



CONJUGAL VISIT: JURIDICAL REVIEW OF THE FULFILLMENT OF INMATES' RIGHTS IN THE CORRECTIONAL PERSPECTIVE

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ABSTRACT

Imprisonment as a loss of independence should only limit the inmates' freedom of movement in a correctional institution. This interpretation rises a discourse that the fulfillment of other rights of inmates must be guaranteed, including the right to fulfill their sexual needs. A term that is known globally in order to fulfill this right is called a conjugal visit. This study seeks to describe the urgency and prospects of conjugal visit for inmates in Indonesia. In addition, this study aims to provide an overview of the arrangement and implementation of conjugal visit. This legal research was normative legal research supported by the results of interviews with resource persons. The data obtained from the literature research were analyzed descriptive-qualitatively with a legal systematic approach and legal comparison. The results of this study indicate that sexual needs are one of the human rights. They are the inmates' basic needs that must be fulfilled. The failure to fulfill these basic needs will have a negative impact both physically and psychologically. Based on the theory of basic human needs, the rules of international law, namely the Nelson Mandela Rules and the Bangkok Rules, as well as national law, namely the Republic of Indonesia Law Number 36 of 2009 concerning Health, conjugal visit can actually be implemented in Indonesia with clear legal bases in Indonesian law. Establishment of regulations regarding conjugal visit is done by comparing practices in other countries and aligned with the Legal System Theory. These countries have similar backgrounds to Indonesia and have implemented conjugal visit, namely Pakistan, Turkey, and Saudi Arabia.

Keywords: sexual needs; inmates; fulfillment of rights

INTRODUCTION

Background

The discourse on the fulfillment of Human Rights in various contexts continues to develop from time to time, one of which is in the context of law enforcement. Human rights are interpreted as a set of basic rights that exist not because they are given by the state or other individuals. Human rights are

basically inherited by humans from birth.¹ Departing from the definition of human rights which is recognized by the state as the rights that cannot be reduced in the fulfillment², then human rights restrictions also need to be carried out with accurate and attentive consideration, including restrictions on one's

1 Carolus Boromeus Kusmaryanto, "Hak Asasi Manusia Atau Hak Manusiawi?," *Jurnal HAM* 12, no. 3 (2021).

2 Pemerintah Republik Indonesia, *Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*, 1999.

independence. The loss of independence, such as imprisonment and confinement, is a tangible manifestation of these restrictions.

Imprisonment as a type of penalty for loss of independence should only limit/eliminate human rights in the form of a person's right to freedom. This limitation/elimination to freedom particularly is to limit one's movement within a certain period of time by placing him/her in a correctional institution. However, Barda Nawawi Arief stated that it is not only freedom that is deprived of in prison, but also a person's normal sexual life. It is because in prisons homosexual relationships and masturbation often occur among inmates.³ Various forms of sexual violence also occur in prisons. Choosing to be sexually active or not, have consensual sex, and have a satisfying, safe, and enjoyable sexual life are all part of Sexual and Reproductive Health Rights (SRHR)⁴. SRHR is a part of human rights, where the SRHR component intersects with other human rights components such as the right to life, the right to be free from torture, and the right to privacy⁵. SRHR is divided into sexual health rights, reproductive health rights, sexual rights, and reproductive rights.⁶ Sexual health rights and reproductive health rights are derivatives of health rights. This right guarantees a person to enjoy the maximum physical and mental health from sexual and reproductive activities.⁷ Meanwhile, sexual rights are the rights to freedom, equality, privacy, autonomy, integrity, and dignity of

all people related to sexuality.⁸ Reproductive rights are basic rights that guarantee the freedom of each couple and individual to decide freely and responsibly regarding the number, distance and time to have children and to obtain information.⁹

The paradigm shifting, in sentencing system from getting punishment to the idea of giving treatment, is marked by the shift from a prison system to a correctional system.¹⁰ The change into a correctional system is intended to shift the emphasis on the element of revenge to rehabilitation and social reintegration. It is conducted by making inmates aware of their mistakes, no longer having the will to commit crimes, and can return to be responsible citizens.¹¹ This change is based on the idea that the treatment and development of inmates refer to the existence of human rights which is manifested in Article 5 letter f of Law Number 12 of 1995 concerning Corrections (Correctional Law) which mentions that losing independence is the only penalty for inmates. In the explanation of the Article, it is stated that the inmates¹² still get their other rights like humans should do.

The fulfillment of the need for sexual activities in the context of SRHR can be actualized in the concept of a conjugal visit. Conjugal visit is made by a spouse (husband/wife) of an inmate for several hours/day privately in a provided room. During visiting times, inmates and their partners may have sexual activities. This concept has appeared in Indonesia sporadically in several prisons known as *Bilik Asmara* or A Love Booth.

3 Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara* (Semarang: Badan Penerbit UNDIP, 1996), hlm. 42.

4 International Planned Parenthood Federation (IPPF), *Sexual Rights: An IPPF Declaration* (London: International Planned Parenthood Federation (IPPF) Publisher, 2008), hlm. 16-21.

5 *Ibid.*, hlm. 10-11.

6 Rano Indradi Sudra et al., *Etika Profesi Dan Hukum Kesehatan Dalam Praktik Kebidanan* (Medan: Yayasan Kita Menulis, 2021), hlm. 45-46.

7 International Planned Parenthood Federation (IPPF), *Op.cit.*, hlm. 17.

8 *Ibid.*, hlm. 12.

9 United Nations, *Report of the International Conference on Population 1984* (New York: United Nations, 1984), hlm. 57.

10 Dwi Elyana Susanti, "Optimalisasi Pelaksanaan Tugas Pembimbing Kemasyarakatan Dalam Revitalisasi Pemasarakatan," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 141-162.

11 Pemerintah Republik Indonesia, *Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasarakatan*, 1995.

12 *Ibid.*

However, conjugal visit are carried out without a clear legal framework, such as in Ciangir Prison, Kendal Open Prison, and Nusakambangan Prison.¹³ In fact, sexual rights have been recognized and regulated in international law, namely the Nelson Mandela Rules and the Bangkok Rules, as well as national law, namely the Republic of Indonesia Law Number 36 Year 2009 concerning Health. Regarding the inmates' sexual need fulfillments through conjugal visit, the absence of a clear legal framework of this need causes the practice of renting love booths in prisons. This practice benefits certain groups, such as in the case of bribery of the Head of Sukamiskin Prison in Bandung in 2018. The love booths built by the Ministry of Law and Human Rights are still insufficient to fulfill the rights of inmates. Therefore, it is necessary to have a juridical review of the implementation and regulation of conjugal visit as the fulfillment of human rights in a correctional perspective.

Research Questions

1. How is the urgency of conjugal visit to fulfill the sexual rights of inmates in prisons?
2. How are the prospects for regulating and implementing conjugal visit in the correctional system in Indonesia?

Aims

1. To describe the urgency of conjugal visit to fulfill the sexual rights of inmates in the Correctional Institution.
2. To describe and recommend the prospect of setting up a conjugal visit in the Regulation of the Minister of Law and Human Rights and its implementation in the correctional system in Indonesia

Research Methods

1. Approach

This research was normative research, based on literature study. In addition, this research was strengthened by the results of interviews with resource persons. The nature of this research was explanatory. It is because this research was the development study on previous research and was carried out to enrich the mind with new knowledge. In addition, there were not many information related to the topic of this research. The approach used in this research were legal systematics and comparative law. The legal systematic approach means that the research was carried out by tracing the systematic linkages between basic laws, both instrumental and operational in the context of law enforcement in society. This study aimed to explore the systematic linkage between legal substances in the laws and regulations in Indonesia such as Law Number 36 of 2009 and Law Number 12 of 1995, the legal structure in the form of the availability of legal apparatus, as well as legal culture in viewing the biological rights of inmates to be able to construct the ideal concept of conjugal visit in fulfilling the rights of inmates. Likewise, the comparative law approach was carried out by comparing the practice of conjugal visit in prisons in several countries such as Pakistan, Turkey, and Saudi Arabia. The evaluative comparative research, which was used to see whether the existing law contributing to the achievement of the goal, will be useful for answering the problem of what must be regulated by law in order to contribute to achieving the goal¹⁴ This legal research analyzed the legal substance that exists in various countries in regulating conjugal visit on the fulfillment of inmates' rights. It was done in order to answer

13 Erandhi Hutomo Saputra, "Dirjen PAS Sudah Sediakan Bilik Asmara Di 3 Lapas," *Kumparan*, accessed March 26, 2021.

14 Kees Waaldijk, *The Character of Scholarly Legal Research: Paradigms, Problems, Questions, Hypotheses, Sources, Methods* (Leiden, 2009), hlm. 2-3.

what must be regulated by law or the ideal concept of conjugal visit in fulfilling the rights of inmates.

Although research on conjugal visit had been carried out before, the previous studies generally focused only on the urgency or the importance of conjugal visit in Indonesia. Meanwhile, this study has a more extensive focus by not only describing the urgency of conjugal visit but also providing a concrete picture related to the concept of the ideal conjugal visit in Indonesia. Several similar studies include a study entitled *Juridical Review of the Urgency of Conjugal Visit Policy as Fulfillment of Rights for Inmates* written by Ni Nyoman Ome Tania Langden and I Nengah Suantra in *Kertha Wicara Journal*, Vol. 7, No. 4, August 2018. This legal research discussed conjugal visit as a form of fulfilling biological needs guaranteed in Law Number 36 of 2009 and its fulfillment is an urgency because there are many deviations against sexual objects in prisons.¹⁵

Other previous research that is also related to conjugal visit is legal research entitled *Conjugal visit for Inmates to Meet Biological Needs (Studies in Class I Correctional Institution in Malang City)* written by Erwina Suhaila, Rahmatul Hidayati, and Budi Parmono in *Dinamika Journal*, Vol. 27, No. 9, January 2021. This legal research discussed the condition of the Malang City Class I prison which experienced overcapacity with a total of 3150 inmates from what should only accommodate 1280 people. Due to the absence of a legal basis, the prison had not implemented a conjugal visit system. The reasons why conjugal visit was not implemented in the prison was due to the absence of laws and regulations

that regulate it, minimal human resources, lack of adequate facilities/infrastructure, and the advantage and disadvantage of conjugal visit. At last, Malang City Class I prison accomodates biological needs of their inmates by giving alternative programs such as Family Visiting Leave (CMK).¹⁶ Although the two studies have described the urgency of conjugal visit in Indonesia through their respective perspectives and construction of arguments, none of them provide a concrete picture regarding the ideal concept of establishing a legal system related to conjugal visit in Indonesia. It includes the regulation in positive law, improvement of the legal structure in Indonesia as a support, as well as the formation of legal culture that is needed in the community to support the implementation of conjugal visit in a conducive manner. A discussion of these topics can be found in this legal research.

2. Data Collection Method

This type of research was normative. The data in this study was secondary data. Secondary data collection applied document studies as a collection tool. The object of document study included primary legal materials, secondary legal materials, and tertiary legal materials.¹⁷

a. Primary legal materials

Primary legal materials are binding legal materials. Primary legal materials generally consist of various laws and regulations and jurisprudence. The laws and regulations which are used including regulations in the international scope such as the Nelson Mandela Rules and the Bangkok Rules, as well as in the national scope such as Law

15 Ni Nyoman Ome Tania Langden and I Nengah Suantra, "Tinjauan Yuridis Urgensi Kebijakan Conjugal Visit Sebagai Pemenuhan Hak Bagi Narapidana," *Jurnal Kertha Wicara* 7, no. 4 (2018): 1-15.

16 Erwina Suhaila, Rahmatul Hidayati, and Budi Parmono, "Conjugal Visit Bagi Narapidana Untuk Memenuhi Kebutuhan Biologis (Studi Di Lembaga Pemasyarakatan Kelas I Kota Malang)," *Jurnal Dinamika* 27, no. 9 (2021): 1295-1311.

17 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1982), hlm. 52.

Number 36 of 2009 concerning Health and Law Number 12 of 1995 concerning Corrections.

b. Secondary legal material

Secondary legal material is an explanation of the primary legal material. This study used books, journals, articles, as well as the results of some research. The researches were carried out both online and offline related to research topics, such as books, journals, articles, and research results on the topics of correctional, health insurance, sexual rights, sexual health fulfillment of inmates' rights, and conjugal visit.

c. Tertiary legal materials

Tertiary legal materials, namely materials that provide instructions/explanations on primary and secondary legal materials. The tertiary legal materials used in this study are the Legal Dictionary, the Great Indonesian Dictionary, and so on.

This research was strengthened by interviews to support the research data¹⁸ The resource persons in the study were (1) Prof. Eddy O. S Hiariej, SH, M. Hum, Deputy Minister of Law and Human Rights of the Republic of Indonesia and a lecturer at the Department of Crime, Faculty of Law UGM. (2) Prof. Dr. dr Soewadi, MPH, Sp. KJ (K) Judicial psychiatrist and lecturer at the Faculty of Medicine UGM who has competence in Sexology (3) Doctor Nugrahaningtyas, a doctor specializing in sexual health, and (4) Dr. Iqrak Sulhin, Lecturer at the Department of Criminology, FISIP, University of Indonesia, compiler of the Correctional Blueprint.

The sampling technique in this study was carried out using a non-random sampling technique which did not provide an opportunity for all individuals or parties involved in the research to be selected as sample. The type of sampling used in this study was purposive

sampling. It means that the sample method was done based on certain criteria, namely the research subjects were selected based on the consideration that they have a relationship with the problem under the study.¹⁹

3. Data Analysis Techniques

The normative legal research conducted by the author focused more on library research, with an approach to the legal system and comparative law. Regarding the urgency of conjugal visit to fulfill the sexual rights of inmates, the author referred to Maslow's theory of basic human needs, the Nelson Mandela Rules, the Bangkok Rules and the Health Law. Meanwhile, to discuss the prospects for regulating and implementing conjugal visit in Indonesian correctional system, the comparison of conjugal visit in several countries was described. In addition, Friedman's theory of the legal system was used for the prospect of conjugal visit implementation in Indonesia.

Data analysis was carried out using qualitative methods which resulted in a descriptive-analytical analysis.²⁰ In compiling and analyzing data, deductive reasoning was used, namely a way of thinking starting from general things to specific conclusions.

DISCUSSION

1. The Urgency of Conjugal Visit in Fulfilling the Sexual Rights of Inmates

A penalty is defined as suffering intentionally given by the state to a person as a reaction to his/her actions that violate criminal law.²¹ Therefore, if someone commits a criminal act (an act that violates the criminal

¹⁸ Waaldijk, *Op.cit.*, hlm. 6.

¹⁹ Valentinus, "Budaya Sabung Ayam Dalam Perspektif Hukum Pidana Dan Kriminologi" (*Skripsi*, Universitas Hasanuddin, 2013), hlm. 48.

²⁰ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1988), hlm. 35.

²¹ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Revisi* (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 36-37.

law), that person is given a penalty in the form of restrictions and even revocation of certain rights. One form of criminal sanctions that significantly limits a person's rights is imprisonment. Imprisonment is also referred to as a penalty of loss of independence which takes the form of deprivation of the convict's²² freedom by being placed in prison.

It is stated in the Correctional Law that a prisoner has the rights,²³ 1) to worship according to his religion or belief; 2) to receive treatment, both spiritual and physical care, 3) to get education and teaching, 4) to obtain health services and proper food, 5) to submit a complaint, 6) to obtain reading materials and participate in other mass media broadcasts that are not prohibited, 7) to get wages or premiums for the work done, 8) to receive visits from family, legal counsel, or certain other persons, 9) to get a reduction in the criminal period (remission), 10) to get opportunities for assimilation including leave to visit family, 11) to get parole, 12) to get leave before being released, and 13) to obtain other rights in accordance with the applicable laws and regulations.²⁴ One of the rights of inmates highlighted in this discussion is the right to "accept family visits". In connection with the implementation of this right, the term "conjugal visit" is known. Conjugal visit is an opportunity for physical contact granted to a prisoner and the prisoner's spouse usually in the form of an overnight stay at the prison.²⁵

Prisoner's rights in Indonesia are regulated in the Correctional Law, while in international instruments the rules that provide protection for inmates, namely the Standard Minimum Rules for the Treatment of

Inmates (SMR) also known as the Nelson Mandela Rules.²⁶ In Article 58 number 2, It clearly states that conjugal visit are allowed and there must be equality between men and women and are carried out in a place that has been provided with due regard to safety and dignity.²⁷ Another international instrument that provides protection for inmates is the Bangkok Rules. Article 27 of the Bangkok Rules contains a statement similar to Article 58 number 2 of the SMR which essentially states that conjugal visit is allowed and there must be equality between women and men in its implementation.²⁸ The Law of the Republic of Indonesia Number 36 of 2009 concerning Health also stipulates in Article 72 letter a that everyone has the right to live a healthy, safe reproductive and sexual life, and free from coercion and/or violence with a legal partner. It is explicitly stated in the article that everyone has the right to have reproductive life and sexual life. This article can justify the existence of conjugal visit in Indonesia in the future.

Conjugal visit in this discussion is prioritized for inmates who are married and have a legal partner. It is true that a prisoner's right to move freely outside the prison is taken, but the prisoner's right to fulfill his/her sexual needs cannot be revoked or eliminated.²⁹ This is in line with the statement of UI Criminologist, Iqraq Sulhin. In the interview the author had with Iqraq Sulhin, he said that

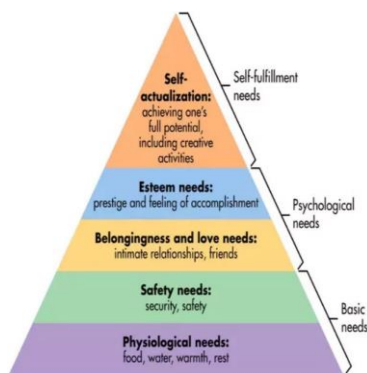
22 Pemerintah Republik Indonesia, *Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan*.
23 *Ibid.*
24 *Ibid.*
25 Bryan A. Garner, *Black's Law Dictionary Ninth Edition* (St Paul: Thomson Reuters, 2009), hlm. 343.

26 Penny Naluria Utami, "Keadilan Bagi Narapidana Di Lembaga Pemasyarakatan", *Jurnal Penelitian Hukum De Jure* 17, no. 3 (2017): 381-394.
27 Austria, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 1955.
28 Bangkok, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with Their Commentary (The Bangkok Rules)*, 2011.
29 Suhaila, Hidayati, and Parmono, "Conjugal Visit Bagi Narapidana Untuk Memenuhi Kebutuhan Biologis (Studi Di Lembaga Pemasyarakatan Kelas I Kota Malang)", *Dinamika Jurnal Ilmiah Ilmu Hukum* 27, no. 9 (2021): 1295-1311.

the right to have sexual relations in prisons is one of the rights of inmates that should not be taken away. However, on the other hand, it should be noted that there are absolute rights and conditional rights. In the interview, Iqrak Sulhin stated that absolute rights include the right to eat, drink, and receive health services. Meanwhile, the right to have sexual relations is included in conditional rights. Iqrak Sulhin further explained that in implementing the conditional rights, various considerations must be taken into account and cannot be demanded by inmates immediately.

These rights can be harmonized with theories about basic human needs that exist in several views. First, the theory of Abraham Maslow as described in the pyramid as follows.³⁰

Figure 1. Maslow's Hierarchy of Needs/ Maslow's Pyramid



Source: *Simply Psychology*, 2020.

Based on the picture above, there are several levels of needs, namely basic needs, psychological needs, and self-fulfillment needs. Basic needs consist of physiological needs and safety needs. Physiological needs are biological needs that humans need to survive, such as food, drink, shelter, clothing, sexual relations, and sleep. Meanwhile, the need for security is a human need for order,

predictability, and control in his/her life. The need for security can be met by the family or the community, such as the police, schools, health care, and so on. Psychological needs consist of the need for belonging and love, and the self-esteem needs. The need for belonging and love, for example, is the need for close relationships and friendships. Meanwhile, the need for self-esteem for example is prestige and a feeling of achievement. Then, the top level of the pyramid is the need for self-fulfillment which consists of the need to actualize oneself, one of which is to achieve one's full potential, including through creative activities. The needs at the lowest level, namely basic needs, must be met first. Then, a person can meet the needs at the next level, namely psychological needs, then self-fulfillment needs. Based on this description, sexual needs are included in physiological needs which are classified as basic needs or the most important basic needs and have to be met first for survival and become the main thing that motivates human behavior.³¹

According to a study conducted by the Faculty of Medicine, Public Health, and Nursing in Gadjah Mada University, there are 5 basic human needs. They are safety needs, sexual needs, economic needs, spiritual needs, and innovation needs.³² These five basic needs are related to each other. That makes all these five basic needs must be met accordingly.³³

Therefore, the right to have sex is considered essential. Thus, the conjugal visit in Correctional Institutions deserves a special concern. On one occasion in 2011, Boyke Dian Nugraha expressed the urgency of conjugal

30 Saul McLeod, "Maslow's Hierarchy of Needs," *Simply Psychology*, accessed April 4, 2021.

31 Interview result with Soewadi, psychiatry expert in Gadjah Mada University, on 10th of September 2021.

32 Wahyudi, *Kesehatan Reproduksi Remaja* (Yogyakarta: Lab Ilmu Kedokteran Jiwa FK UGM, 2000), hlm. 5.

33 Interview result with Soewadi, psychiatry expert in Gadjah Mada University, on 10th of September 2021.

visit for inmates. Boyke claimed “eventhough they are detained, sexual needs have to be fulfilled because it is one of biological needs just like eating and drinking, so it would be best if Correctional Institutions have specific rooms”.³⁴

According to a psychiatry expert in Gadjah Mada University, sexual satisfaction is a key component to health and well-being.³⁵ Soewadi expressed that since sex is a basic human need, it makes the primary fulfillment for the sexual needs can only be met by having sex.³⁶ The sexual needs must be completely fulfilled because if it is not fulfilled properly, there is a sexual deviant behaviour probability.³⁷ In accordance with Soewadi’s opinion, Boyke shared several poor effects for people who cannot have their sexual needs fulfilled properly.³⁸

The poor effects mentioned above are headaches, depressions, irritability, and suicide.³⁹ A study revealed that sexual activities in prisons can be in the form of masturbation, homosexual activities, fondling, kissing, raping, oral sex, making out, and fingering. However, these activities are considered not fully satisfy their sexual desire hence the inmates are depressed and it makes them have suicidal thoughts.⁴⁰

34 “Dr Boyke: Untuk Penyaluran Seks, LP Perlu Miliki Ruang Khusus Bercinta”, *Detik News*, accessed September 15, 2021.

35 Interview result with Soewadi, psychiatry expert in Gadjah Mada University, on 10th of September 2021.

36 Interview result with Soewadi, psychiatry expert in Gadjah Mada University, on 10th of September 2021.

37 Interview result with Soewadi, psychiatry expert in Gadjah Mada University, on 10th of September 2021.

38 “Dr Boyke: Untuk Penyaluran Seks, LP Perlu Miliki Ruang Khusus Bercinta”, *Detik News*, accessed September 15, 2021.

39 *Ibid.*

40 Ely Rahmatika Nugrahani et al., “Sexual Activity of Male and Female Prisoners in Prison and The Impact on Sexual Orientation - A Systematic Review,” in *Proceedings of the 9th International Nursing Conference* (SCITEPRESS - Science

Furthermore, Iqraq Sulhin presented two points of view over the lack of conjugal visit facility in Correctional Institutions or the effect of the inability to channel inmates’ sexual desire. First, by observing a study about prison culture and prison society in the 1970s, lack of conjugal visit will cause homosexuality problems in prisons.⁴¹ Second, according to a contemporary study, unfulfilled conjugal visit in the Correctional Institutions causes sexual abuse in the Correctional Institutions.⁴² Based on these points of view, Iqraq Sulhin is inclined to discuss the second opinions which express the effect of unfulfilled conjugal visit in the Correctional Institutions that causes sexual abuse in the institution.⁴³ Sexual abuse in Correctional Institutions leads to other problem. One of which is the rising number of sexually transmitted disease like HIV-AIDS in a lot of Correctional Institutions.⁴⁴

2. Arrangement Prospect and Implementation of Conjugal Visit in Indonesia

Prisons undergo a philosophical juridical change from an imprisonment system to a correctional system. Imprisonment system emphasizes on vengeance and surrender which is followed by detainment in prisons. Prisons in this sense are gradually seen as systems and facilities that are not compatible with rehabilitation and social reintegration process. The goals of rehabilitation and social reintegration are to make the inmates realized their mistakes, to no longer intend to commit criminal acts, and to get them ready to return

and Technology Publications, 2018), 406–412.

41 Interview result with Iqraq Sulhin, Author of Cetak Biru Pemasarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August2021.

42 Interview result with Iqraq Sulhin, Author of Cetak Biru Pemasarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August2021.

43 Interview result with Iqraq Sulhin, Author of Cetak Biru Pemasarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August2021.

44 Interview result with Iqraq Sulhin, Author of Cetak Biru Pemasarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August2021.

to be responsible people for themselves, their families, and their societies.⁴⁵ This prison concept highlights on the arrangement of directions and boundaries process and how to correct the prisoner behaviour in the correctional institutions based on Indonesia's Five Principles (commonly known as Pancasila). This process is conducted in an integrated manner between the correctional officers, the inmates, and the communities. The purposes are to increase the awareness of the inmates so that they can realize their mistakes, improve themselves, and no longer intend to commit criminal acts in order to be accepted in the society, able to actively participate in the society's development, and able to live normally as a good and responsible citizen.⁴⁶

Prisons as the key player from this correctional system actually have not fully able to achieve the aspirations of the purposes mentioned above. It happens because the condition of Correctional Institutions in Indonesia has reached overcapacity.⁴⁷ The Head of Research and Development Agency of Ministry of Law and Human Rights, Sri Puguh Budi Utami, revealed that⁴⁸ the overcapacity of Correctional Institutions shows there is no compatibility between the inmates and the capacity of the institutions and consequently it makes the correction process will be affected.⁴⁹

In line with the statement above, Institute for Criminal Justice Reform also acknowledged

45 Pemerintah Republik Indonesia, *Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasarakatan*.

46 Dwija Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia* (Bandung: Refika Aditama, 2006), hlm. 98-99.

47 Haryono, "Implikasi Perubahan Undang-Undang Pemasarakatan Terhadap Perlakuan Tahanan, Anak, Dan Warga Binaan Pemasarakatan," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 17-36.

48 M. Nur Huda, "Jumlah Napi Perempuan Di Indonesia Melonjak Tajam Sejak 2014," *Tribun News*, accessed September 12, 2021.

49 *Ibid.*

that the number of inmates in the current Correctional Institutions in Indonesia have exceed the normal capacity.⁵⁰ The occupants in Correctional Institutions in Indonesia have reached an extreme point of 188% inmates. There are various problems arise from this overpopulated environment. They include escaped inmates or inmates from their prison, riots, drugs trafficking controlled from the inside of the prison, fire by the inmates, illegal retribution asked by the correctional officers, and much more. These problems occur not solely because the mistakes and errors come from the correctional officers or the lack of infrastructures. However, they also happen because of substantially more complex situations between the system and the implementation with all the limitations, such as the politics of punishment and the policies of criminal law in Indonesia that still view imprisonment as *primum remedium*. Thus, this situation causes the overcapacity problems but without upgrading the infrastructures.⁵¹ Aside the complexity of overcapacity problems, old discourse from The Ministry of Law and Human Rights about the policy of inmates' rights becomes highly discussed by the public again, which is conjugal visit.

a. Conjugal Visit as the Effort to Fulfill the Inmates' Rights

In 2009, Secretariat General of Justice of the Ministry of Law and Human Rights of the Republic of Indonesia (KemenkumHAM)⁵² revealed that sexual deviant behaviour of the inmates is undeniable. In addition, Correctional Institutions' officers acknowledge that giving conjugal visit facility for well-

50 Rully Novian et al., *Strategi Menangani Overcrowding Di Indonesia, Penyebab, Dampak, Dan Penyelesaiannya* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2018), hlm. 3-4.

51 *Ibid.*

52 Dinas Komunikasi dan Informatika, "Depkumham Akan Ajukan Program Conjugal Visit," *Kominfo Jatim*, accessed September 12, 2021.

behaved inmates to fulfill their sexual needs is necessary. Therefore, fulfilling their sexual needs must be legalized with strict regulations on the bases of Correctional Institutions as educational institutions.⁵³

Legalizing inmates' sexual needs, specifically for those who have married, can be implemented using the reward and punishment context. It makes the conjugal visit facility can only be given to inmates under the condition of the they should be well-mannered and should never break the rules. Referring to the result of a study conducted by the Assessment and Development Policy Center of the Ministry of Law and Human Rights, around 88% inmates agree with the conjugal visit, which is partner's visit to legally fulfill their sexual needs.⁵⁴ On the other hand, the Minister of Law and Human Rights, Yasonna Laoly, claimed that Indonesia has not been able to build rooms to fulfill inmates' sexual needs to their legal partners.⁵⁵ A similar claim was also mentioned by the Vice Minister of The Ministry of Law and Human Rights, Eddy O.S. Hiarij. He stated that ideally every Correctional Institutions have the facility to support conjugal visit. However, currently, correctional institutions in Indonesia is still facing a more urgent problem, such as the overcapacity.⁵⁶ Eddy O.S. Hiarij also added that as an effort to solve this problem, Correctional Bill and Criminal Code Bill do not place imprisonment as the main punishment.⁵⁷

53 *Ibid.*

54 *Ibid.*

55 Chaerul Umam, "Yasonna Laoly Akui Kemenkumham Belum Bisa Menyediakan Rumah Conjugal Visit Di Lapas," *Tribun News*, accessed September 13, 2021.

56 Interview result with Eddy O.S. Hiarij, The vice minister of the Ministry of Law and Human Rights of the Republic of Indonesia, on 27th of August 2021

57 Interview result with Eddy O.S. Hiarij, The vice minister of the Ministry of Law and Human Rights of the Republic of Indonesia, on 27th of August 2021

On the other hand, a criminologist from University of Indonesia, Iqrak Sulhin explained that the Draft of Correctional Bill, issued in September 2019, already puts rights and provides discussions related to conditional rights, yet on this discussion conjugal visit has not been the main issue.⁵⁸

Correctional Bill arranges the inmates' rights in Article 9 and Article 10. The rights arranged in this bill is actually similar as the one in the Correctional Act. However, in this act, the rights of the inmates are arranged only in 1 article, which is Article 14 section (1). Meanwhile, in the Correctional Bill, the inmates' rights are arranged in 2 implicit categories. Article 9 of Correctional Bill arranges several common rights or unconditional rights. Article 10 section (1) of the Correctional Bill arranges several conditional rights or rights that can be obtained by the inmates only if the conditions are fulfilled. The rights mentioned are (a) remission, (b) assimilation, (c) family visit leave, (d) conditional leave, (e) pre-released leave, (f) released on parole, and (g) other rights correspond to act of laws. The requirements of inmates' rights are also stated in the Correctional Act. However, the arrangement is not included in the act. Instead, it is arranged in the Government Regulation based on Article 14 section (2). The elaboration of several requirements to obtain conditional rights for inmates can be found in Article 10 section (2) of the Correctional Bill. This elaboration is in accordance with the diversification of the inmates' rights in Correctional Bill which is divided into 2 different categories. As the requirements to obtain the conditional rights, a prisoner must (a) have good behaviour; (b) participate actively in all correctional

58 Interview result with Iqrak Sulhin, Author of Cetak Biru Pemasyarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August 2021.

programs; dan (c) have shown reduced risk level. Even though there are several changes regarding inmates' rights in the Correctional Bill, they are considered minor changes because they just separate conditional and unconditional rights in different articles. In addition, these changes also elaborate certain requirements to obtain conditional rights. The requirements were at first included in the Government Regulation. Now, they are included in the Correctional Bill. There are not any significant changes or additional rights in the Correctional Bill. Likewise, conjugal visit is not being recognized in the Correctional Bill yet.

These minor changes have not shown the focus to fulfill the inmates' rights, in this case the conjugal visit. In terms of correctional system, Indonesia is still battling over the overcapacity issue. The issue mainly highlights on inhuman situation that the number of inmates exceed the prison capacity as it is revealed in an essay collection titled *Suing from Behind the Bars*. This situation becomes one of the causes of an epidemiological phenomenon of sexual deviancy that keeps developing in prisons. The prevalence of sexual deviancy in the prison is 7,5 times higher compared to the population in the general communities. It shows the tip of the iceberg of prison's problems that merely depict the overpopulated issue with insufficient resources in Indonesian prisons.⁵⁹

Even though sexual need is one of the basic human needs,⁶⁰ Nugrahaningtyas explained that this need is considered unconventional in Indonesia if someone directly shows that he/she wants to have

some sexual activities. Thus, neglected basic needs fulfillment becomes the consequence, including the access to fulfill sexual needs, especially in the Correctional Institutions.⁶¹ Boyke has explained this issue in a book entitled "Di Balik Ruang Praktik" (Behind the Doctor's Practice Room). He stated that men who are unable to satisfy their sexual desire may resort to sexual deviancy. Moreover, he claimed that sexual deviancy happens most of the times in the prison, such as anal sex. It happens because they are unable to satisfy their sexual desire and resort to homosexual sex. This sexual deviancy is usually done between the a prisoner and the younger prisoner who acts as the sex slave. This phenomenon becomes one of the reasons why a discourse on arranging conjugal visit facility in Indonesian prisons, especially in men's prison emerges.

According to Iqram Sulhin, in discussing the rights of the inmates, conjugal visit facility needs to be evaluated whether to be categorized in the primary rights or in the conditional rights. He added that the implementation of primary rights can be seen in the meal and health facilitation.⁶² At the same time, conjugal visit is more suitable to be included in the conditional right. Consequently, in order to obtain this right, the inmates need to fulfill some provisions stated in the law.⁶³

The urgency to take the inmates' rights into consideration to receive conjugal visit is in accordance with the correctional policy and approach model which are used in the Correctional Bill as stated in the Academic Paper of Correctional Bill. In this academic paper, it is specified that correctional approach is based on human affections,

59 Aditya Yuli Sulistyawan, "Membangun Model Hukum yang Memerhatikan Kebutuhan Seksual Narapidana Di Lembaga Pemasyarakatan: Telaah Paradigma Konstruktivisme," *Jurnal Ilmu Hukum* 4, no. 1 (2014): 213-228.

60 Interview result with dr. Nugrahaningtyas Utami, an activist of BKKBN, on 25th of August 2021.

61 *Ibid.*

62 Interview result with Iqram Sulhin, Author of Cetak Biru Pemasyarakatan dan Akademisi Kriminologi Universitas Indonesia, on 12th of August 2021

63 *Ibid.*

not vengefulness, and it does not aim to make the inmates surrender, but to improve their behaviour. The strategies implemented in the Correctional Bill which is by accelerating the inmates' preparation to make them ready to get back to the society so that they can avoid destructive imprisonment influence, as well as by granting their conjugal visit. The spouse who visit the prisoner in conjugal visit is part of the society which can reduce destructive imprisonment effects. As explained by the experts, fulfilling sexual needs can reduce the possibility of decreased physical and mental health, such as headaches, depression, irritability, and it can also reduce the occurrence of sexual violence as one of the destructive effects in the Correctional Institutions as proven in several states in the United States of America which have applied conjugal visit.

This perspective should be a serious concern for government in handling cases in Correctional Institutions. Nevertheless, the overcapacity problems which reached 87% is a top priority to be resolved first. The over capacity data based on Correctional Institution database system on July 7th 2021 revealed that the available capacity is only for 135,981 people. However, the Correctional Institutions are now are filled with 253,938 inmates.⁶⁴

b. Conjugal Visit Around the World and the Reality in Indonesia

Several countries have given conjugal visit rights to their inmates since a few years ago. Nonetheless, there are some **fundamental** differences in conjugal visit rights in each country. In a certain sense, conjugal visit is influenced by the country's culture. Brazil, for

64 Kuku S. Wibowo, "Kemenkumham: Penghuni Lapas Dan Rutan Di Atas Kapasitas, Potensi Rusuh Besar," *Tempo*, accessed September 14, 2021.

instance, grants conjugal visit for both heterosexual and homosexual couples. However, Pakistan only grants conjugal visit for married heterosexual couples. Here are some countries that have implemented conjugal visit. They could be a reference for Indonesia if one day the state facilitates inmates' sexual rights through conjugal visit in the Correctional Institutions.

1) The United States of America

The arrangement of granting conjugal visit rights in the United States is divided into two. They are arrangement for inmates in federal prisons and arrangement for inmates in state prisons. United States Federal Bureau of Prisons does not grant conjugal visit for federal inmates. Meanwhile, inmates in states inmates are granted the right of conjugal visit in accordance to each state.⁶⁵ Not all states acknowledge and provide conjugal visit rights for their inmates. There are 4 states known to grant conjugal visit rights. They are California, Connecticut, New York, and Washington. However, the duration for the conjugal visit for each state is varied. The shortest duration is 1 hour. Meanwhile, the longest duration is 48 hours, which is applied to inmates in Washington.⁶⁶

Furthermore, granting conjugal visit in many states in the United States of America has a significant positive impact. As stated by Jorja Leap, a professor of Social Welfare at the Luskin School of Public Affairs at the University of California,

65 Daven Hiskey, "So What Are the Actual Rules with Conjugal visit and How Did They Get Their Start?," *Today I Found Out*, accessed September 15, 2021.

66 Deborah C. England, "States That Allow Conjugal visit," *Criminal Defense Lawyer*, accessed September 16, 2021.

this right is granted based on the considerations by criminologists related to strengthened family relationships and reduced recidivism if the inmates are granted with conjugal visit.⁶⁷ A study conducted by Florida International University also showed that there were less rape and sexual assault cases being reported in prisons located in the states that grant conjugal visit compared to prisons located in states where conjugal visit are prohibited. The ratio of sexual violence occurs in states that prohibit conjugal visit is 1:444 or 226 cases per 100,000 inmates. Meanwhile in the states that allow conjugal visit, sexual violence cases decline to 4 times lesser with a ratio of 1:1,754 or 57 cases per 100,000 inmates.⁶⁸ This study illustrates sexual violence that occurs behind the bars can be suppressed with the right policy. One of them is by granting conjugal visit rights

Unlike Saudi Arabia that categorizes conjugal visit as a right where almost all inmates with certain prison sentences have the right to receive conjugal visit, The U.S Supreme Court assesses conjugal visit as a privilege instead of a constitutional right. This perspective impacts the general requirements which the inmates need to do or fulfill in order to be granted conjugal visit permission. For example, the inmates must have an exemplary behavior. Furthermore, there are several other requirements implemented in most states that acknowledge the conjugal visit.

They are (a) inmates who request to receive conjugal visit must have a clean record during their stay in the Correctional Institutions, including exemplary and no violence behaviour; (b) prohibit conjugal visit for inmates who are imprisoned for child abuse or domestic violence. Especially in Connecticut, inmates who are members of gangsters are not granted conjugal visit; (c) limit conjugal visit to inmates in prisons with low to moderate security levels; and (d) restrict conjugal visit for inmates who are in prisons with a high security level or who are about to be sentenced to death.

2) Saudi Arabia

Saudi Arabia is one of the leading countries in providing inmates' rights by granting conjugal visit rights. Islam as the religion of the majority of its people is known with polygamy as a part of Islamic norms. Thus, Saudi Arabia also uses polygamy as one of the considerations in granting conjugal visit rights. For monogamous men and women in prison, one conjugal visit is granted per month. Meanwhile for polygamous men, two separate visits per month are granted.⁶⁹ This right is granted to inmates who have served more than three months of their sentences. They are granted approximately 3 hours of conjugal visit in each visitation.⁷⁰ The government of Saudi Arabia acknowledges that consequently by granting this right, it is also necessary to provide supporting facilities. Therefore, the

67 Josh Sanburn, "Mississippi Ending Conjugal visit for Prisoners," *TIME USA*, accessed September 16, 2021.

68 "Research Finds That Conjugal visit Correlate with Fewer Sexual Assaults," *Prison Legal News*, accessed September 17, 2021.

69 Aarefa Johari, "Even Saudi Arabia Allows Prisoners to Receive Conjugal visit," *Scroll.In*, accessed September 17, 2021.

70 Habib Toumi, "Conjugal Visit Prisoner Attempts to Smuggle in Drugs," *Gulf News*, accessed September 18, 2021.

prison provides some decent rooms, away from Correctional officers and visitors sight, and they have been equipped with furnitures.⁷¹ More generous than any other country, the Saudi Arabian government even covers travel expenses for visiting couples.⁷² Not only conjugal visit in Correctional Institutions, well-behaved inmates who have served more than half of their prison sentence (at least 1 year) gain the right to leave the institution for 24 hours for their conjugal visit.⁷³

Conjugal visit are pure visits to satisfy sexual desires for inmates, and its positive paradigm is to reduce sexual deviation level among inmates.⁷⁴ According to the research of Bella Az Zachra entitled *Politics of Criminal Law on Efforts to Establish Conjugal Room in the Act of Law Number 12 in 1995*, fulfilling the sexual needs for Indonesian inmates for now can only be done by utilizing their Family Visiting Leave rights (CMK). It is because the Government of Indonesia still prioritizes over capacity problems occurred in Indonesian Correctional Institutions. Sexual deviancy behaviour among inmates can be the effect of the absent of conjugal visit.⁷⁵ As a matter of fact, conjugal

visit can be a manifestation of the inmates' assimilation target which implemented in the Correctional Act. In this act, conjugal visit is a means for correcting process for Correctional Inmates (WBP) who have met certain requirements by blending them into society, as stated in the Elucidation of Article 6 section (1) of the Correctional Act.⁷⁶ Conjugal visit in many other countries has been brought into existence and its implementatin has ebb and flow, but not so much in Indonesia. There is an interesting case in Uzbekistan related to the ebb and flow of conjugal visit implementation. It happened when when one of inmates in Uzbekistan staged a hunger strike, as a result of the country eliminating their right to conjugal visit. Undoubtly, the country did not spontaneously stop conjugal visit. Based on the existing data, it turns out that the conjugal visit turned into a legalized prostitution in Uzbekistan's Correctional Institution.⁷⁷

Until now, Indonesia does not have clear and firm rules to regulate the existence of conjugal visit. Referring to the statement from the Head of East Java Department of Law on Human Rights, it was explained that the conjugal visit program is being carried out in open prisons, a type of open camp. The Open prisons are strategic unit to prepare inmates to carry out a social reintegration process based on the concept of community-based correctional system in the form of assimilation.⁷⁸ Now, Indonesia only

71 Human Rights Commission, "Prison Inmates Connecting with Family Members," *Rights: Quarterly Magazine*, accessed September 19, 2021.

72 Suzanne Raga, "9 Arresting Facts about Conjugal visit," *Mental Floss*, accessed September 20, 2021.

73 Human Rights Commission, "Prison Inmates Connecting with Family Members", *United Nations Human Rights Office of the High Commissioner*, accessed September 15, 2021.

74 Okky Chahyo Nugroho, "Pemenuhan Hak Atas Kebutuhan Seksual Warga Binaan Pemasyarakatan," *Jurnal HAM* 6, no. 2 (2015): 36-45.

75 Nizar Apriansyar, "Peran Pemerintahan Dalam Pembentukan Kebijakan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 187-196.

76 Victorio H. Situmorang, "Lembaga Pemasyarakatan sebagai Bagian dari Penegakan Hukum", *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 85-98.

77 Nugroho, *Loc.cit.*

78 Ahmad Sanusi, "Evaluasi Pelaksanaan Pembinaan

has 4 (four) open prisons, namely in Padang, DKI Jakarta, Kendal, and NTB. He further explained that conjugal visit should ideally be in open prisons. Meanwhile for other prisons and detention centers, infrastructure facilities such as closed cottages are made so if there are inmates and their wives who want to use them to satisfy their sexual needs, they do not become the ridicule subject by other inmates.⁷⁹

However, there are some obstacles in conjugal visit implementation. One of the obstacles is there is the idea of conjugal visit that is often considered contrary to moral norms in society or even religious norms. The Conjugal visit is considered to be able to open a gap in the practice of adultery. One of the concerns related to this adultery issue is that inmates will receive conjugal visit from someone who is not their legal partner.⁸⁰ However, by looking at the practice in various countries, one of them is Saudi Arabia, conjugal visit holds social and religious values similar to Indonesia. The rights of conjugal visit is not granted freely to the inmates. There are limitations that can be applied as also being applied for other rights which are stated in the Correctional Law. Article 14 paragraph (2) of Correctional Law clearly states that provisions about conditions and procedures for the implementation of inmates' rights

are also regulated. However, they are are regulated in separate legal products, namely Government Regulations, one of them is Government Regulation Number 32 of 1999 concerning Conditions and Procedures for the Implementation Rights of Correctional Inmates.⁸¹ Therefore, the conjugal visit that will be implemented in Indonesia can also be regulated under special conditions for the inmates as its recipient. For example, it is possible to prove a marriage certificate between the visitor and the conjugal visit recipient.

By learning from other countries that provide conjugal visit facilities, it is generally given with special conditions. Considering the assimilation promoted in the Correctional Law is aimed to Correctional Inmates who have certain requirements, similar requirements as stated in the Government Regulations can be integrated into the conjugal visit requirement. The example is the requirement of good behavior. Similar practices can be seen in the love booths. Up to now, this booth is only found in open prisons, which are prisons with minimum security. Regarding the love booths, the Ministry of Law and Human Rights has target to provide love booths for other prisons with minimum security under certain requirements. These requirements can encourage inmates to improve their behavior and place them in an advantageous position so that they are entitled to get conjugal visit. Thus, the purpose

Narapidana Di Lembaga Pemasyarakatan Terbuka," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 2 (2019): 123-138.

79 "Depkumham Akan Ajukan Program Conjugal Visit.", *Dinas Komunikasi dan Informatika*, accessed September 15, 2021.

80 Rangga Baskoro, "Ini Alasan Bilik Asmara Sulit Drealisasikan Di Lapas, Seperti Yang Diminta DPR," *Tribun News*, accessed September 16, 2021.

81 Yuliana Primawardani, "Perawatan Fisik Terkait Penyediaan Makanan Dan Minuman Bagi Narapidana Di Lembaga Pemasyarakatan Ditinjau Dari Pendekatan Hak Asasi Manusia," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 2 (2017): 159-179.

of assimilation which is built on the concept of community-based corrections in the Correctional Law⁸² can be in accordance with it. In addition, Article 5 letter f of the Correctional Law also states the penal system is based on the principle that loss of independence is the only suffering experienced by the inmates. It is unfair that inmates must experience other sufferings for example sexual violence because the lack of proper sexual rights. It is shown by the practice of conjugal visit in America which has proven that inmates with conjugal visit have a much lower rate of sexual violence. Thus, it can be concluded the implementation of conjugal visit is parallel with the direction of the Correctional Law. In addition, the implementation of conjugal visit in Indonesia can imitate the success of several countries that have implemented it, such as Saudi Arabia, America, and so on, while still upholding the Indonesian values.

c. Ideal Concept for the Conjugal Visit in Indonesia

Referring to the expert's opinion and scientific essay about the importance of fulfilling sexual needs as a basic human need, the fulfillment of sexual needs for inmates through conjugal visit needs to be immediately regulated in Indonesia. Various unsatisfactory effects continue to occur as there is strict limitation for the fulfillment of inmates' sexual needs in the implementation of criminal law. It needs to be a legal reform in fulfilling the rights of inmates in Indonesia, especially about sexual rights. Barda Nawawi Arief in his book *The Problem of Law Enforcement*

82 Haryono, "Optimalisasi Pelaksanaan Tugas Dan Fungsi Lapas Terbuka Dalam Proses Asimilasi Narapidana," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 3 (2018): 295-311.

and Criminal Law Policy in Combating Crime states that legal reform is not only limited to legal substance reform, but also legal structure reform and legal culture reform. Legal culture reform includes legal ethics and legal science/education reform. Similar to Barda Nawawi Arief, Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three elements. They are substance of the law, structure of law, and legal culture.

Legal substance includes applicable norms or rules, both written and unwritten, such as Laws, Regional Regulations, Ministerial Regulations, and so on. They can be used as the basis for implementing and enforcing the rules therein. Thus, there will be certainty, order, and legal protection. Referring to the implementation of conjugal visit in the other countries that have been described previously, generally these countries acknowledge the legality of conjugal visit in their laws and regulations. If Indonesia will implement the conjugal visit, ideally the substance of the arrangement is regulated in laws and regulations as well. It is due to the written law will give more assurance of legal certainty in the implementation process.⁸³

Reforming the legal system within the scope of legal substance is necessary to keep the values that exist in society. Most Indonesians who are still attached to eastern culture often think that the topic of sex is something taboo and very personal. For them, sexual activity cannot be told to other people or become a public discussion.⁸⁴ Considering that sexual topics, especially sexual relations, tend to

83 Fajar Nurhardianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal TAPIS* 11, no. 1 (2015): 34-45.

84 Inhastuti Sugiasih, "Need Assessment Mengenai Pemberian Pendidikan Seksual Yang Dilakukan Ibu Untuk Anak Usia 3-5 Tahun," *Proyeksi* 6, no. 1 (2011): 71-81.

be considered taboo. Meanwhile, sexual relations outside of marriage and sexual relations between same-sex are strongly opposed by the Indonesian people, it is important to regulate which inmates are entitled to get conjugal visit. The arrangement of subjects who are entitled to get conjugal visit in Indonesia can be seen from the practice in some countries that are similar to Indonesia, such as Pakistan, Saudi Arabia, and Turkey. The three countries only allow conjugal visit for heterosexual couples who are legally married. A similar arrangement can also be applied in Indonesia. In Indonesian context, conjugal visit can only be given to heterosexual couples who are legally married and validated by proof of marriage, for example a marriage certificate. In addition, as an effort to compromise to limitation of infrastructures in Indonesia, the provision of conjugal visit for inmates with imprisonment of more than one year is an ideal step. The goals of correctional facilities are to make Correctional Inmates become a fully human, realize their mistakes, improve themselves, and do not repeat criminal acts. In addition, it is expected that Correctional Inmates can be accepted again by their community and can live as citizens who are good and responsible. In order to reach these goals, personal qualifications and requirements of inmates who are entitled to conjugal visit must be underlined. It is important to provide conjugal visit requirements which is inmates must have a record of good behavior in order to be entitled as conjugal visit recipient. These conditions are applied in several countries that have been described in the previous sub-chapter, such as Turkey and the United States. The application of similar conditions to conjugal visit in Indonesia will encourage inmates to behave well and to develop good behavior. This treatment for the correctional inmates will be parallel with the goals of correctional

system itself. If it is concluded, there are at least 3 prospective matters regarding the arrangement of inmates who are entitled to get conjugal visit in Indonesia in the context of legal substance, namely:

1. Inmates who have been legally married to their heterosexual partner and validated by proof of marriage, such as a marriage certificate;
2. Inmates with an imprisonment term of more than one year; and
3. Inmates with a record of good behaviour during their imprisonment period.

The other technical arrangements, such as the duration of one conjugal visit, frequency of conjugal visit, and other related technical regulations are circumstantial and can be further regulated by considering the general availability of prison facilities and infrastructure in each region.

The successful implementation of legal substance is closely related to the legal structure. The legal structure is a law enforcement agency and apparatus that implements the law. Regarding the conjugal visit, the availability of more prison officers is needed to supervise inmates. In addition to supervising outside the conjugal visit room, supervision is also needed to map the inmates whose behavior is good and deserved conjugal visit. Thus, as a first step in implementing legal substance, it is necessary to ensure that there are adequate human resources for implementing the substance. Prison officers or known as Correctional Special Police (Polsuspas), until now do not have an ideal ratio. According to data from the Ministry of Law and Human Rights, an average of one Polsuspas supervises 34 inmates in Indonesia. There is a significant difference in ratio with neighbor countries. In Australia, one prison officer supervises two inmates. In Brunei Darussalam, one prison officer supervises one prisoner. In China, one prison officer supervises three or four

inmates. In Japan, one prison officer supervises three inmates, and Malaysia has the same ratio as China.⁸⁵ Therefore, it is necessary to increase the number of Polsuspas in order to optimize the implementation of legal substance in prisons. In addition to the problem of unbalanced ratio of Polsuspas and inmates, another problem is the lack of Polsuspas in building their integrity. The lack of integrity for Polsuspas makes them prone to conduct illegal retribution, bribery, and other actions that are contrary to the values of the Three Pillars of Correctional Officers. If the conjugal visit is implemented in Indonesia, then at least two things of the legal structure need to be fixed, namely:

1. Increasing the number of Polsuspas or prison officers; and
2. Building the integrity of Polsuspas or prison officers.

Based on the practice of conjugal visit in Turkey, there are prison officers assigned to supervise outside the conjugal visit room during the visit. There are also prison officers to check the background, clothing, and belongings of couples who want to make a conjugal visit in the United States. These two practices show that more human resources are needed in carrying out conjugal visit. Thus, Indonesia needs to provide adequate human resources to implement conjugal visit. In addition, it is also important to prioritize to build prison officer's integrity. It is essential considering that the practice of conjugal visit will be vulnerable to illegal retribution or bribery acts. It is possible that the officers ask for a certain amount of money to inmates to make them get a good-behavior record and thus entitled to get a conjugal visit (illegal retribution).

It is also possible that the inmates themselves give a certain amount of money to the officers so that the officers provide a good-behavior record for them to get a conjugal visit (bribery). A bribery case related to the provision of sexual intercourse facilities occurred in 2018. In order to get free access in and out of prison, a perpetrator bribed the head prison of Bandung Suka Miskin Class I with a Mitsubishi Triton car, shoes, bags, sandals, and Rp 39,500,000 in cash. The bribery was given by the perpetrator to get facilities in cell rooms, and are allowed to build a room measuring 2x3 m² which is equipped with a bed for sexual relations. The room itself was rented out to other inmates at a rate of Rp. 650,000.⁸⁶ Based on this case, it is concluded that access to basic needs, in conjugal visit case, is actually can cause illegal retribution and bribery acts. Thus, a continuous and intensive effort to build integrity is needed for prison officers. Another element that also influences the legal system is the legal culture. Legal culture is the response and attitude of community, including the legal culture of law enforcement officers against the law and the legal system. This element is important because no matter how good the legal substance and legal structure, if the legal culture still tends to be bad, then law enforcement cannot run optimally. One of legal cultures that needs to be fixed is the perspective of community and law enforcement in Indonesia who tend to consider sexual needs as non-basic needs. Sexual needs are seen as a part of freedom that is lost during the imprisonment. This perspective needs to be abolished and replaced with the sexual needs of inmates as a constitutional right as stated by the United States Supreme Court or a fundamental right as stated by

85 Victorio Hariara Situmorang, "Lembaga Pemasyarakatan Sebagai Bagian Dari Penegakan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (March 27, 2019): 85-98.

86 Huyogo Simbolon, "Fahmi Darmawansyah Akui Berikan Mobil Dan Uang Untuk KaLapas Sukamiskin," *Liputan* 6, accessed October 16, 2021.

the High Courts of Punjab and Haryana in India. This perspective becomes one of the foundations for the presence of conjugal visit in several states in the United States and several regions in India. In addition, law enforcers in Indonesia also need to have a different perspective in the fulfillment of sexual needs of inmates. They should acknowledge that sexual needs fulfillment for inmates has a good impact for a long term. These good impacts include sexual violence in prisons which decreased by four times in the United States that implemented conjugal visit and HIV/AIDS case in prisons in India which decreased when conjugal visit was implemented. Thus, a legal system that can work effectively in the fulfillment of sexual needs as basic needs of inmates, legal substance, legal structure, and legal culture must interact each other and function properly.

CLOSING

Conclusion

Conjugal visit basically needs to be implemented in Indonesia, considering sexual needs fulfillment as part of Human Rights (HAM), namely Sexual and Reproductive Health Rights (SRHR). As human rights, sexual rights are one of the basic human rights which are also regulated in various regulations, both within the scope of international law and national law. Regulations within the scope of international law include the Standard Minimum Rules for the Treatment of Inmates (SMR) or also known as the Nelson Mandela Rules and the Bangkok Rules. Meanwhile, within the scope of national law, sexual rights are regulated in the Law of the Republic of Indonesia Number 36 of 2009 concerning Health. Not only juridically, the urgency of conjugal visit also needs to be reviewed sociologically. It shows that by not fulfilling the sexual needs of inmates, this situation can cause bad impacts. The bad impacts are related to the

physical and psychological health that will occur if the sexual rights of inmates are not given properly. Massive sexual violence also occurs as the impact. The limitation of sexual rights brings several impacts that are certainly not in line with the purpose of correctional system in the correctional law. These impacts are also not in line with the Law concerning Health which guarantees the right to obtain optimal health quality.⁸⁷ Therefore, conjugal visit as a program to fulfill sexual rights as the basic rights of inmates is important to be implemented in Indonesia.

Related to the arrangement of conjugal visit in Indonesia, it can take example from the arrangements in other countries that have implemented conjugal visit and with many similarities background as Indonesia, especially in terms of culture such as Pakistan, Saudi Arabia, India, Turkey, or similar conditions of overcapacity in prisons, like Brazil. The conjugal visit arrangements can also refer to pioneer countries of conjugal visit, such as the United States and the Netherlands, which already have legal regulations regarding conjugal visit in more detail. A review practice of conjugal visit in various countries can pave the way for the formation of correctional regulations in Indonesia. The application of conjugal visit in Indonesia is aligned with the Legal System Theory, which includes legal substance. The legal substance which becomes the main points of regulation are guided by the practice of other countries. One of them is related to the criteria and conditions for inmates who are entitled to get conjugal visit, based on the written norms, unwritten norms and social norms that apply in society. The legal culture of public's opinion, which considers the deprivation of body includes the inability

⁸⁷ Mikho Ardinata, "Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia (HAM)," *Jurnal HAM* 11, no. 2 (2020).

to fulfill inmates' sexual needs, needs to be abolished. It is because sexual need itself is a basic human need. Increasing the number and the integrity of prison officers as part of legal structure also need to be considered.

SUGGESTION

The Indonesian government needs to pay attention to international provisions in the fulfillment of human rights such as the Mandela Rules and the Bangkok Rules. The government is expected to implement the two international provisions in positive legal rules. The substance of the positive law in the form of regulations about the implementation of conjugal visit can be guided by other countries. These countries have similar backgrounds with Indonesia and they have implemented conjugal visit properly. In addition, it is necessary to prepare legal structure in the implementation of conjugal visit. It includes increasing the number of Polespas or the prison officer whose integrity need to be built in carrying out their functions. It is also essential to have a perspective that the fulfillment of sexual needs is a basic right and not a privilege.

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