

# FULFILLMENT OF REPRODUCTIVE FUNCTION RIGHTS FOR FEMALE CORRECTIONAL INSTITUTION RESIDENTS (COMPARATIVE STUDY: SINGAPORE AND AUSTRALIA)

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Received : 2024-09-10

Published: 2024-10-30

DOI: 10.54443/morfai.v4i3.2154

Accepted: 2024-09-29

## Abstract

*Guaranteeing the basic rights of citizens is the duty and obligation of every country. Especially for prisoners, even though their freedom has been taken away, they still have rights and protection that must be provided. Provisions regarding the fulfillment of prisoners' rights have been regulated both nationally and internationally, especially for female prisoners. Policy in a country must be a strong foundation for fulfilling the rights of female prisoners, especially in reproductive functions and improving their health in prison. The comparative law method is used to solve the problems in this paper, with 2 other countries, Singapore and Australia with the aim of developing national law, reforming law, and sharpening the direction of this legal research. The legislative and executive institutions can immediately produce implementing regulations regarding the fulfillment of the reproductive rights of female prisoners so that there is no legal vacuum.*

**Keywords:** *Comparative Law; Rights of Female Prisoners; Reproductive Health.*

## 1. INTRODUCTION

Inmates are essentially human beings who have a number of rights attached to them, but because they have been declared legally and legally guilty, there are restrictions that apply to inmates but still in accordance with moral and security considerations to meet fair demands. Although inmates are often considered "scum of society", in essence they are also human beings with a number of rights attached to them whose rights and freedoms must still be guaranteed. Guaranteeing various basic rights of citizens based on legal regulations is already the duty and obligation of the government to implement it. Rights are a law that is inherent in a person to do or not do something, to obtain or not to obtain an action. Even though their freedom is being taken away, inmates still have the right to human rights.<sup>1</sup>

The rights granted to inmates are a moral and social obligation on the part of society to ensure that inmates are not physically harmed and receive proper care in accordance with the goals of corrections.<sup>2</sup> So what is important for correctional institution officers is that every inmate must be informed about their rights with various existing regulations to provide protection and welfare for them in correctional institutions.<sup>3</sup> Provisions regarding the fulfillment of inmates' rights have been regulated both nationally and internationally. Protection of inmates' rights, especially women in

<sup>1</sup>Anupma Kaushik and Kavita Sharma, "Human Rights of Women Prisoners in India: A Case Study of Jaipur Central Prison for Women", *Indian Journal of Gender Studies*, Vol. 16, no. 2 (2009), p. 253-254.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., pp. 269-270.

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general and those with special needs, has been attempted by the United Nations (UN) through several formulations, namely The Standard Minimum Rules for The Treatment of Prisoners (SMR) or

Mandela Rules and United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or The Bangkok Rules. Indonesia as a member of the UN issued a policy that participates in seeking every protection and fulfillment of rights to inmates in Indonesia. The state must be able to be a strong foundation to also fulfill the rights of female inmates, especially in reproductive functions and improve their health in correctional institutions. In every woman, there are rights that must be guaranteed and given special protection by law, one of which is reproductive health related to health services provided by correctional officers. Article 61 paragraph (1) of Law Number 22 of 2022 concerning Corrections states that Detention Centers, Temporary Child Placement Institutions, Correctional Institutions and Special Child Development Institutions provide special treatment to groups with special needs, one of which is referred to in Article 61 paragraph (2) letter c, namely "women in reproductive function", namely menstruating, pregnant, giving birth or breastfeeding.

Regarding the implementing regulations for the care of inmates, it has been regulated in government regulations in 1999. However, these provisions do not yet have rigid regulations regarding the issue of fulfilling the rights of female inmates in reproductive functions. Based on this, Indonesia has experienced a legal vacuum related to the procedures for implementing and fulfilling the rights of female inmates, especially "in reproductive functions". shows that the government still lacks attention to the fulfillment of the reproductive rights of female inmates so that the regulations are vague. However, respect for women's human rights must always be prioritized so that consideration is needed in forming a national mechanism for monitoring places of imprisonment that is inseparable from criminal policy reform.

This research topic has similarities with previous research, there is previous research that has raised the rights of female prisoners. The first research was by Fahririn (2021)<sup>4</sup> focuses on the implementation of health services during pregnancy, childbirth and postpartum female convicts provided by the correctional facility. The suggestion given is that there needs to be government attention to the security system, health facilities and convict activities. Another study was written by Jhody Raehandi (2021)<sup>5</sup> which focuses on the attention and fulfillment of rights given by correctional officers to pregnant female prisoners. By providing results that there are many obstacles in fulfilling the rights of prisoners so that it is necessary to add and update proper infrastructure in Correctional Institutions. The similarity with this study is that it raises the issue of fulfilling the rights of female prisoners in correctional institutions. The substantial difference with this writing lies in the fulfillment of reproductive function rights which are not only pregnant and breastfeeding but also for women who are menstruating. The purpose of this study is to determine the guidelines that should be drawn up regarding the implementation of the fulfillment of the reproductive rights of female inmates in positive law in Indonesia.

<sup>4</sup>Fahririn, "Implementation of the Rights of Female Convicts in Class IIA Penitentiary, East Jakarta", *Supremacy Journal of Law*, 3, No. 2 (2021): 126-143, <https://doi.org/10.36441/supremasi.v3i2.285>

<sup>5</sup>Jhody Raehandi Ramadhan, "Efforts to Fulfill Special Rights for Pregnant Female Prisoners", *Justitia: Journal of Law and Humanities*, 8, No. 5 (2021): 1269-1275.

## 2. METHOD

This writing uses a doctrinal research method, namely based on doctrine, regulations, principles, norms or values and through literature studies with identification of legal sources by analyzing the legal sources. The data collection technique used is through document studies through reading materials and related documents such as regulations, academic manuscripts, books, journals, articles and other materials that can support the answers to these research questions. The types of legal materials used are primary, secondary and tertiary legal materials. Primary legal materials are in the form of all laws and regulations related to the issues discussed in this writing such as the Correctional Law. Secondary legal materials are books, articles and journals that have relevance to the discussion in helping and supporting primary legal materials. While tertiary legal materials are as complements such as the Great Dictionary of the Indonesian Language and the Black Law Dictionary.

This study uses a comparative law approach to solve related problems. Comparative law aims to compare the laws of a country, the laws of a time and court decisions.<sup>6</sup>The comparative legal method is used to compare various types of legal orders from various forms of society.<sup>7</sup>Comparison of a country's law is useful in terms of developing national law, legal reform, legal certainty and sharpening the direction of legal research.<sup>8</sup> This study aims to compare the law between Indonesia and 2 (two) other countries, namely Singapore and Victoria, Australia. By analyzing the results of the comparison of the 3 countries, it aims to see the regulations that are in accordance with international standards and how the government should be able to implement more rigid regulations in Indonesia for the implementation of the fulfillment of the reproductive rights of female inmates.

## 3. RESULTS AND DISCUSSION

The principle of Human Rights is human dignity which emphasizes that everyone has the right to get every life that is dignified, respected, treated well and valuable. This is related to how a person treats other fellow human beings.<sup>9</sup>Humans are considered to be rights holders because as humans they need the protection of one another which is provided by rights.<sup>10</sup>Human rights are laws that every person has as a human being, are universal and can never be removed by anyone and by any action. The rights granted must also be given by the state to inmates. This is a moral and social obligation on the part of the government and society to ensure that inmates are not physically harmed and receive proper care in accordance with the purpose of corrections. Because corrections are a sub-system of criminal justice that aims to enforce the law in treating prisoners, children and inmates.

Especially for female inmates as a special needs group whose rights must also be fulfilled, including health services and reproductive functions.<sup>11</sup>Every woman has the right to receive protection from every party. The main fulfillment is to receive health services and special assistance and legal advice. Basically, women's reproductive functions such as pregnancy, childbirth, breastfeeding and menstruation are indeed only carried out by women, but efforts to raise children are also part of the responsibility of men (as fathers/husbands) and society as a whole. So there needs to

<sup>6</sup>Surahsими Arikunto, *Research Procedures: A Practical Approach*, (Jakarta: Rieneka Cipta, 2002), p. 23.

<sup>7</sup>Barda Nawawi Arief, *Comparative Criminal Law*, (Depok: PT Raja Grafindo Persada, 2020), p. 6.

<sup>8</sup>*Ibid.*, pp. 26-27.

<sup>9</sup>Eko Riyadi, *Human Rights Law*, (Depok: PT RajaGrafindo Persada, 2020), pp. 25-31.

<sup>10</sup>Cindy Holder and David Reidy, *Human Rights: The Hard Questions*, (United Kingdom: Cambridge University Press, 2013), citing Chris Brown, "Human Rights and Human Nature", p. 36.

<sup>11</sup>Women who are menstruating, pregnant, giving birth or breastfeeding.

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be a change.ordertraditional regarding the roles of men and women in society, namely with equal rights without discrimination.<sup>12</sup>

Figure 1.1.



**Pregnant Female Inmates at Class IIB Women's Detention Center in Salatiga<sup>13</sup>**  
Source: Jeteng News. Id (2021)

Indonesia as a country of law, the basis of its power is law and all implementation of power is under the law, based on the *rechstaat* to uphold justice.<sup>14</sup>All duties and authorities of state apparatus and authorities are based on what is regulated by law for the purpose of reflecting justice.<sup>15</sup>Indonesia, with its civil law system, realizes a state based on law through systematically drafted laws and regulations.<sup>16</sup> That the provisions regarding the protection of the reproductive rights of female inmates in Indonesia have been stated in Law No. 22 of 2022 concerning Corrections,<sup>17</sup>and Implementing Regulations in the form of Government Regulations<sup>18</sup>. The implementing regulations essentially only explain the provision of doctors and health services as well as polyclinics and additional food for pregnant and lactating women. Before looking at and assessing whether these implementing regulations have been implemented, it is necessary to first look at the implementation carried out by

<sup>12</sup>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>13</sup>Lurisa Lulu, "Commotion, 9-Month Pregnant Female Prisoner Screams in Pain During Contractions in Salatiga Prison", iNews.id, September 12, 2021, available at, <https://jateng.inews.id/berita/heboh-napi-perempuan-hamil-9-bulan-menjerit-kesakitan-saat-konrasi-di-rutan-salatiga>, accessed November 1, 2023.

<sup>14</sup>Hamid S. Attamimi, "Legislation Theory in Indonesia" paper presented at the Inauguration Ceremony of Permanent Professorship at the Faculty of Law, University of Indonesia, April 25, 1992, p. 8.

<sup>15</sup>ICCE UIN Jakarta Team, *Democracy, Human Rights and Civil Society*, (Jakarta: Prenada Media, 2003), p. 201.

<sup>16</sup>Fajar Nurhardianto, "Legal System and Legal Position of Indonesia", *TAPIS Journal*, Vol. 11, No. 1 (2015), p. 37.

<sup>17</sup>Article 61 paragraph (1) of the Corrections Law: special treatment is required for groups with special needs, one of which is women in reproductive function as referred to in paragraph (2) letter c. The term "in reproductive function" is women who are menstruating, pregnant, giving birth or breastfeeding.

<sup>18</sup>PP No. 99 of 2012 concerning Amendments to PP No. 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Inmates and PP No. 58 of 1999 concerning Requirements and Procedures for the Implementation of the Authority, Duties and Responsibilities for the Care of Prisoners.



the correctional system in fulfilling these rights. Corrections have implemented promotive and preventive measures for reproductive health, namely through educational provision, especially for female correctional inmates who are in special needs. Tanjung Redeb Prison<sup>19</sup> has conducted education with the theme of women's reproductive health counseling to provide information regarding understanding and maintaining the health of the reproductive organ area. In addition, knowledge about sexually transmitted infections is also provided in order to prevent and avoid them. By carrying out education in the form of promotive and preventive, it is certainly hoped that the correctional system can help prevent the spread of diseases related to women's reproductive health in Tanjung Redeb Prison.

Educational provision activities regarding reproductive health as a preventive measure were also held again by the Sukamara Women's Penitentiary.<sup>20</sup> This activity aims to improve preventive behavior to avoid all forms of diseases related to reproductive organs. It was expressed by the nurse in the LPP that reproductive health services, one of which is health education, is the right of every inmate. Based on the educational activities, it is also necessary to look at the actual conditions in the field to assess whether the education has been effective and how the facilities and infrastructure support the fulfillment of these rights. The conditions for the fulfillment of the rights of female correctional inmates still cannot be said to be optimal, especially in health services.<sup>21</sup> Female inmates who are pregnant and breastfeeding are a special needs group that must be given special protection and treatment while in the correctional institution including special room placement. However, this has not been implemented properly, including the security system that has not been able to fully guarantee it.

The research results are described in the Class IIB Batam Women's Prison (LPP Batam)<sup>22</sup>, that the fulfillment of reproductive rights is also carried out by correctional officers in various ways, namely by providing counseling related to reproductive rights, through information media such as television, radio, books, magazines and others related to reproductive rights and reproductive health as well as conducting socialization from various parties and cooperation with the health service. Obstacles that occur during the fulfillment of the reproductive rights of female prisoners in LPP Batam are inadequate health service facilities and inadequate medical equipment, so that the provision of health services is not optimal. The number of medical personnel or health workers in LPP Batam is also still very lacking.

Based on the study, the reproductive rights that have not been fulfilled in LPP Batam are the rights to obtain reproductive health services. This is related to the cost of care and additional food provided to inmates. The cost of care must be paid for by themselves or borne by the family and additional food is provided by the family when visiting.<sup>23</sup> Citing data obtained from Kompasiana<sup>24</sup>, based on research conducted by Kurniawan (2021), it was found that there were minimal medical personnel facilities and difficult health services, so that the quality and infrastructure of health services in correctional institutions were inadequate. The facts in the field concluded that there were

<sup>19</sup>Directorate General of Corrections, "Tanjung Redeb Prison & HMI-WATI Berau Educate WBP about Reproductive Health", accessed via <http://www.ditjenpas.go.id/rutan-tanjung-redeb-hmi-wati-berau-edukASI-wbp-tangan-kesehatan-reproduk>, on March 21, 2024.

<sup>20</sup>Central Kalimantan Regional Office of the Ministry of Law and Human Rights, "Female Inmates of Sukamara Prison Again Provided with Reproductive Health Counseling", accessed via <https://kalteng.kemenkumham.go.id/berita-kanwil/berita-utama/13912-wbp-perempuan-lapas-suk>, on March 21, 2024.

<sup>21</sup>Fahririn, "Implementation of Rights...", Loc.Cit.

<sup>22</sup>Asha Dawinta and Risqi Utami, "Fulfillment of Reproductive Rights of Female Prisoners in Class IIB Women's Prison, Batam in 2018", *Kebinanan*, Vol. 09, No. 01, (2018): 41-48.

<sup>23</sup>Ibid.

<sup>24</sup>Serafim Esternita, "Implementation of Maternal and Child Health Services in Indonesian Women's Prisons", *Kompasiana*, May 26, 2023, available at <https://www.kompasiana.com/serafimesternita1381/647002d18221992ed471e393/penerapan-pejalan-kesehatan-ibu-dan-anak-di-lapas-perempuan-indonesia>, accessed March 10, 2024.

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still violations of health service standards which were the rights of female inmates to receive maximum and regular medical services.

So that the inhibiting factor in fulfilling the rights of correctional inmates is the certainty of the budget which has an impact on the inadequacy of infrastructure in supporting efforts to fulfill rights, equipment that does not support so that it cannot be implemented optimally. This results in service standards for the needs of inmates not being able to be implemented optimally. The attention given by the government and related agencies to the implementation of the fulfillment of prisoners' rights is still lacking so that they have not been able to achieve success in fulfilling their rights.<sup>25</sup> Based on the implementation that has been described above and looking at the Correctional Law which emphasizes that there needs to be further regulations related to the fulfillment of the reproductive rights of female inmates, it can be said that the implementing regulations for the care of inmates do not yet have rigid regulations regarding the problem of fulfilling the rights of female inmates in reproductive functions.

Indonesia has experienced a legal vacuum related to the procedures for implementing and fulfilling the rights of female inmates through its implementing regulations. So based on this, it is necessary to understand the concept of what content should be conveyed in the implementing regulations in Indonesia based on the orders of the Correctional Law, to create regulations that are proportional and can be implemented properly.

Referring to Changi's Women Prison,<sup>26</sup> health services provided by correctional officers are in accordance with the standards of the UN international convention. There is a polyclinic and doctors are provided who can conduct routine checks on each inmate if needed. Medicines are also provided by Changi's Women Prison for free. For inmates who are pregnant and breastfeeding, ultrasound services, additional food and special nutrition are provided. female inmates who are in the process of giving birth, if prison conditions do not allow it, this can be done at a hospital outside the prison. For those who have given birth, they are given permission to live together in a room that has been specially provided for breastfeeding mothers and guidance is also provided for mothers in going through their postnatal period.

Regarding the mental health of the inmates, it has also been accommodated by the correctional facility for counseling sessions for mental health. The implementation seen through Changi's Women Prison, has been in accordance with the Mandela Rules,<sup>27</sup> that in women's correctional institutions, there needs to be special accommodation related to prenatal and postnatal care and handling. Also in accordance with Bangkok Rules<sup>28</sup> where each prison is required to provide competent health services and accommodation related to personal hygiene for women including sanitary napkins (provided free of charge), a smooth water supply, especially for women who are pregnant, breastfeeding, menstruating and postpartum.

That every woman has the right to receive health care and guarantees of obtaining adequate health services without discrimination, so that women who are pregnant, in labor and post-labor, receive proper services and free nutritious food during the process. Singapore itself has regulations related to the fulfillment of the rights of female inmates through the Prison Regulation-Prison Act Republic of Singapore Version in Force From 2/0/2022. In essence, it is explained normatively in the regulation that female inmates are given permission to live with their children and must be given basic

<sup>25</sup>Mukhlis Ridwan and Setia Putra, "Strengthening the Rights of Prisoners and Children during the Covid-19 Pandemic from a Human Rights Perspective", *USM Law Review Journal* 5, no. 1 (2022): 428-440.<http://dx.doi.org/10.26623/julr.v5i1.4404>

<sup>26</sup>CNA Insider, "Inside Singapore's Only Women's Prison", available at <https://youtu.be/1NIXcUObjXc?si=hfkZn5IKe8oEdvhU>, accessed March 21, 2024.

<sup>27</sup>The Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)

<sup>28</sup>United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)

needs, nutrition and adequate health care. A separate category is given for each room, including for those who are sick or have special needs.

Next in Changi's Women Prison,<sup>29</sup> that in practice every prison officer who works in a special prison for women must also be a woman, including doctors and health workers. This is required to provide comfort and security for female inmates both when breastfeeding, and basic needs that can also be understood by fellow women. The implementation carried out in Singapore has also been in accordance with what is regulated in the UN convention that health checks are an obligation carried out by female medical personnel. However, it does not become a barrier for professions such as doctors and teachers, because they can still carry out their professional duties in correctional institutions for female inmates.

In contrast to what happened at the Dame Phyllis Frost Centre<sup>30</sup>, Victoria, Australia. It is said that prison health services and care in Victoria are in a state of emergency and how poor the quality of health services in prisons is.<sup>31</sup>The problem in Victorian women's prisons is that they are partnered with private health service providers, which puts profit first rather than service. The issue of healthcare at the Dame Phyllis Frost Centre has been renewed with the recognition that there is a need for more tailored and appropriate standards of healthcare, particularly for women in detention. It is hoped that healthcare services provided in women's prisons will be well-run and effective. This aims to bring healthcare services in prisons into line with healthcare services in the general community.

Referring also to the Australian standard guidelines, namely through the Standard Guidelines for Corrections in Australia Revised 2012 and Guiding Principles for Corrections in Australia Revised 2018, regarding special services for women, the management and classification of female inmates must reflect their higher needs and security, especially regarding health services, welfare and their relationships with their children. Every inmate has the right to receive health services, meaning that they must have access to health services provided by professional and competent health workers to provide standards of physical, mental and social health care that are comparable to those in the community outside.

Based on the description of the implementation of the two countries, Singapore and Victoria, Australia, and referring to the regulations set out in each country, then the positive law of Indonesia needs more detailed confirmation regarding how access to services is provided, the provision of drugs, vitamins and proper nutritional checks. Regarding facilities and infrastructure that are able to support care for female inmates, it is also something that needs to be regulated in Government Regulations. All regulations starting from the acceptance stage, registration to placement also need to be separated between female inmates and male officers, which also needs to be emphasized in the implementing regulations of Indonesia. Because all health care for inmates is the responsibility of the state, all facilities, means and infrastructure and health services must be provided by the state.

In relation to the correctional officers who are required to be in the environment only women, this has not been strictly regulated in Indonesia. Based on the results of field research conducted in this writing,<sup>32</sup>It was stated that there are still male officers around the Women's Prison environment. This makes the inmates feel uncomfortable and unsafe in carrying out all activities, including when the inmates are breastfeeding. Inadequate room conditions, coupled with inadequate security and comfort, this has an impact that also affects female inmates while in prison. So this important point

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<sup>29</sup>CNA Insider, "Life as Female Prison Officers: Beyond The Bars", available at <https://www.youtube.com/watch?v=biGMhHt2-V4>, accessed March 21, 2024.

<sup>30</sup>A maximum security women's prison located in Deer Park, Victoria, Australia.

<sup>31</sup>The Guardian, "People before profits: Victoria to ditch private health providers in women's prisons", available at <https://www.theguardian.com/australia-news/2023/jan/20/people-before-profits-victoria-to-ditch-private-health-providers-in-womens-prisons>, accessed March 21, 2024.

<sup>32</sup>Results of interviews with resource persons of inmates at the Class IIA Women's Penitentiary in Jakarta, January 2024.

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has not been able to be described and explained in government regulations in Indonesia, namely regarding male officers who are not allowed to be in the scope of women's correctional institutions.

According to The Health of Australia's Prisoners 2010, women are a special group so that the focus of women's reproductive health is on pregnancy and routine cervical examinations every 2 years as a form of prevention. Looking back at the regulations in Indonesia, reproductive health has not been fully regulated in the form of care in implementing regulations such as in menstrual conditions. Then there are no health facilities other than physical ones that are accommodated through implementing regulations such as mental and social health. In the prison system, everyone struggles and has the right to continue to have their dignity recognized.<sup>33</sup> Issues related to prioritizing the rights of female inmates are a major focus in correctional institutions or detention centers.<sup>34</sup> Based on the explanation of the regulations in Singapore and Victoria, Australia, in essence they have jointly discussed and conveyed how a female inmate must receive special needs and care as referred to in the provisions of the UN international standards.

Every provision that has been regulated in the International Convention becomes a guideline for every state correctional system to carry out its duties and responsibilities in carrying out the fulfillment of the rights of female inmates in special conditions. Various rights related to society and government, in the end, are that human rights belong to everyone whenever and wherever.<sup>35</sup> The increase in the value of human rights in a country results in a good policy to go hand in hand with good values.<sup>36</sup> Legal certainty is a guarantee that applicable laws can run well.<sup>37</sup> Legal certainty in policies regarding the fulfillment of rights is a shared desire that is needed by every inmate within the scope of correctional institutions.

Based on the description and analysis above, Indonesia, through government regulations as the implementer of the Corrections Law, has not yet formulated in detail how proper treatment should be given in fulfilling the rights of female inmates, however Article 61 paragraph (2) letter c of the Corrections Law has clearly stated that women in reproductive function are a group with special needs so that they require special treatment and actions and are further regulated in government regulations. Every inmate ultimately needs legal certainty from authorized institutions to ratify a policy related to the fulfillment of reproductive rights of female inmates. The law can run effectively if there is a balance between the three elements, namely structure, substance and legal culture.<sup>38</sup> In this case, it is very much hoped that the legal structure can carry out its duties and authorities to provide legal certainty for its people in order to realize a good correctional system based on its objectives.

The main thing that needs to be done is to formulate and ratify a national policy in the form of implementing regulations that specifically address every problem in fulfilling the rights of inmates, especially for the special needs of women in reproductive functions in correctional institutions and detention centers.<sup>39</sup> It is also hoped that by comparing the laws of the two countries and reflecting on the UN International Convention, this can become a basis for the formation of Government Regulations in formulating more rigid provisions regarding treatment in Article 61 paragraph (2) letter c of the Corrections Law, to replace the outdated government regulations. That then, in addition to the

<sup>33</sup> Amber Baylor, "Centering Women in Prisoners' Rights Litigation," *Michigan Journal of Gender & Law*, Vol. 25, no. 109 (2018), p. 158-159.

<sup>34</sup> Ellen M. Barry, "Women Prisoners on the Cutting Edge: Development of the Activist Women's Prisoners' Rights Movement," *Social Justice*, Vol. 27, no. 3 (2000), p. 168.

<sup>35</sup> Tom Butcher, "Human Rights, Trans Rights, Prisoners' Rights: An International Comparison", *Northwestern Journal of Law and Social Policy*, Vol. 18, no. 2 (2023), p. 48.

<sup>36</sup> Elaine Player, "Long Sentenced Women Prisoners: Rights, Risks and Rehabilitation", *Punishment & Society Sage Journals*, Vol. 24, no. 1 (2022), p. 5.

<sup>37</sup> Sudikno Mertokusumo, *The Discovery of Law*, (Yogyakarta: Liberty, 2009), p. 21.

<sup>38</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (Bandung: Nusamedia, 2009), p. 32.

<sup>39</sup> Directorate General of Corrections Health Care and Rehabilitation, *Women's Rights and Health in Indonesian Correctional Institutions/Detention Centers: A Review of the Current Situation*.



fulfillment of rights for female inmates, it is also necessary to pay attention to the children who also live in correctional institutions with their mothers, there is an overlap between PP No. 99 of 2012 and the Correctional Law. That in Article 20 of the Government Regulation a quo, it is stated that "Children of female inmates who are brought to the Correctional Institution or who are born in the Correctional Institution, at the latest until the child is 2 (two) years old." Meanwhile, Article 62 paragraph (1) of the Corrections Law states that "Children of female prisoners or convicts who are taken to detention centers or correctional facilities, or who are born in correctional facilities, can live with their mother for a maximum of 3 (three) years." Looking at the age requirements for a child who is given permission to live with his mother in a correctional institution, there is an overlap between the ages of 2 years and 3 years. This is also a problem of legal uncertainty which requires immediate changes to government regulations regarding the rules of care for the implementation of the fulfillment of rights for inmates.

**Figure 1.2**



**Female Inmates with Children at Palembang Women's Correctional Institution<sup>40</sup>**  
Source:Newspaper, 2020

That in essence, the state has an obligation to provide comprehensive legal protection for a child's life from the time they are in the womb until their future. Likewise, a child who is born in prison, must still be given the same rights and legal protection by the state.<sup>41</sup> Because basically the basic rights of every citizen are difficult to implement if there is no law that regulates it as a legal regime regarding human rights both nationally and locally in reaching the dynamics of citizen demands regarding the fulfillment of human rights. So that all subjects concerned in the correctional system are required to be given protection by the state without exception. Where it is not only based

<sup>40</sup>Kabarindo, "Providing Special Treatment, Palembang Women's Prison Distributes Additional Food for Children in Accommodation", Kabarindo.id, July 23, 2023, available at <https://kabarindo.id/berikan-perlakuan-cepat-lapas-perempuan-palembang-bagikan-makanan-besaran-untuk-anak-bawaan/>, accessed November 1, 2023.

<sup>41</sup>Bianca Agnetha and Irma Cahyaningtyas, "Legal Protection for Children Born in Prison from a Human Rights Perspective", USM Law Review Journal 5, no. 2 (2022): 593-605, <http://dx.doi.org/10.26623/julr.v5i2.5723>

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on good and proportional regulations, but also with the implementation through a sufficient budget to facilitate all of these needs. With the existence of healthy and appropriate instruments, then surely human rights can succeed in achieving its goal of fulfilling the rights of every citizen. The legal system in Indonesia has the characteristic of regulating human actions based on written legal rules.<sup>42</sup> Every regulation that has been enacted in a country must have the intention and purpose of the law maker so that every human action can be based on the law and is expected not to commit violations based on the law. Everything that is implemented must be based on the law, the government must submit to the law, not the other way around.<sup>43</sup>

Based on the theory of punishment, there is also a relative theory or purpose theory, in which punishment is imposed for the purpose and benefit of the perpetrator who has the aim of maintaining public order.<sup>44</sup> This theory is also known as the utilitarian philosophy of punishment, with its main figure being Jeremy Bentham. By forming legislation in the form of government regulations as implementing regulations of the Correctional Law, it is expected to provide benefits to everyone, especially female inmates within the scope of correctional institutions. This theory is also in line with one of the objectives of law according to Gustav Radbruch, namely the benefit of law (zweck matigheid or utility), implementing certainty and justice by considering the benefits related to law in society.<sup>45</sup> By forming a legal regulation, it is also related to legal certainty which emphasizes the aspect of "should" or *das sollen* and includes regulations regarding what should be done.<sup>46</sup>

Fulfillment of all rights and obligations of every female inmate in the correctional institution has the main objective of restoring the situation and preparing herself to be able to return to society. This is also in line with the main objective of correctional institutions, namely social reintegration. The purpose of social reintegration is to re-adjust and return the situation to society for the purpose of unity and integrity of society.<sup>47</sup> Social reintegration is the main goal to be achieved from correctional institutions to integrate the relationship between convicts and society. The purpose of social reintegration in carrying out imprisonment is to provide attention to society and prisoners in a balanced manner. So that by fulfilling every need, providing good services, especially health services for every female inmate in special conditions, namely in reproductive function, it is hoped that it can have a good impact, and not only physically but also mentally to be able to return to society and reduce the number of recidivists.

**4. CONCLUSION**

Based on the results of research and analysis conducted using comparative law methods against several countries, it can be concluded that in principle Indonesia, Singapore and Australia have implemented international standards regulated in the UN. However, the difference in these three countries is that Singapore and Australia have explained in more detail how the state and officers should work together to try to provide protection for female inmates in institutions. However, Indonesia has not implemented the provisions in detail. This is the hope in this writing for the legislative and executive institutions to immediately realize and determine the implementing regulations. Indonesia, which is currently experiencing a legal vacuum and the absence of definite guidelines provided by the government, has resulted in a lack of unity from various women's correctional institutions in Indonesia to jointly uphold the reproductive rights of female inmates in correctional institutions. By making a comparison with Singapore and Australia and reflecting on the

<sup>42</sup>Ibid.<sup>43</sup>Ridwan HR, *State Administrative Law*, (Jakarta: Rajawali Pers, 2014), p. 21.<sup>44</sup>Topo Santoso, *Criminal Law: An Introduction*, (Depok: PT RajaGrafindo Persada, 2020), p. 172.<sup>45</sup>Muhammad Erwin, *Philosophy of Law*, (Jakarta: PT Raja Grafindo Persada, 2012), p. 123.<sup>46</sup>Rommy Haryono Djojarahardjo, "Realizing the Aspect of Justice in Judges' Decisions in Civil Courts", *Journal of Law and Justice Media*, Vol. 5, No. 1 (2019), p. 93.<sup>47</sup>Soerjono Soekanto, *Sociology: An Introduction*, (Jakarta: PT Radja Grafindo, 2013), p. 293.

international standards issued by the UN, this has become a bright hope for lawmakers to produce new implementing regulations and specifically regulate further the treatment in Article 61 paragraph (2) letter c of the Corrections Law. Discussions that need to be discussed in the implementing regulations in terms of care and services for inmates are about how to access the services provided, the provision of drugs, vitamins and proper nutritional checks. Regarding facilities, infrastructure that can support care for female inmates. All regulations starting from the acceptance stage, registration to placement also need to be separated between inmates and men, which also needs to be emphasized in the implementing regulations. And also related to male officers who are not allowed to be in the scope of women's correctional institutions and must be minimized except for professional reasons and in emergency situations.

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