



Sexual Needs of Indonesian Prisoners in the Aim of Punishment Perspective

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Abstract

Biological primary needs are for everyone, including prisoners since they are ordinary human beings who have the right to biological needs. The government should pay more attention to this matter in terms of regulations that regulate such needs. The first problem discussed in this study is government policies related to prisoners' sexual needs, and the second one is the fulfilment of sexual needs in the perspective of the aim punishment. This research uses a normative legal method by analyzing the data qualitatively, which means that the obtained data lead to a theoretical study in the form of principles, legal doctrines and the content of legal norms, which are first systematically described. This prison decision policy remains the most commonly used alternative by law enforcement agencies, resulting in overcrowding of prisons and suboptimal criminal justice, one of which is regarding the fulfillment of biological rights that creates a sense of lack of justice in it. The aspired values should become an orientation to create optimal social policies, criminal policies, and law enforcement policies. Thus, there should also cooperation between the law enforcement and the community to ensure justice.

Keywords: Policy; Justice; Biological Needs; Prisoners

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Introduction

This paper discusses the fulfilment of one of the basic needs of prisoners in Indonesia, namely sexual conditions in prisons. Currently, the state does not seem to pay attention to these basic needs, even though they are one of the prisoners' rights. The shift from the prison paradigm to the correctional facility has not yet addressed the problem of meeting the sexual needs of prisoners. (Citrawan, 2013). The penal law has not regulated this fundamental right (Citrawan, 2013; Okky Chahyo Nugroho, 2015). The law regulates the right to receive family visits but does not explain the implementation of this right. The satisfaction of sexual desire is an important part of human life. If not activated, it can affect sexual behavior (Maryani, 2019), namely having sexual fantasies or nocturnal sex dreams, doing self-masturbation, and having a same-sex relationship (homosexuality) (S. P. Srivastava, 1958). These three sexual behaviours are common in prison because of the high sexual need (Chirstophe Hensley, 2002). Meanwhile, in order to satisfy his sexual needs, the detainee can initiate

various methods, including resorting to the period of sexual intercourse or probation (Okky Chahyo Nugroho, 2015). Several countries have implemented a marital visitation policy, which means that opportunities for physical contact or reunification have been offered to inmates and their spouses, usually in the form of an overnight stay in prison (Langden and I Nengah Suantra, 2018). Conjugal visit, otherwise known as "family visit" conducted in prisons, is one factor that can maintain a healthy relationship with a partner without prioritizing sexual needs (Interesting, 2016). In 2007, the Mexico City prison system began allowing inmates to make conjugal visits with same-sex partners. Meanwhile, India's highest court ruled in 2015 that having sex with a partner or artificial insemination to have children is a fundamental right of inmates (Interesting, 2016).

Regarding the prisoners' rights, in the correctional development system, there is a principle of "Guaranteeing the right to stay in touch with family and certain people", which is one of the prisoners' rights. However, it is not stated and explained clearly about prisoners' rights to sexual needs in prisons. Based on the background above, two problems were occurred to be studied more deeply. The first problem is regarding government policies related to prisoners' sexual needs. The second one is the fulfilment of sexual needs in the perspective of the aim of punishment.

Research Method

The method used in this research is the legal regulation through the realization of bibliographic studies to collect secondary data and qualitatively analyze the existing data and evaluate them according to the classification of the problems according to their origin and hierarchy in an integral way.

Results and Discussion

The Policy of Sexual Needs Fulfillment

Human rights are universal and enduring fundamental rights inherent in human nature as a gift from Almighty God. Human rights are universal, applicable to all people regardless of one's gender, ethnicity, race, religion, or cultural, social, and even political background. The point is that everyone has human rights that cannot be violated. Human rights are basic rights that are owned by humans because of their dignity as human beings and are not granted by society or the state. Therefore, human rights cannot be eliminated or declared invalid by the state (Nasution, 2011; Yustina and Siregar, 2020).

One of them is to ensure the fulfillment of the rights of prisoners in the correctional facility, which are covered and protected by law enforcement authorities, especially prison officials. Since inmates are protected by their rights, even if they have broken the law, any action taken against them, whether in the form of counseling or other activities, must be protected and must not conflict with the objectives of the penal system itself (Mahendra, 2020). There is a guarantee of the enforcement of the rights of prisoners in the correctional system, which is covered and protected by law enforcement agencies, especially prison officials. Since detainees are protected for their rights even if they violate the law, any action taken against them, whether in the form of counseling or other activities, should be supported and not contradict the goals of the system. Indonesia guarantees for the rights of prisoners regulated by Article 14 of Law Number 12 the Year 1995 concerning Social Security, one of which is the right to receive family visits, but the purpose of the family visit is not explained. One of the prisoners' rights that needs attention is the right to fulfil sexual needs. However, the penal law has not regulated this very moral right (Okky Chahyo Nugroho, 2015; Mahendra, 2020). The fulfilment of sexual needs is an essential part of human life, when it is not channelled it could affect sexual behavior (Haryono, 2017). Regarding the prisoners' sexual needs, there are three common sexual behaviours occurred in prison, namely sexual fantasies brought into dreams (Nocturnal sex dreams), self-masturbation and same-sex relationships (Homosexuality) (S. P. Srivastava, 1958). Meeting sexual needs is an essential part of the prisoners' formation process because it has the first objective of protecting their marriages. The second objective is to foster discipline and help in rehabilitating offenders. The third one is to reduce lesbian or gay behaviour in prison (Haryono, 2017). The fulfilment of prisoners' rights in terms of a conjugal visit is still not supported by the proper regulation. Thus, it is still a lack of provision of superior rooms (Maryani, 2019). The laws and regulations have not explicitly stipulated the implementation of the right to get conjugal visits. Thus, the performance of the marital visit policy is still fragile and needs to be improved, especially in the regulatory aspects, which are still not adequately regulated (S. P. Srivastava, 1958). The government policy in clearly formulating the conjugal visit aspect for inmates

dramatically influences the implementation of this right to feel the benefits. An element that needs to be considered is the support of adequate facilities or infrastructure, which is still lacking. The regulation of conjugal visits as a means of fulfilling prisoners' sexual needs still lacks sufficient facilities. Therefore, the fulfilment of the right of conjugal visit must be followed by infrastructure development to optimize the resulting benefits (Bambang Sumardiono; Gunarto; Anis Mashdurohatun; & Ahmad Khisni, 2018). The government's policy implications greatly influence the program's success rate of a family visit to the prison. With appropriate policies, the mental health of prisoners can be maintained and violence in prison can be suppressed as good as possible (Maryani and Rochaety, 2019). The high level of depression in prisoners is the leading cause of various cases of violence in prison. It can be overcome by measuring the prisoners' mental health to minimise their cognitive burden (Tasca, Mulvey and Rodriguez, 2016). The conjugal visit program allows prisoners to interact with their family or relatives, which significantly affects their mental condition. Visiting prisoners can reduce the level of prisoner noncompliance and deviant behaviour within the prison (Albertie et al., 2017). Even though it is regulated in law, the right of the conjugal visit should not be treated as a fundamental right but also given as a reward for prisoners who have good behavior (Joshua C. Cochran, 2012).

The prison system is organized to train inmates to become full-fledged human beings, to be aware of mistakes, to improve themselves and not to commit any other criminal acts. This system is designed to train Corrective Care Citizens to integrate healthily into the community through coaching and mentoring in the penitentiary (Popescu, 2015). Punishment in the correctional system is carried out while improving a person's dignity as a human being. This treatment aims to include the detainee in the teaching process as an object and subject with the ultimate goal of returning him as a capable and available person (resocialization of the offender). It is evident from the term that the aim of the correctional system is no longer the imposition of punishment, but the process of incarceration of prisoners (Haryono, 2017). In carrying out its duties and functions, the correctional facility fosters prisoners who face difficulties and whose social status is disturbed by social and mental rehabilitation (Pembimbing Kemasyarakatan Indonesia, 2020). The right of prisoners to benefit from the rehabilitative program must be fulfilled, including the right to receive visits from family members or the right to be involved in the marital visit program (Maryanto, Rahmawati and Rini, 2014).

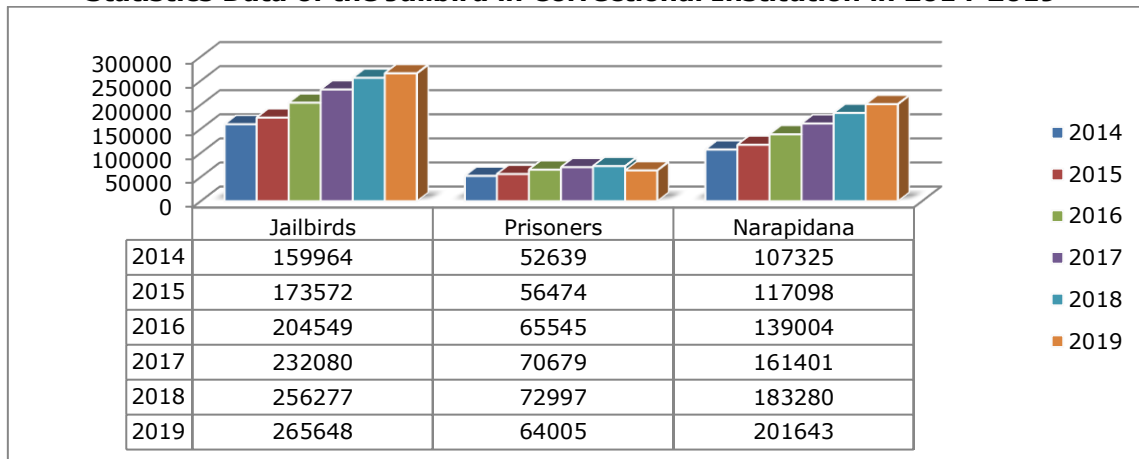
Many countries have implemented conjugal visitation policies, which means that prisoners and their spouses have the opportunity for physical contact or to meet, usually in the form of a sleepover in prison (K Dzehtsiarou and F Fontanelli, 2015).

A conjugal visit is a "family visit", which is done in detention and becoming one of the factors that possibly maintain a healthy relationship with one another without highlighting sexual needs (Okky Chahyo Nugroho, 2015). Marital visitation policies are known as family visits, such as the Qatar Central Prison, which has opened a village where couples and children visit prisoners. Israel allows conjugal visits to gay and lesbian inmates as well as married ones. In Canada, every 2 (two) months, inmates can spend up to 72 hours with their family or a lawyer. In 2007, Mexico City's prison system allowed inmates to have conjugal visits with their same-sex partners. In the Eastern Hemisphere, India's Supreme Court ruled in 2015 that IVF is a basic right of prisoners to have sex with a partner or have a child (Interesting, 2016). However, the fulfilment of the fundamental rights of prisoners in India is still far from optimal, including the right to a conjugal visit (Interesting, 2016). Prisoners in Pakistan generally do not get their rights related to good health services, the right to get conjugal visits from their spouses, and fair and fast trials (Rakesh Chandra, 2018). The absence of a conjugal visit program often led to various sexual crimes among prisoners. Therefore, the marital visit program's implementation is essential to reduce cases of sexual crimes in prisons (Gul & Rais and Gul, 2018).

Fulfilling Sexual Needs in the Perspective of Criminal Purpose

Crime is a humanitarian problem and the oldest social problem in society and cannot be resolved (Mososi Anne Nyakara & Simiyu Wandibba, 2019). The statistical data of prisoners in the year 2014-2019 shows an increase every year as illustrated in the table below:

Table 1
Statistics Data of the Jailbird in Correctional Institution in 2014-2019



Source : <http://smslap.ditjenpas.go.id/public/grl/current/monthly/year/2019/month/12>

This research shows the close relationship between the right to sexual needs and fundamental civil liberties in human rights legislation, both nationally and internationally. Denial of the biological condition of prisoners is also a denial of the prisoner's state of nature as a human being. Various findings on the activity to satisfy the sexual needs of prison inmates are phenomena that cannot be ignored (Dey Ravena dan Kristian, 2017). The policy to fulfil prisoners' sexual needs in the perspective of the purpose of punishment cannot be separated from the criminal policy, as stated by G.P. Hoefnagels that "criminal policy is a rational organization of social reactions to crime" (Kemur, Tendean and A.Joy.M.Rattu, 2019) or it can be said the company's reasonable efforts to prevent crime. Crime cannot be eliminated, it can only be reduced in quantity and quality. This claim can be empirically verified since we have been born human until now, crime continued to exist and became increasingly complex (M. Hamdan, 1997; Tina Asmarawati, 2015).

According to Franz von Liszt (Dey Ravena and Ade Mahmud, 2019), the purpose of holding a criminal (Strafrechtstheorieen) is necessary because humans must know the nature of crime and the legal basis of crime. Still according to Franz von Liszt, the nature of crime in law is protecting interests by attacking interests. Hugo de Groot also stated that "malum passionis (quod infligitur) propter malum actionis", which means the evil of suffering for the sinful evil of doing. In the Retributive Theory view, punishment is imposed solely because the person has committed a crime (quia peccatum est). The justification for the crime is the crime itself. Therefore, according to this theory, punishment is solely for the crime itself. Crime is an absolute consequence that must exist as a retaliation against those who commit crimes. Thus, the basis of justification for punishment lies in the existence or occurrence of the crime itself (Bambang Poernomo, 1985). The theory of retaliation does not think about fostering the perpetrator of the crime, even though the perpetrator of the crime has the right to be developed into a valuable human being following his dignity (Muladi and Barda Nawawi Arief, 2010). They do not necessarily feel guilt or regret; on the opposite, the perpetrators might have feelings of resentment (Andi Hamzah, 1985). It cannot be denied that crime contains suffering. However, the punishment should not bring a convicted person into long-term suffering. Criminal should be used as a means to foster a convict to realize his actions. Relative theory or goal theory was born as a reaction to a fundamental idea. According to the comparative approach, the goal of detention is retaliation and creating order in society. The offense does not simply consist in retaliation or punishing a person who has committed a criminal act, but has specific deserving purposes. Thus, the basis for justifying the existence of the crime according to this theory lies in its objective. The sentence imposed is not "quia peccatum est" (because people commit crimes) but "ne peccetur" (so that people do not commit crimes) (J. E. Sahetapy, 1979). Combination theory or also called integrative theory, is a combination of fundamental theory and relativity theory. According to the combination theory, the purpose of the crime, apart from repaying the convicted guilt, is also intended to protect the community by creating an order. The criminal justification lies in retaliation. Only "the guilty" may be sentenced, and the punishment is following the offense committed. The law must impose punishment only on the guilty person, and the severity of the punishment must not exceed the severity of the offence. Even though retaliation is considered a principle of crime and that the severity of the punishment must not exceed just revenge, punishment has various effects, including

repairing something damaged in society and general prevention. Thus, in essence, punishment is always protecting culture and retribution for acts of disobedience. Besides this, punishment contains other things, namely that punishment should be something that will bring harmony and that punishment is an educational process to make people acceptable in society again (Muladi dan Barda Nawawi Arief, 2010). Antony Duff and David Garland grouped the various purposes of this punishment into two major groups, namely consequentialist and non-consequentialist (Roeslan Saleh, 1978). For consequentialists, whether or not a certain thing depends solely on the consequences as a whole. In short, if the results are good, the action is correct; but if the products are harmful, the action is not correct. Therefore, to seek justification for punishment, one must prove that Discipline brings kindness; The rigor prevents a worse accident and there is no other alternative that can give the same good results.

The prison system adopted by Indonesia tends to adhere to a combined theory. In a correctional facility, prisoners are trained with the ultimate goal of resocialization and rehabilitation. In addition, we are returning them to society to become more reasonable human beings. In the process of training, prisoners are guaranteed their rights. However, concerning the right to fulfil sexual needs, it is still an obstacle, both from the rules and their implementation. Prisoners who are in prison do not immediately lose their sexual desire. Therefore, the performance of the conjugal visit program is urgently needed to reduce the number of sexual violence in prison (Harkristuti Harkrisnowo, 2013). The facility for visiting family members to prisoners in prison may not be the only important issue in fulfilling prisoners' rights as an effort to maximize the rehabilitative impact of prisons that might occur. However, the comfort of a place to undergo or get a visit is essential so that both prisoners and families visiting can get the maximum benefit from this program (Anamica Singh and Anupal Dasgupta, 2015). Prisoners see the conjugal visit program as a positive thing because it helps reduce their suffering in prison and strengthen their relationship with their spouses (Moran and Disney, 2018). Based on the research, it was found that the marital visit program had a positive impact and a negative impact on visitors, especially female visitors. On the one hand, a conjugal visit can increase the intimacy of a couple, but on the other hand, this program creates a high sense of tolerance towards the prison atmosphere (Einat and Rabinovitz, 2013). The conjugal visit program has been shown to reduce violence in prisons and reduce the number of same-sex sexual crimes among prisoners. The program has been shown to reduce recidivism rates (Granja, Cunha and Machado, 2014). Visits of prisoners can increase the likelihood of successful assimilation of prisoners into the community (Mitchell et al., 2016). Visits from family members of prisoners serving detention time can increase their success in assimilation, rehabilitation and return to the family (Liu, Pickett and Baker, 2016). Prisoners who regularly receive visits from their families will find it easier to adapt to society once released from prison. However, there are several weaknesses such as social jealousy, smuggling, and the transmission of dangerous diseases such as HIV/AIDS, as well as unwanted pregnancies, which will burden the country's finances (Tasca, Mulvey and Rodriguez, 2016).

In the perspective of the integrated purpose of punishment, the fulfilment of the rights of sexual needs is a form of fulfilling the prisoners' rights and an effort to prevent the occurrence of worse conditions for prisoners while serving a sentence in prisons. The sentence handed down was not intended to demean their dignity. In addition, the fulfilment of sexual needs is also designed to maintain the relationship between prisoners and their families. For example, the absence of conjugal visit rights in India has harmed the prisoners' families' mental state. Conjugal visits have a maximum rehabilitative impact in prison and reduce mental stress for prisoners (Kanaboshi and Anderson, 2011). In connection with the assimilation process of prisoners, the conjugal visit program becomes a link and a linking factor between prisoners and the outside society. Before undergoing assimilation, prisoners can meet their families in a conjugal visit as the beginning of their interaction with the external organisation. In addition, conjugal visits are proven to have an impact on the health of prisoners, both physically and mentally (Anamica Singh and Anupal Dasgupta, 2015). Prisoners in the correctional institution have time with their families or spouses, so this condition will significantly affect their physical and mental improvement.

The concept of punishment that is people-oriented (individual/personal) prioritizes the philosophy of fostering/treating the perpetrator of the crime ("the treatment of offenders"), which gives birth to a humanistic approach, the idea of individualization, and the purpose of the punishment which is oriented towards the improvement of the perpetrator (namely the goal of rehabilitation, reform, re-education, resocialization, social re-adaptation, and so on). Such an individual humanistic approach deserves to be carried out. Still, it should be noted that the one who requires guidance and care is the perpetrator and the community or environmental conditions. This is because the main factors causing the crime are beyond the scope of criminal law, such as social inequality, racial and

national discrimination, low living standards, unemployment, and illiteracy (ignorance) that exist in the most proportion of the population (Chin et al., 2019). Starting from the description above, criminal policy should be pursued with an integral approach/policy, either by using "penal" or "non-penal" means ('Resolution 1. Crime Trends and Crime Prevention Strategies "Noting that the main causes of crime in many countries are social inequality, racial and national discrimination, low standards of living, unemployment and illiteracy among broad sections of the population', 1980; Arief, 2000). G.P. Hoefnagels also conveyed the integration between "penal" and "non-penal" means that criminal policy is pursued through the "penal" route, namely by applying criminal law (criminal law implication/practical criminology); and the "non-penal" route, namely prevention without punishment and influencing the public's view of crime and punishment through mass media (G.P. Hoefnagels, 2013).

Conjugal Visit in Indonesia

In the context of punishment, the only pain felt by prisoners is the loss of freedom of movement, including sexual intercourse. It is necessary to have facilities or policies for inmates to have contact with their partners. If the husband is in prison for a long time, his wife can cheat and for her husband to experience sexual abuse. So far, two mechanisms can be done to overcome this problem. First, the leave policy to visit family or create a room in a correctional facility with the minimum security type. The policy of seeing family leave has been around for a long time, but the time given is limited to only two days and is rarely used by inmates. Regulations and infrastructure still constrain the provision of a particular room to channel sexual needs.

Sexual needs are derived from personal life, the right to form a family, the freedom to humane treatment, health and a decent life. In addition, there is a need for the state to establish a mechanism to fulfil the sexual needs of prisoners based on human rights (Citrawan, 2013). The right of prisoners to receive family visits is regulated in the penal law. However, regulations related to the right to fulfil sexual needs or conjugal visits are still not clearly and well ordered, for example, those related to infrastructure to support the fulfilment of these rights. The regulation of conjugal visits as a means of fulfilling prisoners' sexual needs still lacks adequate facilities. Therefore, the completion of the conjugal visit rights must be followed by infrastructure development to optimize the resulting benefits (Maryani and Rochaety, 2019).

A conjugal visit is an important thing to be implemented in prisons as the fulfilment of prisoners' rights (Langden and I Nengah Suantra, 2018). In Indonesia, three correctional institutions have provided conjugal visit facilities, which are called 'Romance room' in the Indonesian context. The three prisons are Ciangir Banten, Kendal and Nusa Kambangan. Romance room facilities are provided for married male inmates. The facility can be accessed by prisoners who are in a correctional facility with the minimum security category. In the room, prisoners are allowed to channel their natural desires while their wife is visiting. The implementation is rigorous and measured, and the marital status is checked (Bayu Septianto, 2020).

The policy of providing romance room is facing several obstacles. First, all this time, correctional institutions face a classic obstacle, namely overcapacity (Kumparan, 2020) with the number of occupants more than twice its capacity. Until 2019, the number of prisons and detention centres in Indonesia was 528, with 130,512 people, while the number of residents reached 265,648 people. Additional facilities provided by the government cannot overcome the excess capacity of prisoners. This is one of the reasons for the inadequate provision of romance room in prisons. Another reason is that the romance room facility cannot be applied in all types of prisons, especially in women's prisons. The application of romance room in a women's correctional facility will create new problems. If the female prisoner is in her fertile period, it will increase the risk for the prison manager with the addition of assisted residents (children of female prisoners) (Rangga Baskoro, 2020). In addition, the construction of romance room also invites several potential negative uses by the prisoners and their relatives. The prevalence of falsification of marriage documents indicates the potential for misuse of facilities in the correctional facility. According to the Minister of Law and Human Rights, Yasonna Laoly, it is challenging for prison managers to ensure that prisoners use these facilities without any potential for fraud or abuse. In addition, monitoring related to security in meeting this need is difficult. The prison manager can't apply direct supervision in the confinement facility because this would violate the rights of prisoners and their families and violate the law. Conjugal visit facilities or romance room for inmates are also not supported by optimal and facilitative policies. The existing approaches are still feeble and need to be improved, especially in the regulatory aspects, which are still not well organized (Bambang Sumardiono; Gunarto; Anis Mashdurohatun; & Ahmad Khisni, 2018). To date,

meeting the sexual needs of married residents can only be done through the Family Visiting Leave program, which still has not accommodated the needs of female prisoners due to the risk of increasing residents in prisons (Kemur, Tendean and A.Joy.M.Rattu, 2019).

Conjugal Visit in Several Countries

Conjugal visits are nothing new in developed countries. Spain implements this policy to fulfil the rights of prisoners and an attempt to reduce the level of sexual violence between prisoners in prisons. In this country, prisoners have the opportunity to have a conjugal visit every 4-8 weeks. A particular room is provided with various supporting facilities such as condoms, bathrooms, and clean towels (Firdaus Anwar, 2019). Thus, the comfort of prisoners can be adequately guaranteed, and the fulfilment of their rights can run optimally. Canada is also one of the countries that have implemented a conjugal visit policy for prisoners detained in prisons. Unlike Spain, Canada allows prisoners to get a conjugal visit every three months. However, the permitted visit time is relatively longer, namely 72 hours for one visit. The facilities provided to support this policy include a private bathroom, a garden, and family cutlery (barbeque). The conjugal visit policy is also applied in Russia, namely the facility for family visits for 72 hours once a year. To ensure the comfort and safety of prisoners, supervision of prisoners who are currently receiving conjugal visit policy facilities does not receive strict control to ensure privacy. Visits are carried out outside prisons where there is minimal supervision and can bring food and clothing from outside the prison. It can be seen that the implementation of the conjugal visit in Russia is much laxer than the marital visit policy in the two previous countries, namely Spain and Canada.

Meanwhile, in Saudi Arabia, conjugal visits are also implemented with some restrictions. Families visiting prisoners are placed in unique rooms within the correctional facility but are only provided with minimal facilities such as beds, clothes, snacks and drinks. Although the facilities provided are very minimal, visits to prisoners in the correctional facilities can be carried out by family members once a month.

Based on these examples, we can conclude that the conjugal visit policy has become one of the priorities in developed countries because the impact resulting from implementing this policy is very significant in reducing the level of violence, sexual harassment and riots in prisons. Thus, of course, it is beneficial for the managers of correctional institutions in Indonesia to take some examples of policies applied in developed countries in fulfilling the sexual needs of prisoners, in the procedure of conjugal visit or romance room.

Conclusions

The laws and regulations have not explicitly stipulated the implementation of the right to get conjugal visits. Thus, the performance of the marital visit policy is still feeble and needs to be improved, especially in the regulatory aspects, which are still not adequately regulated. It is necessary to clearly define policies for fulfilling sexual needs as one of the rights of prisoners. The unclear regulations regarding conjugal visits have resulted in various negative impacts, such as sexual crimes, recidivism, and hindering the assimilation and rehabilitation program of prisoners. In the perspective of the integrated purpose of punishment, the fulfilment of the rights of sexual needs or conjugal visits for prisoners is the implementation of humanistic discipline, not only paying attention to prisoners but also protecting the community. Criminalization is not intended to undermine human dignity; the rights of prisoners are guaranteed, and the community is protected from the negative impacts of punishment. Fulfilling the requests to conjugal visits will support the assimilation and rehabilitation program when prisoners return to society. However, decision making in the formulation of a marital visit policy must accommodate every prisoner detained in the correctional facility to be holistic and not partial. Therefore, it is necessary to form an optimal regulation so that prisoners in female prisons can also take advantage of this policy correctly and following applicable regulations.

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