

# Legal Protection for Women Recidivist Convicts in the Development Process in Correctional Institutions

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## Abstract

Corrections are a subsystem of criminal justice that organizes law enforcement in the field of treatment of detainees, children and inmates. Correctional law has not provided special treatment for female recidivists, which results in a lack of focus on rehabilitation and reintegration, ineffectiveness in preventing crime, lack of individualization approach. This study aims to analyze and find the reconstruction of legal protection regulations for female recidivists in correctional institutions based on the values of justice. The research used a socio legal research approach using primary and secondary data and qualitative analysis of data. The result of the research is that legal protection for female recidivists in correctional institutions has not yet realized the value of justice. In terms of legal substance, there is no coaching program that has formed special regulations in the form of laws and regulations, from the legal structure there is a lack of focus on rehabilitation and reintegration, ineffectiveness in preventing crime, from a recidivist legal culture that often focuses on separating individuals from society through prolonged punishment or detention long term, lack of opportunity for repentance and improvement. So that legal protection for female recidivists in fostering in prisons is based on values of justice, by reconstructing Article 36 paragraph (4) and Article 61 paragraph (2) of Law Number 22 of 2022 Concerning Corrections.

**Keywords:** Protection; Law; Prisoners; Recidivists; Women; Justice

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## A. INTRODUCTION

All human activities, both political, social and economic, have the potential to become perpetrators of crime. The perpetrator of the crime itself can be interpreted as an act or anti-social action that has received criticism from society because it is considered contrary to norms.<sup>1</sup>

Ironically, the Penitentiary is a crime school for convicts, including female convicts. As a result, people actually become eviler after serving criminal sanctions in Correctional Institutions. This has become one of the dominant factors in the emergence of a female ex-convict committing another crime, which is commonly called a recidivist.<sup>2</sup>

Correctional institutions should have the concept of social rehabilitation and not solely as a place to give criminal sanctions, but also as a place to foster or protect and socialize inmates so that after serving their sentence, they have the ability to adapt to conditions outside the Penitentiary as members of the community. good and comply with applicable laws.<sup>3</sup>

Correctional Institutions are activities to carry out the development of Correctional Assistance Citizens based on systems, institutions, and methods of development which are the final part of the punishment system in the criminal justice system. Because they have committed a crime or offense. For the Indonesian nation, thoughts regarding the function of punishment are not only in the mere aspect of deterrence, but also as a form of social rehabilitation and reintegration, which has created a system of guidance for lawbreakers known as the correctional system.<sup>4</sup>

A person commits a repetition of a crime caused by several factors such as the lack of effective operation of one of the subsystems of one of the criminal justice systems in Indonesia, economic, social and cultural factors. In the Indonesian Criminal Code, repetition of criminal acts is only known in the form of recidivism, with no limit to the number of repetitions.<sup>5</sup>

The handling of recidivism crime is carried out in a series of systems called the criminal justice system which is a means in society to deal with crime. The components in the system are the police, prosecutors, courts

<sup>1</sup> Syafruddin Hussein, 2003, *Kejahatan Dalam Masyarakat dan Upaya Penanggulangannya*, Fakultas Hukum Sumatra Utara, Medan, page. 1  
<sup>2</sup> Adrianus Meliala, et.all, 2009, *Restorative Justice System: Sistem Pembinaan Para Narapidana Untuk Pencegahan Resedivisme*, Artikel ini Disajikan Dalam Kerangka Kerjasama Antara Tim Penulis (Dept. Kriminologi FISIP UI) dengan *Australian Agency for International Development*, Jakarta, page. 2

<sup>3</sup> Marpaung, 2010, *Sistem Pemasyarakatan*, Sinar Grafika, Jakarta, page. 34-38

<sup>4</sup> Adami chazawi, 2002, *Pelajaran Hukum Pidana Bagian 2*, Grafindo persada, Jakarta, page. 100

<sup>5</sup> Diatur di dalam Buku II Bab XXXI Pasal 486 sampai dengan Pasal 488 Kitab Undang-Undang Hukum Pidana.

and correctional institutions.<sup>1</sup> The four components must work and process in an integrated manner in criminal justice and are expected to become the basis for law enforcement in the Republic of Indonesia which is based on law.

Conceptually convicts should receive guidance in correctional institutions, but in reality, many convicts actually commit crimes again both while still in the correctional environment and when they are free. One of the things that undermines the social system is the existence of repeat offenders or what is commonly called recidivist. These criminals usually repeat the same crime, even though he was once sentenced. Whereas Correctional Institutions have the goal of guiding convicts so they want to repent, as well as educating them to become good and useful members of society. So that everything remains based on humanity and in accordance with the objectives of guidance and education for convicts.

The regulation that needs to be criticized for reconstruction is Law Number 22 of 2022 concerning Corrections, that there is no difference in coaching in Correctional Institutions between female recidivists and ordinary prisoners, where there should be differences in coaching carried out because recidivists are people who have done coaching in Penitentiary. Therefore, it is necessary to add to the contents of the Article which regulates the guidance for female recidivists inmates. Based on the description of the background above, the problem in this research is how is the legal protection for female recidivists in correctional institutions currently, and how is the legal protection for female recidivists in fostering in correctional institutions based on the value of justice.

## **B. Research Methods**

In this study the authors use the constructivism paradigm, a paradigm that views law as only dealing with statutory regulations. Law as something that must be applied, and tends not to question the value of justice and its use for society. This type of research with a socio legal research approach. The data collection method used comes from primary and secondary data. Data analysis was carried out using qualitative analysis methods.

## **C. Research Results**

### **1. Legal protection for women recidivist convicts in current correctional institutions.**

The philosophical basis of why Law Number 12 of 1995 concerning Corrections was changed to Law Number 22 of 2022 concerning Corrections is that Law Number 22 of 2022 concerning Corrections highlights old regulations that have not yet regulated prisoner services. Guidance mechanism for inmates of correctional institutions. There is no regulation regarding the implementation of security in correctional institutions and health care for prisoners. There is no protection for correctional officers in carrying out their duties and responsibilities. As well as the absence of additional in terms of the use and development of information technology.

This new Correctional Law contains strengthening the position of Correctional Institutions in an integrated criminal justice system that organizes law enforcement in the field of treatment of Detainees, Children and Detainees; expanding the scope of the objectives of the Correctional System not only to improve the quality of Prisoners and Assisted Children but also to provide guarantees for the protection of the rights of Prisoners and Children; the renewal of the principles in the implementation of the Correctional System is based on the principles of protection, non-discrimination, humanity, mutual cooperation, independence, proportionality, loss of independence as the only suffering, and professionalism.

Law Number 22 of 2022 concerning Correctional Institutions provides a direction for affirming regulations regarding rights and obligations for Detainees, Children and Convicts; Arrangements regarding the implementation and provision of Service, Development, Community Guidance programs, as well as the implementation of Treatment, Security, and Observation; Arrangements regarding the support of intelligence activities in the implementation of the Security and Observation function; Arrangements regarding the code of ethics and code of conduct of Correctional Officers as well as guarantees for the protection of the rights of Correctional Officers to obtain security protection and legal assistance in carrying out their duties and functions.

Law Number 22 of 2022 concerning Corrections also contains arrangements regarding the obligation to provide facilities and infrastructure in the administration of the Correctional System including Correctional information technology systems; arrangements regarding supervision of the implementation of Correctional functions; and arrangements regarding cooperation and community participation carried out in the context of administering the Correctional System.

The considerations for Law Number 22 of 2022 concerning Corrections are:

- a. whereas in essence the treatment of suspects, defendants and convicts who have been deprived of their liberty must be based on the principles of legal protection and respect for human rights based on

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<sup>1</sup> Arjono Reksodiputro, 1997, *Reformasi Sistem Pemasyarakatan*, Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, Jakarta, page. 84

- Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. that correctional facilities are an integral part of the integrated criminal justice system organized by the government as part of the law enforcement process in the context of providing services as well as coaching and mentoring for social reintegration;
  - c. that Law Number 12 of 1995 concerning Corrections is no longer in accordance with developments in community law and has not fully reflected the need for the implementation of the correctional system so that it needs to be replaced;
  - d. that based on the considerations referred to in letters a, b, and c, it is necessary to stipulate a Law on Corrections.

The importance of discussing recidivist perpetrators is because the actions they have taken have been repeated, so that convicts have already carried out coaching in Correctional Institutions but are still committing crimes again. This proves that the guidance carried out in Correctional Institutions has not been maximized and has not had a deterrent effect, so different coaching is needed between female recidivists and prisoners who are not recidivists.

Women prisoners are a group that is vulnerable to discrimination and oppression in the criminal justice system. They are often seen as a less respected group, especially if they are recidivists. This makes their rights as citizens are often harmed and not fully guaranteed in correctional institutions.

The development of female recidivists in correctional institutions is a complex matter and is often in the spotlight because of various problems that occur, one of which is legal protection which has not been fully provided to them.<sup>1</sup>

Women recidivist convicts are often seen as a less respectable group and easily become victims of discrimination and oppression in the criminal justice system. This is due to the repeated criminal acts committed by female recidivists, so that society and law enforcement agencies pay less respect to their rights as citizens.

For example, female recidivists are often seen as irresponsible and difficult to correct, so their rights are often ignored or belittled. In addition, many female recidivists experience difficulties in gaining access to legal and educational services, as they are often seen as unfit for such assistance.<sup>2</sup>

Therefore, there is a need for more serious efforts on the part of correctional institutions and the government in improving conditions and facilities in correctional institutions to provide sufficient and adequate legal protection for female recidivists inmates. In addition, efforts are also needed to increase education and awareness of the rights of female recidivists in the criminal justice system.<sup>3</sup>

These conditions can worsen the access of female recidivists to a fair trial and other citizens' rights. In addition, the judiciary also often punishes female recidivists with more severe punishments than male convicts who commit the same crimes. This shows the existence of gender discrimination in the criminal justice system.

The lack of awareness and commitment from correctional institutions and the judiciary in protecting the rights of female recidivists can also have an impact on the injustice of the criminal justice system as a whole. Therefore, there is a need for more serious efforts on the part of correctional institutions and judicial institutions in increasing their awareness and commitment to protecting the rights of female recidivists.<sup>4</sup>

The social stigma attached to female recidivism convicts can also complicate efforts to provide fair legal protection. Society often tends to criticize and isolate female recidivism convicts, which in turn makes it difficult for them to get support and assistance from social and government institutions. This can make them isolated and difficult to start a new life after leaving prison.

This social stigma can be related to wrong perceptions or negative stereotypes attached to female recidivists. Society often perceives them as bad and unreliable people, so they are avoided and ignored by those around them. This can worsen their psychological condition and make it more difficult for them to start a new life.

To overcome this problem of social stigma, it is necessary to make efforts to increase public awareness about the rights of female recidivists and reduce discrimination against them. The government and social institutions also need to provide adequate support and assistance to assist female recidivism convicts in starting a new life after leaving prison.<sup>5</sup>

According to the researcher, this is not in accordance with the theory of justice, both Pancasila justice which will be explained below and general justice theory. In legal philosophy, natural law theories from Socrates to Francois Geny, still maintain justice as the crown of law. Natural Law Theory prioritizes "the seeking for

<sup>1</sup> Fajri, A., 2020, *Perempuan Residivis dan Perlindungan Hukum*. Jakarta: Indonesian Legal Roundtable. <https://www.iltoday.com/perempuan-residivis-dan-perlindungan-hukum/>

<sup>2</sup> Basuki, N., & Hamzah, A, 2019, *Protecting Women's Rights in Indonesian Prisons: A Study of Women Prisoners' Experiences in Four Prisons in Indonesia*. Tangerang: Community Legal Aid Institute (LBH Masyarakat).

<sup>3</sup> Carlson, Elizabeth, 2012, *Women and Criminal Justice: An International Perspective*, Jones & Bartlett Publishers

<sup>4</sup> Storr, Merilin and Kirby, Amy, 2015, *Women, Crime and Criminal Justice: A Global Enquiry*, Routledge

<sup>5</sup> Ahn, H. J., & Choi, Y. J. (2017). The social stigma of ex-convicts and its effects on recidivism: A systematic review. *Journal of the Korean Society of Public Health Nursing*, 31(1), 36-49.

justice". There are various theories about justice and a just society. These theories concern rights and freedoms, opportunities for power, income and prosperity. Among these theories can be mentioned: Aristotle's theory of justice in his book *Nicomachean ethics*, John Rawl's theory of social justice in his book *A theory of justice* and also Ahmad Ali in exposing legal theory and justice theory.

Aristotle's view of justice is contained in his work *Nicomachean ethics*, politics, and rhetoric. More specifically, in the book *Nicomachean Ethics*, the book is devoted entirely to justice which, based on the general philosophy of Aristotle, should be considered the core of his philosophy of law, "because law can only be enacted in relation to justice".<sup>1</sup>

Aristotle's view above is very important that justice must be understood in terms of equality. Aristotle however makes an important distinction between numerical equality and proportional equality. Numerical similarity equates every human being as a unit. This is what is now commonly understood about equality and what is meant when it is said that all citizens are equal before the law. Proportional equality gives each person what he is entitled to according to his abilities, achievements, and so on. From this difference, Aristotle presents many controversies and debates about justice. Furthermore, he distinguishes justice into types of distributive justice and corrective justice.

Distributive justice according to Aristotle focuses on distribution, honor, wealth, and other goods that can be obtained equally in society. Leaving aside the mathematical "proof", it is clear that what Aristotle had in mind was the distribution of wealth and other valuables based on the prevailing values among citizens. Fair distribution may be a distribution that is in accordance with its good value for society.

On the other hand, corrective justice focuses on correcting something that went wrong. If a violation is violated or a mistake is made, then corrective justice seeks to provide adequate compensation for the injured party, if a crime has been committed, then the appropriate punishment must be given to the perpetrator. However, injustice will result in disruption of equality that has been established or has been formed. Corrective justice is tasked with rebuilding that equality. From this description it appears that corrective justice is the area of justice while distributive justice is the government's field.<sup>2</sup>

In building his argument, Aristotle emphasized the need to make a distinction between verdicts that base justice on the nature of the case and those based on general and customary human nature, and verdicts based on certain views from certain legal communities. This distinction should not be confused with the distinction between positive law stipulated in the Act and customary law. Because, based on Aristotle's distinction, the last two judgments can be sources of consideration that only refer to certain communities, while other similar decisions are embodied in the form of legislation, still a natural law if it can be obtained from general human nature.

Meanwhile, Rawls in his book *A Theory of Justice* explains the theory of social justice as the difference principle and the principle of fair equality of opportunity. The essence of the difference principle is that social and social differences must be regulated so as to provide the greatest benefits to those who are most disadvantaged.

The term socio-social differences in the principle of difference leads to inequality in the prospect of a person getting the basic elements of welfare, income and authority. Meanwhile, the principle of fair equality of opportunity shows those who have the least opportunity to achieve prospects for prosperity, opinion and authority. They are the ones who should be given special protection.

Rawls works on the theory of the principles of justice primarily as an alternative to the theory of utilitarianism as proposed by Hume, Bentham and Mill. Rawls argues that in a society organized according to the principles of utilitarianism, people will lose their self-esteem, moreover that service for the common development will disappear. Rawls also argues that this theory is actually stronger than what is considered normal by society. It is possible to ask for sacrifices for the sake of the public good, but it cannot be justified that these sacrifices are first asked of people who are already less fortunate in society.

According to Rawls, situations of inequality must be given rules in such a way as to benefit the weakest sections of society the most. This happens if two conditions are met. First, a situation of inequality guarantees a minimum maximum for the weakest class of people. This means that the social situation must be such that the highest possible profit is generated for the lower classes of people. Second, inequality is tied to positions that are open to everyone. It means that everyone is given the same opportunities in life. Based on these guidelines all differences between people based on race, skin, religion and other differences that are primordial in nature, must be rejected.

Furthermore, Rawls emphasized, The first statement of the two principles reads as follows in a natural way. First, each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second, social and economic inequalities are to be arranged so that they are both (a) reasonably

<sup>1</sup> Carl Joachim Friedrich, 2004, *Filsafat Hukum Perspektif Historis*, Nuansa dan Nusamedia, Bandung, page. 25

<sup>2</sup> Carl Joachim Friedrich, *Op.Cit*, page. 25

expected to be to everyone's advantage, and (b) attached to positions and offices open to all. Programs for upholding justice with a populist dimension must pay attention to two principles of justice, namely first, giving equal rights and opportunities to the broadest basic freedoms of equal freedom for everyone. Second, being able to rearrange existing social inequalities so as to provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups.<sup>1</sup>

Thus, differences demand that the basic structure of society be regulated in such a way that the gap in prospects for obtaining the main things of welfare, income, authority is reserved for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: First, to correct and improve the condition of inequality experienced by the weak by presenting empowering social, social and political institutions. Second, every rule must position itself as a guide to develop policies to correct the injustices experienced by the weak.

Legal protection for female recidivists in correctional institutions is still considered unfair due to several factors. First, the social stigma attached to female recidivism convicts can complicate efforts to provide fair legal protection. Second, the lack of awareness and commitment from correctional institutions and the judiciary in protecting the rights of female recidivism inmates is also a factor exacerbating this situation. Third, prisons often lack adequate resources and infrastructure to provide legal protection to female recidivists. As a result, they are often victims of physical, sexual, and psychological violence from fellow prisoners, security guards, and even their families who come to visit. And finally, there are many cases where female recidivists do not have access to competent lawyers or other legal services that should be provided by correctional institutions.

Based on Article 28D paragraph (1) of the 1945 Constitution, it is stated that everyone has the right to protection for himself/herself, family, honor, dignity, and human rights. In addition, in Article 2 letters a and c of Law Number 22 of 2022 Concerning Corrections, that:

The Correctional System is organized for the purpose of providing guarantees for the protection of the rights of prisoners and children and to provide protection to the public from repetition of criminal acts.

The correlation between the rights of female recidivists and the rights of women in general is that female recidivists also have the same rights as other women, such as the right to self-protection, the right to reproductive health, and the right to recognition as an independent and equal individual. with men. However, female recidivism convicts often experience more severe discrimination and oppression, because of the social stigma attached to them as people who have committed criminal acts repeatedly.<sup>2</sup>

The purpose of legal protection for female recidivists in correctional institutions includes:<sup>3</sup>

1. Preventing acts of discrimination: Legal protection aims to prevent acts of discrimination aimed at female recidivists in correctional institutions.
2. Preventing acts of violence: Legal protection also aims to prevent acts of physical, sexual and psychological violence from being committed by other prisoners, security officers or visiting families.
3. Providing access to justice: Women recidivist prisoners have the same rights as other citizens to obtain access to justice, including the right to be represented by a competent lawyer and to have access to other legal services.
4. Promoting rehabilitation: Equitable legal protection can help motivate female recidivists to join rehabilitation programs and change their behavior.
5. Guarantying women's rights: Legal protection must also ensure that women's special rights, such as the right to reproductive health, are not neglected or violated.

The rights of female convicts in correctional institutions have not been fully fulfilled. This is caused by the lack of adequate resources and infrastructure in correctional institutions, lack of awareness and commitment from correctional officers and judicial institutions, as well as the social stigma attached to female recidivists. Female prisoners are also often victims of physical, sexual and psychological violence in correctional institutions. To ensure that the rights of female convicts are fulfilled, it is necessary to reform the criminal justice system and law enforcement, as well as increase the awareness and commitment of correctional officers and judicial institutions.<sup>4</sup>

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<sup>1</sup> John Rawls, *A Theory of Justice*, Cambridge, Massa Chusetts, The Belknap Press of Harvard University press, 1971, p.60. Lihat pula terjemahan ke bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, 2006, *Teori Keadilan, Dasar-dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara*, cet-1, Yogyakarta: Pustaka Pelajar., page. 72.

<sup>2</sup> Lihat Pasal 2 huruf a dan c Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan.

<sup>3</sup> Wahyuni, E. N, 2019, *Perlindungan Hukum Terhadap Narapidana Perempuan di Lembaga Pemasyarakatan Khusus Perempuan*, Jurnal Dinamika Hukum, 19(2), page. 171-182

<sup>4</sup> Rachmawati, S, 2020, *Hak-hak Narapidana Perempuan Dalam Pembinaan Di Lembaga Pemasyarakatan*. Jurnal Pembangunan Hukum Indonesia, 7(2), page. 130-142.



lack adequate resources and infrastructure to provide legal protection to female recidivists. As a result, they are often victims of physical, sexual, and psychological violence from fellow prisoners, security guards, and even their families who come to visit. And finally, there are many cases where female recidivists do not have access to competent lawyers or other legal services that should be provided by correctional institutions.<sup>1</sup>

Regulation of the Director General of Corrections Number PER-21/PJ/2015 is a regulation that regulates the development of recidivist female convicts in correctional institutions. Some of the things regulated in this regulation include:

1. The objective of fostering recidivist female convicts is to provide holistic and integrated protection, service and recovery by taking into account human rights as well as gender and age characteristics.
2. The training of recidivist female convicts is carried out by training officers, counselors and volunteers who have received special training.
3. Guidance covers several aspects, such as religion and beliefs, education and training, health and welfare, as well as productive activities.
4. Recidivist female prisoners have the right to receive the same treatment as other prisoners, as well as the right to gain access to adequate health and legal services.
5. Recidivist female convicts are endeavored to be placed in a special correctional institution for women, but if this is not possible, they can be placed in another correctional institution by taking into account the established criteria and requirements.

This Regulation of the Director General of Corrections Number PER-21/PJ/2015 aims to provide holistic protection and recovery for female recidivists and pay attention to human rights and gender and age characteristics.<sup>2</sup>

Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of the Rights of Correctional Families. Some of the things regulated in this regulation include the requirements for the rights of correctional inmates. Article 3 of Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of the Rights of Correctional Inmates states that the rights of correctional inmates can be exercised if certain conditions are met, such as good behavior, not committing violations of the discipline, and comply with the rules and regulations of the penitentiary.

Implementation of the rights of correctional inmates Article 5 to Article 16 of Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of Correctional Assistance Prisoners' Rights regulates the rights possessed by correctional inmates such as the right to health, the right to work, the right to education, the right to religion, the right to family relations, the right to advocacy, and the right to legal protection.

Upholding the rights of correctional inmates Article 17 to Article 22 of Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of the Rights of Correctional Inmates regulates the enforcement of the rights of inmates. In the event that the rights of correctional inmates are violated, then the actions regulated in this regulation can be carried out, such as verbal warnings, written warnings, and strict sanctions. Complaints and dispute resolution Articles 23 to 26 of Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of the Rights of Correctional Assisted Citizens regulate complaints and dispute resolution related to the rights of inmates.

Government Regulation Number 99 of 2012 concerning Procedures for the Implementation of the Rights of Correctional Assisted Citizens aims to provide protection and guarantees for the rights of correctional inmates. This is important to do so that they still feel valued and treated humanely while serving their sentence in correctional institutions.<sup>3</sup> Law Number 22 of 2022 concerning Corrections is a statutory regulation that regulates the correctional system in Indonesia. Some of the contents of the law include:

The definition of correctional and convicts Article 1 paragraph 1 of Law Number 22 of 2022 Concerning Corrections explains that  
Corrections are a subsystem of criminal justice that organizes law enforcement in the field of treatment of detainees, children and inmates.

Correctional purposes Article 2 of Law Number 22 of 2022 Concerning Corrections explains that:

Correctional System organized for the purpose of:

- a. provide protection guarantees for the rights of prisoners and children;
  - b. improve the quality of personality and self-reliance of the Prisoners so that they are aware of mistakes, improve themselves, and not repeat criminal acts, so that they can be accepted again by the community, can live normally as good citizens, obey the law, are responsible, and can play an active role in development;
- And

<sup>1</sup> Harahap, R, 2018, *Perlindungan Hukum Terhadap Narapidana Dalam Rangka Meningkatkan Partisipasi Masyarakat Dalam Pembinaan Di Lembaga Pemasyarakatan*. Jurnal Hukum Respublica, 2(1), page. 40-50

<sup>2</sup> Lihat Peraturan Direktur Jenderal Pemasyarakatan Nomor PER-21/PJ/2015.

<sup>3</sup> Lihat Peraturan Pemerintah Nomor 99 Tahun 2012 Tentang Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan

- c. provide protection to the public from repetition of criminal acts.

Correctional principles Article 3 of Law Number 22 of 2022 Concerning Corrections explains that:

The correctional system is implemented based on the principles of:

- a. protection;
- b. non-discrimination;
- c. humanity;
- d. mutual cooperation;
- e. independence;
- f. proportionality;
- g. loss of independence as the only suffering; And
- h. professionalism.

Prisoners' rights are contained in Article 9 of Law Number 22 of 2022 Concerning Corrections, that:

Prisoners are entitled to:

- a. carry out worship according to their religion or belief;
- b. receive treatment, both physical and spiritual;
- c. get education, teaching, and recreational activities as well as opportunities to develop potential;
- d. get proper health services and food in accordance with nutritional needs;
- e. get information services;
- f. get legal counseling and legal assistance;
- g. submit complaints and/or grievances;
- h. obtain reading materials and follow broadcasts of mass media that are not prohibited;
- i. receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all actions that endanger the physical and mental;
- j. get work safety guarantee, wages, or work result premium;
- k. get social services; And
- l. accept or refuse visits from family, advocates, assistants, and the community.

Correctional officers in Article 84 paragraph 1 of Law Number 22 of 2022 Concerning Corrections, that correctional officers are functional law enforcement officials who carry out correctional functions.

Guidance for convicts in Article 38 explains that based on the results of Litmas, coaching takes the form of:

- a. personality development; And
- b. independence development.

Whereas correctional institutions in Article 1 letter 18 provide an explanation of correctional institutions, hereinafter referred to as prisons, which are institutions or places that carry out the function of fostering convicts.

Law Number 22 of 2022 concerning Corrections is the legal basis for the correctional system in Indonesia and contains several provisions relating to the protection of the rights of convicts, including female recidivists, in correctional institutions.<sup>1</sup>

**Legal Protection for Women Recidivist Convicts in Correctional Institutions has several weaknesses, including the following:**

**Weaknesses from the Legal Substance Aspect.** Following are some of the weaknesses that are generally associated with legal substance regarding recidivists:<sup>2</sup>

- a. Retrospective approach: The recidivism concept is based on a person's criminal record. This means that a more severe sentence is applied to someone who has committed a previous offence, regardless of the changing factors in a person's life and character. This approach does not provide an opportunity for rehabilitation or positive change that can occur in the individual.
- b. Lack of focus on rehabilitation: Legal substance on recidivists tends to focus more on the sentences and penalties given to repeat offenders, rather than on their rehabilitation efforts. This can hinder recovery and social reintegration efforts for offenders, as well as reduce opportunities to address the root causes of criminal behavior.
- c. Discrimination potential: The use of the concept of recidivism in law can lead to potential discrimination against individuals who have committed previous offences. In some cases, a more severe sentence may be imposed on an individual based on their criminal record, without taking into account the individual context or social factors that may have influenced previous decisions.
- d. Does not take into account the causative factors of crime: Legal substance regarding recidivism tends to focus more on punishment than on addressing the factors underlying criminal behavior. Lack of attention to issues such as poverty, mental illness, or social injustice can hinder efforts to prevent crime and promote sustainable rehabilitation.

<sup>1</sup> Lihat Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan.

<sup>2</sup> Maruna, S., & LeBel, T. P. 2016. *The Wiley Handbook of Offender Rehabilitation*. Wiley.

- e. Inflexibility: Recidivist legal systems often adopt an inflexible approach to individual cases. Sentences determined based on a person's criminal record may not take into account differences in the severity of the offense, the individual's conversion rate, or the potential for positive change. This can hinder potential social recovery and reintegration.
- f. Does not consider social changes: The legal substance of recidivism often does not consider social changes that occur over time. Societal and legal norms may change over time, and views on crime and approaches to rehabilitation may also change. However, recidivism law is often tied to traditional approaches that may no longer be relevant or effective in a changing social context.
- g. Does not provide incentives for improvement: Because recidivism is based on a person's criminal record, more severe penalties are imposed without providing clear incentives for individuals to make improvements and avoid future criminal behavior. Systems based solely on harsh punishments may not encourage positive change or motivation to address the underlying problems of criminal behavior.
- h. Not considering mitigating factors: The legal substance regarding recidivists tends to not consider mitigating factors that can influence an individual's decision to commit a crime. Factors such as economic stress, negative social environment, or past trauma may not be taken into account in the recidivism assessment. This can lead to injustice in the legal system and disproportionate punishment.
- i. May hinder social reintegration: More severe penalties for recidivists may create barriers to their social reintegration. Prolonged punishment or continued separation from society can exacerbate social isolation and hinder individual efforts to improve their lives. As a result, they may face greater difficulty readjusting back into society after serving time.
- j. Focus on criminal justice: Legal substance on recidivism tends to focus on criminal justice and punishment, while paying less attention to sentencing alternatives such as rehabilitation, education, or community monitoring which can be more effective in reducing recidivism rates. This lack of focus on alternative approaches can hinder efforts to minimize crime in society as a whole.

**Weaknesses from the Legal Structure Aspect.** Following are some of the weaknesses that are generally associated with legal structures regarding recidivists:<sup>1</sup>

- a. Inflexibility in sentencing: Legal structures on recidivism often adopt an inflexible approach to sentencing. Heavier penalties are imposed automatically based on the number of previous offences, without taking into account differences in the severity of the offense or individual conversion rates. This can result in disproportionate and unfair punishments.
- b. Lack of focus on rehabilitation and reintegration: Recidivist legal structures often focus more on punishment and separation from society than on social rehabilitation and reintegration measures. Systems that do not provide sufficient opportunities for individuals to change their behavior and prepare them for a productive life can hinder efforts to reduce recidivism rates.
- c. Ineffectiveness in preventing crime: Although the primary purpose of recidivism laws is to prevent crime, these legal structures are often ineffective in achieving that goal. More severe punishment for recidivism has not been consistently proven to reduce recidivism rates. Lack of focus on the underlying causes of crime and a holistic approach to prevention can hinder efforts to prevent crime.
- d. Does not take individual changes into account: Recidivist legal structures often do not take individual changes over time into account. Even though a person may have experienced repentance and attempted to change their behavior, these legal structures still base the conviction on a past criminal record. This can undermine the potential for positive change and can hinder successful social reintegration efforts.
- e. Potential for racial discrimination and disparity: Legal structures regarding recidivism can potentially lead to racial discrimination and disparities within the criminal justice system. Factors such as racial profiling, systemic injustice, and unfair law enforcement can influence the approach to recidivism and the punishments administered. This can lead to systematic injustice in the treatment of certain individuals.
- f. Lack of individualization approach: Recidivist legal structures tend not to take individual differences into account in determining sentences. A uniform approach for all recidivists may not take into account factors such as social circumstances, conversion rates, or rehabilitation potential that differ between individuals. As a result, some individuals may receive punishments that do not suit their circumstances.
- g. Does not take into account successful rehabilitation: Legal structures on recidivism often do not provide recognition or incentives for individuals who have been successfully rehabilitated and change their behavior. Even if a person has shown positive changes and has not been involved in crime over a period of time, their past criminal track record still influences future convictions. This can hinder individual motivation and efforts to live a crime-free life.
- h. Imbalance in the treatment of misdemeanor and serious offences: Recidivist legal structures often do not provide any distinction in the handling of misdemeanor and serious offences cases. In some cases,

<sup>1</sup> Hallett, M., & Lamond, D, 2015, Reimagining Rehabilitation: Beyond the Individual. Routledge.



individuals who have a long criminal record may receive more severe penalties than individuals who commit serious offences the first time. This can lead to an imbalance in legal treatment and disproportionate punishment.

- i. Potential to create a vicious circle: Recidivist legal structures can create a vicious circle where individuals who have been convicted as recidivists often face difficulties social reintegration and restarting positive lives. This can increase the risk of further recidivism and result in a continuous crime cycle.
- j. Not prioritizing victim recovery: Legal structures regarding recidivism often do not prioritize recovery and justice for victims. The main focus is on the punishment of perpetrators, while attention to the needs and recovery of victims is often lacking. This can overlook an important aspect of the criminal justice system which aims to provide remedy and justice for all parties involved in a crime.

**Weaknesses from the Legal Culture Aspect.** Following are some of the weaknesses that are generally associated with legal culture regarding recidivists:<sup>1</sup>

- a. Persistent social stigma: The legal culture of recidivism often creates a persistent social stigma against individuals who have become recidivists. Such individuals may be shunned by society, experience discrimination in their search for work, and have difficulty building a stable life after serving time. This stigma can hinder social rehabilitation and reintegration efforts.
- b. Separation and dehumanization: Recidivist legal cultures often focus on separating individuals from society through lengthy sentences or long-term detention. This can lead to dehumanization of individuals and disregard for their human rights. Long-term separation can also hamper social rehabilitation and reintegration efforts.
- c. Lack of social support: The recidivist legal culture tends to be minimal in providing social support for individuals who have become recidivists. The criminal justice system is often more focused on punishment than on supporting individuals in positive change and social reintegration. This lack of social support can increase the risk of recidivism.
- d. Lack of opportunities for repentance and reform: The legal culture of recidivism tends to provide little opportunity for individuals to repent and reform. A focus on punishments and penalties often overrides more holistic rehabilitation and reintegration efforts. Lack of support and resources for education, skills training, or other rehabilitation services can hinder individual efforts to change their behavior.
- e. Relating to retributive justice: Recidivist legal cultures are often associated with retributive justice approaches, where the main objective is to punish and retaliate against the perpetrators of crimes. This approach may not adequately consider social rehabilitation and reintegration factors that can help break the cycle of crime.
- f. Injustice in the justice system: A recidivist legal culture can lead to injustice in the criminal justice system. At times, recidivists may face discrimination or abuse of power by law enforcement officials. Negative perceptions of recidivists can influence court decisions, result in unfair treatment, or increase the likelihood of pre-trial detention or more severe sentences.
- g. Lack of attention to the causal factors of crime: The recidivist legal culture often does not pay sufficient attention to the causal factors of crime. This includes social problems such as poverty, unemployment, or mental disorders that can affect recidivism tendencies. Lack of emphasis on these factors can undermine effective prevention and more holistic problem solving.
- h. Not taking into account changes in the justice system: Recidivist legal cultures may not be responsive to changes in the criminal justice system. As new research and evidence emerges about the effectiveness of rehabilitation approaches or other alternatives, a rigid legal culture may not adapt to this change. This could hinder progress in reducing recidivism rates and increasing the effectiveness of the justice system.
- i. Reliance on punishment as the sole solution: The recidivism legal culture is often based on a reliance on punishment as the sole solution to recidivism problems. This approach tends to ignore rehabilitation, social reintegration, or community approaches that could be more effective in reducing crime. A lack of diversification in legal responses to recidivism can limit potential remedies and prevent a reduction in recidivism rates.
- j. Does not take into account social and economic disparities: Recidivist legal cultures often do not take into account social and economic inequalities that may affect recidivists' likelihood of changing their behavior. Factors such as limited access to education, skills training or decent work can affect the prospects for successful rehabilitation and reintegration. Not taking these gaps into account in a recidivist legal approach can increase inequalities in the criminal justice system.

## **2. Legal Protection for Women Recidivist Convicts in Guidance in Correctional Institutions Based on Justice Values**

<sup>1</sup> Garland, D, 2001, *The Culture of Control: Crime and Social Order in Contemporary Society*. University of Chicago Press.

In order to create better legal protection, it is necessary to have a penitentiary for female recidivists whose role is to regulate, supervise and guide. Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2021 concerning Legal Protection for Women Prisoners in Correctional Institutions: This Ministerial Regulation provides guidelines and standards of legal protection for female prisoners, including female recidivists in correctional institutions. This regulation regulates various aspects, such as access to education, health, employment, rehabilitation, and humane treatment of female convicts. The institution in question is the Correctional Institution.

Legal protection for female recidivists in prison is a right that must be fulfilled by the state, as mandated in Law Number 22 of 2022 concerning Corrections. Women recidivist convicts are female convicts who have served a previous sentence and committed the same or a different crime, so they were punished again.<sup>1</sup> One of the important functions of Correctional Institutions is the "Function of education and protection of female recidivists". Preventive education is needed as a first step to provide a better understanding to prisoners.<sup>2</sup> In carrying out their duties, Correctional Institutions coordinate with the Minister of Law and Human Rights of the Republic of Indonesia in making fostering regulations in Correctional Institutions, one of which is regarding the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2021 concerning Legal Protection for Women Prisoners in Correctional Institutions : This Ministerial Regulation provides guidelines and standards of legal protection for female convicts, including female recidivists in correctional institutions. This regulation regulates various aspects, such as access to education, health, employment, rehabilitation, and humane treatment of female convicts.

The duties of correctional institutions will focus more on protecting human rights and the regulation and supervision of female recidivists, and the quality of human resources for employees in correctional institutions.<sup>3</sup> Special correctional institutions for female recidivists must apply a gender-based approach in all aspects of their policies and programs. This includes an in-depth understanding of gender roles, the social and cultural influences on female recidivists, and the elaborate treatment of their needs that differ from those of other prisoners.

Correctional institutions must provide protection for the physical and mental health of female recidivists. This includes providing adequate access to health services, including medical care, counselling, and psychological support to deal with trauma and mental health problems that female recidivism prisoners may experience.

Correctional institutions need to establish collaboration and partnerships with various relevant stakeholders, including government agencies, non-governmental organizations, and gender advocacy organizations. This collaboration aims to increase the effectiveness of legal protection and rehabilitation programs for female recidivists, as well as to ensure continuous monitoring and evaluation.

Correctional institutions must ensure the availability of facilities and amenities that suit the needs of female recidivists. This includes improving the quality of housing, sanitation care, access to health facilities, sports facilities, and recreational activities that support their recovery and well-being.

Special correctional institutions for female recidivists must play a role in increasing public awareness of the issues faced by female recidivists. Through education and outreach programs, prisons can help change attitudes and perceptions of the community towards female recidivists, promote empathy, understanding, and social inclusion.<sup>4</sup>

The results of the research that the authors conducted were the results of interviews with Ibuk Gusli in the Development Section of Class IIB Penitentiary in Padang that the number of female convicts was 183 and 37 were recidivist convicts. user. The reason for them committing crimes again is that on average they are due to economic difficulties, they feel that buying and selling drugs is the easiest way to make money even though it is a high risk.<sup>5</sup>

Correctional Institutions have the authority to stipulate regulations regarding procedures for imposing sanctions in accordance with statutory provisions. Based on regulatory tasks attached to correctional institutions for recidivist convicts. These sanctions regulations are usually regulated in prison regulations and must comply with applicable laws and regulations. It is important to carry out sanctions regulations with the principles of fairness, proportionality, and pay attention to the human rights of convicts.<sup>6</sup>

1. Sanction regulations in correctional institutions are reductions or restrictions on the rights of convicts as a

<sup>1</sup> Kadir, A, 2018, *Peningkatan Perlindungan Hukum Bagi Narapidana Perempuan di Lembaga Masyarakat*, Jurnal Hukum Lex, 15(1), page. 88-99.

<sup>2</sup> Handayani, R, 2022, *Perlindungan Hukum bagi Narapidana Residivis Perempuan di Lembaga Masyarakat*, Jurnal Ilmiah Penelitian dan Pembelajaran Hukum, 1(1), page. 85-97

<sup>3</sup> Cullen, F. T., & Jonson, C. L, 2017, *Rehabilitation and Treatment of Offenders*. Routledge.

<sup>4</sup> Rachmawati, S, 2020, *Hak-hak Narapidana Perempuan Dalam Pembinaan Di Lembaga Masyarakat*, Jurnal Pembangunan Hukum Indonesia, 7(2), page. 130-142.

<sup>5</sup> Wawancara dengan Ibuk Gusli Bagian Pembinaan di Lembaga Masyarakat Perempuan Kelas IIB Padang, pada hari Kamis tanggal 20 Juli 2023 pada pukul 14.00 WIB.

<sup>6</sup> Foucault, M, 1977, *Discipline and Punish: The Birth of the Prison*. Vintage Books.

- consequence of violations of correctional institution regulations. Some examples of reductions in the rights of convicts that may be applied as sanctions.
2. Reduction of visits: Prisoners who violate prison regulations may be subject to sanctions in the form of reducing or limiting visits from family or closest people. This aims to provide a deterrent effect and as a form of penalty for behavior that violates the rules.
  3. Limitation of facilities: Prisoners who commit certain violations may be subject to sanctions in the form of restrictions on access or use of facilities in correctional institutions. For example, they may be restricted from participating in certain activities, obtaining certain items, or using certain facilities normally available to obedient prisoners.
  4. Restrictions on activities: As a sanction, convicts who violate regulations may be restricted from participating in certain activities within the penitentiary. For example, they may be excluded from rehabilitation or education programs that other prisoners should be participating in.
  5. Deprivation of certain rights: Prisoners who commit serious violations may be subject to sanctions in the form of reduction of certain rights, such as the right to visit family, the right to obtain permission for leave in custody, or the right to participate in special programs.

The reconstructed article and the results of its reconstruction are: Reconstruction of Law Number 22 of 2022 Concerning Corrections by changing and adding points so that Article 36 paragraph 4 reads: Placement of Prisoners as referred to in paragraph (1) letter b is grouped by age, gender and repetition crime or other reasons in accordance with the risk and needs assessment carried out by the Correctional Assessor. Reconstruction of Article 61 paragraphs 1 and 2 of Law Number 22 of 2022 Concerning Corrections so that it reads: (1) Detention centers, prisons, prisons and LPKA provide special treatment to groups with special needs based on the value of justice. (2) The group with special needs as referred to in paragraph (1) consists of: a. Children; b. Fostered Children; c, women in the reproductive function; d. people with chronic diseases; e. persons with disabilities; and f. old human. g. repeat offenders.

#### **D. CONCLUSION**

Legal Protection for Women Recidivist Prisoners in Unjust Prison Institutions, that in Law Number 22 of 2022 Concerning Corrections in Article 36 paragraph 4 and Article 61 paragraphs 1 and 2 there is no classification of coaching for repeat offenders. For repeat offenders, let alone women, special guidance must also be provided and differentiated from ordinary convicts. In this case, the only difference is the Guidance of Women Prisoners in Correctional Institutions which are carried out in Women's Correctional Institutions. Regulatory Weaknesses in Providing Legal Protection for Women Recidivist Convicts in Correctional Institutions from the legal substance it is necessary to establish separate special regulations in the form of laws and regulations. In terms of legal structure, inflexibility in sentencing, lack of focus on rehabilitation and reintegration, ineffectiveness in preventing crime, lack of individualized approach, not taking into account factors such as social circumstances, conversion rates, or rehabilitation potential that differ between individuals. And in terms of legal culture that persistent social stigma, segregation and dehumanization, lack of social support, lack of opportunities for repentance and improvement, lack of attention to the factors that cause crime, does not take into account social and economic inequalities that recidivist legal culture often does not take into account social inequalities and economic factors that can affect the likelihood of recidivists changing their behavior. So that legal protection for female recidivists in fostering in prisons is based on values of justice, by reconstructing Article 36 paragraph (4) and Article 61 paragraph (2) of Law Number 22 of 2022 Concerning Corrections.