

Responsibility for Fulfilling the Rights of Women Prisoners

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Abstract

The purpose of this study is to review the implementation of government responsibility for fulfilling the rights of women prisoners at the Class IIA Watampone Correctional Institution. The type of research used is qualitative, using an empirical juridical approach, namely analyzing the articles in the applicable laws and regulations related to legal facts in the field. The results showed that the government's responsibility for the fulfillment of the rights of women prisoners at the Class IIA Watampone Penitentiary has not been fully effective due to several indicators of weak performance achievement, namely facilities and infrastructure that are not yet feasible due to budgets that are not yet human rights-based so that room facilities are still overcapacity. Health clinics and medical personnel are only permanently recruited at the Class IIA Watampone Penitentiary. As a result, the fulfillment of the rights of women prisoners still needs to be improved and optimal as mandated by Law Number 39 of 1999 concerning Human Rights and Law Number 12 of 1995 concerning Correctional Institutions (LAPAS).

Keywords: policy, responsibility, fulfilling, women prisoners, Indonesia

1. Introduction

One of the essences of the rule of law is respecting and protecting human rights. The concept of human rights law states that the state, in this case, the government, is the holder of obligations, and the individual, in this case, the people, is the holder of rights (Butt, 2020). Thus, every citizen has human rights that the state must uphold, protect, honor, and fulfill.

Women, as a group in society within a country, are a group that must be guaranteed the protection of their human rights (Lines, 2008). Therefore, the state is responsible for guaranteeing the protection of women's human rights just like any other group. The principle of non-discrimination is the soul of all International Conventions against women; Article 4, paragraph 2 of the Women's Convention expressly states that the making of special regulations by participating countries, including regulations contained in this convention aimed at protecting pregnancy and other women's interests must be a concern.

Indonesian women are inseparable and occupy a significant position in life and development in Indonesia. Indonesian women, whether mothers, wives, children, grandmothers, office workers, homemakers, or professionals, all make contributions that cannot be underestimated. Unfortunately, the appreciation of Indonesian women is often not commensurate with their sacrifices. The position of women in the social, cultural, political, and legal systems often needs to be proportional and equal to men (Handtke et al., 2015).

According to Charlotte Bunch, a women's human rights activist, women's rights have been violated in various ways. In certain political conditions, women and men experience or become victims of violence (Parkes & Pate, 2006a). Still, because men have dominated the political actors, the problem of women as victims of violence who have violated their human rights related to their womanhood has become invisible. Bunch further stated that, at present, women's issues must concretely become the focus of state attention at the national, regional, and international levels. Only in this way, women's issues can

be considered a problem of the state and nation and not just a problem of women's groups (Parkes & Pate, 2006b). The rampant cases of discrimination and violence against women, in the public and domestic spheres, to date often raise questions about the extent to which Indonesian law has protected women, and women are often victimized in all matters, such as sexual harassment.

The equality of women and men in Indonesia has always been an inexhaustible question. Because socially and culturally (Jurgens & Betteridge, 2004), Indonesian women have been the object of discrimination and injustice for decades, even before Indonesia's independence. This injustice is when compared to the position and treatment received by men. The history of injustice experienced by Indonesian women must end.

In the view of Indonesian law, many legal instruments guarantee equality and justice for everyone, both men and women, including those derived from international law. Everything has been contained in various laws and regulations, hoping to realize justice following its formulation (Kasera, 2020).

However, in real terms, its enforcement in daily community life is still an unending problem. The reality shows that the law has not yet "taken sides" with women, especially those from poor communities and racial, ethnic, and religious minorities, who do not have access to power. If women have not received equality and justice, then the implementation of the principle of "equality before the law" is doubtful, and this will certainly apply to women prisoners (Guo, 2012).

Every year, the number of women living in detention institutions increases along with the dynamics of crime. The Directorate General of Corrections noted that throughout 2022, the average increase in the number of female prisoners was 7.90 percent. Women prisoners are Indonesian citizens (WNI) who have lost their independence due to serving a sentence in a correctional institution (LAPAS). However, women prisoners are human beings and citizens, so they should be treated following Human Rights (HAM). Article 27 of the 1945 Constitution states that all people are equal before the law, so it raises the consequence that in fulfilling the rights of citizens, there should be no discrimination, even in the process of undergoing punishment due to being convicted.

Human rights, or the Universal Declaration of Human Rights, are fundamental rights that every human being has; human rights are inherent in every person since the person is in the womb. Thus, the human rights of women prisoners are human rights that must be respected and protected, including the right to fair treatment and access to adequate health services (Genders & Player, 2022). The principle of fair treatment and respect for human rights during detention is a principle that must be applied in the criminal justice system. Indonesia as a nation based on Pancasila and the 1945 Constitution of the Republic of Indonesia, it is appropriate that the rights of women prisoners are given special attention because they have natural rights that are different from male prisoners, including female prisoners experiencing menstruation, pregnancy, and breastfeeding so that in this case their rights are affirmative. Although, in fact, in the field, it does not entirely follow the regulations, pregnant women prisoners are entitled to nutritious food intake, including unique rooms separate from other prisoners (Phyu, 2021). In reality, female prisoners and their babies are mixed in one block due to limited facilities that are not proportional to the number of prisoners. For some of these phenomena, researchers are interested in researching the responsibility of fulfilling female prisoners' rights at the Class II A Watampone Correctional Institution, South Sulawesi.

2. Discussion

The fulfillment of the rights of women prisoners in correctional institutions basically refers to the principles derived from Pancasila as the Idiil foundation, the 1945 Constitution as a constitutional (structural) principle, and the Law as an operational principle. In Pancasila, the concept of fulfilling rights has an ideological (philosophical) legal basis in the fifth principle, namely Social Justice for All

Indonesian People. The definition of justice for all Indonesian people contains a right. all Indonesian people to be treated equally before the law (Zhang, 2022).

Rights are a legal power, namely law in the subjective sense which is the power of will given by the legal order (Akoensi, 2018). Because rights are protected by the legal order, the owner of the right has the power to defend his rights from interference / threats from any party. If another party violates the right, it will lead to a lawsuit from the owner of the right, which is submitted to law enforcement officials. Thus it can be said that all Indonesian people without exception are entitled to justice, whether it is a man or a woman even though he or she is a prisoner or not entitled to fair treatment including the fulfillment of their human rights.

Various policies and programs have been carried out to fight for the rights of these women, and the results still have to be and need to be improved. One of the policies through legislation is the ratification of the Convention on the Elimination of all forms of discrimination against women (Hasan, 2021). This convention is one indication that there is protection of differences in treatment of a person on the basis of gender differences. With this provision, it means that women are specifically given guarantees of rights protection in various matters. However, the position of their rights is still vulnerable to various violations, so that in various aspects of life, women have not been able to achieve their rights in real terms. Equality between women and men has been a long struggle and is still being fought for today.

The rights possessed by women prisoners are fundamentally different from those of other prisoners. Although basically the rights possessed by all prisoners are the same, the fact that the physical condition of women is different makes them more special than other prisoners (Haris, 2022). The difference can be seen from the nature of women who experience conditions due to their inherent nature such as pregnancy, childbirth, breastfeeding, menstruation and so on. However, in the eyes of the law, criminals are considered guilty and must be punished according to the level of crime and offense committed, so they must undergo legal proceedings in a special place, namely the Correctional Institution.

Correctional Institution as the last institution in the criminal justice system is an institution that does not question whether someone who wants to be rehabilitated is someone who is really guilty or not. The purpose of the correctional institution is the development of lawbreakers, so it is not merely to retaliate but to correct by attempting to repair (rehabilitate) and return (integrate) prisoners into society this is the philosophical basis of the correctional system (Singh & Maseko, 2006).

Both male and female prisoners essentially have the same rights and must be protected and nurtured by the state. Although in particular, male prisoners, female prisoners and child prisoners are different, so the role of the state is very important in making affirmation efforts towards the fulfillment of these rights because the special conditions possessed lead to consequences of special treatment not intended to create discrimination but instead create equality in treatment (Akiror, 2011). In the concept of special rights for women prisoners because it is the nature of women to experience menstrual cycles, pregnancy, childbirth and breastfeeding that are not shared by other prisoners, so it is only natural that women prisoners need special attention from the state.

Referring to the provisions stipulated in Law Number 12 of 1995 concerning Corrections, it is found that there is only one article that explicitly regulates the issue of women prisoners, namely Article 12 paragraph (2), namely the guidance of women prisoners in correctional institutions is carried out in women's correctional institutions. Meanwhile, there is no regulation regarding the treatment and fulfillment of rights specifically related to women (Barcinski et al., 2017). Because only convicts are mentioned, there is no distinction between male and female prisoners, this means that there has been a vacuum of norms, so in the future this needs to be regulated by norms between male and female prisoners cannot be treated the same, given the psychological differences between men and women. Specifically, the rights of women prisoners are contained in Government Regulation Number 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Prisoners in Article

20 paragraph (1), stating that prisoners and correctional children who are pregnant, sick, or breastfeeding are entitled to additional food in accordance with the doctor's instructions.

Thus, the regulation regarding the protection of prisoners in general has been contained in Law Number 12 of 1995 concerning Corrections, while specifically the protection of women prisoners is limited to only one article as stated in Article 20 paragraph (1) of Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Prisoners.

Although women prisoners are not specifically regulated in Law Number 12 of 1995 concerning prisons, the United Nations has established guidelines in 2010 for policy makers, especially in places of detention, to meet the characteristics and specificities of women undergoing detention including the right to fulfill maternal duties in the best interests of children, including the right to personal hygiene, the provision of related accommodation such as the needs of nursing mothers, pregnant women and childbirth (Borah, 2021). Therefore, it is the obligation of the state to prepare the required service facilities as well as the specific rights as affirmed in the United Nations Rules for the Treatment of Woman Prisoners held in Bangkok in 2010.

However, the fulfillment of these special rights at the research location shows that the availability of services is not optimal, including the fulfillment of health rights including routine health checks, health checks for children who are brought. Conditions that occur health services are only curative or treatment so that medical personnel or doctors are brought in only to cure patients, this is understood because correctional institutions do not yet have permanent doctors and nurses but only with a cooperation system (Handtke et al., 2015; Lines, 2008). So they do not have an obligation to always be present to monitor and check the health of prisoners. Whereas in emergency conditions, medical personnel are needed, especially for pregnant female prisoners who will one day give birth or are at risk of bleeding. Based on this phenomenon, the rights of women prisoners have not been fully enjoyed, in fact, there is the potential for violations of human rights, especially the conditions of detention which include prison overcapacity, excess detention and lack of access to adequate health care facilities and limited female warders at the Watampone Class II A Penitentiary, namely 2 people out of a total of 110 warders. In addition, the condition of many prisoners, namely 490 prisoners with details of 24 female prisoners and 466 men so that as a whole 490 in 2023, there is a density of the number of residents who are not proportional to the available facilities. The results of observations found 24 female prisoners with room facilities as many as 3 blocks and each room of 8 people with no separation between rooms for pregnant, breastfeeding and other female prisoners.

From the aspect of health rights, the results also show that access to health services is not yet adequate, one of the indicators is the absence of permanent doctors and nurses, even though Law Number 12 of 1995 concerning Corrections clearly mandates the availability of medical personnel in terms of doctors and nurses on a permanent basis. Currently, efforts to fulfill the health rights of prisoners, especially children and women, through cooperation with local hospitals, including doctors and nurses who are not permanent (Parkes & Pate, 2006a, 2006b). Observations show that the number of doctors is 2 people and nurses are 5 people, certainly not proportional to the number of prisoners who will get access to health services and care. Based on observations, it was found that the total number of inmates of Class II A Watampone Prison is 490 people with 466 male inmates and 24 female inmates. Another problem is the absence of special toilet facilities for pregnant women resulting in women undergoing pregnancy in detention institutions having to share with other female inmates. The survey results show that the number of pregnant prisoners is 5 people and breastfeeding as many as 3 people. However, based on the survey results, the availability of clean water is decent and adequate.

Some of these problems indicate that the implementation of the obligation to fulfill the basic rights of women prisoners is not optimal, so it requires continuous advocacy and assistance, including by the government to continue to fight for the rights of women prisoners through the fulfillment of access

rights to adequate facilities and infrastructure, including the most urgent is the rehabilitation of buildings so that they can fulfill the rights of prisoners fairly. Including the improvement of regulations or policies that are not gender biased, including the reconstruction of specialization arrangements in correctional institutions such as special correctional institutions for women or special correctional institutions for narcotics, this is very influential in the implementation of the coaching process which is closely related to the protection of the rights of prisoners.

Although in reality, in carrying out the process in correctional institutions the rights of women prisoners in Class II A Bone correctional institutions have not been given in accordance with their rights as citizens. This is caused by several factors, in addition to the above factors, there is also a need for commitment from the government in this case the correctional institution to allocate a human rights-based budget as stipulated in Law Number 39 of 1999 concerning Human Rights which emphasizes the government's obligation to respect, protect, and fulfill human rights through legal, economic and political aspects. In fact, according to Sahardjo, punishment is not merely to cause pain to the convict because of the loss of freedom of movement, but to guide the convict to repent, to become a useful member of Indonesian social society.

So resocialization is very important, especially in the process of interaction between prisoners, correctional officers, and the community, and into the process of interaction which includes changing the value system of prisoners, so that they can properly and effectively adapt to the norms and values that apply in society (Jurgens & Betteridge, 2004; Novianti et al., 2020; Parkes & Pate, 2006b). The correctional system is a process of fostering convicts based on the principles of Pancasila, which views convicts as creatures of God, individuals, and at the same time as members of society and this correctional system still prioritizes the rights of prisoners and correctional students.

3. Conclusion

Women prisoners have basic rights that are inherent from birth, therefore even though they hold the status of prisoners does not eliminate the human rights to be enjoyed. So it is the responsibility of the state to fulfill these basic rights even though the fulfillment of these basic rights by the state is not optimal so that women prisoners do not enjoy these rights properly due to policies either directly or indirectly that cause discrimination for women prisoners because the correctional institution law has not accommodated special treatment with special rights for women prisoners. For this reason, the earliest step that can be taken in realizing a change in order to realize better conditions for women prisoners is the legal reconstruction of Law Number 12 of 1995 concerning Corrections by accommodating several articles related to special rights and special treatment for women prisoners, so that the government has a normative legal obligation to fulfill through affirmative action.

References

- Akiror, M. (2011). *The impact of imprisonment on the health rights of female inmates, a comparative study: a case study of Soroti Prison-Uganda*.
- Akoensi, T. D. (2018). 'In this job, you cannot have time for family': Work–family conflict among prison officers in Ghana. *Criminology & Criminal Justice*, 18(2), 207–225.
- Barcinski, M., Cúnico, S. D., & Brasil, M. V. (2017). The meanings of re-socialization to correctional officers in a women's prison: between care and control. *Trends in Psychology*, 25, 1257–1269.
- Borah, K. (2021). A Critical Introspection on the Enjoyment of Legal Rights by Women Undertrial Prisoners in Central Jails of Assam. *Indian Journal of Gender Studies*, 28(2), 248–261.

- Butt, K. M. (2020). Women Prisoners: A Case Study of Central Jail, Kot Lakhpat, Lahore. *South Asian Studies*, 29(1).
- Genders, E., & Player, E. (2022). Long sentenced women prisoners: Rights, risks and rehabilitation. *Punishment & Society*, 24(1), 3–25.
- Guo, J. (2012). ‘Anyone in my shoes will end up like me’: Female inmates’ discourse of responsibility for crime. *Discourse & Society*, 23(1), 34–46.
- Handtke, V., Bretschneider, W., Elger, B., & Wangmo, T. (2015). Easily forgotten: Elderly female prisoners. *Journal of Aging Studies*, 32, 1–11.
- Haris, L. (2022). Lopsided Liability: Analyzing the Constitutional and Statutory Implications of the Bop’s Failure to Meet Programming Duties for Incarcerated Individuals in Female Prisons. *Admin. L. Rev. Accord*, 7, 183.
- Hasan, M. (2021). Effort to Fulfill Female Convicts’ Rights to Health and Clothing at Sigli Class Iib Correctional Facility for Women. *Jurnal Penelitian Hukum De Jure*, 21(2), 237–242.
- Jurgens, R., & Betteridge, G. (2004). Prisoners who inject drugs: public health and human rights imperatives. *Health & Hum. Rts.*, 8, 46.
- Kasera, P. (2020). Rights of Women Prisoners in India. Available at SSRN 3621467.
- Lines, R. (2008). The right to health of prisoners in international humanrights law. *International Journal of Prisoner Health*, 4(1), 3–53.
- Novianti, V., Ernaningsih, W., & Flambonita, S. (2020). Efforts to Fulfill the Right of Rehabilitation For Female Defendant (Study at Lapas Ila Women’s Prison in Palembang). *6th International Conference on Social and Political Sciences (ICOSAPS 2020)*, 456–464.
- Parkes, D., & Pate, K. (2006a). Time for accountability: Effective oversight of women’s prisons. *Canadian Journal of Criminology and Criminal Justice*, 48(2), 251–285.
- Parkes, D., & Pate, K. (2006b). Time for accountability: Effective oversight of women’s prisons. *Canadian Journal of Criminology and Criminal Justice*, 48(2), 251–285.
- Phyu, S. Z. L. (2021). Public Policy and the Challenge of Health Care Services to Women prisoners in Myanmar. *Review of Human Rights*, 7(1).
- Singh, A., & Maseko, T. W. (2006). The protection of prisoners’ rights to health care services in South African law: is it adequate? *Journal for Juridical Science*, 31(1), 80–100.
- Zhang, A. (2022). ‘Safety overrides all other concerns’: On why collective discipline in China fail to rehabilitate female prisoners. *International Journal of Law, Crime and Justice*, 70, 100547.