



Fulfillment of human rights against mothers who bring children to a current institution in law regulations

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Abstract

This study explains the State's responsibility towards children who follow their mothers in LAPAS and the fulfillment of children's rights which follow their mothers in LAPAS. Data collection techniques through literature and field studies, results of the research show that regulations regarding the fulfillment of the rights of children who follow their mothers in prisons are very minimal, inadequate health services, due to the unavailability of doctors on duty, obstetricians, ultrasound facilities, nutritionists, bad environment for the child. The principle of correctionalism states that losing independence is the only suffering, so prison tries to fulfill children's rights while in prison. It can be seen that sometimes prison officers spend their money to support children's needs, facilitate the creation of birth certificates, allow children to be cared for by their parents, and get exclusive breastfeeding.

Keywords: human rights

Introduction

Human rights are rights inherent in humans, which must be fulfilled by the State, including children who follow their mothers in correctional institutions. Article 20 of the Government Regulation of the Republic of Indonesia Number 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Correctional Inmates states that children of female prisoners who are brought into prison may be given additional food on the instructions of a doctor, up to a maximum of two years of age.

Although there is no comprehensive statutory basis governing the development of children who follow their mothers during their sentence in prison, children are still allowed to follow their mothers. This occurrence creates new problems because prisons have not provided special facilities for the care and development of these children, so their mothers must work alone to provide for their children. Supposedly, when a child is allowed to follow his mother in a correctional facility, it should be the State's responsibility to ensure that the child's rights are not harmed.

Children are part of society who have the right to be protected and respected by every citizen and State. The existence of children is inseparable from the survival of a nation and State, so children must be given the most comprehensive opportunity to achieve the best growth and development physically, psychologically, and socially. Therefore, government proactive protection efforts are needed to realize welfare and ensure children's rights without discrimination. (Perlindungan Anak, 35 Tahun 2014)

Childhood is essential in children's growth because, at that time, the physical, mental, emotional, and social development of children is being built, so it is necessary to pay attention to children in this period. Children are still very fragile at that time, so they need parental care and support to protect children in their vulnerable period. Children must be raised in an environment suitable for children's growth and development, both physically, emotionally, and psychologically. Moreover, children easily imitate the things they see and hear. Thus, if the child's environment is terrible, it will also negatively impact their behavior.

Parenting is the responsibility of parents in a family environment, but sometimes, for the sake of the continuity of the social order and the benefit of the child himself, it is necessary to have someone to protect him. If the child's parents are absent, unknown, or unable to carry out their rights and obligations, child custody can be delegated to the family up to the third degree. However, if the extended family is also unable, then the implementation of these rights and obligations becomes the responsibility of the State. (Kesejahteraan Anak, 4 Tahun 1979)

The fulfillment of the rights of children who follow their mothers to prison is an urgent matter, and this is in line with state guarantees of the right to play, to obtain protection, to names, to national status, to food, to access to health, and recreation for children. In addition, the State also has the responsibility to support children's growth by facilitating adequate infrastructure and human resources.

Research Method

This research is a type of empirical juridical research, where the data in this study were obtained through the stages of library and field research. Literature research is carried out to examine the laws and regulations, study books, and papers relevant to this research, while field research is needed to sharpen the discussion through interviews with respondents and informants. (Salim, 2017) ^[9]

Result and Discussion

The State's Responsibility Towards Children Who Follow Their Mothers in Correctional Institutions (Prisons)

The role of prisons as representatives of the State is vital in respecting the human rights of every prisoner because prisons are, in fact, the ultimate authority in the criminal justice system, regardless of whether someone is guilty or not. Therefore, every inmate needs to be seriously trained so that after serving his sentence, he becomes a better person than he used to be. (Aplan, 2013)

Under certain circumstances, due to a mistake, a person must lose his freedom as a citizen, and unfortunately, if the prisoner is a pregnant or nursing woman. (Tirsa, 2013) ^[27] Article 20 of the Government Regulation of the Republic of Indonesia concerning the requirements and procedures for implementing the rights of inmates provides an indirect understanding that children can follow their mothers in correctional institutions up to the age of two years.

The government, as an integral part of the state regulatory agency, has the responsibility to protect and fulfill the rights, obligations, and responsibilities of every child, as can be seen in Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 from Article 21 to Article 24 which explains the duties of the government as one of the state institutions. In this case, it is the duty to protect and care for these children, including children whose mothers are currently serving a sentence. (Imam, 2013) ^[23]

The KPAI commissioner believes that children have the right to be close to their parents, as long as their parents can care for them. However, if the child lives with his parents with limited custody because his parents are in prison, the prison can effectively respond to the child's needs because the child does not understand the concept of a prison run by his parents. Unfortunately, the State has not fully sided with children in practice in various prisons. (Jastra, 2020) The State's responsibility towards children who follow their mothers to prison is reflected in the following indicators:

Law

Indonesia is a state of the law; therefore, every action in the nation and State's life is subject to the rule of law. Law as a social institution plays a vital role in achieving peace, justice, and security. Laws are also needed to regulate prohibited or ordered actions by society. Each community also has different interests, so a coercive, binding rule and heavy sanctions are required to control these different interests. (Moeljatno, 2009)

In a legal state like Indonesia, regulation is vital in government administration. Everyone, including those who run the State, is subject to legislative rules. Law is needed to ensure order, security, and legal justice and achieve public welfare. (Meutia, 2020)

Early childhood is crucial in the development and education of children. The foundations for a child's physical, mental, emotional, and social development are formed during this period. It is necessary to pass laws to provide essential support for children's physical, mental, and health development during children's vulnerable times. The need for special rules for children departs from the psychological principle that children are different from adults physically and mentally.

The right to obtain health services and proper food

Children's health rights are part of economic, social, and cultural rights that require state support. Health development aims to improve the health status of the community, especially children, because efforts to maintain the health of infants and children must be prioritized to prepare the next generation of the nation to be healthy, intelligent, qualified, and reduce infant and child mortality. (Tedy, 2011) ^[26] In this case, the dimensions of health are physical, mental, spiritual, and social and include economic aspects. Therefore, to provide health services, resources in the health sector are needed in human resources, finance, energy, health supplies, medical information, medical equipment supplies, and health service facilities and technology. (Kesehatan, 36 Tahun 2009). For the baby to be born safely, all stages of its life must be carefully considered, such as routinely checking the fetus while still in the womb to ensure its health. However, according to the inmates, there are no obstetrician and ultrasound facilities in prisons, even though ultrasound facilities are vital to ensure the fetus's health, which is very vulnerable during the first trimester of pregnancy. At that time, the health and development of the fetus were also greatly affected by things such as maternal nutrition, maternal illnesses, drugs, mental conditions, tobacco, drugs, and alcohol, which can only be confirmed by ultrasound. Unfortunately, such health checks have not been thoroughly carried out. However, detainees, especially those with children, are still concerned about their health by giving them medicines according to their illness. (Narapidana, 2020). Nevertheless, health services are still lacking because there are no doctors on duty; only nurses will come when called. (Hana, 2020).

Regarding the right to adequate food, like other human rights, it emphasizes three types or degrees of state obligations: obligations to respect, protect and fulfill. The commitment to perform is a combination of the

responsibility to facilitate and the obligation to provide. The State is obliged to ensure the availability, affordability, and satisfaction of sufficient, safe, quality, and nutritionally balanced at the national and regional levels for individuals evenly throughout the territory of the Republic of Indonesia by using local resources, institutions, and culture. (Pangan, 2012)

To ensure adequate nutrition for pregnant or breastfeeding prisoners, the government provides additional calories specifically. Breastfeeding mothers are given an extra 300 calories per day, breastfeeding mothers can receive between 800 and 1000 calories per day, extra food is intended to maintain the growth and development of children through breastfeeding. (Hana, 2020) Regarding complementary feeding for children, prison managers and partners continue to provide supplements in baby bread and ready-to-eat porridge. What is still lacking is the provision of warm water to make milk and bathe the children, considering that the water provided is the same for each room, without any additions. Fortunately, the government is responsible for diapers and milk, although conditions apply to granting these rights. (Hana, 2020).

Right to a Good Environment

Children have the right to welfare, care, upbringing, and guidance based on love in their families and from within the care of institutions to grow and develop properly. (Meutia, 2020) Supposedly, children do not need to follow their mothers in correctional institutions because prisons are not child-friendly and can negatively impact children. It is because environmental factors greatly influence the causes of child delinquency and economic/social and psychological factors. (A, 1985) The living environment is all individuals and systems, interacting and forming relationships. Therefore, the environment has a central role in instilling ethical and aesthetic values in the child's character and influencing the child's development journey. (Ramayulis, 2016) ^[8].

Even if the prisoners' children are placed in separate rooms, they can still interact with other prisoners, which is not suitable for children's development, considering that children easily imitate adults' behavior. With all the prison restrictions, prisoners who decide to raise their children in prison do not know where to leave their children because no family or institution is willing to care for them. (Narapidana, 2020) ^[24, 27]

There are differences of opinion regarding the responsibilities of children who follow their mothers in prison. According to the Public Relations of the Aceh Regional Office of the Ministry of Law and Human Rights and the Directorate General of Corrections, the children of prisoners are the responsibility of the social service department, in this case, the orphanages. But what needs to be noticed here is, before a child becomes the responsibility of the State, first the child becomes the responsibility of the immediate family. (Pemasyarakatan, 2021) The above view is different from the statement of the social service officer, which states that there is no particular institution that can take care of these children as long as the mother is serving her sentence. Unlike the case of naughty children and neglected children, they have an intensive care unit where the naughty children are in Lampineung, while the neglected children are placed in UPTD Aneuk Nanggroe. (Rian, 2021)

The Semarang Women's Correctional Institution has prepared a unique program for breastfeeding inmates to overcome this problem. It is an innovation for children to grow up in a suitable environment while receiving exclusive breastfeeding for up to 6 months to reduce the risk of postpartum hemorrhage for the mother. This innovation is named ASIFAJA, which stands for exclusive long-distance breastfeeding so that even though the mother is serving a sentence, the baby can still consume breast milk at home, which is significantly safer for the child's growth and development. (Munawarah, 2020).

Facilities and infrastructure

The Correctional Institution facilitates facilities and infrastructure for spiritual and physical care, including children who follow their mothers in correctional institutions: (Syarat dan Tata Cara Pelaksanaan wewenang, Tugas dan Tanggung Jawab Perawatan Tahanan, 58 Tahun 1999), 58 Tahun 1999). The facilities available at the Sigli women's prison consist of 1 office building, one polyclinic and inpatient room, one bunk unit, one kitchen unit, one central commander post unit, three neighborhood posts, and one residential block for the inmates consisting of 18 rooms for residence and two bathrooms.

The Rights of Children Who Follow Their Mothers in Correctional Institutions

The principle of the penal system stipulates that the loss of liberty is the only suffering. Therefore, the prison must respect prisoners' rights, including children who follow their mothers in jail, because mothers and children are one unit. Article 28B paragraph (2) of the Constitution guarantees the right of children to grow and develop. Child protection covers a wide field because it applies to the physical child and includes all rights that ensure an optimal child development. (Arif, 1989) ^[1]. Based on observations at the Sigli Penitentiary, there are several implementations of the rights of children who follow mothers in the Correctional Institution:

The Right to Life, Survival and Development of Children

The right to life is the most basic and absolute human right. Conceptually, child protection covers a broad field because child protection protects the child's body and soul and includes the safety of all rights to ensure optimal development following the child's wishes.

Ensuring the right to life, survival, and maximum development for children is fundamental. When children have recognized their right to life, their survival must be protected. Another example of the right to life principle is abolishing the death penalty and life imprisonment for children. Then, other concerns are reducing infant and

child mortality and providing nutritional food and clean water. Correctional officers usually carry this out by spending their money to occasionally be given to children who follow their mothers in correctional institutions. (Hana, 2020)

Right to Obtain Identity and Nationality

The first and foremost problem in registering a child is registering his birth. Because first of all, birth registration is the official recognition of children from the State. In terms of identification, the legal status of children is essential for children's interactions in society. Second, birth registration is one of the critical elements of government plans for children. Third, birth certificates are a means of securing other children's rights, such as identification during wartime, family departures, and kidnappings. Article 7 of the Convention on the Child's Rights also requires registration of births immediately after birth. (Konvensi Hak Anak, 1989). Because the recognition of citizenship is obtained with a birth certificate which then becomes a requirement to obtain health facilities outside prisons, such as health insurance (BPJS). In practice, officers facilitate access outside the prison because inmates cannot get out of jail. It is clarified in Article 5 of Law Number 23 of 2002, which states that every child has the right to citizenship as an identity. (Perlindungan Anak, 23 Tahun 2002)

Right to be raised and cared for by Parents

Child care and protection are part of the fundamental rights of children. Since children cannot take care of themselves and need loving protection and support, parenting is the most important thing after a child is born. The Convention on the Rights of the Child stipulates in Article 9 that unless there is an important matter and in the child's best interest, even if the child wants to be separated from his parents, he will not be separated from his parents. (Konvensi Hak Anak, 1989) ^[1] Therefore, in addition to Government Regulation no. 23 of 1999, prison authorities also allow children to follow their mothers in prison. So far, prison officials have given rights to children who follow their mothers following applicable laws and government regulations. (Hana, 2020)

Right for Breastfeed

After birth, the most critical issue for the child is survival, and of course, the child cannot protect himself in such a situation. Mother is the closest person to the baby, and breast milk (ASI) is the best food. Article 281 paragraph (1) of the Health Law has mandated exclusive breastfeeding, protecting children's fundamental rights. There is a threat of criminal sanctions for those who intentionally do not give exclusive breastfeeding. (Pemberian Asi Eksklusif, 2012)

As part of national development, health development aims to improve the quality of human resources. The success rate of health can be seen from the reduction in infant mortality and improvement in community nutrition so that the State as the administration of government has the responsibility to ensure the realization of optimal health status for its people. (Titon, 2007) ^[10]

Conclusion

The State's responsibility in fulfilling the rights of children who follow their mothers in correctional institutions has not run optimally. It is marked by a lack of healthy nutrition for children, a lack of medical personnel, an environment that is not conducive to child growth and development, and most importantly, the absence of special regulations regarding the development of children who follow their mothers in correctional institutions. The rights of children who follow their mothers in correctional institutions that must be fulfilled are the rights to life, survival, and development of children, the right to personal identity, the right to be cared for and raised by parents, and the right to obtain breast milk.

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