

## The Socio-Legal Study of Rights Fulfillment and Fostering Prisoner at Correctional Institutions in Covid-19 Pandemic

Nur Rochaeti✉ and Irma Cahyaningtyas

Faculty of Law, Diponegoro University, Semarang - Indonesia

---

### Abstract

As part of the integrated criminal justice system, Correctional Institutions play a role as law enforcement officers in addition to having a strategic role in the formation of Human Resources (HR) that are independent, responsible, quality, and dignified. The correctional system is a more humane and normative treatment system for inmates based on Pancasila and is characterized by rehabilitative, corrective, educative, and integrative or order regarding the direction and boundaries as well as ways of fostering prisoner based on Pancasila, which are carried out in an integrated manner between the coach as a correctional officer, being fostered, and integrative or order regarding the direction and boundaries as well as the way of fostering the prisoners based on Pancasila which are carried out in an integrated manner between the coach, prisoners and integrative Public. The problem is how is the socio-legal study of fulfilling prisoner's rights and fostering in correctional institutions during the COVID 19 pandemic. The research method used is socio-legal, to analyze the policy on Act Number 12 of 1995 of correctional and fulfillment of prisoner's rights in coaching during the COVID 19 pandemic. The results of the study analysis that the policy in Act Number 12 of 1995 of correctional currently does not accommodate the fulfillment of prisoner's rights in correctional facilities, prisoner's guidance is carried out by providing useful skills after leaving correctional facilities for independence and personality, which cannot be fully utilized. Inmates optimally, after leaving penitentiary, infrastructure facilities, as well as health workers in correctional, are needed, especially when the COVID 19 pandemic. The release of prisoners is a dilemma in the condition of the COVID 19 pandemic.

**Keywords:** arranged socio-legal; fostering prisoner; correctional institutions; COVID-19.

### Abstrak

Sebagai bagian dari integrated criminal justice system, Lembaga Pemasyarakatan berperan sebagai aparat penegak hukum disamping peran strategis dalam pembentukan Sumber Daya Manusia (SDM) yang mandiri, bertanggungjawab, berkualitas dan bermartabat. Sistem Pemasyarakatan adalah tata perlakuan yang lebih manusiawi dan normatif terhadap narapidana berdasarkan Pancasila dan bercirikan: rehabilitatif, korektif, edukatif dan integratif atau suatu tatanan mengenai arah dan batas serta cara pembinaan warga Binaan pemasyarakatan berdasarkan Pancasila yang dilaksanakan secara terpadu antara pembina, yang dibina, dan masyarakat. Permasalahannya adalah, bagaimana kajian socio legal pemenuhan hak narapidana dan Pembinaan di lembaga pemasyarakatan di masa pandemi COVID 19. Metode penelitian yang digunakan adalah socio-legal, untuk menganalisis kebijakan tentang Undang Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan dan pemenuhan hak-hak narapidana dalam pembinaan pada masa pandemi COVID 19. Hasil penelitian menunjukkan, bahwa kebijakan dalam UU No. 12 Tahun 1995 saat ini belum mengakomodir pemenuhan hak-hak narapidana di dalam lembaga pemasyarakatan, pembinaan narapidana dilakukan dengan pemberian ketrampilan yang bermanfaat setelah keluar lembaga pemasyarakatan bersifat kemandirian dan kepribadian, tidak sepenuhnya dapat dimanfaatkan narapidana secara optimal, setelah keluar dari lembaga pemasyarakatan, fasilitas sarana prasarana serta tenaga kesehatan di lembaga pemasyarakatan sangat dibutuhkan terutama saat pandemi COVID 19. Pembebasan narapidana merupakan dilema dalam kondisi pandemi COVID 19.

**Kata kunci:** socio-legal, pembinaan, lembaga pemasyarakatan, COVID-19.

## Introduction

The correctional institution is a part of the integrated criminal justice as set forth in The Act No 12 of 1995 on Correction, in building convicts and correctional protégés to be complete humans. Prisoner's development must be pursuant to the need and requires support from all parties. Such support is not only from convicts themselves and supervisors but also from society. The society should be able to accept prisoners, especially those who have repented, to return to social life. This task does not only make Correctional Institution a place of retribution, but also a place where convicts repent their mistakes.

Problems do not occur only in an internal correctional institution, but also after getting out of it and becoming part of the society. Many ex-prisoners become recidivists not long after getting out of jail. The reason is that the broken relationship between prisoners and the society is not well settled so that when a convict has been released, he is not necessarily accepted in the social environment and eventually recommits crime.

The purpose of correction is social reintegration in achieving unity of life relationship until prisoners get out of The correctional institution to be part of the society. Philosophically, Correction means a conviction system that has moved far and left Retributive, Deterrence, and Resocialization philosophies. The sentence is not intended to make suffering as a form of retribution, not intended to be a deterrent with suffering, and also not assuming convict as an individual lacking of socialization. Correction is in line with social reintegration philosophy, which assumes that crime is a conflict existing between a convict and the society. Thus the sentence is aimed at recovering conflict or reuniting a prisoner with the society (reintegration) (Sujatno, Adi, 2010).

The idea rested on the belief that the penal system should not merely punish people who violated the law but equip them to lead productive and law-abiding lives upon release. Rehabilitative penology was designed to help occupants of penal institutions adjust to society through educational and vocational training, right behavior incentives, and other prison-based programs. The central aim was to reduce recidivism by facilitating personal improvement (Grasso, 2017).

The National Advisory Commission on Criminal Justice Standards and Goals support the social re-integration model. This condition explains that maintaining those violating the laws in the society is important since jail or correctional institution results in dehumanization (National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, 1973). "Prison tends to dehumanize people. Their weaknesses are made worse, and their capacity for responsibility and self-government is eroded by regimentation. Add to these facts, the physical and mental conditions ignore offender's right, and the riots of the past decade are hard to be wondered at. Safety for society may be achieved for a limited time if offenders are kept out of circulation. However, no real public protection is provided if confinement serves mainly to prepare men for more, and more skilled criminality."

Article 1 point 2 Law No. 12 of 1995 on Correction states that the correctional system is an order regarding the direction and limitation of as well as how to develop Correctional

Development Inhabitant based on Pancasila (Indonesian Five Basic Principles), which is implemented in an integrated manner between the supervisor, the developed. The society to improve the quality of Correctional Development Inhabitants so that they will realize their mistake, correct themselves, and not recommit crime; thus, they will be reaccepted in the social environment, actively participate in the development, and live a normal life as good and responsible citizens.

Philosophically, correction shows commitment in the effort to change prisoners condition through a development process and treating them humanely, through prisoners rights protection. In Article 14 The Act Number 12 of 1995, each prisoner has the right to:

1. perform devotional practice pursuant to their religion or belief;
2. obtain treatment, both spiritually and physically;
3. obtain education and teaching;
4. receive health service and decent food;
5. give complaint;
6. obtain reading and have other non-prohibited mass media broadcast;
7. obtain wage or premium for works they perform;
8. receive the visit of family, legal counsel, or other certain people;
9. receive a reduction of imprisonment period (remission);
10. have the change to assimilate, including leave to visit family;
11. receive conditional liberation;
12. receive leave before release; and
13. receive other rights pursuant to prevailing laws and regulations.

Practically, the existing conditions occurring in almost every the correctional institution are problems caused by (“Kemenkumham Beri Solusi Tidak Menyentuh Akar Masalah Di Lapas,” n.d.) :

1. Overcapacity at Correctional Institution, the overcapacity phenomena in many State Detention House and Correctional Institution, is one of the real symptoms of no synergy of operation in the criminal system. In the context of an integrated criminal system, every law enforcement institution cannot negate problems faced by other law enforcement institutions, which directly or indirectly are caused by one of the institutions’ policy;
2. Non-fulfillment of prisoner’s basic needs, the existing condition is non-fulfillment of prisoner’s basic needs, such as non-fulfilled food nutrition, inadequate sanitation, and so on. Such a condition may cause disease, especially to convicts;
3. Criminal imprisonment is not the only solution. Conflict cases that still occur at the correctional institution illustrate that prison is not a solution to crime reduction (Ismail, 2013).

In the performance of the law reform, there are some matters to conduct, such as:

1. Rearrangement of the existing legal structure and institutions, including quality human resources;
2. Reformulation of just law;

3. Improvement of law enforcement through settling law violation cases;
4. People's involvement in law enforcement;
5. Public education to improve people's understanding of the law; and
6. Application of the Good Governance concept.

In the COVID 19 pandemic Minister of Law and Human Rights, Yasonna Laoly decided to release some of the prisoners from prison to prevent the spread of COVID 19 in prison. About 30,000 adult and child convicts released earlier than the time they should be released as the result of the spread of the Coronavirus or COVID 19 disease. This Provision is outline in the Decision of Minister of Law and Human Rights number M.HH-19.PK/01.04.04 on the Release and Liberation of Convicts and Children through Assimilation and Integration in Prevention of and Coping with COVID 19 Spread.

## Research Problems

The research problem is how is the Socio-Legal Study on the Fulfillment of Prisoners Rights and Development at Correctional Institution in the COVID 19 Pandemic?

## Research Methods

The research employed a juridical-empirical approach that the juridical study was based on currently applicable laws and regulations. The empirical study was based on the implementation of development in the correctional institution. The research locations were at the Regional Office of Law and Human Rights of Central Java Province and Correctional Institution in Nusakambangan Island.

## Discussion

The Correctional system puts Correctional Development Inhabitants consisting of prisoners, state children, and correctional clients not as a development object anymore. However, the subject of development and they are deemed ordinary people and citizens and dealt with not on retaliation background, but with development and guidance (Sudaryono, 2005). The main principles of the correctional concept are:

1. Those who are misguided also need protection by giving them life provisions to be good citizens who are useful to the society. This means building the Indonesian society towards a just and prosperous society based on Pancasila (Indonesian Five Basic Principles). Life provisions are not only in terms of financial and material matters, but more importantly, mentality, physiology (health), expertise, skill and people with desire and potential and effective capability to be good citizens who do not recommit the law and are useful to the state development;
2. Criminal imprisonment is not the state's act of vengeance. None of the convicts is tortured either in the form of act, utterance, treatment, or placement. The only suffering experienced by the prisoners is their lost freedom;

3. Repentance cannot be achieved through torture, but through guidance/supervision. Prisoners should be instilled with an understanding of life norms and given a chance to contemplate their past acts. Prisoners may participate in social activities to grow their sense of social life;
4. The state does not have the right to make a person worse or more evil than before he enters correctional institution. Further, recidivists are to be separated from the rest, those with great crime from small crime, by types of crime, adult convicts, young convicts, and child convicts, men and women;
5. While having their movement freedom lost, convicts should be introduced to the society and should not be exiled therefrom. They will gradually be guided outside the correctional institution (in the society), which is needed in the correctional process;
6. Works given to convicts should not only be intended to kill time, nor be a temporary allocation for the office or the state. The works should be one with the works in the society and intended for the national development. There should be integration between convicts' works and the national development;
7. Guidance and teaching must be based on Pancasila (Indonesian Five Basic Principles). Education and guidance shall also contain Pancasila (Indonesian Five Basic Principles). Prisoners must be given with religious education and the chance and guidance to perform their devotional practice. They must be instilled with the spirit of mutual cooperation, tolerance, kinship and kinship between nations. They must be instilled with the sense of unity, sense of Indonesian nationality, spirit of positive deliberation for consensus. Prisoners should participate in activities for a common interest and public interest;
8. Every person is human and must be treated as human, even if he is misguided. There should be no reference that convicts are criminals.

On the contrary, they should always feel that they are deemed and needed as humans; i. Prisoners are only sentenced with loss of freedom. Attempts need to be made for convicts to have livelihood for their family members who become their dependents by providing them works or allow them to work and given wages for their work; j. The hindrance to implementing the correctional system is the legacy of prison houses with poor conditions, making adaptation to correctional tasks difficult, located in the middle of the city with their high and wick walls.

The purpose of development in the correctional institution is divided into three (Sudaryono, 2005):

1. After getting out of Correctional Institution, convicts will no longer commit a crime;
2. Prisoners shall become useful humans who participate actively and creatively in the state and national development;
3. Prisoners will be able to get close to God Almighty and reach happiness in the world and the afterlife.

The purpose of prisoner's development is closely related to imprisonment objective. Prisoners' development currently made starts from the fact that the purpose of

imprisonment is no longer appropriate to the development of life values and essence growing in society. In the correctional system, the purpose of imprisonment is development and guidance, with admission/orientation, development, and assimilation stages. The stages are not known in the prison system. the admission/orientation stage is intended for prisoners to know the way of life, regulation, and purpose of their development (Sudaryono, 2005).

The correctional institution serves to facilitate their integration with and adaptation to social life, intending to make them feel that they are Indonesian people and citizens who can perform something for the state and nation's interest just like other Indonesian people and citizens and able to create society's good opinion and image. Criminal imprisonment (correctional) for prisoners does influence not only their physiology but also their psychology including:

1. Loss of personality;
2. Loss of security;
3. Loss of personal communication;
4. Loss of good and service;
5. Loss of heterosexual;
6. Loss of Prestige;
7. Loss of belief;
8. Loss of creativity (Harsono, H.S, 1995).

Criminal imprisonment with correctional system contains two aspects of imprisonment objective, namely as society protection and violator correction. R.M. Jackson states that imprisonment is useful if the violator is no longer imprisoned within a certain period. Further, it is reasserted that effectiveness is a measurement of comparison between the number of violators re-imprisoned and those not re-imprisoned.

The necessary primary justification of criminal imprisonment actually lies in the characteristics or functions as a process to change or correct the law violator's characters and behaviors (Nawawi Arief, 2009). This opinion is as proposed by M. Cherif Bassiouni, that the characteristics of imprisonment in modern society emphasize the implementation of a process more than its direct impact on victim or violator. The development in the correctional institution in the COVID 19 pandemic period requires a protocol which requires special treatment as an effort to protect correctional institution officers and convicts' health. The criminal policy, which becomes the basis of implementation of development in The Correctional Institution, is Law Number 12 of 1995 on Correction.

One of the renowned correctional institutions in Indonesia is Lembaga Pemasyarakatan Nusakambangan. This correctional institution is located on Nusakambangan Island. Nusakambangan Island is quite familiar to some of the Indonesians because of its nickname as the prison island. This nickname is given because its function is where convicts from various regions are imprisoned with various cases. Nusakambangan is about 1 km away from Cilacap city and may be reached through a boat from The Wijayapura port

within 10 minutes. Nusakambangan Island has an area of about 210 square kilometers or 21000 hectares (Wibowo, 2001).

The use of prisoner's manpower to build a stronghold in Nusakambangan in 1861 started the entry of prisoners or foreign workers into Nusakambangan Island. The success of The Dutch East Indies Government in supervising and securing the convicts at the time was used as the basis to establish the island to accommodate convicts. In 1908, the Governor-General of The Dutch East Indies issued an order that the island met all requirements for a prison island or *bijzonderestraf gevangenis*. Further, the island's supervisory and ownership status was to Raad van Justitie or the Department of Justice (Wibowo, 2001).

There are eight Correctional Institutions in Nusakambangan, including Correctional Institution Class I Batu, Correctional Institution Class IIA Besi, Correctional Institution Class IIA Kembang Kuning, Correctional Institution Class IIA Pasir Putih, Correctional Institution Class IIA Permisan, Correctional Institution Class IIA Narkotika, Correctional Institution Class IIA Karanganyar, and Correctional Institution Class IIB Terbuka. This research was conducted at Correctional Institution Class IIA Permisan. The development activities in Correctional Institution Permisan are divided into two, namely independence activities and personality activities. The independence activities consist of 10 activities conducted by 312 development inhabitants and implemented from 09:00-13:00 West Indonesia Time. In contrast, the personality activities must be conducted by all development inhabitants of The Correctional Institution. The facilities in the correctional institution are complete and well managed. This is also supported by the factor of development inhabitants and officers well maintaining the facilities and infrastructure in the correctional institution.

With regard to the assimilation of convicts, Circular of Director General of Correction No. PAS-497.PK.01.04.04 Year 2020 on the Release and Liberation of Prisoners and Children through Assimilation and Integration in Prevention of and Coping with COVID 19 Spread signed by Acting Director-General of Correction is issued. The regulation is made an adjustment to the development and needs for law in the society when it is stated that the purpose of the policymaking is aimed at ensuring prisoners from COVID 19 exposure resulting from overcrowded conditions of the correctional institution. In the COVID 19 pandemic period, the development at the correctional institution establishes a protocol of special treatment as an effort to protect correctional institution officers and prisoners' health, such as limitation of family's visit time and reduction of activities involving a large number of prisoners, since they will be risky to the correctional institution officers and prisoners' health.

## **Conclusion**

Development in the correctional institution is implemented based on Law Number 12 of 1995, as a series of law enforcement intending to make Correctional Development Inhabitants realize their mistakes, correct themselves, and not recommit crime, so that

they will be accepted again in society environment, actively participate in the development, and live a normal life as good and responsible citizens. In the COVID 19 pandemic period, the development at the correctional institution establishes a protocol of special treatment as an effort to protect correctional institution officers and prisoners' health, such as limitation of family's visit time and reduction of activities involving a large number of prisoners.

## Suggestion

Several things suggested to fulfill the rights of prisoners in correctional institutions during the COVID 19 period, namely:

- a. Conducting training, workshops for Correctional Institution officers to improve competence, mostly related to the Rights of Prisoners and Development in Correctional Institutions;
- b. Improve facilities and infrastructure for the fulfillment of prisoners' rights in correctional institutions;
- c. Provide easy access to fulfilling the rights of prisoners in correctional institutions.

## References

- Grasso, A. (2017). Broken Beyond Repair : Rehabilitative Penology and American Political Development. *Political Research Quarterly*, 70, 394. Retrieved from <https://www.jstor.org/stable/26384950>
- Harsono, H.S, C. (1995). *Sistem Baru Pembinaan Narapidana*. Bandung: Djambatan.
- Ismail, R. (2013). Problem Lembaga Pemasyarakatan Di Indonesia Dan Reorientasi Tujuan Pemidanaan. *Jurnal Hukum Dan Peradilan*, 2, 263-264.
- Kemenkumham Beri Solusi Tidak Menyentuh Akar Masalah Di Lapas. (n.d.). Retrieved February 7, 2020, from <http://www.bantuanhukum.or.id>
- National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime* (1973). Washington DC.
- Nawawi Arief, B. (2009). *Tujuan Dan Pedoman Pemidanaan*. Semarang: Badan Penerbit Universitas Diponegoro.
- Sudaryono, N. S. (2005a). *Hukum Pidana*. Surakarta: Spectrum.
- Sujatno, Adi, W. N. (2010). *Curah Pikir Dua Sahabat*. Jakarta: Team 7AS.
- Wibowo, U. (2001a). *Nusakambangan Dari Poelaoe Boei Menuju Pulau Wisata*. Jakarta: Mitra Gama Widya.