

Legal perspective of medical care system for prisoners and detainees

By Endeh Suhartini

LEGAL PERSPECTIVE OF MEDICAL CARE SYSTEM FOR PRISONERS AND DETAINEES

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ABSTRACT

This research was initiated based on the lack of supervision over the health of prisoners in the jurisdiction of Bogor city. Accordingly, the research which based on the deep observation and valid preliminary data is needed to ensure a good implementation of medical care in the prisons which would resulting the formulation of a sound model and concept of an integrated medical care for the prisoners in the Bogor city's jurisdiction especially in line with the law number 39 of 1999 concerning on Human Rights. Actually, this research emphasizing on three main issues, namely: 1) how the medical care's procedure for prisoners in the jurisdiction of Bogor city?, 2) what kind of obstacles that appears in applying medical care for prisoners in the jurisdiction of Bogor city?, 3) how the applied integrated model of medical care for prisoners related to the law number 39 of 1999 concerning on Human Rights?. The main purpose of this research is namely: a) to mapping and analyzing the medical care procedure for prisoners in the jurisdiction of Bogor city, b) to identify the obstacles which arises when applying medical care for the prisoners in the jurisdiction of Bogor city, c) to form a model of government policy in applying medical care for the prisoners according to the law number 39 of 1999 concerning on Human Rights; d) to mapping the authority model of government policy in applying medical care for the prisoners according to the law number 36 of 2009 concerning on health. The substance of this research is focused on the implementation of medical care for the prisoners in the jurisdiction of Bogor city which is in line to one of strategic planning formulation (Rumusan Rencana Strategis) of Juanda University in its research field namely the development of medical care model for prisoners. So that Juanda University could become academic partner to its stakeholders on formulating a legal services policy over the health of prisoners and it also become the academic partner to the Ministry of Law an Human Rights in actualizing the fulfillment of human rights of prisoners and detainees.

Key words: Health, Prisoner, Human Rights.

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1. INTRODUCTION

²⁵ mentioned in Article 1 section 3 of the 1945 Constitution of the Republic of Indonesia: “The state of Indonesia is a state based on the rule of law”. This article clearly stated that Indonesia is a state law (*rechstaat*) and not a state of power (*machstaat*) in which the whole actions and deeds of its people and government has to comply the law, it is because Indonesia is not a state of power which belongs to a certain person because of his unlimited power. However, a mandated power must be held according to according to the law and should not used inappropriately.

According to Muchtar Kusumaatmadja, in general definition, law is not merely a constellation of principles and rules regulating the life of humans, but it also overwhelming the existence of institutions and processes which could realize the implementation of those principles in practice. in other words, a comprehensive legal coaching cannot be done if the law reviewed only relying on a normative approach (Kusumaatmadja, 1986; Ghofur & Sulistiyono, 2015).

²⁸ The 1945 Constitution of the Republic of Indonesia stipulated that health is a humans right. Article 28 H of the 1945 Constitution of Indonesia stated that each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care. Furthermore, article 34 section (3) stated that the state has the responsibility to provide proper medical and public service facilities. in relation, it shows that the government has a ¹ responsibility to heal a sick man and to keep healthy people healthy. according to ⁴ law No. 36 of 2009 concerning on health stated that health is a condition of prosperous body, soul, and social that would make every person can live productively in their social and economic aspects. Therefore, althought health is part of human rights, it is also would determine their future (Rencana Pengembangan Tenaga Kesehatan of 2011-2025).

Actually, prisoners are people who are serving a sentence or sanction of confinement or other sanctions according to a court decision. In relation, the rights of prisoners have been regulated in article 14 section (1) of Law No. 12 of 1995 concerning on penitentiary.

Generally, people are viewing the prisoners as the object. Whereas, it mentioned in the explanation of law no. 12 of 1995 concerning on penitentiary that prisoners is not only the object but also the subject as well as others, which sometimes can do a criminal offense so it does not have to be aborted (Rencana Pengembangan Tenaga Kesehatan of 2011-2025).

However, the issue of human rights cannot be separated from a legal state, it is just thinking legally related to the idea how justice and order can be realized (Ghofur & Sulistiyono, 2015). Thus, the recognition and inauguration of a legal state is one of its aims of protecting human rights, meaning that individual rights and freedoms are recognized, respected, and glorified (Effendi, 1994).

2. PROBLEM STATEMENT

- How is the implementation of the right of medical care for prisoners and detainees in order to prevent drug trafficking in prisons?
- How to prevent the drug trafficking in the prisons?

3. THE REALIZATION OF MEDICAL CARE RIGHT FOR PRISONERS IN ORDER TO PREVENT THE DRUG TRAFFICKING IN THE PRISONS

According to H.J.J. Leenen the formulation of health law are covers all legal provisions which directly related to health care and the application of civil law, criminal law, administrative law, in that connections, it also including the international treaties, customary law and jurisprudence related to health care, autonomous law, science and literature as a primary source of law.

Article 1 of Law No. 36 of 2009 concerning on health stated that: health is a healthy, physical, mental, spiritual and social condition that enables everyone to live socially and economically productive.

Section (7) of article 1 of Law No. 36 of 2009 concerning on Health stated that : health service facility is a tool and/or place used to conduct health service efforts, either promotional, preventive, curative, or rehabilitative by Government, local government and/or society.

Section (12) of Article 1 of Law No. 36 of 2009 formulated that: Promotional health services is an activity and / or a series of health service activities that prioritize health promotion activities

Section (13) of Article 1 of Law Concerning on Health stated that: a preventive health service is a preventive activity against a health problem / disease.

Section (15) of article 1 of this law also stated that a rehabilitative health service is an activity and/or a series of activities to return the former sufferer into the community so that it can function again as the member of society that is useful for himself and the community as much as possible in accordance with his ability.

4. PERCEPTIONS OF PRISONERS AND PENITENTIARIES

Indonesian criminal law system use the term of Rumah Tahanan Negara (Rutan) and Lembaga Pemasyarakatan (Lapas). In other word, Rutan is part of penitentiary. in general, the institution of Rutan and Lapas as mentioned above, have a different purpose. The following are the difference of both institutions (www.hukumonline.com).

5. LEGAL PERSPECTIVE OF HEALTH AND MEDICAL CARE

Van der Mijl stated that the Medical Law can be defined as a formulation of rules related to provision of care and its implementation against civil law, criminal law, and administrative law. A medical laws that examine the juridical relationship in which a physician as a party, are part of the medical law (Lisdiyono & Asyhar Assalmani, 2017). By looking at the medical law, it covers medical law, nurse law, hospital law, environmental law, waste law (industrial waste, house, etc.), pollution law (noisy, smoke, dust, smell, poison gas), equipment using X-ray Law (*Cobalt, nuclear*), safety law, and other laws and regulations that have direct links to everything that may affect human health (Is, 2015; Lisdiyono & Asyhar Assalmani, 2017).

Health is a very basic right of human and attached to human life. In relation, health is human rights issue and it talks about the right to obtain an optimal health from the state as regulated by the law (Kurnia, 2007). However, health is a crucial issue that every country must face because it directly correlates with the people's personal integrity development so that they can live in dignity (Kurnia, 2007). In order to realize an optimal degree of health, however, it cannot be released from two basic rights as illustrated in the table below:

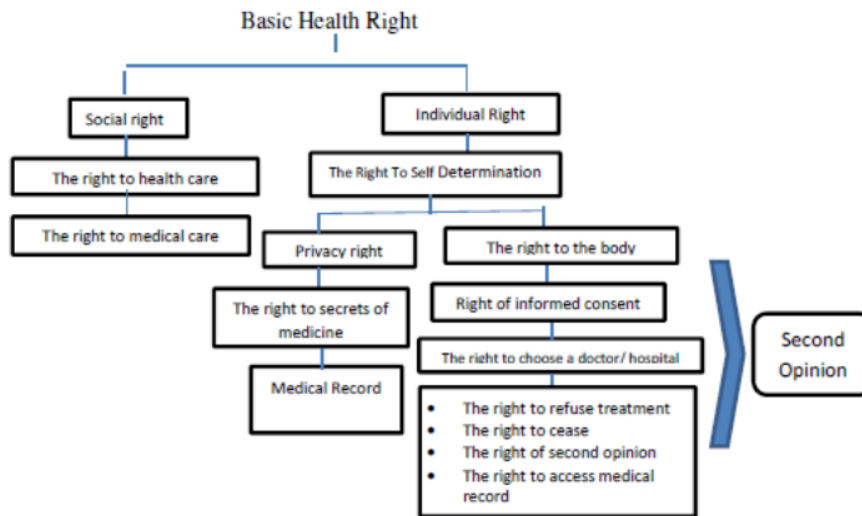


Figure 1 Diagram of Two Basic Rights

6. PREVENTION EFFORT OF DRUG DISTRIBUTION IN THE SCOPE OF PENITENTIARY

In the context of the development of national law, one of nine national priorities program (Nawacita), which is to strengthen the country's presence in conducting system reform and free-corruption, dignified, and reliable law enforcement. The priority programs are described in six priority sub-program namely: (1) developing a fair and just legal enforcement; (2) preventing and eradicating corruption; (3) eradicating illegal logging, wild fisheries, and illegal mining; (4) eradicating drugs and psychotropic substance; (5) guaranteeing the legal certainty of land ownership; (6) protecting children, women, and marginalized groups.

The correctional process in the penal system is defined as a process that began since a prisoner entered the prison until he returned to the community. It also serves to prepare the prisoner to be able to interact socially in society since the prisoners who have entered the penal institution is usually feel alienated. So, at this point, the coaching given to prisoners is helpful to overcome the problem. Legally speaking, it has been mentioned in article 3 of law No. 12 of 1995 concerning on penitentiary that the penitentiary system is established to prepare prisoners to integrate properly so that can play a role as a free and responsible member of society. According to penitentiary system, the guidance of prisoners consists of internal coaching which includes religious education, general education, skill courses, recreation, sports, arts, scouting, cooperated work training, while external coaching includes coaching during conviction and after conviction.

Based on the explanation of Andi Mattalata, mentioned that in 2008 the prison population throughout Indonesia reached 130.832 peoples with details of 54.307 prisoners and 76.525 detainees. This amount is very unbalance against a prison capacity of only 81.384 people. It means, the overcapacity is almost 45% (Angkasa, 2010).

Some examples of overcapacity occur in the prisons of west java region. The prison of ciamis, which build in 1887 should accommodate 118 people. In fact, about 335 prisoners and detainees occupying prison. Such condition also occurred in the class IIA prison of drug convicted Banceuy Bandung. The capacity of it is about 402 people and currently inhabited by 1025 detainees. If calculated on average, from 22 prison in west java, the percentage of

overcapacity reached 198%. With the number of prisoner and inmate 15.662 people, this occupancy rate belongs to the list of the most densely populated prison in Indonesia. Another example can be seen at the condition of Cipinang prison as stated by Roy Marten as its ex-prisoner, he mentioned that the capacity of the prison is for 1.200 people but inhabited by more than 4.000 people (Angkasa, 2010).

The above argument is reinforced by the recent findings of BNN, which was at the beginning of 2017, as stated by Komjen Budi Waseso, the Head of BNN, stated that due to the low supervision system in prisons, the prisons were used for Narcotics network control and in the effort of drug distribution into prison. BNN findings of 39 prisons that have been proven related to the activities of the narcotics network (news.detik.com).

At the time of the research team conducted a survey to several prisons in the jurisdiction of Bogor city, Bogor Regency and Cianjur regency which has different facilities. Actually, those mentioned prisons is not reserved for convicted drug prisoners but, in fact, based on the results of interviews and surveys through questioners, it shows that the authority of such prisons strives to monitor and stay aware of the use, and/or distribution of drugs in the prisons. This effort supported by the form of activities prepared by the authority especially by the coaching section which leads to the spiritual activities of the prisoners. Hopefully, after released from the prison, they will be ready to be a better human being in their society.

According to the regulation of Ministry of Law and Human Rights No. M.HH-05.OT.01.01 of 2010 concerning on the organization and working procedure of ministry of law and human rights of the Republic of Indonesia, mentioned that penitentiary institution is the technical implementation unit in the field of correctional which is under the responsibility of head of regional office of the Ministry of Law and Human Rights of West Java that have duty of implementation of correctional for prisoners by conducting guidance for prisoners, providing a guidance, preparing the facilities and managing the result of work, conducting a social/ spiritual for prisoners, maintaining security and orderliness of prisons, and conducting business and household affairs.

However, there are several issues found while the research team conducted a survey to the prisons, which is related to the issue of facilities provided in prisons in compare to the amount of prisoners. The research team concluded that the facilities provided in the prisons are inadequate to accommodate the amount of prisoners. In other word, the amount of prisoners in compare to the provided facilities and amount of the officers are unbalanced. Looking back at the previous years, the same point also written by Angkasa (2010), which stated that the overcapacity is occurred due to the growth of prisoners number is not proportional against the facilities improvement. Furthermore, the percentage of incoming prisoners if compared to outgoing prisoners are very unbalanced, it far beyond the percentage of outgoing prisoners who are completed their sentence in prison. The occurrence of several kinds of criminal cases that brings large amount of prisoners into prison are associated with a rapid increase toward prisoner's health, especially the prisoners sentenced of drugs, theft, and violence against children (Angkasa, 2010; Ghofur & Susilo, 2016).

Furthermore, as quoted by Angkasa (2010), it mentioned that the overcapacity occurred in the prisons are tends to the negative implications such as low level of supervision and control. The director general of penitentiary of laws and human rights department Untung Sugiyono, exemplify that the amount of current prisoners and inmates are 130.075 persons, while the amount of prison officers are only reach 10.617 persons. Consequently, each officer must watching about 48 persons. This amount, however, are far of ideal, the ratio of which is 1 to 25. It is because the low level of security system may triggers a lot of problems such as the escape of prisoners, internal chaos, and unimplemented guiding program that should be done. Other implications caused by low level of security are the rapid growth of criminal acts in the prison.

As a concrete example, the case of drug discovery in the prison was recorded with total 64 cases which done by 96 prisoners. Catur Sapto Edy as a vice chairman of commission III of DPR RI stated that the overcapacity can also leading to several problems such as the escape of prisoners, fighting and drugs transactions (Angkasa, 2010).

7. CONCLUSION AND RECOMMENDATION

The realization of the right to medical care for prisoners and detainees in order to prevent drugs accommodation in the area of penitentiary institutions generally has been carried out regularly and corresponded to the needs of prisoners and detainees while sick, but, however, it still not optimally done due to an inadequate budgets and facilities so that the sick prisoners must be referred to the adequate medical facility in the larger hospital at the respective territories. The efforts to prevent drugs trafficking in the prisons has been carried out in the form of regular campaign and legal counseling both in the penitentiary institution internally or to the prisoners of Paledang prison. It was in the form of featured programs such as spirituality program, arts, handcraft and also industrial activities. In addition, it can be concluded that the comparison between the total amount of prisoners, officers, against prison's facilities are unbalance, or in other words, it can be said that the overcapacity was occurred due to the growth of prisoners number is not proportional to the improvement of prison's facilities.

Based on above statements, it must be recommended to the central and regional government and also Indonesian Police to make an integrated collaboration in providing services for prisoners and detainees in the form adequate budgets and facilities.

8. ACKNOWLEDGEMENT

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