

## THE PHENOMENON OF INMATES BECOMING VICTIMS IN CORRECTIONAL INSTITUTIONS

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### ABSTRACT

Inmates becoming victims in Indonesian correctional institutions is not a new phenomenon and has been happening for a very long time. Inmates may be considered victims because some of their rights as human beings have been violated, causing enormous damage and/or losses. There are 4 things that can be studied related to this. First, the conducting parties. Second, the regulations. Third, the forms of violations. And the Last, the solutions. Through research with a sociological juridical approach, it can be stated that the conducting parties are the institutions, the officers and the prisoners. The proposed Solution is through criminal policy by reducing the inmate populations in most Indonesian correctional institutions which are experiencing overcrowding situations. It is also important to increase the quantity and quality of professionals and the integrity of the officers.

**Keywords** : Inmates, Correctional Institutions, Overcrowding

### A. INTRODUCTION

Correctional Institutions (Lapas) as stipulated in Article 1 number 3 of Law Number 12 Year 1995 concerning Corrections are places to carry out the guidance of inmates and Correctional Students. This guidance uses a system called the Correctional System which is regulated in Article 1 number 2 which states that "The Correctional System is an order regarding the direction, limit and method to foster Correctional Inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can accepted by the community, can play an active role in development, and can live normally as a good and responsible citizen. Correctional Institutions should be in congenial, condusive, and sterile settings in order to carry out their goal of guiding inmates and correctional students. According to Andrew Coyle, when the state "robs" a person of his independence and makes him an inmate, the state is still obliged to be able to place the person concerned as a dignified human being<sup>1</sup> and can ensure that the person concerned is safe from actions that can harm him both physically and psychologically.<sup>2</sup> Providing a sense of security for all people who enter it, including inmates, officers, and visitors, is one of the concrete forms.<sup>3</sup>

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<sup>1</sup> Dignity is defineds as a quality or state of being worthy, honoured or esteemed, and it is 'realized through individual freedom that is brought to bear in the course of the self's participation in meaningful decision making and exercise of individual responsibility' (Shannon, D.W. Six Degrees of Dignity: Disability in an Age of Freedom; Creative Bound International: Ottawa, ON, Canada, 2007; ISBN 1894439317., hlm.17)

<sup>2</sup> Andrew Coyle, A Human Rights Approach to Prison Management: Handbook for Prison Staff (International Centre for Prison Studies, 2002) hlm. 8

<sup>3</sup> Alison Liebling, 'Moral performance, inhuman and degrading treatment and prison pain', Punishment and Society 13, 2011, hlm. 533.

However, the condition of Correctional Institutions in Indonesia does not seem to be the case, there are still aspects related to infrastructure and facilities as well as the behavior of officers and inmates that are not in accordance with existing provisions. This inadequate infrastructure and facilities lead to overpopulation or overcrowded, which greatly disrupts the purpose of guidance. This can cause disturbances in the behavior and psychological health of inmates.<sup>4</sup>

Furthermore, García-Guerrero, Marco A, stated that Overcrowding can entail on a general level: a) a violation of international rules on the separation of inmates (men-women; preventive-sentenced inmates, etc.); b) a risk to the psychological and physical health of inmates; c) a risk for the public healthcare; d) a dangerous environment for inmates and for penitentiary professionals; and e) an attack against human rights, for it can lead to a cruel or inhuman treatment.<sup>5</sup> On October 25, 2021, data on prisoners and detainees shows that there are 270,167 people in the facility. However, the facilities are only suitable for 132,107 people. This fact indicates that there is an excess of 138,060 residents, or 154% increase.

Wolf refers to this situation as a "inmates management catastrophe. Wolf stated that there were 8 factors that caused the situation, namely "(1) the prison population was high; (2) Excess occupants; (3) poor conditions in prison (for both inmates and prison officers); (4) Lack of officers; (5) Riots between prison staff; (6) Poor security; (7) Improper placement of prisoners of long term and life sentence prisoners and mentally disturbed prisoners; (8) Riots and other damages of control over prisoners.<sup>6</sup>

In several concrete cases, in addition to the very high and almost evenly distributed overcrowding of correctional institutions throughout Indonesia, there is also violence perpetrated against inmates by officers, as well as violence perpetrated by fellow inmates. In this situation, The prisoners or inmates who experience the above-mentioned losses and/or violence are deemed to be victims. This refers to Vonomir Paul Separovic's opinion regarding the limit of victims as follows.

*The person who are threatened, injured or destroyed by an actor or omission of another (mean, structure, organization, or institution) and consequently; a victim would be anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offences, non fulfillment of work duties) or an accidents. Suffering may be caused by another man or another structure, where people are also involved.<sup>7</sup>*

## B. PROBLEM STATEMENT

1. Which parties can make inmates become victims and what rules are violated?
2. What policies can be implemented to reduce inmates becoming victims?

## C. DISCUSSION

### 1. Parties who can make inmates becoming victims.

Three (three) parties, meaning institutions, officials, and prisoners, act as perpetrators who may lead inmates to become victims. These three parties fall within the qualifications regarding their victims whose limits are given by Separovic. "*The person who are threatened, injured or destroyed by an actor or omission of another (mean, structure, organization, or institution)...*"<sup>8</sup> The institution referred to here is the Ministry of Law and Human Rights cq. Directorate General of Correctional Institutions. This institution is included in the qualification as a perpetrator based on Separovic's opinion which states: "...a victim would be

<sup>4</sup> García-Guerrero, Marco A, Overcrowding in prisons and its impact on health, Rev Esp Sanid Penit 2012; 14: 106-113

<sup>5</sup> *Ibid.*

<sup>6</sup> Michael Cavadino and James Dignan, *The Penal System an Introduction*, (London: Sage Publications), 2003, hlm. 10.

<sup>7</sup> Zvonimir Paul Separovic, 1985. *Victimology Studies of Victims*. Zagreb: Pravni Fakultet. hlm. 29.

<sup>8</sup> *Ibid.*

*anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offences, non fulfillment of work duties) or an accidents. Suffering may be caused by another man or another structure, where people are also involved".*<sup>9</sup>

The element of someone who has suffered a loss as a result of an act that has been threatened with punishment. The presence of some rules that are not applied are acts that are threatened by punishment. Basic rights are not respected due to the high number of inmates. This can be seen as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 concerning the Grand Design of Overcrowded Handling in State Detention Centers and Correctional Institutions. This condition raises new problems, including the non-fulfillment of the basic rights of each detainee/inmates. It is even further stated that other impacts that arise as a result of overcrowded conditions include the emergence of irregularities, escapes, riots, fires, drug smuggling, and human rights violations. When there is a violation of human rights, it means that there are victims of violations of human rights, which in this case are individual prisoners who do not obtain their basic rights while serving prison sentences.<sup>10</sup>

The suffering of inmates is also experienced by them as a result of not implementing Article 12 of Law Number 12 year 1995 concerning Corrections, especially paragraph (1) letters c and d related to the classification of the length of the sentence imposed and the type of crime

Law Number 12 of 1995 concerning Corrections Article 12 paragraph (1) formulates: In the context of fostering prisoners in Correctional Institutions, classification is carried out on the basis of: a. age; b. gender; c. the length of the sentence imposed; d. type of crime; and e. other criteria in accordance with the needs or development of coaching.

In actuality, because most correctional institutions lack sufficient space and capacity, inmates are not placed according to the length of their sentence or the sort of crime they committed.

Another violation is against the provisions contained in the 10 Principles of corrections. The alleged violations are mostly found in the fourth principle, which states that: "The state has no right to make them worse or worse off than before they were convicted.

One of the ways is to avoid mixing inmates and students, or those who commit serious crimes with those who commit minor crimes, and so on". Violation of this principle has the same character as the violation of Article 12 paragraph (1) particularly letter c and letter d inmates who are mixed together are more likely to become victims because they are more miserable, hurting, and tense. From a criminological perspective, this may encourage inmates to commit crimes once they are released. In other words, inmates have a proclivity for recidivism, which means that the goal of criminal law and imprisonment is ultimately unfulfilled.

Another victimization occurs when some inmates are unable to do the five daily prayers, particularly the mahgrib and isya prayers, when they are in their rooms. This happens especially in correctional institutions that are overpopulated with a very high percentage, for example 500%. In this condition, the institution has violated Article 14 of Law Number 12 of 1995 concerning Corrections, especially paragraph (1), which states that prisoners have the right to: a. worship according to their religion or believe. Violations of this Article are considered human rights violations.

Officers as perpetrators who could cause inmates to become victims occur with the presence of several officers who carry out actions in the form of violence, as well as extortion of inmates. The violence was reported in the media, with a video of an inmate suspected of being abused at the Class IA Tanjung Gusta

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<sup>9</sup> *Ibid.*

<sup>10</sup> <https://peraturan.bpk.go.id/Home/Details/133191/permenkumham-no-11-tahun-2017> Accessed on October 20th, 2021.

Penitentiary in Medan going popular on social media. The officer's request for a sum of money was not met, resulting in the violence. An inmate also revealed that they were frequently subjected to extortion in the video narration that circulated.

A qualitative statement is also seen in the news which states that "This is the action of an employee of the Correctional institutions Class IA in Medan. We are not animals. "We are humans. We have been dragged here for years because of small cases. We can not get out. If we did not give the money, we would be beaten like this, " <sup>11</sup>

There were incidents of violence conducted by unscrupulous officers against inmates in Cilacap On Thursday, March 28, 2019, during the transfer process of 26 narcotics offenders from the Krobokan Correctional Institution and Bangli Correctional Institutions to Nusakambangan. Officers acted violently while a group of inmates were being unloaded in the front yard of the Wijayapura Task Force Post on their way to the ferry boat. The Directorate General of PAS has examined 13 officers suspected of having committed acts of violence whose videos have been widely circulated on various social media. In the video, a number of men with handcuffs on their hands and heads covered with shirts squatting down to a ship. Some of them have fallen and received a hit from the correctional officer. They were then violently dragged by the officers.

For this behavior, the perpetrator can be qualified to have committed a criminal act of persecution, which is defined in Article 351 paragraph (1) of the Criminal Code with a maximum imprisonment of two years.

In addition, the event of a fire that occurred at the Tangerang Penitentiary on September 8, 2021, can also be classified as acts of victimization against inmates. The big fire killed 41 inmates on the spot, critically injured 8 others, and left 72 more with minor injuries.<sup>12</sup> The officer in charge could be charged with committing a criminal act under Article 359 of the Criminal Code, which stipulates that negligence causing the death of another person is punishable by a maximum sentence of five years in prison or a maximum sentence of one year in jail.

Victimization can also take the shape of acts of persecution, confiscation, or theft carried out by fellow inmates. The most recent example that went viral in the media was the maltreatment of an inmate by another inmate in a public restroom in the mosque inside the Jember Class IIa Penitentiary on September 4, 2021. The victim was hounded by the perpetrator after he was accused of being a police spy.<sup>13</sup> In cases of rape or sexual assault, convicts are frequently subjected to torture. This is as qualitative statements stated by ex-inmates:

They were stripped naked and pummeled for the first few weeks. Their 'genitals' are lubricated every day with balm or chili. They are told to Crawl around the field. They are, nonetheless, alive and suffering. Rapists are the ones we despise the most. Prison must have made them give up.<sup>14</sup>

Furthermore, it is stated Being stripped and beaten alternately has been a procedure. The most heinous act is telling them to eat and drink their own feces. Not to mention being ordered to "serve" the inmates one by one. For inmates, having sex with young children is an unforgivable crime," he explained.<sup>15</sup>

One of the rape case inmates, who is an inmate at the Yogyakarta Class II Correctional Institution, made the following statement:

<sup>11</sup> <https://www.merdeka.com/peristiwa/viral-penganiayaan-terhadap-napi-di-lapas-tanjung-gusta-6-orang-di-periksa.html> Accessed on October 23rd 2021.

<sup>12</sup> <https://megapolitan.kompas.com/read/2021/09/29/12071561/polisi-tetapkan-3-tersangka-baru-kasus-kebakaran-lapas-tangerang-salah>. Accessed on October 23<sup>rd</sup> 2021.

<sup>13</sup> <https://www.merdeka.com/peristiwa/dituduh-mata-mata-polisi-narapidana-baru-dianiaya-sesama-penghuni-lapas-jember.html>, Accessed on October 23rd 2021.

<sup>14</sup> <https://bergelora.com/ngeri-ini-siksaan-di-penjara-bagi-pelaku-kekerasan-seksual/> Accessed on October 23rd 2021.

<sup>15</sup> <https://bergelora.com/ngeri-ini-siksaan-di-penjara-bagi-pelaku-kekerasan-seksual/> Accessed on October 23rd 2021.

*"When I initially arrived, I was beaten by a cellmate, and I had to put up with it for a while." In any case, things aren't looking good. Not only the treatment between inmates, but also the officers' discriminating behavior. People in my neighborhood have also been stressed because they have been tortured in the Penitentiary for rape cases. In the Correctional Institution, people with rape charges have been bullied."*<sup>16</sup>

Several current legal rules are violated by this act of victimization, including the following provisions::

1. Article 4 letters n and o of the Minister of Law and Human Rights' Regulation No. 6 of 2013 concerning the Order of Corrections and State Detention Centers ("Permenkumham 6/2013") confirms that every inmate or detainee is prohibited from:
  - n. *commit acts of physical and psychological violence against other inmates, detainees, correctional officers, or guests/visitors;*
  - o. *deliver provocative statements that could disrupt security and order. If the above actions are violated, the inmate or detainee may be subject to sever disciplinary sanctions, in the form of:*
    - a. *6 days in solitary confinement, which can be extended twice for another 6 days; and*
    - b. *In the current year, they are not eligible for remission rights, leave to visit family, conditional leave, assimilation, leave before release, or parole, and they are registered in register F.*
2. **Policies that can be implemented to reduce inmates become victims.**

The policy that will be implemented must be based on the problem's root cause. The primary cause of the problem is that the Correctional Institution's inmate population exceeds its available capacity, or it is overcrowded. As a result, real, meaningful and concrete policies and realistic initiatives to minimize the number of inmates in correctional institutions are required. The government through related institutions can optimize existing positive legal norms, which include the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018 concerning Terms and Procedures Method of granting remission, assimilation, leave to visit family, parole, leave before release, and conditional leave, National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. The government through related institutions can optimize existing positive legal norms including the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018 concerning Terms and Procedures Granting of remission, assimilation, leave to visit family, parole, leave before release, and conditional leave, National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. Furthermore, In this case regarding the occurrence of the covid-19 pandemic, Ministerial Regulation Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children can be used in the Context of Preventing and Controlling the Spread of Covid-19. Another rule released by the prosecutor's sub-system is the Restorativ Justice policy, which was promulgated on July 22, 2021 by the Attorney General's Regulation (Perja) No. 15 of 2020.

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<sup>16</sup> Aroma Elmina Martha dan Chandra Khoirunnas, 2019, Penganiayaan Terhadap Narapidana Pelaku Perkosaan Yang Mengalami Label Negatif Di Lembaga Pemasyarakatan (Studi Di Lembaga Pemasyarakatan Wirogunan Yogyakarta), *Jurnal Veritas et Justitia* Vol Volume 4 • Nomor 2 • 388 DOI: 10.25123/vej.3064.

Meanwhile, it is vital to develop character for officers with integrity and professionalism in order to overcome the violence committed by officers against inmates who are driven by financial motives.

The presence of violence among inmates is usually induced by the residence's extremely unpleasant atmosphere, which makes it psychologically easier for them to become emotional and, as a result, resort to violence as an outlet. Then, once again, limiting the number of inmates in the Correctional Institution is the way to be taken.

#### D. CONCLUSION

Based on the discussion above, it can be concluded as follows.

1. The party that can make inmates become victims is the institution, which in this case is the ministry of law and human rights cq. Directorate of Corrections, Correctional Institution officers, and prisoners. The regulations that are violated include the Correctional Law, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 concerning Grand Design, Regulation of the Minister of Law and Human Rights Number 6 of 2013 concerning Regulations of Correctional Institutions and State Detention Centers, correctional principles and The Criminal Code.
2. The form of policy that can be taken to reduce inmates becoming victims is to significantly reduce the number of inmates by optimizing legal norms related to the reduction of inmates, and increasing the integrity and professionalism of correctional officers.

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