

## Legal Protection of the Rights of Pregnant Women Prisoners in Lubuk Pakam Correctional Institution

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**Abstract:** *The rights of female prisoners must be considered specifically for female prisoners, because every woman experiences menstruation, pregnancy, childbirth and breastfeeding. Coaching in correctional institutions must pay attention to laws governing special rights for women prisoners. This research is normative juridical and empirical juridical research, so the approach taken is a statutory approach, because what will be studied are various legal rules that become the focus and central theme of a study. The research specification used is descriptive analysis, namely describing the results of research with complete data and as detailed as possible. Description is intended for primary, secondary and tertiary data related to legal protection of women prisoners through analysis using relevant laws and theories. Based on the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections Article 9 Paragraph (4). Prisoners who are entitled to health services and proper food in accordance with nutritional needs, while based on Government Regulation Number 32 of 1999 concerning Terms and Procedures related to the Implementation of the Rights of Prisoners, Article 20 Paragraph (1) Prisoners and Correctional students who are sick, pregnant or breastfeeding are entitled to additional food in accordance with the doctor's instructions, but the reality in the prison is not like that, there is no assertiveness from the prison towards providing the rights of pregnant women, so that the implementation becomes ineffective.*

**Keywords:** *Rights, Prisoners, Women, Pregnant, Correctional Institution*

## INTRODUCTION

The Republic of Indonesia is a State of Law, the characteristic of a state of law is a state that carries out the duties and obligations of the state apparatus must be based on the law and is obliged to uphold the rule of law in the life of society, nation and state, intended to realize the rule of law as contained in the 1945 Constitution of the Republic of Indonesia so that the law can act as a regulator of social life. Efforts to realize this are certainly not easy because not only the national legal system must be built and put in order but also law enforcement officials and the legal subjects themselves so that it is hoped that a clean, law-abiding society will be created, free from all forms of actions that violate the law The position of women in Indonesian law has been explicitly explained in the 1945 Constitution of the Republic of Indonesia. In Article 27 of the 1945 Constitution, it has been determined that all citizens are equal before the law and government and that every citizen has the right to work and a livelihood that is worthy of humanity.

There is not a single word that is discriminatory against women, this is under the founding father of this country from the beginning of realizing that there is no difference in

treating its citizens between men and women. The Republic of Indonesia is a State of Law, the characteristic of a state of law is a state that carries out the duties and obligations of the state apparatus must be based on law and is obliged to uphold the rule of law in the life of society, nation and state, intended to realize the rule of law as contained in the 1945 Constitution of the Republic of Indonesia so that the law can act as a regulator of social life. Efforts to realize this are certainly not easy because not only the national legal system must be built and put in order but also law enforcement officials and the legal subjects themselves so that it is hoped that a clean, law-abiding society will be created, free from all forms of unlawful acts.

Human rights are a gift from God that has existed since birth for every human being to be able to live a peaceful life and must be protected. The protection of human rights must be understood by the surrounding community in order to protect and respect the right to life of every human being which is a characteristic of a democratic state. Regarding human rights, one that needs to be considered is the rights of prisoners who are in detention or correctional institutions. Law Number 12 of 1995 concerning Corrections regulates and guarantees the community of prisoners to return to social life, because prisoners are also human beings who are human resources who have the right to life and deserve to be fostered properly. Human rights have been attached to humans since they were born so that without these rights we could not have dignity as human beings. Rights are inalienable and must not be violated. There should be no discrimination or distinction in state protection or state guarantees of individual rights.

Unexpected situations, being in the wrong place and time or because of someone's mistake must lose their freedom to become a prisoner. It becomes ironic here that this prisoner is a woman who, when sentenced by a judge, is pregnant so that the periods of pregnancy can even be until giving birth in prison.

The rights of female and male prisoners in correctional institutions are in principle the same, but there are some rights that must be considered specifically for female prisoners, because every woman experiences menstruation, pregnancy, childbirth and breastfeeding. Guidance in correctional institutions must pay attention to laws governing special rights for women prisoners. Prisoners are people who break the law and also harm others for a certain purpose. However, prisoners are also human beings created by God who have human rights, therefore, the application of rights must still be given when undergoing guidance in correctional institutions. The rights that must be obtained by female prisoners, especially those who are pregnant, are about the food consumed by the mother, whose nutritional value must be increased more than other prisoners.

Women who are pregnant must also be considered by calling an obstetrician to carry out regular controls, this is done to maintain the health of the mother and the prospective baby in her womb. The role of correctional institutions is very important in coaching and also in paying attention to the health of its prisoners. Correctional institutions are institutions that have the most important role to provide guidance to prisoners who have violated the law in order to provide a deterrent effect. Therefore, correctional institutions are obliged to fulfill the rights of each prisoner indiscriminately. It is often found in correctional institutions that the application of the rights of prisoners is not in accordance with their human rights. This is due to the Correctional Institution officers lack of understanding of the Law governing the correctionalization of prisoners in the Correctional Institution.

## **RESEARCH METHODS**

The scope of this research will be carried out by drawing legal principles, which are carried out on written and unwritten positive laws. This research can be used to draw legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated both implicitly and explicitly.

This research is called empirical juridical research because in addition to examining the laws and regulations relating to the form of guidance for recidivists, it also observes how reactions and interactions occur when the norm system works. This research is also called law in action research. As well as conducting interviews without intermediaries at Lubuk Pakam Correctional Institution to complete the data related to this research. The results of this study in order to be of better value or to be more precise in the study, researchers need to use a legal approach in each analysis, this approach will be able to determine the value of the results of the study. This research is normative juridical and empirical juridical research, so the approach taken is a statutory approach, because what will be studied are various legal rules that become the focus and central theme of a study.

Legal analysis produced by a normative research using a statutory approach will produce more accurate research. As well as taking data in the field that occurs and in the research used an approach to the hierarchy of legislation governing the implementation of rehabilitation of narcotics abusers in this case Law Number 12 of 1995 concerning the Correctional Act along with its form of guidance. The data required is secondary data relevant to this research problem. Sources and types of data in this study are secondary data obtained from research materials in the form of legal materials, consisting of:

- a. Primary legal materials, namely legal materials that are binding and consist of: Preamble of the 1945 Constitution Body of the 1945 Constitution, Health Law Number 36 of 2009,

Law, Law Number 29 of 2004 concerning Medical Practice, Criminal Code (KUHP), Correctional Institution Law

- b. Secondary legal materials, namely materials that provide explanations of primary law, such as the Draft Corrections Law, the Draft Criminal Code, and others.
- c. Tertiary legal materials or supporting legal materials, namely materials that provide instructions and explanations for primary legal materials and secondary legal materials, in the form of dictionaries, encyclopedias, scientific journals, magazines, newspapers and so on which are used to complement or support research data.

Data collection is carried out using documentation studies where all secondary data used in this study are collected using a library study (library research) and collected through field studies using interview techniques. Interviews were conducted with informants in this study at Lubuk Pakam Correctional Institution Data processing is carried out to facilitate the analysis of data that has been obtained in accordance with the problems studied. Data processing is carried out in the following stages:

1. Data selection, checking activities to correct and determine the completeness of the collected data is complete enough, correct and then the data is selected according to the problem under study.
2. *Reconstructing* data by rearranging data in an orderly, sequential, logical manner, so that it is easy to understand and interpret.

The research schedule is compiled for more directed research and time efficiency. The research schedule is also a series of table lists that show the complete stages of preparation, implementation, and report preparation by giving time information in it. The data obtained in this research will be analysed qualitatively in accordance with the specifications of the nature of the research to examine between theory and practice in providing rights to pregnant female prisoners in the Penitentiary. Qualitative data analysis is to explore social facts not only on the surface but also to explore what actually happens behind the real events. Qualitative data analysis is to explore social facts not only on the surface but also to explore what really happened behind the real events. Measures are not left to the researcher but are left entirely to the findings in the field. Conclusions will be obtained from solving the problem formulation carried out in the research.

## **DISCUSSION AND ANALYSIS**

Female prisoners who are pregnant running the coaching process in correctional institutions have more specific and deeper rights during pregnancy. Female prisoners who are pregnant while undergoing the process of guidance in a correctional institution are given

dispensation such as relief in daily activities and work in correctional institutions, for example if usually pregnant women do heavy work can be replaced by other female prisoners and differences in nutritious food consumed by pregnant female prisoners with other female prisoners in order to maintain the fetus they are carrying. Female prisoners are female convicts who are serving criminal sanctions according to the crime that has been made and according to the decision of the district court. Women in this case, a person who is also His creation must be protected and given his rights, therefore many things are experienced by women and not experienced by men such as menstruation, pregnancy and breastfeeding. In the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections Article 9 paragraph (4) which reads that: "Prisoners are entitled to health services and food in accordance with nutritional needs".

In Government Regulation Number 32 of 1999 Article 20 Paragraph 1 concerning Protection of Women which reads: "Prisoners and Correctional Students who are sick, pregnant or breastfeeding are entitled to additional food in accordance with the doctor's instructions" Rights are a person's demand for something that is his personal need in accordance with justice, morality, and legality. Pregnancy is a time of transition, which is a period between life before having a child who is now in the womb and life later after the child is born. According to Poewodaminto, a pregnant woman is a term for a person who has conceived, a woman who has a husband, and a common nickname for pregnant women. Women in the view of Islam during the jahiliyah period did not mean anything, they were only used as a material for satisfying the lust of men, even if they had a female bayai was considered a disgrace so that if a baby girl was born she would be killed.

Reproductive rights and reproductive health have become a very important issue to be addressed, because in addition to the issue of women's human rights, it is also caused by the following:

- a. Reproductive rights and health are part of human rights that must be respected and protected by all parties, both the government and the business world, and society in general.
- b. Reproductive health and rights play a strategic role in women's empowerment efforts.
- c. Reproductive rights and health play a very important role in the development of human resources, especially for future generations.

The broad view speaks of women's (and even men's) health throughout their lives, from the time a person is born to old age. This means that the maintenance of women's reproductive organs starts from infancy until women experience post-menopause. The idea of reproductive rights and reproductive health is not new. These rights are born from the integration of various

internationally recognized basic human rights, and in particular from other guarantees of social rights. Reproductive rights should be seen as new rights, to create a future with better quality of life.

Pregnancy is a very meaningful experience for women, families and communities. The mother's behavior during her pregnancy will affect her pregnancy, the mother's behavior in finding birth attendants will affect the health of the mother and the fetus born. Midwives must maintain the health of the mother and fetus and prevent complications during pregnancy and childbirth as a whole. Regulations regarding the implementation of the rights of women prisoners are contained in Government Regulation Number 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Prisoners. Where in Article 20 regulates the protection of women prisoners, namely:

- a. Prisoners and correctional students who are sick, pregnant and breastfeeding are entitled to receive additional food in accordance with the doctor's instructions.
- b. Additional food is also given to prisoners who perform certain types of work.
- c. Children of female prisoners brought into the Penitentiary or born in the Penitentiary can be given additional food on the instructions of a doctor, at most until the age of 2 years.
- d. In the event that the child as referred to in paragraph 3 has reached the age of 2 years, it shall be handed over to his/her relatives.
- e. In the interest of the child's health, the head of the Penitentiary may determine additional food.

Special protection for pregnant women prisoners can also be seen in the Protection of Human Rights of Women Prisoners. In the International Human Rights Instrument. Established by the UN General Assembly on December 16, 1996, it is stated that everyone has the right to enjoy the highest attainable standard of physical and mental health, especially to be free from death during childbirth, the development of health since childhood is in a healthy environment and free from industrial population, 38 Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Prisoners, Article 20 regarding treatment and freedom from disease also applies to female prisoners without exception.

Furthermore, the conditions and procedures for the implementation of the rights of prisoners are regulated in Government Regulation Number 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Prisoners. In Government Regulation Number 32 of 1999 concerning the Terms and Procedures for the Implementation of the Rights of Prisoners has been specifically regulated about women prisoners, as for the special rights obtained by women prisoners end get treatment, both spiritual and physical care. The

implementation of other rights of women prisoners is carried out based on the policies of each correctional institution such as:

1. Give dispensation to not participate in sports activities
2. Giving dispensation to not participate in community service activities
3. Providing dispensation for activities that endanger the health of the mother or her womb.

The explanation states that what is meant by convenience and special treatment is the provision of service facilities, or the provision of facilities and facilities for the sake of smoothness, security, health, and safety. This provision very clearly provides special rights for pregnant women to get services from the government in the form of security, health and safety. Pregnant women must be guaranteed security, obtain adequate nutrition, and be treated with discrimination and punishment. Pregnant women who are serving a prison term in the penitentiary do not receive special attention because during their sentence pregnant women do not get special treatment from the penitentiary. Pregnant women are treated the same as other prisoners, even though women need specialization because in addition to their nutritional needs that must be met, nutritional needs for their fetuses must also be met.

Implementation of the fulfillment of the right to health services for women prisoners in a state of pregnancy. Every female prisoner who is pregnant is fulfilled with the right to obtain health services at the Women's Correctional Institution in Indonesia in accordance with Article 20 paragraph (1) of Government Regulation Number 32 of 1999. Due to the monitoring and evaluation by each Women's Correctional Institution which can minimize all obstacles that occur in the implementation of the fulfillment of the right to health services for women who are pregnant. according to article 1 number 7 of Law No. 12 of 1995 is a convict who undergoes a sentence of loss of independence in the Correctional Institution (LAPAS). Recognition of the rights of prisoners, including women prisoners, can be seen in the content material contained in Article 14 of Law No. 12 of 1995 concerning Corrections.

Prisoners in Indonesia are deprived of food and medicine. In fact, prisoners are forced to pay a daily fee for accommodation received while in prison. While serving their sentence, female prisoners are prone to sexual harassment. To anticipate this, officers in women's correctional institutions must be dominated by women. Because preventing the opportunity to commit acts of violence or sexual harassment in the Women's Correctional Institution becomes narrow if the officers in charge of guarding and fostering are women. Women prisoners as human beings also have the right to health as guaranteed in Article 25 Paragraph (1) of the UDHR In Article 11 paragraph (1) letter f of the *Convention on the Elimination of All Forms*

*of Discrimination Against Women* (CEDAW) as ratified by Indonesia with Law Number 7 of 1984, one of which states that women have the right to health protection.

As this international convention has been ratified by Indonesia and is binding, the state is obliged to recognize the rights and implement the protection of women as stipulated in the Convention and is bound by the international monitoring and reporting system. The state is obliged to fulfill the protection of women's health rights. Recognition of the rights of prisoners is seen in the content material contained in Article 14 of Law No. 12 of 1995 on Corrections, that prisoners are entitled to health services and food. In the correctional system, prisoners are seen as human beings who have human nature, intentions and potential that can be explored and developed in the framework of the formation of the whole Indonesian human being with the basis of Legal Protection for Pregnant Women Prisoners in Correctional Institutions, there is specifically no law regarding this matter, but there are several regulations that treat pregnant women prisoners specifically, we can see this in the implementation of the Rights of Women Prisoners in Government Regulation No. 32 of 1999, concerning Terms and Procedures for the Implementation of the Rights of Prisoners where article 20 regulates the protection of women prisoners, namely:

- 1) Prisoners and correctional students who are sick, pregnant and breastfeeding are entitled to additional food in accordance with the doctor's instructions.
- 2) Additional food is also provided to prisoners who perform certain types of work.
- 3) Children of female prisoners who are brought into the Penitentiary or with complete facilities and infrastructure such as medical personnel, delivery rooms, closets that support the safety of women who are pregnant as well as the guidance of birth counseling in the Penitentiary can be given additional food on the instructions of a doctor, at most until the age of 2 (two) years.
- 4) In the event that the child as referred to in paragraph 3 has reached the age of 2 (two) years, it must be handed over to the father or relatives, or other parties with the consent of the mother and made in an official report.

Based on Article 95 of the Criminal Procedure Code above regarding legal protection for prisoners, the article regulates in general regarding legal protection for prisoners, and does not distinguish between legal protection for male and female prisoners. Special protection for pregnant and lactating women prisoners can also be seen in the Protection of Human Rights of Women Prisoners. In the International Human Rights Instruments. Established by the UN General Assembly on December 16, 1996, it states that everyone has the right to enjoy the highest attainable standard of physical and mental health, especially to be free from death in



childbirth, healthy development from childhood in a healthy environment and free from industrial pollution, These rights also apply to women prisoners without exception Protection of Human Rights of Women Prisoners in International Human Rights Instruments, Law Number 12 of 1995 concerning Corrections in Article 14 paragraph (1) letter d states, that prisoners get health services and proper food.

Furthermore, regarding Legal Protection for Pregnant and Breastfeeding Women Prisoners, childbirth for female prisoners who are pregnant in prison is carried out in public hospitals. This is in accordance with the rules stipulated in the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights Part Ninth Article 49 paragraph (3) concerning special rights inherent in women due to their reproductive function, guaranteed and protected by law. From the explanation of the Law above, it indicates that there is still a lack of special protection provided for pregnant and lactating women prisoners in Women's Correctional Institutions in Indonesia, including Women's Correctional Institutions. In Law No. 12 of 1995 concerning Corrections, there are no specific rules regarding the legal protection of women prisoners, especially for pregnant/breastfeeding women prisoners.

In accordance with Article 1 number 7 of Law No. 12 of 1995 is a convict who is serving a sentence of loss of independence in the Correctional Institution (LAPAS). Recognition of the rights of prisoners, including women prisoners, can be seen in the content material contained in Article 14 of Law No. 12 of 1995 concerning Corrections. In terms of the fulfillment of rights for prisoners, one of the rights that is very crucial and must be fulfilled is the right to obtain health services and proper food. Female prisoners are certainly different from male prisoners, because female prisoners have privileges that are certainly not owned by male prisoners such as menstrual cycles, pregnancy, childbirth, breastfeeding. So that the needs of women are more specific, especially in terms of health services, especially for women who are pregnant until giving birth and breastfeeding.

As this international convention has been ratified by Indonesia and is binding, the state is obliged to recognize the rights and implement the protection of women as stipulated in the Convention and is bound by the international monitoring and reporting system. The state is obliged to fulfill the protection of women's health rights. Recognition of the rights of prisoners is seen in the content material contained in article 14 of Law No. 12 of 1995 on Corrections, that prisoners are entitled to health services and proper food. So far there has been no factor that is very inhibiting in the fulfillment of the right to obtain health services for pregnant women prisoners at the Women's Correctional Institution.

However, in terms of health facilities at the Women's Correctional Institution clinic, it is still very minimal or makeshift, such as the absence of beds for inmates who conduct consultations or medical examinations, and the completeness of existing drugs is still very limited, especially in terms of special drugs such as for inmates who have HIV / AIDS disease, officers must cooperate with other parties such as mental hospitals or other institutions so that they can get the drugs needed, Of course, officers and officials at the Correctional Institution are working optimally so that the implementation of the fulfillment of the loyal rights of prisoners can run well In addition, the existence of monitoring and evaluation in the activities of the mechanism for fulfilling the rights of pregnant prisoners at the Women's Correctional Institution which aims to be in the following matters, including :

1. So that the causal factors that cause obstacles / constraints in health services for pregnant women prisoners at the Women's Correctional Institution can be known as early as possible so that the necessary corrective steps can be determined immediately.
2. To minimize the occurrence of errors / deviations, so that activities can be carried out in accordance with the plans that have been determined both in terms of administrative, technical and results achieved.

The obstacle faced is that the budgeting from the government to provide additional food for pregnant prisoners has not been maximized, so pregnant prisoners only expect help from their families to bring additional food for them, while prisoners who are far from their families or do not have families, only expect the state to give them. This is what causes pregnant female prisoners to be malnourished because during their pregnancy, all the nutrients needed are not enough to be fulfilled. Law Number 12 of 1995 concerning Corrections in Article 1 paragraph (2) which states, that the Correctional system is an order regarding the direction and limits and ways of fostering correctional prisoners based on Pancasila which is carried out in an integrated manner between the fosterer, the fostered, and the community to improve the quality of correctional prisoners so that they realize their mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted back by the community environment, can actively participate in development, and can live reasonably as good and responsible citizens.

## **CONCLUSIONS**

Every pregnant female prisoner has the right to obtain health services at the Women's Correctional Institution. Efforts to fulfill this health service do not escape all the basic needs for pregnant women inmates including efforts to improve the nutrition of pregnant women are included in the food provided. In addition, for female prisoners who are pregnant at the Institute

of Legal protection of the rights of pregnant female prisoners at the Lubuk Pakam Correctional Institution has been partially implemented properly, while based on the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections Article 9 Paragraph (4). Prisoners who are entitled to health services and proper food in accordance with nutritional needs, while based on Government Regulation Number 32 of 1999 concerning Terms and Procedures related to the Implementation of the Rights of Prisoners, Article 20 Paragraph (1) Prisoners and Correctional students who are sick, pregnant or breastfeeding are entitled to additional food in accordance with the doctor's instructions, but the reality in the prison is not like that, there is no assertiveness from the prison towards the provision of the rights of pregnant women, so that the implementation becomes ineffective.

### **ADVICE**

It is hoped that the Government and Correctional Institution Officers of Lubuk Pakam will be more sensitive to the special rights of pregnant women which are already listed in the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections and for the government should budget a larger state revenue and expenditure budget to the Lubuk Pakam Women's Correctional Institution, so that facilities and infrastructure in the implementation of women's prisoner development are well improved, and the government and the Correctional Institution pay more attention to the conditions of the Lubuk Pakam Correctional Institution if there are new inmates entering which the rights of pregnant women can be applied in order to maintain the health of mothers and fetuses such as providing basic food and additional food such as milk. Hopefully in the future there will be parties who work together in other health fields, especially to ensure vitamins or nutrition for pregnant women and babies because babies really need additional food and adequate nutrition. And hopefully in the future the facilities and infrastructure in the health sector at the Lubuk Pakam Women's Correctional Institution can be completed, especially such as drugs, equipment such as patient mattresses, and other supporting facilities.

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