



Fulfilment of the right to family visiting leave for prisoners (A Study in Class II A Correctional Institution Banda Aceh)

Muslim¹, Rizanizarli², Iskandar A Gani²

¹ Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Syiah Kuala University, Banda Aceh Indonesia

Abstract

The purpose of writing this journal is to explain the implementation of leave to visit family for prisoners in Class II A Banda Aceh Correctional Facility, to explain the obstacles in the implementation of leave to visit family for prisoners in Class II A Banda Aceh Correctional Facility and to explain the efforts that have been made in overcoming obstacles. The results showed that there are 2 (two) types of implementation of the right to leave to visit family for prisoners, namely leave to visit family normally (regulated by law) and leave to visit family urgently (*incidental*). Obstacles in the implementation of leave to visit family are hampered by long bureaucratic stages, coordination problems between the Correctional Facility and the Police in carrying out escorts, the difficulty of the inmate's family getting support from the local village head. Efforts that have been taken are by providing leave to visit the family that is urgent (*incidental*), conducting an MoU with the Police to write and communicate via mobile phone.

Keywords: Family visiting leave, Correctional Institution, prisoners

Introduction

Indonesia is a *state* of law that requires the state (*state*) and citizens (*society*) to comply with the rule of law. As legal subjects, citizens are required to submit and obey the rules of applicable legal norms. This is related to legal codification which explains that laws or rules are binding and compelling. This means that the enactment of a law forces its citizens to comply with the established rules of law. All actions that are considered criminal offences will have legal consequences in the form of punitive sanctions. This provision applies absolutely within the scope of the rule of law ^[1].

Indonesia has 5 types of criminal punishment as stipulated in Article 10 of the Criminal Code (KUHP), namely, death penalty, imprisonment, confinement, fine and closure ^[2]. Of the five punishments, imprisonment is the punishment that is then implemented through the correctional system in correctional institutions. It is stated in the General Provisions of Article 1 paragraph 18 of Law Number 22 Year 2022 on Corrections (hereinafter referred to as the Corrections Law) that "Correctional Institution is a place to carry out the function of guidance for prisoners".

All provisions for the running of the correctional centre are contained in the Corrections Act. This law is one of the legal bases for the correctional technical service unit by replacing the previous law, Law Number 12 of 1995 concerning Corrections. The correctional institution is a full representation of the maximum efforts made by the government in implementing services and also guidance for correctional prisoners.

In accordance with what is stated in Article 1 Number 1 of the Corrections Law, it explains that "Corrections is a criminal justice subsystem that organises law enforcement in the field of treatment of detainees, children and prisoners. Therefore, the implementation of the correctional system is required to be able to achieve the objectives of the correctional in the form of protection, guidance and

guidance in accordance with the principles of the correctional system.

The principles of the correctional system mandated in Article 3 of the Corrections Law uphold a more integrative and integrated punishment system. This principle goes hand in hand with the existence of human rights that protect the rights of every prisoner. The current correctional system has been truly implemented as a forum for moral reform of prisoners.

The rights possessed by prisoners will not be separated from their nature as a human being who should be treated humanely. Society views that as perpetrators of criminal offences, prisoners should not need to be treated properly. In essence, humans are born with absolute rights or in the term referred to as Human Rights ^[3].

The basic rights that must be obtained for a prisoner are explicitly regulated in Article 9 of the Corrections Law, including:

- a. Practising worship in accordance with their religion and beliefs;
- b. Receive care both spiritually and physically;
- c. Receive education, teaching, and recreational activities as well as opportunities to develop potential;
- d. Receive proper health services and food according to nutritional needs;
- e. Receive information services;
- f. Receive legal counselling and legal aid;
- g. Submitting complaints and/or grievances;
- h. Obtaining reading material and following mass media broadcasts are not prohibited;
- i. Receive humane treatment and be protected from torture, exploitation, neglect, violence and all acts of physical and mental harm;
- j. Receive job security, wages or premiums for work;
- k. Receive social services;
- l. Accept or refuse visits from family, advocates, counsellors and the community.

The rights of prisoners do not only include basic rights / general rights but there are also special rights for prisoners who fulfil certain provisions and requirements as explained in Article 10 paragraph (1) of the Corrections Law, as for the special rights that can be obtained by prisoners as follows:

- a. Remission;
- b. Assimilation;
- c. Leave to visit family or be visited by family;
- d. Conditional leave;
- e. Leave before release;
- f. Parole; and
- g. Other rights in accordance with the provisions of laws and regulations.

The rights mentioned above can be obtained by prisoners who fulfil requirements such as: good behaviour, actively participating in activities and having a reduced risk. Prisoners who fulfil these conditions and requirements will get the rights as explained in Article 10 paragraph (1) of the Corrections Law ^[4].

In the perspective of positive law, it is explained that prisoners should be given the right to live properly. This is motivated by the existence of Article 3 letter g of the Correction Law which explains that "Loss of freedom is the only suffering." As a prisoner, he has received appropriate punishment and has taken responsibility for his actions before the law. Therefore, neither the state nor the community has any reason to deprive him of his absolute right as a human being to live a decent and prosperous life.

However, in the reality of social facts, there are still many correctional institutions that have not implemented correctional guidance optimally. This is evidenced by the many cases of riots that occurred in several Indonesian correctional institutions, such as the riots at Mako Brimob Correctional Facility, Depok, Fire at Tangerang Class I Correctional Facility, riots at Tanjung Gusta Medan Class IA Correctional Facility due to power and water outages and so on. The crises that occur in these correctional institutions are almost entirely caused by conditions of overcapacity ^[5].

According to the Public Database System of the Directorate General of Corrections, correctional institutions in Indonesia have experienced overcapacity by 258% ^[6]. The large number of inmates in a correctional institution creates various obstacles in efforts to fulfil the rights of prisoners in correctional institutions.

Based on Article 10 paragraph (1) of the Corrections Law, it is explained that prisoners have special rights, one of which is the right to leave to visit family (CMK). This right can be fulfilled if a prisoner fulfils certain provisions and conditions stipulated in laws and regulations. Regulations on the implementation of the right to leave to visit family (CMK) for prisoners are regulated in Government Regulation No.32 of 1999 concerning Conditions and Procedures for Implementing the Rights of Prisoners, as explained in Article 42 of Government Regulation No.32 of 1999 explained that family visiting leave can be given to every prisoner and correctional student, the right to leave to visit family is a right that can be used by prisoners to be able to gather with family at their residence for a maximum of 2x24 (twice twenty-four hours) / 2 (two) days.

Further provisions regarding the fulfilment of the right to leave to visit family are regulated in Permenkumham No.7

of 2022 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Ahead of Release, and Conditional Leave (hereinafter referred to as Permenkumham). Article 2 of the Minister of Law and Human Rights Regulation states that every prisoner and child is entitled to family visitation leave. The granting of leave to visit the family can be given by considering the interests of guidance, security, public order, and a sense of public justice.

Although the right to leave to visit family is a right that can be obtained by all prisoners and children, in practice there are still many prisoners who find it difficult to apply for leave to visit family. Based on initial observations at Class II A Correctional Facility Banda Aceh, leave to visit family can only be granted to prisoners in three circumstances, namely: the death of the nuclear family, the wedding of the nuclear family, and the division of inheritance. The length of leave to visit family is 2x24 hours / 2 (two) days. However, currently the Class II A Banda Aceh Correctional Facility does not grant the right to leave to visit the family to all prisoners and children due to the risk of prisoners escaping, as well as the lack of state budget for the process of escorting prisoners who obtain leave to visit the family. In addition, problems were also found at the time of applying for leave to visit the family, including conditions outside the provisions of the Corrections Law and Permenkumham such as the practice of illegal levies, and the provision of land certificates as collateral, as a result many prisoners and children could not exercise their rights as prisoners to apply for leave to visit their families due to the many requirements.

In addition, based on preliminary observations at the Class II A Banda Aceh Correctional Facility, there are still many prisoners who do not know that they have rights regulated in the Correctional Law and Permenkumham, this results in a lack of awareness of prisoners to apply for the rights regulated in the Correctional Law, in addition to a lack of understanding of the submission procedure, prisoners are also complicated by requirements outside the provisions of the Law that burden prisoners to obtain their rights as prisoners. This phenomenon is contrary to the concept of the legal system, certainty, and punishment. Based on this description, it is interesting to study and analyse further the fulfilment of the right to leave to visit family in correctional institutions.

Research Method

The research method is a procedure or way of obtaining correct or truthful knowledge through systematic steps. The use of research methods has implications for data collection techniques and analysis and research conclusions. The method used in this research is the empirical juridical research method, namely research by conducting a comprehensive study by conducting observations and direct interviews at the research location ^[7].

Data collection techniques in this study were carried out by means of test methods, observation, questionnaires, and interviews. The data analysis in this study was carried out using qualitative and quantitative methods. Qualitative research analysis is research that does not use calculations. Meanwhile, quantitative research analysis includes all types of research based on the calculation of percentages, averages and statistical calculations ^[8].

Results and Discussion

To obtain the right to Family Visiting Leave, hereinafter abbreviated as CMK, the family of the prisoner must first submit an application letter to the registration department at the Class II A Penitentiary in Banda Aceh. The application letter to be submitted is a written application letter that has been known and signed by the village head where the prisoner is domiciled stating the willingness of the village apparatus to assist the Correctional Facility to supervise the prisoner when carrying out CMK. In the event that the village apparatus does not give its permission due to its ignorance of the coaching programme in the correctional facility, the family can request a statement letter from the correctional facility stating that the prisoner concerned can carry out the coaching programme outside the correctional facility approved by the Head of the Correctional Facility. The family or other person acting as guarantor of the prisoner is willing to guarantee the prisoner in the process of implementing CMK^[9].

After the prison receives an application letter from the family of the prisoner, the prison then collects data on the prisoner in question to review whether the prisoner concerned has fulfilled the specified requirements, both substantive requirements and administrative requirements. These requirements must be fulfilled if the prisoner wants to get his right to carry out CMK. If after reviewing it turns out that the inmate concerned does not meet the requirements, the State Detention Centre Klas II B Banda Aceh will notify the family that the application to obtain CMK cannot be granted because the inmate concerned does not meet the requirements set out in the Law^[10].

If the prisoner has met the substantive and administrative requirements, the Correctional Facility will then hold a Correctional Observation Team (TPP) hearing to listen to the opinions of the TPP members and study the development of the prisoner's behaviour during the period of punishment at the Class II A Banda Aceh Correctional Institution. If the prisoner concerned is eligible for CMK, this proposal will be forwarded to the head of the correctional centre and a cover letter will be made from the correctional centre to be sent to the regional office.

After the Head of Correctional Institution Class II, A Banda Aceh approves the proposal to grant CMK to the prisoner concerned, then the Correctional Institution makes a cover letter which is sent directly to the Regional Office of the Department of Law and Human Rights in the Aceh Region. After that, the Regional Office of the Department of Law and Human Rights of the Aceh Region conducts another TPP hearing to review the prisoners proposed by the Head of Correctional Facilities to get CMK coaching before the application letter is sent to the Director General of Corrections to be reviewed at the centre. If the Head of the Regional Office of the Ministry of Law and Human Rights rejects the proposal, then within 14 (fourteen) days from the date the proposal is received, he/she shall notify the Head of Correctional Facility by including the reasons for the rejection. If the CMK proposal is approved by the Aceh Regional Office of the Ministry of Law and Human Rights, then the proposal is forwarded to the Director General of Corrections located in Jakarta and if the Director General of Corrections approves the proposal of the Head of Prison, then on behalf of the Minister, the Director General of Corrections issues an approval for the granting of CMK to

the prisoner concerned through an integrated information system between correctional technical implementation units. The process and implementation of urgent CMK (incidental) have the same stages, except that in urgent CMK (incidental) it is no longer necessary to submit a cover letter to the Regional Office and the Central Directorate General of Corrections. The following is an explanation of the stages of the process and implementation of urgent CMK (incidental)

Ricky as the detention service staff stated that the stages for prisoners to obtain urgent CMK permits (incidental) are by submitting a written application letter from the family known and signed by the local village head to the prison registration section, after which the Class II A Banda Aceh Correctional Institution collects data on the prisoner in question. After collecting data, the Class II A Banda Aceh Correctional Institution holds a TPP session to propose this urgent (incidental) CMK permit to the Head of Correctional Institution, after being approved by the Head of Correctional Institution, the prisoner concerned can be given permission to be out of prison temporarily. The duration of the permission granted to the prisoner is 1 (one) day. CMK which is urgent (incidental) is indeed an authority owned by the Correctional Institution which is given to prisoners in an emergency or urgent situation and on humanitarian grounds. The processing process from the family submitting a CMK application letter to the issuance of an approval letter for the CMK to be carried out on the prisoner takes 1-2 days.

The process of obtaining CMK is initially submitted at the Penitentiary then forwarded to the Regional Office of the Ministry of Law and Human Rights, then by the Regional Office, the proposal after processing is also forwarded to the Directorate General of Corrections of the Ministry of Law and Human Rights in Jakarta. If the proposal is accepted by the Director General of Corrections of the Ministry and has been approved, then the Director General of Corrections on behalf of the Minister of Law and Human Rights of the Republic of Indonesia signs a Decree on the CMK and then the decision letter is sent to the State Detention Centre that proposed the CMK, after which the Correctional Facility can give permission to the prisoner concerned to be able to leave the Correctional Facility for 2 days.

The length of the process is because there is a certain sequence to complete the administrative requirements. Starting from the time the prisoner is informed that within a certain period of time he will be given CMK. At that time the prisoner's family must also prepare a letter of guarantee. Then the prison starts preparing its officers to study the eligibility of the prisoner, the prisoner's family and the environment in which he lives. The duration of the CMK granting process from the time it is proposed by the Correctional Facility until the issuance of the Decree on CMK takes approximately almost 1 month. The escort is carried out by the Police, so coordination with the Police is very necessary, the problems that usually arise are about the implementation of the escort in the field and how many personnel from the police will escort and accompany the convict, because the costs incurred in the implementation of CMK are borne by the applicant, therefore the Correctional Facility must know in advance the people from the police who carry out the escort so that later it can be informed to the family of the convict how the escort is carried out and what should be the responsibility of the family while the convict is in his place of residence.

Sukri, a convict who had applied for CMK coaching, explained how his family found it very difficult to convince the local village head to sign the CMK application letter for Sukri who was registered as a resident of his village. So that this made Sukri canceled to get the CMK coaching programme which was carried out in the village where the prisoner's family lived. This could be due to the lack of knowledge of the local village apparatus about the coaching programmes implemented in prisons.

Based on the results of the research, it was found that the efforts made by the Class II A Banda Aceh Correctional Institution were as follows:

- a. To overcome the problem of the CMK bureaucratic process which takes a very long time. The Correctional Institution Class II A Banda Aceh, provides absolute authority possessed by every correctional institution, namely temporary permission to leave the prison, in terms of its implementation is very similar to CMK so as to shorten the time and space, the Correctional Institution Class II A Banda Aceh informs the prisoners that this implementation is CMK so that this is what underlies the creation of CMK which is urgent (*incidental*).
- b. To overcome the problems that arise during the implementation and before the implementation, the Correctional Institution takes steps in advance, such as the problem of coordination between the Correctional Institution and the Police on how and how many police personnel will escort prisoners at the time of implementation in the field. In this case the Class II A Correctional Institution Banda Aceh took steps to resolve by cooperating with the Police through an MoU that had been agreed upon in advance between the Correctional Institution and the Police.
- c. To overcome obstacles arising from outside the prison such as the difficulty of obtaining approval from the local village head, the effort taken by the family of the prisoner is to contact the prison. The correctional centre as the authorised party to grant CMK usually issues a written statement addressed to the village head/head of village.

Conclusion

The implementation of CMK in Class II A Correctional Institution Banda Aceh has two implementations, namely CMK in accordance with the Law and CMK which is urgent (*incidental*). Obstacles in the implementation of CMK are hampered by the provision of CMK which is too convoluted and takes a very long time, coordination problems with the police in carrying out escorts and lack of support from the village head. Efforts made by the Class II A Correctional Institution Banda Aceh, in overcoming the obstacles of a long time are to provide absolute authority owned by the Correctional Institution, namely CMK which is urgent (*incidental*).

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