023, which amounted to 4,000 (*The Correctional Database System Was Reported*, 2024).

Although the number continues to grow, female inmates remain a minority. In April 2024, the percentage of female inmates was around 2.17% of the total inmates. (*The Correctional Database System Was Reported*, 2024). This minority status increases the likelihood that their and their children's special care needs are neglected or unmet.

The problem of female inmates who are pregnant, giving birth, and breastfeeding in prisons is a complex problem related to the protection of minorities or vulnerable groups, human rights, and women's welfare. Therefore, it is important to further review whether existing regulations have accommodated these issues. For these problems, the author will analyze how the condition of female inmates in prisons is related to the applicable regulations and facts that occur in the field.

Methods

This paper uses a normative-empirical approach by examining the implementation of positive legal provisions or laws and regulations on the phenomenon of female inmates who are pregnant, giving birth, and breastfeeding in the community. The existing data was analyzed using qualitative methods and presented descriptively.

Results and Discussion

Female Prisoners Who Are Pregnant, Giving Birth, and Breastfeeding in Indonesian Prisons

Based on the database as of April 2024 of the Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia, the capacity of prisons in 33 Regional Offices (LKkanwil) is 94,079 people, but the number of inmates reaches 184,551 people. (*The Correctional Database System Was Reported*, 2024). This means that there is an excess capacity of 90,472 prison residents. The data was obtained from 33 regional offices of the Ministry of Law and Human Rights. There is 1 regional office that is not *over capacity*, which means that 31 other regional offices are experiencing *over capacity*.

The excess capacity in this prison has a significant impact on female inmates, especially those who are pregnant, giving birth, and breastfeeding. Data from 2023 shows that the number of female inmates stands at 10,013. This condition can be an illustration of how many female inmates must be considered because women have special conditions that must be handled differently. Based on these conditions and situations, it is necessary to pay attention to the right to health that must be given to pregnant women in the Correctional Technical Implementation Unit.

The focus that must be given to female inmates with pregnant and lactating conditions is on reproductive health care, physical and psychological treatment, as well as comfort for female inmate children in prisons.

Reports from abc.net.au tell about the tragic fact of the condition of women who are pregnant, giving birth, and raising their children behind bars. Ultrasound monitoring facilities are uneven for inmates in each prison. Class IIA prisons in East Jakarta do not provide ultrasound services to monitor the growth and development of pregnant female inmates.

Even in the process of giving birth, not all female inmates have the luck to give birth in calm conditions with the help of doctors. Sometimes, when they are in contraction, the mother-to-be has to scream to get the freedom to walk outside the bars. It is not uncommon for female inmates who are about to give birth at night or at dawn to shout first from the prison hallway to notify the prison officers who are on guard.

However, some inmates are unlucky because they have to face the momentum of giving birth behind bars without being accompanied by experts or midwives." There was a prisoner who gave birth in the prison, but because there were no midwives or doctors, and no one dared to remove the placenta, finally this prisoner was taken out of prison with the baby still connected to the placenta in the stomach"⁹

Another case occurred at the Class IIB Prison in Pekanbaru. Access to facilities needed by female inmates, such as sanitary napkins, is very difficult to obtain. This is a basic need for women who have a menstrual cycle every month. In addition, the absence of a special room for newborn babies by female inmates caused the mother and her baby to blend in with about 47 other inmates. This condition of overcrowded cells can affect and interfere with the growth and development of babies, especially related to hygiene and the risk of transmission of various diseases.

Legal Protection of Pregnant, Childbirth, and Breastfeeding Women Prisoners in Indonesian Prisons

The discussion of human rights for women is actually not new. Currently, a victim will not only receive his rights but will also find out where human rights protection lies and how to obtain those rights. The rights given to women are not only related to their status as human beings but also as women. The legal system regarding human rights is found in various legal regulations related to human rights. This system includes various legal instruments and their implementation mechanisms at the regional, national, and international levels. In the system, the recognized rights, protection guarantees, and ways to access those rights are explained in detail.

Standards for the protection of prisoners' human rights at the international level include:

- a) *Standard Minimum Rules for the Treatment of Prisoners*
- b) *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
- c) *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture, Inhuman or Degrading Treatment or Punishment*
- d) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- e) *Basic Principles for the Treatment of Prisoners* (Prinsip-Prinsip Dasar Pembinaan Narapidana)
- f) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, approved by the United Nations General Assembly on 9 December 1988 through Resolution 43/173.

Legal protection of prisoners means all efforts to protect the *fundamental rights and freedoms of prisoners* and other interests related to their welfare. Adopted from the *General Assembly* (December 9, 1975), the *Declaration Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* expressly prohibits any form of persecution or other cruel acts, treatment, and punishment that is inhuman and degrading to human dignity, which constitutes a violation of basic human rights (Arief, 1998: 103).

However, in reality, inappropriate treatment in prisons is often experienced by female inmates. The lack of understanding of the rights of inmates by prison officers and the inmates themselves is the main factor in the lack of fulfillment of the rights of female inmates in prisons. Even if a person is convicted for his actions, his human rights must still be well considered. What's more, a woman has special conditions that men do not have, such as menstrual cycles, pregnancy, childbirth, and breastfeeding, which must still be considered even though she is in prison.

In the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, there are thirty-nine principles on the rules for the treatment of persons who have been deprived of their independence. These principles affirm that the measures implemented are aimed at protecting the special rights of female prisoners, especially pregnant and lactating women, and should not be treated in a discriminatory manner. Refusal of special health facilities for female inmates is prohibited under national and international law because it is considered a form of ill-treatment.

Special rights that must be obtained by female inmates include the separation of rooms for pregnant and lactating inmates, as well as the existence of female prison officers who are trained in care during pregnancy and child care.

In addition to the above regulations, the UN General Assembly on December 16, 1966 also established the *Covenant on Economic, Social, and Cultural Rights* (International Covenant on Economic, Social, and Cultural Rights) which states the right of every pregnant woman to obtain the highest standards of mental and physical health and to be free from death during childbirth, health development since childhood, an environment free from industrial pollution, medical attention, treatment, and free from infectious diseases. Although the convention does not

explicitly mention the rights of female inmates, the phrase "every person" and its conformity with human rights make it possible for female prisoners to also have the highest rights during pregnancy, as mentioned in the convention.

Indonesia, as a country that upholds human rights, certainly guarantees the protection and enforcement of human rights that are absolute and cannot be reduced by the state (*non-derogable rights*), even in emergencies, including when a person becomes a prisoner. This is explained in Article 28I, paragraph (1) of the Constitution of the Republic of Indonesia in 1945, which explains *non-derogable rights*, namely:

"The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law are human rights that cannot be reduced under any circumstances."

In addition, in providing and fulfilling the rights of citizens, the state must not be discriminatory. This is emphasized through Article 27 of the Constitution of the Republic of Indonesia in 1945, which explains the existence of equal status before the law for everyone. The state must pay attention to fundamental matters by prioritizing specificity and proportionality in its implementation.

The Government of Indonesia has also ratified *the International Covenant on Civil and Political Rights* through Law No. 12 of 2005, which states the categories of rights that cannot be reduced, namely:

1. The right to life.
2. The right *to be free from torture*.
3. The right *to be free from slavery*.
4. The right to be free from detention for failing to fulfill the agreement (debt).
5. The right to be free from retroactive punishment.
6. Rights as a subject of law
7. The right to freedom of thought, belief, and religion.

Although inmates are people who have been convicted through a judge's decision for having committed acts that violate positive laws in Indonesia, it does not mean that their right to continue their lives in peace is ignored. In Indonesia, prisons operate based on the principles of correctional services in determining the boundaries and processes of corrections. The penitentiary system was first introduced by Dr. Sahardjo, SH, in 1963 and has been officially used since April 27, 1964, through the Mandate of the President of the Republic of Indonesia at the Prison Service Conference in Lembang, Bandung. Then, in 1976, Dr. Sahardjo, SH, formulated the principles of guidance and coaching for inmates known as the Ten Principles of Corrections, namely:

1. People who are lost must be protected by providing provisions for life as good and useful citizens in society.

2. Criminal punishment is not an act of revenge from the state.
3. A sense of repentance cannot be achieved through torture but through guidance
4. The state has no right to make prisoners more evil than they were before they were sentenced.
5. In losing freedom of movement, prisoners must be introduced to the community and must not be isolated from society.
6. The work given to the inmates should not be just to fill the time.
7. Guidance and coaching must be based on Pancasila.
8. Prisoners as lost people are human beings and must be treated as such.
9. Prisoners were only sentenced to the crime of loss of independence.
10. It is necessary to establish new correctional institutions by the needs of the correctional process. Provide and nurture facilities that can support rehabilitative, corrective, and educational functions.

These principles show that the penitentiary system in Indonesia focuses on the rehabilitation and reintegration of prisoners into society by treating them humanely and ensuring that their basic rights are maintained.

In Article 5 of Law Number 12 of 1995 concerning Corrections, it is also stated that the correctional development system must be carried out based on:

1. Pengayoman
2. Equality of treatment and service
3. Education
4. Mentorship
5. Respect for the dignity of human beings
6. Losing independence is the only suffering
7. The right to stay in touch with family and certain people is guaranteed

Not only that, in Article 14 of the a quo Law, it is also explained that prisoners have the right to:

1. Performing worship by their religion or belief.
2. Receive treatment, both spiritual and physical care.
3. Getting education and teaching
4. Get proper health services and food.
5. Submit complaints.
6. Get reading materials and follow other mass media broadcasts that are not prohibited.
7. Get wages or premiums for the work done.

8. Accepting visits from family, legal counsel, or certain other people.
9. Getting a reduction in the sentence (remission).
10. Getting assimilation opportunities, including leave to visit family.
11. Get parole.
12. Get leave ahead of freedom.
13. Obtaining other rights by applicable laws and regulations.

In terms of granting and implementing the rights of women prisoners, it is carried out by the provisions and policies of each prison. Each prison may have different provisions and policies. In general, examples of rights that can be granted by prisons to female inmates include:

1. Giving a dispensation not to participate in sports activities.
2. Providing a dispensation not to participate in community service activities.
3. Providing dispensation for activities that endanger the health of the mother and her womb.

The protection of female inmates is also specifically stated in Article 20 of Government Regulation No. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens, which includes:

1. Prisoners and correctional students are entitled to additional food according to the doctor's instructions when they are sick, pregnant, or breastfeeding.
2. Inmates who perform certain types of work are entitled to additional food.
3. Children who are born in prisons or brought into prisons on the instructions of doctors are entitled to receive additional food until they are 2 (two) years old.
4. If the child is 2 (two) years old, it must be returned to his father, his family or if he does not have a family, it will be handed over to the social service with the approval of his mother and a written document is made as contained in the minutes of the event.
5. Prisons can determine additional food for the benefit of children's health based on the doctor's consideration.

The protection of female and child inmates brought to prisons is also explained in Government Regulation No. 58 of 1999 concerning Conditions and Procedures for the Implementation of Authority, Duties and Responsibilities for Prisoner Care in Article 28, which includes (Yenti & Hilmy, 2024).

1. Every prisoner has the right to get food by the applicable laws and regulations
2. Foreign prisoners are given the same food as other prisoners, except on the doctor's instructions can be given other types of food according to the customs in their country whose price does not exceed the price of food per day.

3. Any prisoner who is sick, pregnant, or breastfeeding is entitled to supplementary food according to the doctor's instructions.
4. Children of female prisoners who are brought into detention centers or correctional institutions are given food and additional food by the doctor's instructions until the child is 2 (two) years old.
5. If the child as referred to in paragraph (4) has reached the age of 2 (two) years, it must be handed over to the father or his family or another party with the consent of the mother.

The provisions regarding the reasons why female inmate children are brought into the prison are explained in Article 28, paragraph (5), which states that female inmate children participate in the prison with their mothers until the age of 2 (2) years. The reason children follow their mothers in prison is to pay attention to the growth and development of children and to get enough affection from their mothers.

Regulations in Indonesia have not fully accommodated the rights of female prisoners, which have been specifically regulated in *the Bangkok Rules*. The United Nations established the Bangkok Rules in 2010, which govern the Treatment of Female Detainees and Non-Detention Measures for violations against women (Triano et al., 2020). The Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia said that the system in Indonesian prisons is an adoption of the international prisoner development system, including *the Bangkok Rules*. The right to health, facilities, and proper food is specific to female inmates in rules 9 through 64. *The Bangkok Rules* also regulate the fulfillment of the right to infant care by female inmates with appropriate facilities and health services for infants.

However, in reality, in Indonesian prisons today, female inmates only get proper health services and food. (Triano et al., 2020). For example, the Tangerang Class IIA Women's Prison only applies the Bangkok Rules on humanitarian grounds. (Marsiari et al., 2023). The government's limited budget in providing facilities causes the rights obtained by women prisoners to be limited to the right to health and proper food. The government has not allocated additional budget for female inmates who bring babies to be taken care of in prisons.

Obstacles in Providing Legal Protection for Pregnant, Childbirth, and Lactating Women Prisoners in Indonesian Prisons

Special rights are granted to female inmates, who are naturally different from men because they experience menstrual cycles, pregnancy, childbirth, and breastfeeding. This has not been fully accommodated in Indonesian law, even though it has been regulated in international conventions. In general, the regulation of prisoners' rights in Indonesia does not specifically protect pregnant women. The applicable law does not distinguish between facilities for female and male inmates. Regulations that specifically regulate the difference in facilities are only contained in Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens. As a result, the facilities in each prison vary depending on their respective policies.

In practice, the fulfillment of the rights of female prisoners is still not optimal. In addition to the absence of specific protection for female inmates, several other factors hinder the provision of legal protection, including:

First, there is a lack of availability of medical personnel and medical facilities. Many units do not have doctors and nurses working together, so pregnant female inmates are poorly monitored.

Second, the incompatibility of health facilities with the needs of pregnant female inmates due to the lack of a special budget for them, so there is a limitation of medicines in polyclinics. Treatment for pregnant women requires special attention.

Third, the quality of health service infrastructure is inadequate, caused by budget limitations for health at polyclinics. Inadequate facilities and infrastructure, such as limited supplies of medicines and lack of midwives who can handle pregnant women, affect the quality of health services provided in prisons.

These factors result in the fulfillment of the rights of female inmates in prisons is not optimal because it is influenced by external factors that affect the services provided.

Conclusion

Female inmates who are pregnant, giving birth, and breastfeeding need treatment that is appropriate to their condition. Reality shows that the rights of female inmates who are pregnant, giving birth, and breastfeeding have not been fulfilled due to the lack of facilities, such as adequate health services, and the lack of regular health checks. Attention from the government regarding the allocation of funds to meet facilities, as well as the lack of education about the rights of inmates, are obstacles in providing maximum services.

Regulations on the regulation of the rights of female prisoners who are pregnant, giving birth, and breastfeeding in Indonesian law are still not optimal and maximum as regulated by international conventions, with only two regulations specifically addressing the handling of female prisoners and their children.

Thus, it is necessary to further study the creation of new regulations related to special needs related to the rights of pregnant female prisoners, giving birth and breastfeeding, as well as massive socialization to prison officers and inmates related to this matter. This is to avoid inequality between prisons.

Suggestion

The suggestion should become a recommendation to the research object or someone who is connected with it. (Enough 1 paragraph, no numbering or mark).

References

- Alirezaei, S., & Roudsari, R. L. (2020). Promoting health care for pregnant women in prison: a review of international guidelines. *Iranian Journal of Nursing and Midwifery Research*, 25(2), 91–101.
- Friedman, S. H., Kaempf, A., & Kauffman, S. (2020). The realities of pregnancy and mothering while incarcerated. *J Am Acad Psychiatry Law*, 48(3), 365–375.
- Kresnadari, A. (2018). Pelaksanaan Pemenuhan Hak Atas Pelayanan Kesehatan Bagi Perempuan Narapidana Dalam Keadaan Hamil (Studi Kasus Lembaga Pemasarakatan Perempuan Kelas IIB Yogyakarta). *Jurnal Hukum Dan Pembangunan Ekonomi*, 6(2).
- Marsiari, L. K. L., Saravistha, D. B., & Aristiawan, I. G. N. (2023). Perlindungan Hukum Bagi Anak Bawaan Warga Binaan Di Lembaga Pemasarakatan Perempuan Kelas IIA Kerobokan. *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum*, 1(2), 10–15.
- Silaban, R., Erwin, M., & Lawolo, O. (2021). PERLINDUNGAN HUKUM TERHADAP NARAPIDANA

- WANITA DI LEMBAGA PEMASYARAKATAN WANITA KELAS II A TANJUNG GUSTA MEDAN. *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana*, 3(2), 212–225.
- Simamora, B. R., & Siregar, F. R. (2024). Legal Protection of the Rights of Pregnant Women Prisoners in Lubuk Pakam Correctional Institution. *International Journal of Law and Society*, 1(2), 160–171.
- Savitri, N. (2019, desember 24). Penjara di Indonesia Masih Belum Penuhi Hak Napi Perempuan yang Hamil dan Menyusui. www.abc.net.au. Retrieved oktober 2, 2022, from <https://www.abc.net.au/indonesian/2019-12-24/melahirkan-dan-membesarkan-anak-dalam-penjara/11812240>
- Silaban, R. (2021, July). Perlindungan Hukum Terhadap Narapidana Wanita di Lembaga Pemasyarakatan Wanita Kelas II A Tanjung Gusta Medan. *Jurnal Rectum*, 3(2), 203.
- Smithart, W. (2019). Pregnant in Captivity: Analyzing the Treatment of Pregnant Women in American Prisons and Immigration Detention Centers. *Ala. L. Rev.*, 71, 867.
- The Correctional Database System was reported. (2024). http://sdp.ditjenpas.go.id/sdp_website/
- Triano, H. M., Hakim, M. Z., & Huripah, E. (2020). Pemenuhan Hak Pengasuhan Bayi Oleh Narapidana Perempuan Di Lembaga Pemasyarakatan Perempuan Kelas Ii A Tangerang. *Pekerjaan Sosial*, 19(1).
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang Undang Nomor 12 Tahun 1995 tentang Pemasyarakatan. Peraturan Pemerintah No. 32 Tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan.
- Peraturan Pemerintah No 58 Tahun 1999 tentang Syarat-Syarat dan Tata Cara Pelaksanaan Wewenang, Tugas dan Tanggung Jawab Perawatan Tahanan. Banapon, K. (2020). Perlindungan Hukum Terhadap Hak Narapidana Wanita Dalam Sistem Pemasyarakatan di Indonesia. *Unisma*.
- Yenti, N., & Hilmy, N. (2024). PERLINDUNGAN HUKUM TERHADAP HAK-HAK WARGA BINAAN PEREMPUAN HAMIL DAN MELAHIRKAN DI LEMBAGA PEMASYARAKATAN PEREMPUAN KELAS IIB PADANG. *Normative Jurnal Ilmiah Hukum*, 12(1), 32–45.