

Protection of Prisoners' Rights in the Criminal Justice System in Indonesia

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Abstract

Punishment through imprisonment is considered to provide no added value for a prisoner to improve his life. The correctional system was developed with the aim of ensuring that convicts realize their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by society, can play an active role in development, and can live a normal life as a good and responsible member of society. The problem in this research is how to protect prisoners' rights in the criminal justice system in Indonesia. The research method uses a constructivist paradigm, with a socio-legal research approach method, and a descriptive research type. Types and sources of data use secondary materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. Data collection methods use literature and qualitative analysis methods. The results of the research are that the protection of prisoners' rights in the criminal justice system in Indonesia is not yet based on the value of justice. Reconstruction of regulations for protecting prisoners' rights in the justice system in Indonesia based on Pancasila values of justice in Law Number 22 of 2022 concerning Corrections Article 7.

Keywords: Reconstruction, Regulation, Protection, Prisoners' Rights.

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Background

After the Japanese colonial period, the prison system entered the period of the Struggle for Independence between 1949-1950 or referred to as the First Imprisonment Period (1945-1950), this period began after the Proclamation of Independence of the Republic of Indonesia was issued which resulted in efforts by several Indonesian prison employees to take over the Cipinang prison house in accordance with the text of the Proclamation but was unsuccessful because it was rejected by the Head of Cipinang Prison. This was followed by other prison houses in Java and Madura to take over the power of the prison house from the hands of the Japanese army. Then continued Imprisonment Period II (1950-1960). This period began with the formation of the United Republic of Indonesia as a result of the Round Table Conference in The Hague (Netherland) on 23 August 1939-2 November 1949.¹ During the Third Imprisonment Period (1960-1963) the condition of the Indonesian Government began to stabilize, because Indonesia already had the law establishing the government and has begun to organize the government.

The term "correctional" officially replaced the term prison on April 27 1964 through a written message from President Ir. Soekarno which was read at the Prison Officials Service conference in Lembang Bandung. This mandate is intended in the context of "retooling" and "reshaping" the prison system which is considered not in line with the idea of Pengayoman as a national legal conception that has the personality of Pancasila. Furthermore, the idea of correctional care was coined by Dr. Sahardjo, to be precise, on July 5 1963 in a speech conferring the title of Doctor Honoris Causa in the field of law by the University of Indonesia. In his speech he gave a formulation of the purpose of prison convicts, namely, in addition to causing suffering to the convict due to the loss of freedom of movement, guiding the convict to repent, educating him so that he becomes a useful member of Indonesian social society. In short, the purpose of imprisonment is correctional.

Replacing the prison system with a correctional system has noble duties and responsibilities, correctional duties include carrying out work based on policies to implement the prison criminal law properly and effectively so that crime can be controlled. Implementing officers in the field of corrections today in reality cannot be considered merely as a complement to guarding prison buildings to prevent escapes, but rather as one of the officers holding the key to the success of the desire to strengthen social order in society and the state. Strengthening social order is a bridge between social protection policies towards achieving the ideals of social welfare."²

The existence of a correctional institution is the final stage of the criminal justice system. The criminal justice system itself consists of 4 sub-systems, namely the Police, Prosecutor's Office, Courts and Correctional Institutions.³ In the Correctional Institution Subsystem, as the final sub-system of the criminal justice system, it

¹ Ibid., hlm.35-39.

² Bambang Poernomo, 1993, *Pola Dasar Teori Asas Umum Hukum Acara Pidana dan Penegakan Hukum Pidana*, Liberty, Yogyakarta, hlm. 123.

³ Penny Naluria Utami, 2017, *Keadilan Bagi Narapidana di Lembaga Pemasyarakatan*, Jurnal Penelitian Hukum De Jure, Vol.17 No.3,

has various tasks to carry out guidance for convicts, especially the crime of revocation of liberty. In the Correctional Institution Sub-system, as the final sub-system of the criminal justice system, it has various tasks to carry out guidance for convicts, especially the crime of revocation of liberty.

With the review of the system and approach to inmates for other solutions to anticipate prison riots, prisons are a place or residence for people who have been found guilty by a court of having violated the law. Correctional Institutions are better known by the lay public as Prisons. When someone has been put in prison, their rights to freedom as a citizen will be revoked. He can no longer be as free as people outside prison. People who have entered prison can be said to be disadvantaged because apart from no longer being able to move freely, they will also be labeled as the trash of society in their environment. In the definition of Correctional Institutions in Law No. 12 of 1995 concerning Corrections, Article 1 Paragraph (3) states that "Correctional Institutions, hereinafter referred to as LAPAS, are places for carrying out the development of correctional prisoners and students". In this sense, it can be seen that Indonesia, as a rule of law country, in implementing punishment for prisoners, no longer uses a prison system but a correctional system.

The prison system is a system that places great emphasis on various elements of revenge and deterrence accompanied by the institution of the "Prison House". The prison system is no longer used because it views and treats convicts not as members of society but as a form of social revenge. So it is no longer in accordance with the level of civilization and dignity of the independent Indonesian nation which has the Pancasila philosophy.

Protection for every citizen is an obligation that must be fulfilled by a country. Likewise, the Indonesian state is obliged to protect every citizen wherever they are. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) Paragraph 4 (four).

Correctional institutions in Indonesia are still in the public spotlight because they often experience various unresolved problems. starting from overcapacity, the practice of illegal levies in the implementation of prisoners' rights services. Correctional Institutions are the final stage of the criminal justice system, which consists of 4 (four) sub-systems, namely the Police, Prosecutor's Office, Courts and Correctional Institutions. The Correctional Institution sub-system as the final sub-system of the criminal justice system has the task of carrying out guidance for convicts, especially the crime of revocation of liberty.

Almost all crimes handled by the Indonesian Criminal Justice System always end in prison. Even though prison is not the best solution in resolving crime problems, especially crimes where the "damage" caused by the crime can still be restored so that conditions that have been "damaged" can be returned to their original state, which in restorative justice is possible. the removal of stigma from individual perpetrators. In responding to crimes that are considered reversible, there is a punishment paradigm known as restorative justice, where criminals are encouraged to repair the losses they have caused to victims, their families and society. In relation to crimes whose damage can still be repaired, society basically wants the perpetrators to be provided with rehabilitative "services". Society hopes that criminals will be better than before they entered prison, this is what is meant by the rehabilitation process.¹

Corrections are stated as a system of guidance for law violators and as an embodiment of justice which aims to achieve social reintegration or the restoration of the unity of relations between correctional residents and society. In subsequent developments, the Correctional System began to be implemented in 1964, supported by Law Number 12 of 1995 concerning Corrections. The Corrections Law strengthens efforts to create a correctional system which is a form of guidance for correctional inmates. Finally, Law Number 12 of 1995 has been replaced by Law Number 22 of 2022 concerning Corrections.

In the future, in relation to restorative justice, there will be many things contained in international and national regulations related to detention/imprisonment as a terminal activity which must contribute to a better life, at least the same, for law violators after conviction.² To overcome the problems mentioned above, especially crimes that are considered to be able to be restored, there needs to be a breakthrough to change the paradigm of punishment which is known as restorative justice, where perpetrators are encouraged to repair the losses they have caused to victims, their families and also society. .

Furthermore, the state's protection for its citizens applies wherever they are in all corners of the world because the protection provided is one of the rights of citizens which is embodied in the Body of the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1) which states that "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law." Therefore, by protecting Indonesian citizens wherever they are, the state has not only fulfilled its obligations but has also fulfilled the human rights of the citizens of that country.

The state, through its legitimate and sovereign government, is the main protector against human rights violations within its jurisdictional boundaries. However, reality often shows that there are actions by a state

September 2017, hlm. 389.

¹ Ayon Diniyanto, 2016, *Indonesian's Pillars Democracy: How This Country Survives*, Journal of Indonesian Legal Studies, Vol.1.No.1, July-December, 2016, hlm.108.

² Sistem pemidanaan yang selama ini di dasarkan pada UU No. 12/1995 tentang Pemasyarakatan

through security apparatus organs to maintain political interests which tend to have the potential to cause various human rights violations. The trigger for human rights violations is at least due to a clash of interests between citizens on one side and the interests of the ruling regime on the other side which are not in line.¹

Therefore, the criminal justice system is closely related to criminal legislation itself, both substantive criminal law and criminal procedural law. It is said that because criminal legislation is basically law enforcement in abstracto which will be realized in criminal law enforcement in concreto.² Law enforcement is an effort to apply and implement the law, as well as taking legal action against any violations or deviations from the law committed by legal subjects.³ Either through judicial procedures or through arbitration procedures for other dispute resolution (alternative disputes or conflicts resolution) or law enforcement activities. All activities so that the law as a set of normative rules that regulate and bind legal subjects in all aspects of social and state life are truly obeyed and truly carried out as they should.⁴

Sub-system institutions in the criminal justice system (Police/investigators, Prosecutors/prosecutors and Correctional Institutions/criminal implementers) as organs in the Executive instrument. Its function is to carry out the function of implementing criminal law enforcement, together with court institutions to support judicial power.⁵ The criminal justice system can be interpreted as a process by which several law enforcement agencies work through a mechanism that includes gradual activities, starting from investigation, prosecution, examination in court, and implementation of the judge's decision carried out by correctional institutions.⁶

The entire process works within a system, so that each institution is a subsystem that is interconnected and influences each other. The criminal justice system works between functional components, each of which must relate and work together. In accordance with research which states that criminal justice can function systematically only to the degrees that each segment of the system takes into account all other segments. In order words, the system is no more systematic than the relationship between Police and prosecution, Police and Court Prosecution and Corrections, Corrections and law, and so forth. In the absence of functional relationships between segments, the criminal justice system is vulnerable to fragmentation and ineffectiveness.⁷

The relationship between the rule of law and human rights is difficult to separate. Because in a legal state human rights are protected, if in a state human rights are not protected, that country is not a legal state but is a dictatorial state with a very authoritarian government. Protection of human rights is a constitutional mandate as well as a necessity for its protection and fulfillment. Because Indonesia is a rule of law country.⁸

This is strengthened in the Indonesian constitution, Law Number 22 of 2022 concerning Corrections, it is stated that Correctional Institutions, hereinafter referred to as LAPAS, are places for carrying out development of Prisoners and Correctional Students. Meanwhile, what is meant by convict is a convict who is serving a sentence in prison based on a court decision that has obtained permanent legal force. Thus, Correctional Institutions only function to carry out guidance for convicts who are serving sentences.⁹

In relation to crimes whose damage can still be repaired, basically the perpetrators are provided with rehabilitative "services", so that the criminals will be better off than before they entered prison. The situation of the work skills/work training program currently running in inside and outside the institution. The basic principle that the management of prison institutions must minimize the various differences between life in institutions and life in freedom, which aims to reduce the responsibility of prisoners because of their dignity as human beings, is also adhered to by national instruments. The correctional concept does not merely formulate the objectives of imprisonment, but rather a coaching system, a methodology in the field of "Treatment of Offenders".¹⁰

In the context of implementing the correctional mission, placing the position of correctional officers in equal relationships is a prerequisite for the functioning of an integrated criminal justice system. The current conditions experienced by the Correctional Service in its efforts to implement the Correctional Mission have not received adequate appreciation and respect from other law enforcement environments. Corrections are positioned only as the end of the ongoing criminal justice process. In a normative context, there are indeed quite crucial

¹ Suparman Marzuki, 2011, *Tragedi Politik Hukum dan HAM*, Pustaka Pelajar, Yogyakarta, hlm.73.

² Romli, 2017, *Atmasasmita Dalam Edi Setiadi Dan Kristian. Sistem Peradilan Pidana Terpadu Dan Sistem Penegakan Hukum Di Indonesia*, Penerbit Prenadamedia Group, Jakarta.

³ Arliman, L., 2019, *Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia*, Dialogia Iuridica. Vol 11, No 1. Pp: 1-20. <https://doi.org/10.28932/di.v11i1.1831>

⁴ Djamir, H. Muhammad, 2020, *Rekonstruksi Penegakan Hukum Tindak Pidana Pencucian Uang Berkaitan Dengan Tindak Pidana Narkotika Dalam Sistem Peradilan Pidana Berbasis Nilai Keadilan*, Doctoral thesis, Universitas Islam Sultan Agung Semarang

⁵ Mufrohim, O., 2020, *Independensi Lembaga Kejaksaan sebagai Legal Structure didalam Sistem Peradilan Pidana (Criminal Justice System) di Indonesia*. Jurnal Pembangunan Hukum Indonesia. Vol 2, No 3. Pp: 373-386. <https://doi.org/10.14710/jphi.v2i3.373-386>

⁶ Maringka, Jan S., 2022, *Ekstradisi Dalam Sistem Peradilan Pidana*, Sinar Grafika, Madiun, Hal:83

⁷ Aras, Firman, 2020, *Implication Of Criminal Detention In Criminal Justice System*. Tadulaco Master Law Journal, Vol.3 No.3, DOI: <https://doi.org/10.22487/tmlj.v3i3.188>

⁸ Lihat UUD 1945 Pasal 1 ayat (3), "Negara Indonesia adalah Negara Hukum".

⁹ Lihat penjelasan Undang-Undang Nomor 12 Tahun 1995 tentang Lembaga Pemasyarakatan

¹⁰ Adi Sujatno, 2004, *Sistem Pemasyarakatan Indonesia (Membangun Manusia Indonesia)*, Montasad, Departemen Kehakiman dan HAM RI, Jakarta, hlm. 7-21.

problems regarding the position of correctional services which are placed as the final part of the punishment system in the criminal justice system. This is in the Article of the Law on Corrections. However, if you look at the main tasks and functions of Corrections in this law, then actually placing Corrections as the final end of the criminal justice system is very inappropriate, considering that Corrections have played a role from the start when the criminal justice process began to work. Under these conditions, it is certainly necessary to strengthen the position of correctional institutions in the midst of the working of the criminal justice system. The correctional system is multilaterally oriented, with an approach that focuses on the potential that exists in law violators (convicts). Correctional institutions as one part of the criminal justice sub-system in Indonesia aim to provide guidance to prisoners.

Punishment through imprisonment is considered to provide no added value for a prisoner to improve his life. Imprisonment according to the correctional system is not intended to make a prisoner feel retribution for the evil deeds he has committed. The correctional system was developed with the aim of ensuring that convicts realize their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by society, can play an active role in development, and can live a normal life as a good and responsible member of society. Imprisonment of prisoners is carried out based on a correctional system. The success or failure of educating prisoners as law-abiding workers in the future after being in society, really depends on the socialization process of prisoners in correctional institutions, by adapting religious, moral and other social values that apply in society. Forms of pressure, blackmail and indecent treatment must not occur in the life of correctional institutions, therefore the development of prisoners in correctional institutions should not be by means of pressure (retaliation), but by protection.¹

The correctional development system is implemented based on the principles of protection, equality of treatment and service, education, guidance, respect for human dignity, loss of freedom is the only suffering and guaranteeing the right to remain in contact with family and certain people. Based on the background above, it is important to answer several questions regarding the position of correctional institutions in the criminal justice system in Indonesia. Based on the background above, the problem in this research is formulated as how to protect the rights of prisoners in the criminal justice system in Indonesia.

Research methods

In this research the author uses the constructivism paradigm, a paradigm which views that legal science only deals with statutory regulations. Law is something that must be applied, and is more likely to not question the value of justice and its usefulness for society. The type of research used in completing this dissertation is a descriptive analytical juridical research method, namely research carried out by examining library materials (secondary data) or library legal research,² then describing it in the analysis and discussion. The approach method in this research is a juridical approach -empirical. The juridical-empirical approach is a method with procedures used to solve research problems by examining primary data in the field.³ The types of data used are primary and secondary data. To obtain primary data, researchers refer to data or facts and legal cases obtained directly through field research, including information from respondents related to the research object and practices that can be seen and related to the research object. This secondary data is useful as a theoretical basis for underlying analysis of the main problems in this research.

Research Results and Discussion

The implementation of the correctional system is essentially an effort to develop the Indonesian human being as a whole, so that in this context correctional institutions have a very strategic role in the context of developing human resources, implementing the development of Correctional Inmates (WBP) including how to create conducive conditions in carrying out their duties in Correctional Institutions. (Prison). A safe and orderly situation is a prerequisite for the implementation of coaching and mentoring of WBP. In other words, it can be emphasized that coaching activities cannot possibly be carried out without the support of a safe and orderly atmosphere within the Correctional UPT. This legal objective will of course be achieved if it is supported by legal duties, namely harmony between legal certainty and legal proportionality, so that it will produce justice.⁴

Considering that many criminals with various backgrounds and levels of violent crime are in the same place, this has resulted in the development process not running as expected. Imprisonment has not been able to deter perpetrators of violent crimes. This can be proven by the increasing number of violent crimes occurring within the prison environment. It is felt that cases of violent crime that often occur currently among new arrivals will

¹ Petrus Irwan Panjaitan dan Pandapotan Simorangkir, 1995, *Lembaga Masyarakat dalam Perspektif Sistem Peradilan Pidana*, Pustaka Sinar Harapan, Jakarta hlm.14.

² Ediwarman, 2010, *Monograf, Metodologi Penelitian Hukum*, Medan: Program Pascasarjana Univ. Muhammadiyah Sumatera Utara, Medan, hlm. 24.

³ Soerjono Soekanto, 1984, *Pengantar Penelitian Hukum*, Jakarta: UI Press, hlm.7

⁴ Prasetyo T, 2000, *Kriminalisasi dalam Hukum Pidana*, Nusa Media, Jakarta, hlm 50

get worse.

Another factor that causes violent crimes in prisons is because the number of prisoners exceeds capacity, violent crimes in prisons often occur due to lack of supervision from prison officers and the difference between the number of correctional officers and prisoners in prisons is very different, where the number of prisoners Those detained there have exceeded capacity, so this results in the development of prisoners not being able to be carried out optimally. The violence that occurs in prisons should be followed up and needs to be looked into further so that it is not considered natural and ordinary, as if it has become the pulse of life in prisons, this condition seems to be starting to run rampant, while efforts to find the common thread of the real core of the problem have not been made. maximally, a serious investigation is needed so that the same case does not happen again so that the main goal of correctional services can run as it should in correctional settings. Overpopulation or what is usually called excess housing is hitting Indonesia, and Indonesia is the country that has the fourth largest population in the world after China, India, the United States. Apart from that, there is also an impact of overpopulation on Indonesia. This overpopulation is not a problem. trivial, therefore it is very important for us Indonesians to understand the problem of overpopulation. Overpopulation is becoming a phenomenon in prisons. Based on Andi Mattalata's explanation, it was stated that in 2008 the population of prisons throughout Indonesia reached 130,832 people with details of 54,307 detainees and 76,525 convicts. This number is very disproportionate to the prison capacity of only 81,384 people. Excessive housing in prisons causes a normal life for Prisoners (WBP) who are being trained to become useful human beings for themselves and others, participating in development for the progress of the nation and state, which is an obstacle to the protection of Human Rights. (HAM) towards prisoners.

Rights are a legal force, namely law in the subjective sense which is the power of will given by the legal order. Because rights are protected by the legal order, rights owners have the power to defend their rights from interference/threats from any party. If another party violates these rights, it will give rise to a lawsuit/legal demand from the rights owner, which will be submitted to law enforcement officials.

Based on this description, it can be stated that all people have the right to obtain justice, whether it is the rights of men or women, even as prisoners. They have the right to receive fair treatment in the context of legal protection. The constitutional basis for the birth of the concept of legal protection is "the whole nation and protect". These two words contain the principle of legal protection for all nations without exception, whether men or women, rich or poor, rich or poor, city or village people, native Indonesians or descendants, members of the TNI/Polri, prosecutors, judges, Lawyers in carrying out daily activities/work/tasks Legal protection for all levels of society consists of two major parts, namely:

- 1) Active legal protection is intended as an effort to create humane social conditions in a reasonable process;
- 2) Passive legal protection which is intended to prevent arbitrary efforts and unfair abuse of rights. Efforts to realize this legal protection include:
 - a) Creating order and tranquility;
 - b) Realizing true peace;
 - c) Realizing justice for all members of society;
 - d) Realizing prosperity for the entire community

Through a human rights perspective, Separovic compares attention to victims and perpetrators and also sees that there is a gap that shows that attention to perpetrators is better through existing legal support than to victims. Separovic believes that in a number of human rights concepts, it is filled with various concerns and the provision of guarantees for people who have the potential to become perpetrators of crimes. They are not allowed to be treated arbitrarily, including the prohibition of torture, having their dignity degraded or treated cruelly, enslaved or oppressed. They must actually receive good treatment, have the right to be declared innocent until they are found guilty through a court decision, have the right to receive treatment, and be given the freedom to speak and express opinions. However, at the same time, Separovic believes that there has been no progress in caring for victims. In this way, it can be said that the victim who has been the object of violence and oppression by the perpetrators from the past until now is the neglected party.

Regulations for the protection of prisoners' rights in the criminal justice system in Indonesia are not yet based on the value of justice. This often results in a lack of harmony in the relationship between administrative subsystems in the implementation of the criminal justice system, making it impossible for an integrated criminal justice system to be realized and what happens is the opposite, namely the failure of legal principles and principles that form the basis of the normative framework of an integrated criminal justice system. This is what can protect prisoners' rights in the criminal justice system in Indonesia.

Closing

The protection of prisoner's rights in the criminal justice system in Indonesia is not yet based on the value of justice. This is often found in the relationship between administrative subsystems in the implementation of the criminal justice system, which makes it impossible to realize an integrated criminal justice system and what

happens is the opposite, namely a failure of principles. -legal principles and principles that form the basis of the normative framework of an integrated criminal justice system. This is what can protect prisoners' rights in the criminal justice system in Indonesia.