

RECONSTRUCTION OF CONJUGAL VISIT PATTERNS AS GUIDANCE FOR PRISONERS IN CORRECTIONAL INSTITUTIONS BASED ON JUSTICE

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ABSTRACT

Theoretically, conjugal visit is not contrary to the principles of punishment. The purpose of this study was to establish a conjugal visit pattern as a prisoner coaching program. To analyze and to find out what weaknesses exist when building a conjugal visit pattern in realizing the rights of prisoners and to reconstruct a conjugal visit pattern as a prisoner coaching program based on Justice. This research used constructivist paradigm. The constructivist paradigm is a paradigm that is almost the antithesis of the notions that put observation and objectivity in finding a reality or science. The paradigm in this research was supported by secondary and primary data. Data analysis was carried out qualitatively. The results of the study found that the Weakness in the implementation of Conjugal Visit as a prisoner coaching program was in the structure of the correctional institution which is still needed improvement, the correctional institution culture including prisoners and the substance (regulations) which was not yet clearly regulated the Conjugal visit. Reconstruction of Article 14 paragraph (1) letter j in Act Number 12 year 1995 concerning Correctional Institution is done by placing Conjugal Visit as a form of giving social justice to prisoners so that they can return well in the community.

Keywords: Conjugal Visit, Prisoners Coaching based on Justice

Introduction

The law needed for the people is a law that provides social justice for all Indonesian people, which reflects the protection of human rights, as stipulated in the 1945 constitution, therefore the Law not only serves as a guide to regulating the behavior of people, but also for government officials and law enforcement officials at all levels.¹This is in line with the opening of the 1945 Constitution of the Republic of Indonesia mandating that the national goal is to protect the entire nation and the entire blood sphere of Indonesia to promote the general welfare, the intellectual life of the nation, and the participation of the world in order of freedom, eternal peace and social justice.²

The length of imprisonment is determined by the court, but the Minister of Justice is authorized to release the agreement to the convicted person. For example, the convicted person is sentenced to three years, the Minister of Justice can have the authority to release the convicted person if he has served a six-month sentence, with an agreement, that the convicted person does not need to live in prison but the convicted person is placed under special supervision. As long as he is still under the supervision, there is still a possibility that the convicted person is obliged to undergo the remainder of the criminal case, in case the agreement as the condition of being released is not fulfilled. The difference between the Elmira system and the Borstal System is in the Elmira court system no longer determines the length of imprisonment in question, while in the Borstal court system it still determines the length of imprisonment concerned. However, in practice between the two systems, the results are the same. The Borstal system then expanded in several Western European countries. The Borstal system was also applied to a special children's prison in Tangerang which was founded in 1927.

The next system was the Osborne System, which was first discovered by Thomas Mott Osborne, twice the mayor of Hobart and then the famous singles prison director in the State of the United States of New York. This system introduces a system of "self government" to prisoners in prison, supervised by foremen or supervisors appointed from prisoners themselves, in doing work both in prison and outside of prison.³

Criminal revocation of independence consisting of imprisonment and imprisonment was carried out in prison. Among the legal experts, most argue that the criminal revocation of independence does not originate from the view of liberalist-individualist bourgeois life. It has been stated in the book "Politics of the National Prison". It is said that the crime of losing independence is derived from the above view of life, it can also be proven in the history of growth as can be read in the book "Politics of Prison" both were established by Mr. R.A. Koesnoen. They can also be found in foreign books about imprisonment which all will prove

¹ Anis Mashdurohaturun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) 2015, page.94.

² Said Gunawan, Anis Mashdurohaturun, Teguh Prasetyo I Gusti Ayu Ketut Rachmi Handayani, *Development Concept Of Non-Alutsista Abuse By Indonesian National Army*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August) ISSN 2289-1552, 2017, page.180.

³ Utrecht, E. 1986. *Hukum Pidana II*. Bandung : Penerbit Universitas. page.277.

that the crime of losing independence is derived from that view of life. Besides that the criminal revocation of independence comes from the life view of liberalism viewed from the political point of view of the crime as very bad.

How badly the results are explained in the book "Politics of the National Prison" and indeed not one in the world has ever explained that the criminal political system run in prison is good. So it becomes a problem for us together in composing a criminal system in Indonesia now that is based on Pancasila and wants to reach a just and prosperous for Indonesian society.

The correctional system is then continued to be realized by renaming the prison to become a Penitentiary. The change in the term prison to become a Penal Institution is intended so that correctional institutions can become a forum and at the same time obtain various coaching and skills that can help them to become independent people who are ready to face their future outside the penitentiary. This change is based on the idea that the treatment and process of guidance for prisoners must refer to the existence of human rights.

The starting point of this change was initiated by a national law figure, Saharjo who in his inaugural address of the Honoris Causa Doctorate degree at the University of Indonesia made a new history in the world of Indonesian prison. According to Saharjo, inmates are stray people who have the time and opportunity to repent and need guidance. The aim of coaching the lawbreakers in the correctional institution is no longer solely to retaliate but also to improve. Therefore, the philosophy of prosecution in Indonesia basically undergoes changes such as those contained in the Correctional System which considers that prisoners are people who are lost and have the time to repent.

Saharjo, who at that time served as Minister of Justice, described a banyan tree that symbolized the patronage which further explained how the law in Indonesia should have a national personality. He explained that, the legal position is the basic and tooling foundation of the State and in the revolution the basic foundation and tools of the revolution, resulting in an obligation for officers to be a protector in treating prisoners. Since the purpose of imprisonment according to the Saharjo version in addition to causing suffering for the convicted person because he freedom of movement, also guiding convicts to repent, educate so that he becomes a useful of the Indonesian socialist community or briefly states that the criminal purpose of imprisonment is correctional.

The discussion about the change in the Prison System into this correctional system then continued in the meeting and in the Saharjo chat with the Elders of the Judiciary and with the prison service departments. The magnitude of Saharjo's desire to realize this new system in the Indonesian legal system did not disappear even though Sahardjo had died. The first President of the Republic of Indonesia, Ir. Soekarno who participated in Saharjo's initial presentation on the concept of *correctionalism* then gave the president's direction and mandate at the inauguration of the new Minister of Justice for the shortest time to hold a Penitentiary Service Conference. Then in April 27 1964 Correctional Service Conference in Lembang, Soekarno gave the following mandate:

1. What was used to be prison now has been retooled and reshaped into a correctional alignment with the manipol-usdek.
2. Correctional as one of the tools of the revolution in reaching the Indonesian socialist society, inspired guardianship idea and aimed at guiding and educating prisoners to become active and militant participants in the completion of the Indonesian revolution.
3. By realizing that every human being is a creature of God living in a society, in the Indonesian Penal System the prisoners are integrated into the community and are actively involved in the economic development of the State so that they can feel that they are part of the responsibility of securing the revolution.
4. In the framework of nation building and character building the correctional, officers should carry out their duties with sincerity and conviction about the ideas and principles of the Indonesian correctional system.

In this Lembang conference later found another meaning of correctional. Where previously the socialization was defined as the return of the convicted person to the community as a useful member, the Lembang conference gave a new understanding that correctional was defined as the return of the unity of life in the life of life in which there was a convicted person. This is in line with the Pancasila values as a life view of the Indonesian nation. Pancasila is the main basic values which is as crystallization of various values that live in society. It is the soul of the nation (*volksgeist*) in society and nation of Indonesia which is the guiding star (*leidstar*) in the life of society, nation and state of Indonesia.⁴Based on the explanation of the background described above, the factor that influences conjugal visit is a prisoner coaching program in the correctional institution, and builds a conjugal visit pattern as a coaching program in justice-based correctional institutions.

Discussion

1. Weaknesses in the Implementation of Conjugal Visit as a Coaching Prisoners Program in Correctional Institutions

According to Sudikno Mertokusumo, the activities of human life are very broad, not counting the number and type, so that it is impossible to be included in a statutory regulation thoroughly and clearly. So it is only natural that there are no laws and regulations that can cover the whole of human life, so that there are no laws and regulations that are as complete and clear as possible. Because the law is unclear, it must be sought and found.

⁴Anis Mashdurohatun, Hayyan Ul Haq, Sony Zulhuda, *Social Function Reconstruction Of Intellectual Property Rights (Ipr) Based On Justice Values*, International Journal of Law Reconstruction Volume I, Issue 1, September 2017,page.145.

- Lawrence Friedman divided the legal system into three (3) components, namely:⁵
1. The legal substance (substance rule of the law), which covers all written and unwritten rules, both material and formal law.
 2. Legal structure (structure of the law), encompassing legal institutions, legal apparatus and law enforcement systems. The legal structure is closely related to the justice system carried out by law enforcement officers, in the criminal justice system, law enforcement applications are carried out by investigators, prosecutors, judges and lawyers.
 3. Legal culture, is an emphasis on the general cultural side, habits, opinions, ways of acting and thinking, which direct social power in society.

The components of the legal structure in the Indonesian legal system within the scope of law enforcement are regulated in Law No. 8 year 1981 which includes; starting from the Police, Attorney General's Office, Court and Criminal Executing Agency (Prison). The authority of the law enforcement agency is guaranteed by law, therefore in carrying out its duties and responsibilities, the law enforcement must be free from the intervention of executive agencies and other external influences. There is an adage that states that even though the world is collapsing the law must be upheld. The law cannot run or be upright if there are no law enforcement officers who are credible, competent and independent. How good is a law if it is not supported by good law enforcement officials, then justice is only wishful thinking. Courts in the legal structure include carrying out law enforcement functions. In enforcing this law there are three things that must be considered, namely legal certainty, benefit and justice.⁶

The authority of community institutions is certainly not only limited to carrying out the law in a positive normative sense, but accommodation regarding philosophical values in the effort of fostering prisoners is part of the actualization of the way and the enactment of the law. This view is in line with the comparison of the views of rational natural law school adherents who underlie the law on rational and human conscience (human reason and conscience). This understanding in the modern century was driven by Hugo Grotius. Adherents of this school are of the view that the validity of positive law must be measured by the criteria that the positive law must be in accordance with logic, so that if the law is in accordance with logic, then the law itself is true and fair.⁷ As with the positivist school of John Austin, which states that the law comes from the highest power in a country and the law is an order of sovereign political power in a country.⁸

According to Hampstead⁹ the Nozick attack was primarily aimed at the formula that the state is needed or was the best tool for distributive justice. Against this, Nozick said that if each person holds or retains their rights that are legally obtained, then the total distribution of rights is also fair. In such circumstances there is certainly no place for the state to intervene, let alone provide formulations or principles that must be adhered to in the distribution of rights among citizens. The state simply functions as a night watchman, guard against theft efforts and keeps other matters related to actions to defend the rights of citizens.

Penitentiary which currently exceeds the number of its prisoner, is one of the obstacles in the implementation of Conjugal Visit. This opens opportunity for irregularities by institutions that exercise their authority which indirectly become a dilemmatic problem where the chance of the apparatus of the prison institution is not able to apply Conjugal Visit appropriately even there will be potential irregularities or collusions in its implementation carried out by irresponsible elements. This is in accordance with the fact that there are many prisons in the provision of prisoners' rights. Henri De Page, the author of an important work on *Traite Elementaire de Droit Civil*, published in the years 1930-1950, stated that the more he deepened the study of civil law, the more he believed that the history of law was earlier than logic because the history of law was able to explain why and how Our legal institutions come to the surface like they are today¹⁰. The US Judge and historical expert Holmes said that the journey taken by the law was not a path and a segment of logic but an experience rail.¹¹

This will certainly lead to injustice if the philosophical meaning is ignored and is inconsistent with the principles of criminal objectives. The use of criminal law as a means of overcoming crime is inseparable from questions about what type of sanction is suitable and how the process of resolving the crime was carried out. Whereas how the criminal law is formulated depends very much on the basic assumptions about crime and the ways and means that can be used to overcome the crime. One of the basic assumptions that have a long root in the history of the formation of criminal law is retributivism.¹² Even according to Michael S. Moore, the view of retributivism is the first and foremost view¹³. In the view of retributivism, criminal law is built based on a legal fiction which in the development of legal science is considered to ignore the aspect of objectivity or the experience of real daily life. Traditionally and dogmatically, a crime is constrained as a violation of public order or an act against the community,

⁵ Lawrence M. Friedman; *The Legal System; A Social Science Perspective*, Russel Sage Foundation, New York, 1975; page. 12 – 16.

⁶ Sudikno Mertokusumo, *Mengenal Hukum*, Liberty: Yogyakarta, 1986, page. 130.

⁷ Munir Fuady, 2013, *Teori-teori Besar Dalam Hukum*, Jakarta: kencana Prenadamedia Group, page. 48

⁸ Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, page. 268-269

⁹ Lord Lloyd of Hampstead & MDA Preeman, *Introduction to Jurisprudence*, (London: English Language Book Society, Steven, 1985), page. 421.

¹⁰ Dikutip oleh Coing H., *epochen der Rechtsgeschichte in Deutschland*, Munchen, Beck, 1976. Pg 12

¹¹ Jhon Gilissen dan Frits Gorle, 2005, *Sejarah Hukum Suatu Pengantar*, Bandung: Refika Aditama, page. 3.

¹² Yong Ohoitmur, 1997, *Teori Etika Tentang Hukum Legal*, PT. Gramedia Pustaka Tama, Jakarta, page. 7

¹³ Michael. S. Moore, 2002, *Retributism (dalam Encyclopedia of Crime and Justice : Second Edition (Editor in Chief : Joshua Dessler)*, Macmillan Reference, Gale Group, USA, page. 1338.

against the collective body of citizens, opposes a set of standards set by the democratic institutions of society.¹⁴ Thus any reaction to violations of public order is the responsibility of the state. The formulation of crime is as a violation of public order regulated in law. The country becomes the basis of legitimacy for the state, which positions itself as a substitute for victims, to formulate and impose criminal sanctions on the perpetrators.

Indeed, it remains with these philosophical weaknesses Conjugal Visit needs to be considered considering the formulation and application of criminal sanctions that pay more attention to the principle of balance of interests of the perpetrators, victims and the community is expected not only to restore order in social life, but also to restore peace, because the conflict can be resolved more substantially. The need for a comfortable and peaceful return to life and a more substantial resolution of the conflict are felt more in community life.

On the other hand, the habit of violating law even by prison guards allows the technical constraints of such a coaching model to be very difficult to implement. However, in practice, the failure of the state to fulfill the rights to sexual needs of prisoners can have negative implications in the Correctional Institution, for example, with frequent sexual deviations and escapes.

Weaknesses from the cultural side in the implementation of the Conjugal Visit will not be the basis of the achievement of complete justice. As we know that fairness (in English) is honesty, fairness, feasibility'. So in other words, justice is honesty, a fairness and feasibility. Rawls's theory is often called Justice as fairness. So the main point is which justice principle is the fairest, and must be guided "that independent and rational people who wish to develop their interests should obtain the same position when they will begin and that is a fundamental condition for them to enter an organization they want."¹⁵

The function of the apparatus will later be an implementation instrument in realizing the balance of prisoners' rights in obtaining Conjugal Visit. However, if the apparatus is unable to balance from the perspective of giving justice, it will make the Conjugal Visit problem a level of implementation. The correlation with this is like a view on the perspective of justice discussed in Islam. Basically the concept of justice in Islam is not "similarity" but "Comparability". Fair if it is comparable to what it gets with what it does, it is not the same as what other people get. This is in accordance with Rawls's opinion that everyone has the same rights to rich, not the right to have the same wealth.¹⁶

Such constraints are very potential to hinder the priority of the application of prisoners' sexual rights. In Article 17 of the International Covenant on Civil and Political Rights outlines that: "No one who can be arbitrarily or illegally interfered with his personal problems, his family, his house or his correspondence, or illegally attacked his honor and his good name ". If it is related to Article 4 Paragraph (2) in the Covenant, then in principle the rights to personal and family matters are civil rights which can be reduced by the basis of legitimate justification according to the covenant. Departing from this understanding of rights, the right to sexual needs as a form of derivation from the right to personal and family problems can in principle be reduced or limited by the state.

In the context of individuals who are serving prison terms in the Penitentiary, of course the degree of proportionality restrictions will be different from those who do not undergo the period as prisoner. Fulfillment of sexual needs as human rights for prisoners need to be regulated by various restrictions and reviews which adheres to the values of society and does not injure the value of public justice.

The accommodation in matters of legal culture, both the community (as subjects and objects) and law enforcement must certainly be seen as strategic issues to be resolved first. Indeed, the clear regulation of Conjugal Visit provides an instrument in solving problems such as the spread of infectious diseases in correctional institutions. As the data of the Minister of Law and Human Rights (Menkumham), the number of prisoners with HIV/AIDS has increased. In 2011 there were 787 prisoners of HIV/AIDS, increasing to 1,042 in 2014. Prisoners infected with HIV/AIDS were inmates with drug cases (Tribunnews.com, 2014). In the 2011 IBBS, as many as 4% of prisoners or WBP stated that they had had sex while in a Penitentiary/Detention Center. Meanwhile, there are 6% of WBP who used injecting drugs. Survey of the level of knowledge and perception, the population that has the highest misunderstanding is prisoners (WBP) (70%). Treatment search surveys for health services (STI services), WBP only a small proportion have symptoms of STI seeking treatment for STI services. (STBP Ministry of Health RI, 2011).

2. Reconstruction of Conjugal Visit Patterns as Guidance Programs in Correctional Institutions Based on Justice

Correctional System was born on April 27, 1964, this is a historical momentum that is very important for the Indonesia which gives changes to the criminal function in Indonesia. What used to be a system of entrapment of perpetrators of crime becomes a process of guidance, as well as efforts for social integration for correctional citizens. So that after undergoing the prosecution process, the perpetrator of the crime is not only deterrent from the treatment during the sentence, but also realizes that the act he did was wrong, so that he could become a useful human being for the community.

¹⁴Randy E. Barnett, et al, 1977, III eds, *Assesing the Criminal Restitution and the Legal Process*, Ballinger Publishing, Cambridge, 1977, page. 7.

¹⁵E. Fernando Manullang, *Menggapai Hukum Berkeadilan*, Kompas, Jakarta, 2007, page. 99.

¹⁶Ali Achmad, 2009, *Menguak Teori Hukum (legal Theory) dan Teori Peradilan (Judicial Prudence) termasuk Interpretasi Undang-undang (Legisprudende)*, Kencana Prenada Media Group, Jakarta. page 123

Correctional is essentially one manifestation of institutionalizing the formal reaction of the community to crime. The reaction of the community at first only focused on the element of suffering to lawbreakers. But in line with the development of society, the element of giving the suffering must also be balanced with humane treatment by paying attention to the rights of lawbreakers as individual beings, as well as social beings. Therefore, correctional facilities must also function as a place for rehabilitation of prisoners with a variety of coaching activities. In carrying out correctional practices that uphold the human rights of perpetrators, of course this is not only the duty of the correctional institution, but also the duty of the government and society. In Article 1 paragraph (2) of Law Number 12 year 1995 concerning Corrections determines that: "The Correctional System is an order concerning the direction and limits as well as the way of fostering prisoners based on the Pancasila which is carried out in an integrated manner between the coaches, the coaches and the community to improve quality of correctional prisoners to realize mistakes, improve themselves, and not repeat crime so that they can be accepted back by the community, can actively play a role in development, and can live properly as good and responsible citizens."

Departing from the above basis, the community involvement is very much needed, including in this case Conjugal Visit which is another form of commitment in the implementation of community involvement in realizing prisoners to be ready to return to the community. This is certainly not solely related to the issue of basic rights, but is also a manifestation of the restorative effort that is part of the practice of theorizing in law.

In Indonesia the application of restorative justice is based on the Indonesian soul (*Volksgeist*) itself which is stated in Pancasila as the ideology of the Indonesian state. The law comes from the soul of the Indonesian people (*volksgeist*) themselves. Where given the opportunity to deliberation to reach consensus in finding a fair meeting point for both parties. In the settlement of a criminal act through restorative justice against a conflict or damage arising as a result of a criminal act, between the social relations of the community members that must be resolved and restored by all parties together, where the principle of deliberation is to reach mutual agreement find the identity of justice itself that is in the heart of each person. The settlement process is done by giving the opportunity to both parties to play a role in the process of resolving the crime.

The main basis for resolving criminal acts through restorative justice is a solution that is not just a tool to encourage both parties to mediate in terms of finding an agreement, but restorative justice aims to penetrate the hearts and minds of the two parties involved in the conflict in order to understand the meaning and purpose of doing a recovery and the sanctions applied are preventive sanctions that are preventive.

This justice is equality among members of society in an act together. Equation is a point that lies between "more" and "less" (intermediate). So justice is the middle point or arithmetical justice. The basis of equality between community members is very dependent on the system that lives in the community. In a democratic system, the common ground for obtaining a midpoint is equal freedom of man since his birth. In the oligarchic system the basic equation is the level of welfare or honor at birth. In fact, in the basic aristocracy system, the equation is privilege. These different bases make justice more to the meaning of equality as proportion. This is a special species of justice, namely the intermediate and proportion.¹⁷

The Conjugal Visit to date has not been regulated in the laws and regulations in Indonesia. The previous Conjugal Visit Program was stated in the 2009 Ministry of Justice and Human Rights Performance Accountability Report as the achievement of performance results and became part of the Performance Improvement of Judicial Institutions and other law enforcement agencies. The study and policy development activities in the report were stated in the form of socialization of the results of seminars held by the Ministry of Law and Human Rights entitled "Demands for Fulfilling Biological Needs in the context of the Convict Guidance Process from the Conjugal Visit." Furthermore, the Ministry of Law and Human Rights basically supports the existence of the Conjugal Visit which is poured into a Leave Family Visit program. Family Visiting is basically the only regulation that can bridge prisoners to gather with their families. The main reason for granting leave entitlements to visiting family is to make it easier for prisoners to make adjustments from life in prisons to social life, in addition to interacting directly with their families and legal partners. Although there is no specific legality regarding Conventional Visit, but the Ministry of Law and Human Rights continues to work on constructing a Visit scheme. Until now the Conjugal Visit discussion is still being held at the Center for the Study and Development of Policy at the Ministry of Law and Human Rights.

The effort to reconstruct the provisions in guaranteeing the rights of prisoners who must remain protected in the Indonesian penal system must be regulated in Article 14 paragraph (1) of Law Number 12 year 1995 concerning Correctional. The article does not explain the rights of inmates who have a family to get their biological needs met or channel their biological desires as long as they serve a sentence in prison. Denial of the existence of biological needs for prisoners is also a denial of the state of nature of a prisoner as a human being. In fact, one way for inmates to get their biological needs met or to channel their biological desires is to use Family Leave Rights as stipulated in Article 35 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2013 Regarding Terms and Procedures for Giving Remission, Assimilation, Family Visit Leave, Conditional Exemption, Free Prior Leave and Conditional Leave.

Sexual needs are basic human needs that are directly related to biological maintenance and survival. As stated by Abraham Maslow that human biological needs as a need to survive, failure in fulfilling one of human biological needs can lead to imbalances that can cause pain, because basically these needs are interrelated and influence. In prisoners, the fulfillment of sexual needs has barriers to distribution, this is because prisoners are convicted of crimes and lost their independence in the

¹⁷ Euis Amalia, Keadilan Distributif dalam Ekonomi Islam, Raja Grafindo Persada, Jakarta, 2009, page. 115-116

prison, so that the rights of prisoners have been regulated in Article 14 paragraph (1) of Law Number 12 year 1995 concerning Correctional, this article does not explain the right of prisoners who have a family to get their biological needs met or channel their biological desires as long as they serve a sentence in prison. The obstruction of fulfilling this need will certainly cause anxiety for prisoners. Based on previous studies, it can be seen that there are various ways that prisoners have taken to fulfill their sexual needs, including in ways that are not commonly practiced by the community. This certainly creates unrest, and can have a negative impact on inmates themselves, both mentally and physically. It does not rule out the possibility that the fulfillment of deviant sexual needs can result in the spread of the disease, and not only that sex businesses such as prisons and detention centers that impose illegal biological space actually cannot be left alone because these conditions will certainly give a difference between inmates who have money and prisoners those who do not have money in terms of using the room to channel their sexual desires and also the use of space illegally will adversely affect the integrity of prison. Therefore, it is appropriate that a program of biological facilities be implemented in order to prevent the occurrence of irregularities committed by inmates or by individuals in in prisons.

Therefore, the reconstruction is juridical to Conjugal Visit as a program for guiding prisoners in a correctional facility based on justice in the provisions of Law Number 12 year 1995 concerning Corrections as follows:

Table.
Reconstruction of Law Number 12 year 1995 concerning Corrections

No	Before Reconstruction	After Reconstruction
1	Article 14 (1) Prisoners have the right to: a. Perform worship according to their religion or belief; b. Get treatment, both spiritual and physical care; c. Get education and teaching; d. Get health care and proper food; e. Convey complaints; f. Get reading material and follow other mass media broadcasts that are not prohibited; g. Get wages or premiums for work done; h. Receive family visits, legal counsel, or certain other people; i. Get a reduction in criminal time (remission); j. Get the chance to assimilate including family leave; k. Get parole; l. Get leave before free; and m. Obtain other rights in accordance with the applicable laws and regulations	Article 14 (1) Prisoners have the right to: a. Perform worship according to their religion or belief; b. Get treatment, both spiritual and physical care; c. Get education and teaching; d. Get health care and proper food; e. Convey complaints; f. Get reading material and follow other mass media broadcasts that are not prohibited; g. Get wages or premiums for work done; h. Receive family visits, legal counsel, or certain other people; i. Get a reduction in criminal time (remission); j. Have the opportunity to assimilate including family leave, the Conjugal Visit rights which will be further regulated through the prevailing laws and regulations; k. Get parole; l. Get leave before free; and m. Obtain other rights in accordance with the applicable laws and regulations
2	Explanation of Article 14 paragraph (1) letter j	Explanation of article 14 paragraph (1) letter j. Conventional rights The periodic visit of the intimate legal visit that is the right of an inmate with his official partner is intended to make it easier for prisoners to make adjustments from life in prison to a community life, in addition to interacting directly with their family and legal partners.

The substance of the legality of norms related to the implementation of the Conjugal Visit becomes part of the effort to integrate the institution into the correctional system in accordance with the needs and principles of punishment. The correctional system is organized in order to form correctional assistants in order to become a complete human being, to realize mistakes, improve themselves, and not repeat the criminal actions so that it can be accepted again by the community, they can actively play a role in development, and can live fairly as good and responsible citizens.

Through the stipulation of Conjugal Visit in Law Number 12 year 1995 concerning Correctional, prisoners are not only objects but also subjects that are not different from other human beings who at times can make mistakes or faults that can be subject to criminal law, so that they must not be eradicated. What must be eradicated are factors that can cause inmates to do things that are contrary to law, decency, religion, or other social obligations that may be subject to criminal penalties. Criminal punishment is an attempt to awaken prisoners or criminal children to regret their actions, and return them to be good citizens, obey the law, uphold moral, social and religious values, so that a safe, orderly and peaceful society can be achieved.

On the other hand, correctional institutions will also be more positioned in the practice level of the role and position of prisoners as part of the Indonesian community which needs to receive genuine attention from various levels of society so that prisoners can enjoy a peaceful community life.¹⁸ The Role of Correctional Institutions as supervisors Prisoners have the task of giving understanding to the Prisoners regarding the norms of life and involving them in social activities that can foster confidence in community life. This is so that the prisoners are able to live independently. The prisoner must have endurance, in the sense that the prisoner must be able to live in competition with the community without committing more crimes.

Re-conversion efforts through the Conjugal Visit process can be an important instrument in fostering prisoners with the meaning of treating someone who is inmate to be built to rise to be a good person. On the basis of this understanding of guidance, the targets that need to be fostered are personal and ethical prisoners who are encouraged to arouse self-esteem in themselves and others, and develop a sense of responsibility to adapt to a peaceful and prosperous life in society, and then potentially noble and high moral.¹⁹

Conjugal Visit in Law Number 12 year 1995 concerning Correctional is another form of implementation of coaching carried out by correctional institutions that prioritizes the role of the community by being considered indispensable if it has been released from the correctional institution as stated by Andi Hanzah and Siti Rahayu namely: "On the transition period between the release of prisoners from prison and the adjustment to the life of the community occurred a turning point. They easily bring the flow back to the deviant life that has been done before"²⁰. While according to Romli Atmasasmita: "even though the community has the same meaningful role in the prisoners' re-socialization process, from the community itself they tend to reject the presence of prisoners in their midst".²¹

Through the Conjugal Visit that is in Act Number 12 year 1995 concerning Correctional is expected to be a means of social construction, the fulfillment of the right of prisoners aims to create a real social change by means of mastering or directing the use of law to an aspired state. In this case, the purpose of fulfilling the rights of the Citizens of Fostering is Corrections itself that is that the Fostered Citizens can become fully human, regret and not repeat the mistakes, and prepare to return to the community. Because the goal is to become a full human being, the human rights of the Patronage Citizens are guaranteed and protected by law through social justice instrument.

Conclusion

1. Weakness in the implementation of Conjugal Visits on institutional aspects. Penitentiary which currently exceeds the number its prisoners is one of the obstacles in the implementation of Conjugal Visit. This opens opportunity for irregularities by institutions that exercise their authority which indirectly become a dilemma problem where the opportunity of correctional institutions is not able to implement Conjugal Visit appropriately, even there will be potential irregularities or collusions in the implementation carried out by irresponsible elements. This is in accordance with the fact that there are many prisons in the provision of prisoners' rights. On the other hand, institutions still need to adapt institutional linkages formally in this case is the correctional institution. Most of the time what is done by the institution still depends formally or the law orders. On the other hand, the institutional role must be able to describe the contents of the mandate of the Law which is very philosophical. The authority of community institutions is certainly not only limited to carrying out the law in a positive normative sense, but also accommodation regarding philosophical values in the effort of fostering prisoners is part of the actualization of the way and the enactment of the law. This view is in line with the comparison of the views of rational natural law school adherents who underlie the law on rational and human conscience (human reason and conscience). This is coupled with its position that the provision of space facilities for intimate relationships between inmates and their legal partners is a basic right that must be fulfilled, because what is missing from a prisoner is the right to freedom. While other rights such as biological needs must remain fulfilled. However, it seems that the provision of special facilities for prisoners is difficult to materialize in a policy, because in fact prison in Indonesia is currently struggling with a variety of classic problems such as excess capacity and limited funds to fulfill the daily needs of prisoners. In addition, there are many obstacles related to facilities in detention centers such as hygiene, sanitation issues and limited space. This is exacerbated by the habit of violating the law, even if it is carried out by prison guards, the technical constraints of such a coaching model are very difficult to implement. However, in practice, the failure of the state to fulfill the rights to sexual needs of prisoners can have negative implications in the Correctional Institution, for example, with frequent sexual deviations and escapes. Weaknesses from the cultural side in the implementation of the Conjugal Visit will not be the basis of the achievement of complete justice. As we know that fairness (in English) is 'honesty, fairness, feasibility'. So in other words, justice is honesty, a fairness and feasibility. Rawls's theory is often called Justice as fairness. In the juridical weakness, it was found that the evaluation of laws and regulations governing the fulfillment of the biological rights of prisoners in Indonesia showed that there were no laws and regulations in Indonesia which regulated conjugal visits, including in this matter not yet regulated in Law Number 12 year 1995 concerning Correctional. The success of the transition process and the fulfillment of neglected rights. Nevertheless, the conjugal visit has not yet been implemented in Law Number 12 year 1995 concerning Correctional Facilities, which is reasonable. This is a matter of principal application

¹⁸ Djisman Samosir, Fungsi Pidana Penjara dalam Pemidanaan di Indonesia, Binacipta, 1992, page 70

¹⁹ Bambang Purnomo, Pelaksanaan Pidana Penjara Dengan Sistem Pemasyarakatan, Yogyakarta: Penerbit Liberty, 1986, page.187.

²⁰ Andi Hamzah, Suatu Ringkasan Sistem Pemidanaan Di Indonesia, Akademi Presindo, Jakarta, 1998, page 12

²¹ Romli Atmasasmita, Kopenjaraan Dalam Suatu Bunga Rampai, CV. Armico Bandung, 2002, page53.

- of Conjugal Visit where in our national legal tradition, what is important in the value of certainty is the regulation itself. Regarding whether the regulation has fulfilled a sense of justice and is useful for the community is beyond the prioritization of the value of legal certainty.
2. Reconstructing the provisions in guaranteeing the rights of prisoners who must remain protected in the Indonesian penal system must be regulated, one of which is in Article 14 paragraph (1) of Law Number 12 year 1995 concerning Corrections. Article 14 which previously contains paragraph (1) Prisoners have the right to: a. performe worship according to their religion or belief; b. get care, both spiritual and physical care; c. get education and teaching; d. get health care and proper food; e. submit a complaint; f. get reading material and follow other mass media broadcasts that are not prohibited; g. get wages or premiums for work done; h. receive family visits, legal counsel, or certain other people; i. get a reduction in criminal time (remission); j. get the chance to assimilate including family leave; k. get parole; l. get leave before free; and m. get other rights in accordance with the applicable laws and regulations, replaced with the contents of Article 14 paragraph (1) Prisoners have the right to: a. performe worship according to their religion or belief; b. get care, both spiritual and physical care; c. get education and teaching; d. get health care and proper food; e. submit a complaint; f. get reading material and follow other mass media broadcasts that are not prohibited; g. get wages or premiums for work done; h. receive family visits, legal counsel, or certain other people; i. get a reduction in criminal time (remission); j. get the opportunity to assimilate, including leave to visit the family including the Conjugal Visit rights which will be further regulated through the prevailing laws and regulations; k. get parole; l. get leave before free; and M. get other rights in accordance with the applicable laws and regulations. It also needs to be confirmed in the provisions of the elucidation of article 14 paragraph (1) letter j. Conventional rights The periodic visit of the intimate legal visit that is the right of an inmate with his official partner is intended to make it easier for inmates to make adjustments from life in prisons to community life, in addition to interacting directly with their families and legal partners.

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