

# The Existence of Correctional Institution in the Criminal Justice System Indonesia

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## Abstract

The Procedure of Penal Code (KUHP) clarified that the objective of law enforcement is not just for public order and finding the truth and justice only, but also for respecting human rights. In the same perspective, a penal expert said that the main objective of law enforcement is a fair legal process that calls "due process of law". Due process of law means the suspected, defendant and prisoner rights is covered and assumed as a part of civil rights and human rights.

**Keywords:** Existence, Correctional Institution.

## 1. Introduction.

In the perspective of the Criminal Justice System (CJS) Indonesia, we recognize the conception of "Integrated Criminal Justice". Integrated Criminal Justice System is built from sub-systems based on the formal criminal law codification of the Code of Criminal Procedure enacted by Law No. 8 of 1981.

Assignment of the sub-systems or components that work together in CJS is police, prosecutors, courts and institutions of Penitentiary, according to Mardjono Reksodiputro include things that are quite widespread and prevent people becoming victims of crime, resolving crimes that occur, so that people are satisfied that justice has been done and the guilty will be punished, and to make those who have committed crimes do not repeat his actions.<sup>1</sup>

Conception of the criminal justice system adopted in the Criminal Procedure Code indicates the existence of elements consisting of sub-systems, namely sub-system of investigation, prosecution sub-system, sub-system of examination before the court and sub-system execution of court decisions. The criminal justice system involves components that run the gamut from police, prosecutors, Courts and Prisons. Each sub-system is part intertwined inseparably and continuously, and there should be an element of similarities perception and purpose in the criminal justice system.<sup>2</sup>

Related to the Penitentiary, the author needs to explore the historical background and the juridical birth of new ideas about the nature of punishment is no longer just a deterrent against perpetrators of crimes. A new Thought is based on the realization that the criminal punishment on the one side should be able to protect society from criminal acts and the perpetrators, on the other side must also be able to restore and revive a criminal in order to become human is responsible, aware of the law and human dignity.

A new Thought has led to the fundamental change in the perception of coaching inmates from System Majesty's Prison inspired by the flow of retributive where criminal punishment is regarded as the imposition of suffering, deterrence and retaliation against offenders towards a new system called the System of Corrections sourced from streams integrative looking at not only the imposition of criminal deterrence effort but more as awareness and recovery of a criminal in order to become law-abiding man.<sup>3</sup>

Meanwhile, according to Didien Sudirman, an observer of Penal Sciences, as a result of the development of science in criminology, the paradigm of the prison as a means to deter such piecemeal changes. This is influenced by the existence of errors or weaknesses in the public system. According to this paradigm, the crime came to be seen as a structural problem and not merely as an individual problem. That deterrent will not grow through torture but through the guidance. Therefore, the state is obliged not fight crime by eliminating the villain but improve his evil behavior. The perpetrators are viewed as human beings who should be treated as creatures of God, as individuals with different inclinations and as social beings and as human citizens who are not deprived of his constitutional rights.<sup>4</sup>

## 2. Results And Discussion.

Before discussing about the existence of a correction in CJS Indonesia, need to be addressed in advance of the

<sup>1</sup>Mardjono Reksodiputro, *Criminology and Criminal Justice System, The Second set of Authorship Books*, Pusat Justice and Legal Services Service (d/h Criminology institutions), University Of Indonesia, Jakarta, 2007, Pg. 140.

<sup>2</sup>Ramelan, "Improving the role of Public Prosecution in the Criminal Justice System Integrated", *Media of Law* (Jakarta: September 2003) Pg. 1.

<sup>3</sup>Dwidja Priyatno, *The Prison Criminal Execution System In Indonesia*, Refika Aditama, Bandung, 2006, Pg. 14

<sup>4</sup>Didien Sudirman, *Repositioning and revitalization of Corrections in the Criminal Justice System in Indonesia*, The Center for the Study and Development of the Ministry of Law and Human Rights RI, Jakarta, 2007, Pg. 200

Correctional System. Discussion of the penitentiary system, in particular the history of the birth of the correctional system, according to the authors is an important step to understanding the country's efforts to protect and enforce the rights of offenders in this respect the rights of prisoners.

Through inauguration speech with the title "Pohon Beringin Pengayom Hukum Pancasila" is, Sahardjo, put forward the idea of the need for equal treatment for prisoners who live behind prison walls through the establishment of a foundation called the Correctional System.<sup>1</sup> The rationale of the protection of the rights of offenders contained in the explanation of the general law of Corrections is in line with the purpose of law enforcement, as required by the Criminal Code, where law enforcement is not only intended to create public order and the search for truth and justice, but also for the purpose of uphold human rights.

Related to the enforcement of human rights that animates Act Corrections, presumably precisely what is proposed by Mardjono Reksodiputro that the purpose of law enforcement is the main occurrence process of law, which included the rights of suspects, defendants and convicted protected and considered as part of civil rights and therefore part of the Human rights.<sup>2</sup>

With the enactment of Correctional above, then the punishment is no longer considered just aiming to take revenge and deterrence against the perpetrators, but intended to mainly realize the convict to be regretted, and return it to become citizens are good, law-abiding people, uphold the values moral, social and religious, in order to reach a society that is safe, orderly and peaceful.

As reported in a number of media and written several books on Corrections, both written by experts or practitioners of Corrections as well as by former inmates as well as the author's experience as a clerk Corrections, discovered the fact that the fulfillment of the rights of prisoners as desired and is guaranteed by the Law, have not been implemented in a real and optimal.

In other words, from a variety of references that authors mentioned above and author's own experience, breach or a waiver of the rights of prisoners, actually still common. Such violations may occur in relation to his fellow inmates, including inmates with Correctional Institution officer and between inmates at the Correctional Institution.

Before identifying the various forms of abuse and or neglect of the rights of inmates, would first need to find the cause problems that caused the violation of the rights of prisoners during of custody for inmates at the Correctional Institution.

Source of problems occurrence of violations of the rights of convicts by Didien Sudirman comes from suffering or pain experienced by offenders as a result of the actions of institutionalization (placement into Penitentiary). Suffering or pain-the pain or the existence of poverty in the fulfillment of the needs of individual inmates, in turn, will give birth to a pattern of behavior "dysfunctional" or deviant behavior. Deviant behavior, among others, may be extortion and fights between prisoners, torture or acts that cause mischief, destruction of goods inventory, the manufacture of prohibited items such as knives, stoves and weapons, homosexual behavior, actions seduce or against officers, runaway, smuggling drugs and so forth.

Between the 6 (six) rights that need protection in the opinion of Mardjono Reksodiputro above, according to the dynamics going on in the world of Corrections, according to the author, there are three important rights to explore its fulfillment. Selection of the three authors of that right is based on the premise that because the offense is often reported in the media or published in a number of books on Corrections. Three such rights is the use of violence in disciplinary action, acts of violence and sexual harassment and discrimination among fellow inmates to medical care.

Besides the three (3) the rights taken from the opinions Mardjono Reksodiputro above, the author argues that there is one more right that should receive attention and protection. Such right is related to prisoners' rights in terms of acquiring assimilation, home leave, parole, furlough bersyarat ahead and leave freely. To get answers to the questions mentioned above, the authors conducted a study as follows :

#### **a. The use of violence in the Imposition of Disciplinary Sanctions**

As discussed above, the deadlock in the fulfillment of the needs of individual inmates, in turn, will give birth to a pattern of deviant behavior. Deviant behavior, among others, may be extortion and fights between prisoners, torture or acts that cause mischief, destruction of goods inventory, the manufacture of prohibited items such as knives, stoves and weapons, homosexual behavior, actions seduce or against officers, runaway, smuggling drugs and etc.

Deviant behavior disorders inmates are referred to as security and order is divided into two (2) categories. First, the disorder is classified as a criminal offense and that secondly disruptions disciplinary offense or violation of domestic regulations Penitentiary. Which include security and public order disturbances in the form of criminal acts, among others, fights, assault and drug smuggling. While that is a breach of discipline

<sup>1</sup>C.I. Harsono Hs, *A New System of Development Inmates*, Publisher Djambatan, Jakarta, 1995, Pg. 34

<sup>2</sup>P.A.F. Lamintang, *Law Penitensier of Indonesia*, Armico, Bandung, 1984, Pg. 53.

include extortion among prisoners, acts that cause mischief, destruction of goods inventory, the manufacture of prohibited items such as knives, stoves and weapons, homosexual behavior, actions against the officers and act runaway.

Related to the fulfillment of the rights of prisoners, in case of any violation of these disciplines, the question we might ask, as stated earlier is whether in the process of imposing such discipline, the inmate in question is still subject to corporal punishment in the form of torture, both physically and psychologically by Correctional Institution.

At the level of conception, corporal punishment in the form of physical torture such as beatings, floggings, chained, dried under the scorching sun and torture psychic as confinement in a dark cell and stuffy for days, revocation of the right to receive mail and family visits are not reasonable, is an action that is not at all justified. Correctional Law has set firmly and clearly prohibit the use of violence in dealing with disciplinary offenses committed by prisoners.

In addition, a ban on the use of corporal punishment in dealing with disciplinary offenses, stipulated in UN Resolution No. 663 C (XXIV), dated July 31, 1957 and Resolution No. 2076 (LXII) dated May 1, 1975 on *the Standard Minimum Rules for the Treatment of Prisoners*, which must be obeyed and exercised by all institutions that deal with offenders in the countries that are members of the United nations including Indonesia. Figures 31 of the *Standard Minimum Rules for the Treatment of Prisoners*.

Although the conception of the use of force in dealing with disciplinary offenses committed by the occupants Correctional Institution is something totally prohibited and can not be justified, but what about the fact that happened on the ground ?. The existence of corporal punishment against inmates with disciplinary offenses disclosed by Rahardi Ramelan, a former inmate at Cipinang Penitentiary in his book "Cipinang Desa Tertinggal". He tells the difference in treatment that occurs in two events "breach of discipline". The first disciplinary offenses allegedly committed by the official or officer who allegedly had dismantled air conditioning, a sink, a halogen lamp and exhaust fan and then carry out the Correctional Institution. While the latter is a form of discipline violation cases of theft of cell phones among inmates.<sup>1</sup>

Although it was realized that the data described above not constitute a formal research results and national, but presumably can describe a limited basis that there had been a waiver of the rights of inmates at the Correctional Institution in the form of the use of force in handling disciplinary offenses committed by inmates.

#### **b. Violence and Sexual Abuse a Fellow Inmates**

As mentioned above, one of suffering or pain experienced by offenders as a result of the actions of institutionalization (placement in a Correctional Institution) is the loss of security and loss of heterosexual relationship.

Loss of sense of security, would soon be felt by every man who used to be in the free world and then put in a restricted environment with restricted freedom anyway. Besides, the loss of a sense of security can also be caused by the interaction with fellow residents Correctional Institution that from day to day, the number increased sharply so largely Correctional Institution under pressure due to excess capacity (overcapacity).

According to data published by the Directorate General of Corrections Ministry of Law and Human Rights, the number of occupants in 515 LAPAS/RUTAN/CABANG RUTAN from across Indonesia in 2013 has reached 111.256 people . This figure increased significantly from year to year. In 2014, there were 114 329 people inhabit prisons, in 2015, increased to 118.768 people, an increase in the number of occupants prisons as much as 160%.<sup>2</sup>

An increasing number of occupants sharply, on the other hand is not offset by the addition of prisons or additions of new and occupancy of prisons that exist adequately. Growth in the number of residents who are not balanced with the capacity expansion, has caused the density in almost all prisons across Indonesia.<sup>3</sup>

Such occupant density, it is possible to cause friction among fellow occupants Correctional Institution which resulted in the emergence of security problems involved in fights, torture, extortion and beatings, which in turn leads to a disregard for the rights of prisoners. Rahardi Ramelan revealed that the number of residents who had been very far beyond their capacity, resulting in the formation of "gang" or primordial groups based on ethnicity that could cause tejadinya thuggery, clashes and fighting between groups in Correctional Institution.<sup>4</sup>

Furthermore, pain is felt as a result of the action-onalisis institutions is the loss of sexual relations. This seems simple, but in reality it is not. Indeed there are some of the inmates were able to overcome or minimize the result of the suffering loss of sexual relations with a variety of activities that are positive,

<sup>1</sup> Rahardi Ramelan, *Cipinang Desa Tertinggal*, Republika, Jakarta, 2008, Pg. 79.

<sup>2</sup><http://smslap.ditjenpas.go.id/public/grl/current/monthly/year/2016/month> diakses tanggal 18 Mei 2016.

<sup>3</sup>Untung Sugiono, "Comprehensive policy Ditjenpas In Combating Drug Abuse and Prevention of HIV / AIDS in prisons / detention", Papers, BPSDM, Dep. Law an Human Rights RI, Jakarta Desember 2008.

<sup>4</sup>Rahardi Ramelan., Op.Cit., Pg. 60.

productive and even innovative, but it must be recognized that there is also a small part of prisoners who are not able to resolve the issue and then delivered clandestinely through same-sex (homosexual). Such relationships can occur in a situation of "consensual" is good because it is "in love" and for their payment, but not infrequently also occur by way of a series of acts of violence that led to the "rape of the same sex".

Based on the above description, presumably it can be concluded that the relationship between inmates, still the occurrence of physical violence in the form of beatings, extortion, assault and sexual harassment in the form of an inmate against other prisoners. Physical abuse experienced by an inmate with links to other inmates, of course constitute a waiver of his rights as a prisoner is supposed to protect.

### **c. Getting Access to Medical Care**

The next inmate rights that need attention and protection is the right to receive medical treatment. The right to obtain treatment or medical care becomes very important to note and fulfilled because actually these rights is not only a prisoners' rights but human rights guaranteed by the state constitution 1945.

Under the provisions governing the health services for prisoners mentioned above, presumably it can be deduced that in the realm of conception, the fulfillment of the rights of prisoners to obtain services or medical treatment has been arranged clearly and firmly. Provisions in the Penal Law and Government Regulation on Conditions and Procedures for Citizens Rights Patronage of Corrections, has set about equal rights for every prisoner to be able to obtain health care, without discrimination and without charge.

In the aforementioned provisions, there are several rights related to health care, the right to get a checkup at least 1 (one) month and entitled to treatment at hospitals outside the general government prisons at state expense. Although the conception, the right to inspection at least 1 (one) month and entitled to treatment at hospitals outside the general government prisons at state expense is something that must be met, but what about the fact that occur in the field?

Probably not much different from the situation outside prisons, health insurance is often too easy to say but not so in the level of implementation. Classic problem faced is the limited budget. Commitment of health insurance that is written in the Law was not accompanied by a commitment to really provide a sufficient budget so that what is guaranteed in legislation can actually be implemented.

Due to lack of budget, the way it is now largely in prisons is the unavailability of polyclinics with appropriate and adequate facilities. In some prisons, there is even a clinic without a doctor and drugs "that's it". The lack of health facilities, not only experienced by a small prisons or prisons Class IIB, but also by prisons such as Class I Cipinang Prison.

In circumstances where health services are limited, what happens in the words of thinkers Corrections, Bahrudin Surjobroto, as a "situation of exchange of interests" between residents and officers. Occupants who need decent health care and have sufficient financial capability, chose to seek treatment in hospitals outside the prisons, with the "help" Correctional staff person. "Help" is a tragedy of course is not free.

Based on the description above, it can be concluded that the related right to obtain the services or medical care, prisoners do not get their due in full, without discrimination and without charge. In other words, it seems it can be said that there had been a waiver of the rights of prisoners to obtain services or adequate medical care, without discrimination and without charge.

### **d. Access to Getting the Right Assimilation, Leave Visiting Family, Parole, Conditional Leave and Leave Nearing Release**

Besides the rights that have been stated above, inmates are entitled also to get a chance to assimilate including home leave, parole and furlough nearing release. The rights are not only important to be protected and fulfilled for the sake of inmates, but actually have a strategic role as an indicator of the success of social re-integration program that became the core of convening Correctional System.

Furthermore, regarding the implementation of development outside the prison, Didin Sudirman said that, correctional integration process carried out through two programs namely the Parole and Leaves Towards Free. Parole granted to prisoners who have undergone at least two-thirds of the actual criminal. While free Towards Free is the release of prisoners before the completion of criminal undertaken entirely. As for the length of the pieces in the amount of remission in recent years gained.<sup>1</sup>

Based on the opinions mentioned above, it seems obvious that the right to get a chance of parole and furlough nearing release, is a measure of the success of Correctional System. Therefore, the fulfillment of these rights, it needs to be done and supervised its implementation. Under the provisions mentioned above, is the home leave is an opportunity coming together in a family house inmates during a period of 2 days or 2 x 24 hours, beyond the time required for the trip. Assimilation is the process of coaching prisoners held by blending inmates in community life. Parole is the process of coaching beyond Correctional Institution inmates held under Article

<sup>1</sup> Didin Sudirman., *Op.Cit.*, Pg. 401



15 and 16 Book of Law Criminal Law (Penal Code). While leave Toward Free is the process of coaching inmates outside Correctional Institution for inmates who can not be granted parole for a short period or the rest of the sentence.

Meanwhile, the implementation of the intent of assimilation, Parole and home leave is conditional as part of efforts to normalize relations with the public and inmates acquire and enhance public participation actively in the implementation of Corrections. Inmates may be granted permission to perform Assimilation, parole and home leave if eligible conditional substantive and administrative. One of the conditions is about the substantive criminal past that have been undertaken. For assimilation has undergone  $\frac{1}{2}$  (half of the period pidananya, parole has undergone  $\frac{2}{3}$  (two thirds) of its criminal past at least nine months, home leave conditional have undergone  $\frac{2}{3}$  (two thirds) of its criminal past and the leave granted for a period of time equal to the time of remission last a maximum of six (6) months. While the administrative requirements include a certificate of no other cases of the Prosecutor, Report Penilitian Society of BAPAS and statements of good conduct and never violated the order of head Prison.

After conducting a study of all the provisions relating to the fulfillment of the rights of prisoners, the author argues that such provisions have clearly and firmly about the fulfillment of the right of prisoners to leave Visiting Family, assimilation, Parole and Leave Nearing Release. However, there is a provision that all the knowledge of the authors, not governed by the provisions granting rights of inmates, which is about the costs arising from the assignment of rights.

Unlike the right to receive health care in the provisions stipulated that all costs resulting from the granting of such rights, are borne by the state, the provision granting the right to leave Visiting Family, assimilation, Parole and Leave Nearing Release, it is completely unregulated. The absence of provisions regarding the issue of the fee, according to the author, may discriminate against inmates and to provide opportunities for the practice of "corruption" committed by a handful of unscrupulous Correctional Officers irresponsible.

Based on an analysis of four prisoners' rights who should receive the attention and such protection, the right not to be tortured as a result of breaches of discipline, the right not to be subjected to violence from fellow inmates, the right to medical care and the right to home leave, assimilation, parole and furlough nearing release, it can be concluded that the rights of prisoners as mandated by the Corrections Act, can not be implemented in full, real, without discrimination and free.

For the good in the future, the question of the fulfillment of the rights of prisoners, of course it does not have to stop at the conclusion that these rights have not been met, as noted above. Related to this, there are at least three questions must be found to answer. *First*, whether the root of the problem that caused it to happen. *Secondly*, if it happens, to whom prisoners must submit complaints. *Third*, Which institution to supervise and oversee the implementation of the rights of prisoners.

On the other side, the inmate with all the helplessness, will tend to accept whatever circumstances they face. An inmate, however he understood that he had the rights guaranteed by the Act will face a dilemma in which she felt "completely wrong" in the struggle for their rights.

Formulation of provisions governing the right to submit complaints mentioned above, contains issue of a dilemma, making implementation difficult. In everyday language, presumably it can be said that how could an inmate who suffered discrimination to get their rights or suffer "extortion" or physically abused by unscrupulous clerk of Corrections, can or dare to report a violation of his rights to the head of prisons, while the motion restricted?

Next, if the prisoners concerned bold and with all the effort she managed to report a violation of his rights to the head of prisons, is there any guarantee that the head of prisons will follow up on these reports ?. Is there any guarantee that the head of prisons will not cover these issues in order to safeguard the prestige and good name of the institution ?. Is there a guarantee that after reporting the violations of their rights, inmates in question will be "safe" to be in an environment that dilapokannya?.

The above paragraph is certainly not meant to say that all Head prisons would not be concerned with the complaints of prisoners, because in reality a lot of the figure head of prisons were very caring and sensitive, not only to the fulfillment of the rights of prisoners but also the complaints of prisoners for infringement -haknya however small it kind of offense.

The message that the author wants to convey the real is when we think in terms of systemic even more so when referring to the opinion of Klitgaard, as noted above, the submission of complaints by inmates of the violations and or waiver of his rights at the Correctional Institution, will only be effective if it is submitted to the institutions outside.

As such, there will be separation of functions between the institutions that must meet prisoners' rights and the institutions that supervise and oversee the implementation of the fulfillment of these rights. With the separation of these functions, monopoly and discretion will be limited and accountability be increased. Thus the abuse of power that resulted in the violation or disregard for the rights of prisoners in the Correctional Institution

can be minimized.

Under the provisions of the Criminal Procedure Code, presumably it can be deduced that the Criminal Code has tried as far as possible to protect not only the rights of suspects and defendants, but also the rights of prisoners. In addition, it is also apparent that for the attainment of the effectiveness of law enforcement, the Criminal Procedure Code has implemented a systemic approach to the separation of functions of law enforcement agencies in the Criminal Justice System Indonesia.

Of provisions regarding prisoners' rights guaranteed by the Law on Penal and their institutions Judge Wasmat which oversees the implementation and fulfillment of these rights for inmates undergo a criminal act in Correctional Institution, presumably can be said that the conception was very noticeable how the state has commitments strong to protect the rights of citizens, including the rights of prisoners.

### **Conclusion.**

Duties and authority of Corrections according to legislation can be seen from the aspect of Corrections role in the fulfillment of the rights of prisoners. In the Penal Law, regulates the provisions concerning prisoners' rights to be protected and fulfilled during the criminal inmates undergoing concerned at the Correctional Institution. Based on the results of research by the author, duties and authority of Corrections referred to can not be implemented optimally. It can be seen in the fact still finding of infringement or a waiver of the rights of prisoners, especially of the right not to be tortured as a result of breaches of discipline, the right not to be subjected to violence from fellow inmates, the right to medical care and the right to home leave, assimilation, exemptions parole and furlough nearing release. Finally it can be concluded that the rights of prisoners as mandated by the Corrections Act, can not be implemented in full, real, without discrimination and without charge. Root of the problem of non-fulfillment of the rights of the convicted person is a tendency to abuse of power as a result of monopolistic behavior, their discretion, the lack of accountability due to the relatively closed correctional culture and malfunction of the Judge Institute Wasmat as mandated by the Criminal Procedure Code.

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