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Legal Protection of Children of Female Prisoners in the Women's Prison

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Abstract: The objective of this research is to understand and analyze the legislative ratio regarding the age restriction provisions for children of female inmates in women's correctional facilities under Article 62 paragraph (1) of Law Number 22 of 2022 on Corrections. The method used in this research is normative legal research. The results of this research indicate that the rights of young children of female inmates are not fully guaranteed within the existing legal framework. The regulation of this legal protection is still not optimal in determining the age limit for children of female inmates. This research proposes improvements in the policy of age restriction in legal protection for young children of female inmates and contributes to a better understanding of the age restrictions in legal protection for young children of female inmates in correctional facilities.

Keyword: Children of Female Inmates, Early Childhood, Female Inmates, Legal Protection.

INTRODUCTION

Indonesia as a state of law emphasizes the importance of carrying out government responsibilities in accordance with laws and regulations. The state apparatus is obliged to uphold the rule of law, ensuring its integral role in the administration of society, nation and state. The ultimate goal is to realize the rule of law as outlined in the 1945 Constitution of the Republic of Indonesia. This ensures that the law serves as a guide in regulating social life.

Law is the regulatory framework that determines the behavior of individuals in a society. Given the diverse interests of members of society, conflicts can arise and have the potential to disrupt the fabric of civilization, to avoid such disruption, laws create social bonds and, in regulating all interactions, seek to harmonize various interests. These interests go beyond the physical plane, encompassing the spiritual aspects of the societal order. Thus, in order to ensure physical and spiritual well-being, happiness, and benefit in society, one must obey, show respect, and not violate the rules.

Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) explicitly states that Indonesia is a state of law. The fundamental requirement of this legal framework is the guarantee of equality for every person or citizen before the law, as stated in

the concept of "Equality Before the Law", therefore, everyone is entitled to recognition and guarantees, protection and guarantees of fair law, and equal treatment before the formation of laws.

The punishment or punishment of a person convicted of a criminal act is not solely aimed at taking revenge for his or her actions. One common form of criminal discipline is imprisonment, which is often used to address problems related to criminal activity. Individuals whose liberty has been legally deprived by the state, such as detainees and/or prisoners, constitute a vulnerable segment of society, Prisoners are relatively susceptible to various risks of abuse, including violence to extract confessions, torture, enforced disappearances, and receiving inhumane and degrading prison conditions. This is mainly due to the existing societal perception that individuals who have lost their freedom no longer have rights. Currently, most government prisons and detention centers in Indonesia are overcrowded.

Human rights legislation was created to protect and uphold the rights of every human being, people, including those who are imprisoned. According to Article 1 paragraph (1) of Law No. 22 of 2022 on Corrections (hereinafter abbreviated as Corrections Law No. 22 of 2022), a convict is defined as a person undergoing guidance in a correctional institution, based on a system, institution, and method of guidance which is the final stage of the criminal justice system.

Individuals referred to as prisoners or detainees in the Corrections Law No. 22 of 2022 are human beings and resources who are entitled to humane and caring treatment in a dignified rehabilitation system. At the same time, legal protection for children of women prisoners in correctional institutions is an integral aspect of the criminal justice system. It aims to ensure the protection of their rights, meet their special needs, and guarantee fair and humane treatment. Many of the rights of women prisoners and their children are still violated despite being enshrined in law. There are no written regulations governing babies born to women prisoners in the law, indicating potential weaknesses in our legal system.

Concerns are currently raised regarding the rights of pregnant and lactating female prisoners, as well as their children, being effectively protected under the Correctional Act No. 22 of 2022. In reality, male and female prisoners are very different in terms of psychological and physical qualities, correctional regulations do not specifically provide for the legal protection of female prisoners. Male and female prisoners should ideally be separated by gender. The development of women's correctional institutions seeks to realize this separation by considering security and psychological aspects. Female and male prisoners generally have the same basic rights, although certain rights are considered different due to the differences possessed by female prisoners. This distinction is based on essential differences, such as menstruation, pregnancy, childbirth, and breastfeeding, which do not apply to male prisoners. Therefore, under these conditions, the rights of women prisoners require special attention, both in terms of legal rules and the behavior of correctional officers.

Government Regulation No. 32 of 1999 (hereinafter abbreviated as PP No. 32 of 1999) which details the Terms and Procedures for the Enforcement of the Rights of Correctional Prisoners regulates the protection of female prisoners in Article 20 which, among others, states:

1. Prisoners and individuals undergoing correctional education who are in poor health, pregnant, or nursing are entitled to supplementary food as determined by a medical professional;
2. Prisoners who perform certain types of work are also entitled to supplementary food.
3. Children born in prison or brought into prison may receive supplementary food as directed by a doctor, up to the age of 2 (two) years;
4. Upon reaching the age of 2 (two) years, the child as referred to in paragraph (3) shall be transferred to the father, his relatives, or other parties with the consent of the mother as referred to in paragraph (3).

5. To maintain the health of children, correctional institutions may implement additional dietary regulations.

Children who enter or are born in correctional institutions require special security and attention in such situations, as outlined in Government Regulation No. 32 of 1999 concerning Conditions and Procedures for Implementing the Rights of Correctional Prisoners, Article 20 paragraphs (3) and (4). Realizing that children are a divine gift, their rights must be realized and protected in accordance with Article 1 point (2) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (hereinafter abbreviated as Child Protection Amendment Law No. 35 of 2014). This regulation emphasizes that child protection includes all efforts aimed at ensuring the welfare and rights of children to grow, mature, and develop in accordance with human dignity and be protected from violence and discrimination, while in the Correctional Law No. 22 of 2022 there is only 1 article that regulates children from detention, namely in Article 62, namely:

1. Children of detainees or children of female prisoners who are brought into detention centers or correctional facilities, or who are born in correctional facilities may stay with their mothers at most until the child is 3 (three) years old.

2. The child of a prisoner or the child of a female prisoner as referred to in paragraph (1) shall be placed specifically together with the prisoner or female prisoner.

3. In the event that the child of a prisoner or the child of a female prisoner as referred to in paragraph (1) is a child with special needs, the child may be placed in a disability service unit.

4. The child as referred to in paragraph (1) may be given supplementary food at the direction of a doctor or nutritionist.

Security is of utmost importance, however, there is no regulation that explicitly regulates the protection of the offspring of female prisoners and female prisoners themselves in correctional institutions. Safeguards are essential to ensure compliance with laws that protect their rights, so that the criminal justice system can operate in a fair and humane manner. The fulfillment of the rights of women prisoners is very important, especially considering the different nature and physiological functions of women, such as menstruation, pregnancy, childbirth, and breastfeeding, thus ensuring the right to adequate health and nutrition. Based on the description above, the author is interested in researching and discussing the issue of regulating the age limit provisions of children who can join their mothers (female prisoners or female prisoners).

METHOD

This research is a normative legal research. The data sources of this research are primary, secondary and tertiary law. This research data collection is obtained from literature study. Data analysis of this research is deductive, namely drawing conclusions from a general problem to a specific problem.

RESULTS AND DISCUSSION

Legal Protection for Children of Women Prisoners

The latest correctional law, Correctional Law No. 22 of 2022, in Article 62 stipulates that: "Children of detainees or children of female prisoners who are brought into detention centers or correctional facilities, or who are born in correctional facilities can stay with their mothers at most until the child is 3 (three) years old, this provision is different from the previous provision which states that children can stay with their mothers until the age of 2 (two) years, can be given additional food on the instructions of a doctor or nutritionist.

The child is placed specifically together with the detainee or female prisoner, what is meant by "placed specifically" is that the child of the detainee or the child of the female prisoner is placed in a separate place or room from the detainee's or prisoner's dwelling that is kept clean and

suitable for the growth and development of the child. in the event that the child of the detainee or the child of the female prisoner is a child with special needs, the child can be placed in the disability service unit."

The ideal foundation of legal protection of the rights of mothers and children in correctional institutions is regulated in Article 27, Article 28 and Article 34 of the 1945 Constitution. The above provisions regulate the following matters:

1. All citizens are equal before the law and government and shall uphold the law and government with no exceptions.
2. Every citizen has the right to work and a livelihood worthy of humanity.
3. Every citizen is entitled and obliged to participate in the defense of the State.
4. Right of association and assembly.
5. The right to life.
6. The right to start a family and have offspring.
7. Right to protection of self and family.
8. The right to live in prosperity and housing.
9. The right to have one's human rights respected.
10. The poor and abandoned children are cared for by the state.
11. The state is responsible for the provision of proper health care facilities and public service facilities.

The operational foundation of the legal protection of the rights of mothers and children in correctional institutions is regulated in Law No. 22 of 2022 concerning Corrections. The work of the correctional institution as an institution is based on a system called the correctional system. Correctional system is an order regarding the direction and limits as well as methods of implementing correctional functions in an effective and integrated manner. Corrections is a subsystem of criminal justice that organizes law enforcement in the field of treatment of prisoners, children and prisoners. The direction aimed at in the implementation of the correctional function is the restoration of life, life, and livelihood relationships. And, the limit in the implementation of the function is the rule of law derived from Pancasila and the 1945 Constitution.

Law No. 39/1999 on Human Rights, in Article 59 paragraph (1) states, that every child has the right not to be separated from his/her parents against the child's will, unless there are legitimate reasons and rules showing that the separation is in the best interests of the child and in Article 71 paragraph (1) states, that the Government is obliged and responsible for respecting, protecting, upholding, and promoting human rights stipulated in this Law, other laws and regulations, and international law on human rights accepted by the Republic of Indonesia.

Government Regulation No. 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Prisoners, Article 20 paragraph (1), paragraph (2) and paragraph (3), is a very clear emphasis, that children of prisoners must also be protected and fulfilled their rights, but are limited to children under the age of 2 (two) years. For this reason, based on the discussion above, children of prisoners must also have their rights fulfilled without any restrictions on their rights.

Children who are more than 2 (two) years old, are only allowed to meet with their mothers, only for 30 (thirty) minutes, and must adjust to the rules of Wirogunan Correctional Institution Yogyakarta for visiting days for female prisoners, namely on Monday and Friday, is a violation of children's human rights.

Early Childhood

Law No. 20/2003 article 28 paragraph 1 states that early childhood is children aged 0-6 years. Yuliani Sujiono says that early childhood is a child who has just been born until the age of 6 years. The age of 0-6 years is a very decisive age for the formation of children's character and

personality as well as their intellectual abilities. Meanwhile, according to The National Association for the Education of Young Children (NAEYC), early childhood is a child who is in the age range of 0-8 years. According to this definition, early childhood is a group that is in the process of growth and development.

Early childhood is often referred to as the golden age or also referred to as the golden age. At this time almost all of the child's potential is experiencing a sensitive period to grow and develop quickly and violently. The development of each child is not the same because each individual has a different development. Nutritious and balanced food and intensive stimulation are needed for growth and development. If children are given intensive stimulation from their environment, then children will be able to undergo their developmental tasks well.

Educators need to understand children's characteristics to optimize learning activities. Educators can provide learning materials in accordance with child development. Another opinion about the characteristics of early childhood (Hibama S Rahman, 2002: 43-44) is as follows:

1. Age 0-1 year

Physical development in infancy experiences the most rapid growth compared to later ages because basic abilities and skills are learned at this age. These basic abilities and skills are the capital for the child for the next development process. The characteristics of infant age children are as follows: 1) motor skills include rolling, crawling, sitting, standing and walking, 2) skills using the five senses, namely children see or observe, touch, hear, smell, and taste by putting each object in the mouth, 3) children's social communication, namely communication from adults will encourage and expand the baby's verbal and non-verbal responses.

2. 2-3 years old

At this age, children are still experiencing rapid growth in their physical development. The characteristics that 2-3 year old children go through include: 1) children are very active to explore the objects around them. Exploration by children of objects encountered is a very effective learning process, 2) children begin to learn to develop language skills, namely by chattering. Children learn to communicate, understand the speech of others and learn to express their hearts and minds, 3) children learn to develop emotions based on environmental factors because emotions are more commonly found in the environment.

3. Children aged 4-6 years

Most children at this age have entered kindergarten. The characteristics of children 4-6 years are: 1) physical development, children are very active in various activities so that they can help develop children's muscles, 2) language development is getting better children are able to understand other people's speech and are able to express their thoughts, 3) cognitive development (thinking power) is very rapidly indicated by children's curiosity about the surrounding environment. Children often ask about what they see, 4) the form of children's play is still individual even though children do it together.

4. 7-8 year olds

The characteristics of children aged 7-8 years are: 1) in cognitive development, children are able to think analytically and synthesize, deductively and inductively (able to think part by part), 2) social development, children begin to want to break away from their parents. Children often play outside the home with their peers, 3) children begin to like games that involve many people interacting with each other, 4) children's emotional development begins to take shape and appears as part of the child's personality.

Child Psychology

Psychology comes from the Greek word "Psychology" which is a combination of "psyche" which means a soul, and "logos" which means science. So etymologically, psychology is the

science that discusses everything about the soul, both the symptoms, the process of occurrence, and the background of the incident. There are many experts who express their opinions about the meaning of psychology itself, including;

1. According to the Indonesian National Encyclopedia (volume 13, 1990) psychology is the study of human behavior, both those that can be seen directly, and those that cannot be seen directly.
2. According to Dakir, Psychology discusses human behavior in relation to its environment.
3. According to Muhibbin Syah, is a science that studies the open and closed behavior of humans both as individuals and groups, in relation to the environment. Open behavior is psychomotor behavior which includes speaking, sitting, walking, and so on, while closed behavior includes thinking, beliefs, feelings, and so on.

From these definitions, it can be concluded that psychology is a science that studies human behavior, both individuals and groups in relation to the environment in the form of 2 types, namely open behavior and closed behavior.

A person experiencing psychological problems is certainly caused by several factors. This factor causes a person to experience symptoms of both physical and mental changes in everyday life. These factors include the first factor of heredity. Heredity is the first factor that influences individual development and as a totality of individual characteristics inherited from parents to children or all the potential, both physical and psychological, that individuals have since conception as inheritance from parents derived from genes.

Children are the successors of development and successors of the nation, namely the generation that is prepared as the subject of the implementation of sustainable development and the controllers of the future of a country, one of which is none other than Indonesia. Children are the buds, potential, and young generation of successors to the ideals of the nation's struggle, play a strategic role and have special characteristics and characteristics that ensure the continued existence of the nation and state in the future. In order for children to be able to assume these responsibilities, children need to have ample opportunities to grow and develop fully, both physically, mentally and socially, and have noble character, it is important to make efforts to protect and to realize the welfare of children by getting guarantees for the fulfillment of their rights and the absence of discriminatory treatment.

Child psychology is one of the branches of science that studies changes and physical, behavioral and mental growth and development of humans starting from birth to old age. Child psychology is a knowledge that studies the functions throughout human life by studying the process of thinking so that it can support the development process of a person who continues to develop and change.

While the definition of child psychology according to experts;

1. Linda L Daidoff (1991), Developmental psychology is a branch of psychology that studies the changes and development of human physical structure, behavior, and mental functions starting from the formation of the creature through conception to death.
2. M Lenner (1976), Developmental psychology as knowledge that studies the similarities and differences in psychological functions throughout life.
3. According to Monks, Knoers and Haditono, developmental psychology is a science that is more concerned with the general factors that influence the process of development (change) that occurs in a person's personality by emphasizing the relationship between personality and development.
4. According to Kartono, child psychology is a science that studies human behavior starting with the period of infancy, childhood, school, adolescence, until the adolescence period before adulthood.

5. Encuclopedia International, Developmental psychology is a branch of psychology that presents a discussion of children's behavior in a historic way, the focus of the discussion is on analyzing the elements of children's behavior that are likely to be a condition for the formation of complex adult behavior.

Female Prisoners

The term "detainee" comes from a combination of two words: "nara" (person) and "penjahat" (punishment and crime). Therefore, prisoner refers to an incarcerated individual who is serving a sentence for committing a criminal offense. As per Article 1 Point 7 of the Correctional Law No. 22 of 2022, an inmate is defined as a person who is serving a period of loss of freedom in a correctional institution (LAPAS). It is important to realize that prisoners are not simply objects; they are individuals who, like any other human being, are capable of making mistakes or committing crimes at any time. A woman who is designated as a female prisoner is someone who has received a valid court decision and is committing a criminal offense while serving a sentence of deprivation of liberty in prison. In article 1 point (7) of Law Number 12 of 1995 concerning Corrections, a prisoner is a convict who is serving a sentence of loss of independence in a Correctional Institution (LAPAS). Prisoners are not only objects but also subjects that are no different from other humans who at any time can make mistakes or mistakes that can be subject to punishment, so that they do not have to be eradicated are factors that can be subject to punishment. Criminalization is an effort to make convicts or criminals regret their actions, and to turn them into good citizens, obey the law, uphold moral, social, and religious values, so as to achieve a safe, orderly, and peaceful community life.

CONCLUSION

Legal protection is an effort made by the state to protect and guarantee the rights of its citizens. Legal protection of early childhood as children of women prisoners in women's correctional institutions as a mother's right to provide care and educate children who are still at an early age has been regulated in statutory provisions, namely in the Minister of Law and Human Rights Regulation on Prison and Detention Security No. 33 of 2015, which is the implementing regulation of Law No. 22 of 2022. Based on these provisions, there are restrictions on both the age and condition of children who can live with their mothers (female prisoners) in correctional institutions. Article 14 of the Minister of Law and Human Rights Regulation on Prison Security No. 33 of 2015 limits the age of children who can live in correctional institutions to 0-3 years. Article 15 of the Minister of Law and Human Rights Regulation No. 33 of 2015 states that children who can live in correctional institutions are children with good and healthy conditions that do not affect other health. This restriction is carried out by the government based on certain factors that are specifically considered, namely the condition of the correctional institution, the influence of legal and economic policies, and social stigma while still paying attention to the rights of the mother (female prisoners) and children as Indonesian citizens.

The results of this study also reveal that there is a need to improve the age restriction policy in the legal protection of children of women prisoners in women's correctional institutions. There is a need to clarify and strengthen existing regulations to pay more attention to the rights of young children in this situation. In this case, there needs to be a balance between the need to protect the child psychologically and the need to maintain a healthy mother-child relationship that is beneficial to the child's development. Therefore, this research provides a strong basis for recommending more specific and appropriate policy improvements in regulating age restriction provisions for the legal protection of children of female prisoners in correctional institutions.

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