



LEGAL PROTECTION FOR THE RIGHTS OF PRISONERS IN DIVORCE CASES IN THE RELIGIOUS COURTS IN INDONESIA

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Abstract

Many people incarcerated at the Correctional Institution have complained about the news that their husband or wife has divorced them. Limitations in attending trials are a form of anxiety for inmates. This can hurt the psychology of the inmates. Receiving a decision beyond the convict's expectations is a consequence that must be accepted, whereas the addition of a divorce between husband and wife will add a heavy burden to the person concerned. There are 3 (three) essential issues in this research: First, what do prisoners experience the limitations as inmates in facing divorce lawsuits in the Religious Courts? Second, how is the implementation of laws and regulations relating to the civil rights of convicts suing for divorce? And third, what is the role of the Government in ensuring the fulfilment of the civil rights of detainees or convicts in the care of Correctional Institutions, especially when facing divorce lawsuits? The data in this research was obtained through Library Research and Field Research. The data obtained was analyzed in depth using the Narrative Content Analysis method. The research was conducted in Bengkalis Regency and Dumai City, Riau Province. The consideration for choosing these two areas was because they have correctional institutions (Lapas) with relatively many inmates and a large number of divorce lawsuit cases involving convicts as defendants. From the results of the discussion, it can be concluded: First, detainees or convicts who are serving their sentence in prison, including civil rights, are regulated and guaranteed in regulations in the form of laws or regulations, as in Chapter IV, part one of PP no. 58 of 1999, article 14 of Law no. 12 of 1995, as well as articles 51 and 52 of PP no. 32 of 1999. Second, no provisions in the statutory regulations regulate detainees or convicts being able to attend divorce trials. So, this is a reference for the prison authorities to refrain from giving detainees or convicts the right to undergo the civil case process they are currently facing. Third, the Head of the Prison or Detention Center may make a policy for prisoners to participate in divorce trials but still through the trial mechanism of a correctional observer team and police escort. Or through virtual trial options in prisons or detention centres.

Keywords: Prisoners, Divorce, Protection of Rights

Introduction

The condition of a prisoner is a condition that is never desired by anyone, even a man who is married, because his condition as a prisoner will hinder a husband's obligations to his wife, one of which is the obligation to provide maintenance. However, sometimes a husband, in fulfilling the needs of himself and his family, makes mistakes or mistakes which sometimes make him have to deal with the law in this country, and even if he is proven

guilty, a husband who makes a mistake must serve a criminal sentence which is called a prisoner.

Training in prisons emphasizes the concept of rehabilitation and social reintegration, which aims to make prisoners accepted again by society and no longer repeat the mistakes they have made. Article 2 of the Corrections Law states that: "The correctional system is implemented to form correctional inmates to become

complete human beings, realize their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by society, can actively play a role in development, and can live a normal life as a good and responsible citizen."

Prisoners who are placed in prison are sometimes considered not to have any rights. They are sometimes treated inhumanely because they are considered to have committed a mistake or crime, so their actions must be repaid in prison. This can cause physical and psychological suffering because they lose their freedom of movement and fundamental human rights (Human Rights).

Correctional Institutions are one of the Technical Implementation Units of the social division under the Directorate General of Corrections, Ministry of Law and Human Rights, which, in carrying out its duties and functions, is subject to the regulations of the Corrections Law and PP on the Implementation of the Rights of Correctional Inmates.

While carrying out their obligations as a husband, the husbands who were convicted faced various kinds of obstacles or even found it very difficult to fulfil their obligations to provide both material and spiritual support for their wives, including due to limitations in space, time and all the actions of the husbands who were convicted during the period. They are serving their criminal term, which is happening because it is a punishment for them because of the various mistakes and negligence they have committed, but on the other hand, their role as husbands still has to be carried out in various ways as much as possible. They have to think about fulfilling their maintenance obligations to their wives. His wife because their status remains as husband and wife.

Many people incarcerated at the Correctional Institution have complained about the news that their husband or wife has divorced them. Limitations in attending trials are a form of anxiety for inmates. This can harm the psychology of the inmates. Receiving a decision beyond the convict's expectations is a consequence that must be accepted, whereas the addition of a divorce between husband and wife will add a heavy burden to the person concerned.

Based on the description above, the author formulates 3 (three) interesting scientific problems which are deemed essential to research. First, what do convicts experience the limitations as inmates in facing divorce lawsuits in the Religious Courts? Second, how is the implementation of laws and regulations relating to the civil rights of convicts suing for divorce? And third, what is the role of the Government in ensuring the fulfilment of the civil rights of detainees or convicts in the care of Correctional Institutions, especially when facing divorce lawsuits?

Answering the problems above is essential to describe coherently the limitations experienced by prisoners as inmates in facing divorce lawsuits in the Religious Courts, explain the juridical analysis regarding the application of laws and regulations relating to the civil rights of prisoners who are sued for divorce, and provide critical explanations and concrete suggestions regarding the role of the Government in ensuring the fulfilment of the civil rights of detainees or convicts who are under the supervision of Correctional Institutions, especially when facing divorce lawsuits.

Literature review

Legal research requires Legal Theory as a tool for analysis. Several theoretical frameworks related to the topic and research aims are employed to address the questions in the problem, with the thought that the legal system is closely related to legal structure, legal

substance and legal culture, as stated by Lawrence M. Friedman. Based on this system, it is known that there are legal problems in protecting the rights of convicts, especially when they become defendants in divorce lawsuits.

To overcome this, several theories were put forward, namely Hans Kelsen's theory of positivism. If the effectiveness of Law in society is closely related to the legal system, then the Positivism theory with a legal system approach will be significantly related to legal development, which Mochtar Kusumaatmaja explains in the theory of Law as a Means of Development.

Meanwhile, according to William C. Chambliss and Robert B. Seidman, three central components support the operation of law in society, namely: (1) Regulatory institutions, (2) Regulatory implementing institutions, (3) Role holders. Satjipto Rahardjo, with his Progressive Law, stated that law is for humans, not the other way around. Therefore, when problems arise in the law, the law must be replaced, reviewed and corrected, not humans who are forced to be included in the legal scheme. Furthermore, Soerjono Soekanto said that five factors influence law enforcement: legal factors, law enforcement factors, facilities and facilities factors, community factors and cultural factors.

According to Jimly Asshiddiqie, community participation drives change. One of the changes is the implementation of justice enforcement for prisoners so that their rights are protected when facing divorce lawsuits. In this research, the author also utilizes the theory of Justice. Robert Reiner once described the debate about Justice as an 'essentially contested concept'. The correct understanding of what 'justice' is is indeed complicated and abstract, especially when linked to various diverse interests (Robert Reiner; 2002: 17). Meanwhile, Plato considers Justice to be part of virtue (Burhanudin Salam; 1997: 117), and Cicero only assesses someone as "good" based on their justice behaviour. According to him, there are three moral virtues: Justice, self-control and courtesy (E. Sumaryono; 1995:90).

Aristotle explains justice by saying, "justice consists in treating equals equally and unequal unequally, in proportion to their inequality." Things that are the same are treated the same, and things that are not the same are treated unequally proportionally (O. Notohamidjo; 2011:70). Starting from Aristotle's opinion, in modern theory, the view is that the desire for equality in treatment must open one's eyes to the inequality of realities.

John Locke, Rosseau, Immanuel Kant, and John Rawls are several thinkers who debated the nature of justice. These authors generally realize that a legal society will only function with all the rights and obligations it creates. Without justice, people will not be willing to be bound and depend on the statements of other parties. Justice provides a way to guarantee that each individual will fulfil their promises (Agus Yudha Hernoko; 2008:40).

John Rawls put forward a theory of justice that criticized the theories of John Locke, Rosseau, and Immanuel Kant because all three tended to be utilitarianism and intuitionism. Jeremy Bentham and John Stuart Mill are known as the originators and developers of utilitarianism, which was later criticized by Robert Nozick and Ronald Dworkin (Andre Ata Ujan; 1999:21). If Rawls calls utilitarianism a view that assesses the goodness and badness of human actions morally depending on the goodness and evil consequences of those actions for humans, then Dworkin calls it a "goal-based theory" and considers it to have failed in guaranteeing social justice because it prioritizes the principle of benefit over the

principle of rights, and therefore utilitarianism is not appropriate as a basis for the concept of justice (Raymond Wacks; 1995: 191).

Utilitarianism tends to assume that everyone's happiness is the same. Satisfaction, which is generally understood in the sense of material satisfaction, has been elevated to a measure that is considered valid and binding. So, satisfaction can never be calculated mathematically. Even though from a moral aspect, by prioritizing the principle of benefit and ignoring the principle of rights, it seems that utilitarianism has a good aim, namely trying, through a teleological approach, to bridge the gap between the principle of rights and the principle of benefit, but in practice, this understanding fails to play its role. Some critics assess that utilitarianism cannot deal with two moral problems: rights and justice (Manuel G. Velasquez; 2005: 77).

Rawls writes that it is unjust to sacrifice the rights of one or a few people simply for more significant economic benefits for society as a whole. He believes that this attitude is contrary to justice, which requires the principle of equal freedom for everyone. Social decisions that have consequences for all members of society must be made based on rights rather than benefits (Andrea Ata Ujan; 1999:18).

Regarding social benefits, justice must be understood in that social benefits must also provide opportunities for less fortunate people to improve their life prospects, not only for people with better talents and abilities. However, "The different principle" does not require the same benefits (equal benefits) for everyone, but rather benefits that are reciprocal in nature, which are called reciprocal benefits (Lord Lloyd of Hampstead & M.D.A. Freeman; 1985:414). For example, a skilled worker will undoubtedly be more valued than an unskilled worker. Here, justice as fairness emphasizes the principle of reciprocity but still pays attention to objective differences between members of society. So, fair procedures guarantee fair results, too.

Rawls's "The different principle" theory of justice was later criticized because it opened up opportunities for government intervention to violate a person's rights. This principle also sacrifices people's efforts and persistence in achieving a certain level of prosperity instead of being put aside for the interests of the less fortunate. However, according to its supporters, Rawls's theory of justice has more advantages than disadvantages.

It has long been realized that Equity is necessary to implement justice. Equity is a virtue that encourages humans to use their right to act rationally according to common sense (L.B. Curzon, 1967:4). Equity in its implementation does not conflict with the law. Its influence is more substantial in resolving disputes when legal aspects do not regulate it. Negligence in practice can change the form of justice, which should have the character of virtue (virtue), into a form of denial of justice itself. The character of justice is objective, *zakelijk* and general, meaning that such justice is absolute, coercive and in its implementation is too abstract, so it does not take into account individuals' circumstances and is too generalized. Individual qualities and certain conditions should also be considered without reducing justice but improving its implementation. Therefore, justice in practice is corrected and juxtaposed with equity (propriety). Equity considers important aspects surrounding a case, namely good faith, the intentions of the parties, the situation or circumstances, etc. (O. Notohamidjojo, 2011:13).

In the civil law system, the principles of equity are included in the principles of good faith, propriety and appropriateness. The jurisprudence that defines abuse of rights, limited initially to violations of the law, was later based on law and, in recent developments, was based on equity. In this case, the judge must consider the situation and circumstances surrounding those who committed the violation. These considerations based on equity will likely direct the judge to a decision that is as fair as possible based on propriety, *et aequo et bono*. Article 1339 BW exemplifies the implementation of the principle of equity, namely: "Agreements are not only binding for things that are expressly stated in them but also for everything that, according to the nature of the agreement, is required by propriety, custom or law." Before that, Article 1338 paragraph 3 BW stipulated that "agreements must be carried out in good faith." Another example is the application of Article 1365 BW through the Hoge Raad decision of January 31 1919, in the Lindenbaum-Cohen case, which decided: "What is meant by an unlawful act is doing or not doing something that (1) violates another person's rights, or (2) is contrary to the perpetrator's legal obligations; or (3) contrary to morality; or (4) contrary to the care that should be taken in public traffic towards oneself and other people's goods" (J.H. Niewenhuis, 2012: 116).

Before the emergence of this decision, acts of violating the law (*onwetmatige daad*) as regulated in Article 1365 BW were narrowly interpreted as limited to acts of violating the law (*onwetmatige daad*). This interpretation is formalistic because what an unlawful act means is only limited to what is regulated in law. Meanwhile, outside the provisions of the law, even though it harms other people, it is not an act that violates the law. This narrow interpretation results in the disruption of society's sense of justice. The teleological-extensive interpretation of Article 1365 BW is an application of the principle of equity, which ultimately provides justice and legal certainty.

The Islamic idea of justice starts from a discourse about divine justice, whether human reason can know good and evil to uphold justice on earth without relying on revelation or vice versa. Humans can only know good and evil through revelation (Allah). It is in this optic that theological differences among Islamic scholars emerge. These differences are rooted in two opposing conceptions regarding human responsibility to uphold divine justice, and debates about this gave birth to two primary schools of Islamic dialectical theology, namely *mu'tazilah* and *asy'ariyah*.

The basic thesis of the *Mu'tazilites* is that humans, as free, are responsible before a just Allah. Furthermore, good and evil are rational categories that can be known through reason, independent of revelation. Allah has created the human mind to see good and bad objectively. This is a corollary to their central thesis that God's justice depends on objective knowledge of good and evil, as established by reason, whether the Lawgiver stated it or not. In other words, the *Mu'tazilites* declared the efficacy of instinctive reasoning as a source of ethical and spiritual knowledge, thereby upholding a form of rationalist objectivism (Abd al-Malik ibn Yusuf Abu al-Ma'ali al-Juwaini, 1400 H: 102).

The *Mu'tazilah's* stance certainly met with opposition. The *Ash'ari* rejects the idea of human reason as an autonomous source of ethical knowledge. They say that good and evil are as God determines, and judging God based on the categories He has given to direct human life is arrogant. For the *Mu'tazilites*, there was no way to explain the relationship of Allah's power to human action within the limits of ordinary logic. It is more realistic to say that

everything that happens results from His will without explanation or justification. However, it is essential to distinguish between responsible human action and movements attributed to the laws of nature. Human responsibility is not the result of free choice, a function which, according to the Mu'tazilites, determines the resulting mode of action. But only Allah alone creates all actions directly. However, in some actions, a voluntary quality of action is replaced by the will of God, which makes a person a voluntary and responsible agent. Therefore, human responsibility results from divine will, known through the guidance of revelation. Otherwise, values have no basis other than Allah's will regarding those values (Al-Gazali, 1412 H: 21).

This Asy'ari conception of ethical knowledge is known as theistic subjectivism, which means that all ethical values depend on the decrees of Allah's will expressed as eternal and unchanging revelation. Both theological positions are based on the interpretation of verses from the Koran, which have a complex view of the role of human responsibility in realizing divine will on earth. On the one hand, the Koran contains verses that support the Mu'tzilah emphasis on full human responsibility in responding to the call of natural and revealed guidance. On the other hand, some verses can support the Asy'ariah view of the omnipotence of Allah, who does not give humans a role in responding to divine guidance. However, the Koran considers divine judgment and omnipotence in matters of guidance.

The concept of natural or universal guidance has broader implications than demonstrating will capacity in the human soul (Q.S. Al-Syam: 7) and proves human responsibility in developing a sharp sense of moral and spiritual perception and motivation, which will uphold justice on earth. It appears that the Koran considers humanity as one nation in connection with universal guidance before exceptional guidance through the Prophets was revealed, and thus considers them all collectively responsible for upholding justice: "Human beings are one nation; "So Allah sent the Prophets, as givers of glad tidings and warners, and He sent down with them the Book of truth, to decide between people regarding matters they disputed" (Q.S. Al-Baqarah: 213).

Based on universal guidance, the natural moral foundations of human behaviour can be discussed in the Al-Quran. These verses refer to a universal and objective moral character, meaning all humans are treated equally and responsible to Allah. In other words, specific moral commandments are based on general human nature and are considered independent of particular spiritual beliefs, even though all practical guidance ultimately comes from the same source, namely, from God. Therefore, it is essential to emphasize, in the context of the Koran, that the idea of theistic justice becomes relevant to establishing social order because it logically evokes universal objective justice ingrained in the human soul. In one significant verse, the Koran recognizes the objective nature and universality of justice, equated with good deeds (moral virtues), transcending different religious communities and warning humanity to perform good deeds. : "To each of you (religious people), We give rules and ways (of behaviour). If Allah had willed, He would have made you one person (based on those rules and ways), but, (he did not do that). Allah wants to test you on what He has given you. Therefore, compete (that is, compete with each other) in doing good. "It is because of Allah that you will all return, then He will tell you (the truth) regarding what you disputed" (Q.S. Al-Maidah: 48).

There is an explicit assumption in this verse that all human beings must strive to uphold a particular scale of justice, which is recognized objectively, regardless of differences in religious beliefs. Interestingly enough, the ideal human being is said to combine these moral virtues with perfect religious submission. In fact, "whoever submits himself to Allah, while he is doing good, his reward will be with his Lord, and there is no worry for them, nor will they grieve" (Q.S. Al-Baqarah: 112).

Here, we have a clear basis for distinguishing between objective and theistic justice, where objective justice is further strengthened by the religious act of obedience to God. In universal objective justice, humans are treated equally and bear the same responsibility to respond to universal guidance. Moreover, it is this fundamental moral responsibility of all humans at the level of universal guidance that makes it reasonable to say that the Qur'an shows something in common with Western ideas about natural law, which is a source of positive justice in a society based on tacit consent or by official action. Because the Koran recognizes theoretical and objective justice, it is possible to term it natural justice in the sense used by Aristotle, a product of natural forces rather than social forces.

Acknowledging Aristotle, scholars often equate divine justice with natural justice, but unlike natural law experts who pay attention to the relationship of justice to society, the faqih focus their efforts on the concept of justice about God's will and connecting it with human destiny. These scholars believe that divine justice is the ultimate goal of the Islamic revelation, expressed in its initial form in the sacred Islamic laws (Al-Syatibi, n.t.: 121).

Method

This research includes legal research using a socio-juridical approach method. The socio-juridical approach is used to look at the process of legal operation at the implementation level, which is related to social culture, economics and politics. This study is legal because ontologically, the substance studied in this study is part of the legal system, namely the legal procedural component (in this case, legal protection for prisoners' rights as defendants in divorce lawsuits). This type of study with such a focus can only be better understood and explained in the qualitative research tradition. The data in this research was obtained through Library Research and Field Research. The data obtained was analyzed in depth using the Narrative Content Analysis method. The research was conducted in Bengkalis Regency and Dumai City, Riau Province. The consideration for choosing these two areas was because they have correctional institutions (Lapas) with relatively many inmates and a large number of divorce lawsuit cases involving convicts as defendants. In the Bengkalis Religious Court, there were 6 cases, while in the Dumai Religious Court, there were 9 cases of divorce cases with convicts as defendants.

Results and Discussion

A convict is a person serving a sentence for committing a crime. According to this definition, people who are called prisoners lose some of their freedom temporarily and are sentenced to a correctional institution. Because some of their independence has been lost, prisoners' husbands cannot fulfil their obligations as a husband to their wives. So, in such situations, it is not uncommon for a wife to ask her husband for a divorce because the rights and obligations that her husband must give are not fulfilled.

Article 19 letter (c) PP No. 9 of 1975 regulates that divorce can occur because one of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place. This is certainly not without reason. It gives the impression of how inhumane a wife can be if her husband is imprisoned and then the wife files for divorce. It must also be remembered that while languishing in prison, a husband or wife cannot fulfil their obligations, especially if they must wait a long time.

Article 38 of Law Number 1 of 1974 concerning Marriage regulates Divorce as a facultative provision that marriage can be dissolved due to death, Divorce, and based on a decision from the Court. So, juridically, the meaning of Divorce is interpreted as the dissolution of a marriage, which results in the severance of the relationship as husband and wife. Meanwhile, Article 39 paragraph (2) Law Number 1 of 1974 jo. Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage determines that the reasons that can be used for divorce are:

- a) One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on, which are difficult to cure;
- b) One party leaves the other for 2 (two) years without the permission of the other party and without a valid reason or for other reasons beyond their will;
- c) One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
- d) One of the parties commits severe cruelty or abuse that endangers the other party;
- e) One of the parties has a physical disability or illness which results in him being unable to carry out his obligations as husband/wife;
- f) Between husband and wife, there are continuous disputes and quarrels, and there is no hope of living in harmony again in the household;

Apart from that, Article 116 letters (g) and (h) of the Compilation of Islamic Law adds two reasons that can be used as grounds for divorce, namely:

- Husband violates divorce agreement;
- Change of religion or apostasy, which causes disharmony in the household;

The above reasons must be considered by the Panel of Judges examining cases when adjudicating divorce cases. For example, the reason for divorce in letter c, which reads: "One of the parties received a prison sentence of 5 (five) years or a heavier sentence after the marriage took place," will be an important highlight in considering the Panel of Judges. Especially in cases with this reason, many injustices occur. Divorce cases prove this because the husband or wife is in detention. So, his absence from the trial occurred even though he had been legally and properly summoned. So, because of his absence and without representing his attorney, the Justice Council will decide the case in verse. The Defendant's limitations in attending the trial result in the principle of justice not being fulfilled for prisoners or inmates defending their rights at trial.

Law enforcement officials, mainly when comprehending civil conflicts, must be aware of a legal vacuum (vacuum of law) in upholding justice in civil procedural law. Detainees or convicts in the custody of Correctional Institutions have constitutionally been deprived of their freedom and, thus, indirectly lose their independence. Loss of independence in a constitutional context can

be interpreted as Article 5 letter (f) of Law Number 12 of 1995 concerning Corrections, namely that loss of independence is one of the principles in the framework of the community development system.

In this article, it is stated that "loss of freedom is the only suffering", which means that correctional inmates must be in the environment and guidance of a correctional institution for and within a certain period so that the state has a full opportunity to improve it (Bruggink, 1999: 17). Inmates in correctional institutions, even though they have lost their independence, as mentioned above, still have their rights. Rights acquired like humans include protected civil rights, such as the right to obtain health care, food, drink, clothing, a place to sleep, skills training, sports or recreation. The point is that even though they have been declared to have lost their independence, there is an obligation for the Correctional Institution to be able to guarantee that all their rights are fulfilled. Civil rights, as explained in Article 5 of Law Number 12 of 1995 concerning Corrections, are binding on civil rights. Apart from that, the rights of prisoners are also stated in Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections, which states that Prisoners have the right to:

- a) perform worship following their religion or beliefs;
- b) receive care, both spiritual and physical care;
- c) get education and teaching;
- d) get adequate health and food services;
- e) submit a complaint;
- f) obtain reading materials and follow other mass media broadcasts that are not prohibited;
- g) receive wages or premiums for the work performed;
- h) receive visits from family, legal advisors, or certain other people;
- i) get a reduction in the criminal term (remission);
- j) get the opportunity to assimilate, including leave to visit family;
- k) obtain parole;
- l) get leave before being released, And
- m) obtain other rights following applicable laws and regulations.

If it is related to the explanation of Article 5 of Law Number 12 of 1995 concerning Corrections, it is related to the rights of prisoners mentioned above, one of which is to "obtain other rights following applicable laws and regulations". There needs to be an expansion of its meaning, especially to include civil rights obtained by inmates. Especially in civil cases registered with the Court, the Panel chairperson examining the case must summon the parties.

However, in divorce cases, the Defendant or Respondent is addressed according to the identity of the Population Identification Card. Meanwhile, the Defendant or Respondent is under the supervision of a Correctional Institution. Therefore, the Bailiff or Substitute Bailiff delivering the summons did not meet directly with the Defendant or Respondent, which resulted in the Defendant or Respondent not being present at the hearing at the first hearing, even though the summons had been forwarded to the local District Office. Therefore, in the absence of the Defendant or Respondent and also not having someone representing him present at the hearing, the Panel of Judges will, of course, in examining the primary case in Article 125 HIR/149 RBG, with the lawsuit deserve to be granted without his presence (*verstek*) unless it turns out that according to the Court, that the lawsuit has no legal basis or is unfounded.

The stages of civil case examination include efforts to reconcile (mediation), reading of the lawsuit, answers, replicas, duplicates, evidence, conclusions, and reading of the verdict. A formal narrative in the trial that must be obeyed and cannot be avoided. Each stage has consequences, and it is the right of each party to defend their rights in court. As regulated in the HIR or RGB, the trial stages must be based on justice for detainees or convicts in correctional institutions. Apart from the rights described above, prisoners have rights as regulated in Article 30 paragraph (1) of Government Regulation Number 32 of 1999 concerning Conditions and Procedures for Implementing the Rights of Correctional Inmates that every Prisoner and Correctional Student has the right to receive visits from family, legal advisors or certain other people.

In this article, apart from family, detainees have the right to receive a visit from a legal advisor or specific other person. In the explanation of this article, certain other people are interpreted as, among others, friends and clergy. In the context of upholding the right to justice and the principle of equal treatment before the law (equality before the law), this article's meaning needs to be expanded. This article provides opportunities for civil trials, which legal counsel can authorize. However, as long as the facilities are not available and access to communication is limited, it will not provide a solution for justice seekers whose status is as detainees or convicts. So, it needs to be interpreted by certain people, including the parties related to the civil case being processed. The aim is to provide the broadest possible but limited access by providing constitutional rights in trials.

Other rights regulated in Government Regulation Number 32 of 1999 concerning Conditions and Procedures for Implementing the Rights of Community Inmates, one of which is civil law. Article 52 confirms that:

- 1) Other civil rights in this Government Regulation include:
 - a. correspondence with family and friends;
 - b. permission to leave prison in extraordinary cases.
- 2) Prisoners and correctional students can send letters out of prison and receive letters from outside prison as intended in paragraph (1) letter a;
- 3) Prisoners and correctional students can be permitted to leave prison as intended in paragraph (1) letter b;
- 4) The Head of Prison permits to leave prison as intended in paragraph (3);

If these rights have been regulated constitutionally, then detainees or convicts have the same rights in fighting for their rights in court in civil cases. The process of criminal liability in civil trials, even though detainees or convicts are in the care of correctional institutions, does not rule out the possibility that it can be carried out as long as the facilities are available and protected by law. This implementation, which can be carried out virtually, will make it easier for detainees or convicts to fight for their civil rights in court.

Article 27 of the 1945 Constitution stipulates that every citizen has the right to obtain work and a living worthy of humanity. Human Rights, as in Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, means that Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His obligatory gifts. Respected, upheld and protected by the state, law, government and everyone for the sake of honour and protection of human dignity. Then, it was emphasized again in the amendment to the 1945 Constitution,

which regulates Human Rights; this indicates that our country has paid serious attention to human dignity in national and state life.

Human rights in law enforcement must rely on legal principles. The material principles are the following:

- 1) The principle of respect for human personality as such, which is further concretized in;
- 2) The principle of respect for the spiritual and physical aspects of existence as a person, which is thought of about other individuals, gives rise to;
- 3) the principle of trust (*vertrouwensbeginsel*), which demands reciprocity and gives rise to;
- 4) the principle of responsibility. The last two principles determine the structure of society and give rise to;
- 5) the principle of justice.

Besides this, there are three principles of formal law, namely, the principle of logical consistency, the principle of certainty, and the principle of equality. So, based on legal principles, in the framework of the material content of the law as stated in Article 6 of Law Number 12 of 2011 concerning Regulations for the Formation of Legislation, it can be stated that the material content of the Legislative Regulations contains, one of them, the principle of protection, where Legislation must function to protect to create public peace. Apart from that, it is justice and equality of position in the law, which means it must reflect proportional justice for every citizen without exception and must not contain things that differentiate based on background, including religion, ethnicity, race, class, gender or status. Social. Therefore, to guarantee the fulfilment of the rights of detainees or convicts, it is necessary to construct civil procedural law that accommodates the rights of the parties in trials, especially detainees or convicts dealing with civil law.

The foundation for law enforcement must refer to 3 fundamental aspects of the legal basis: legal certainty, justice and expediency. Therefore, every legal regulation must fulfil these three elements. The connection with the civil rights of detainees and convicts needs to be highlighted, especially to uphold justice for their civil rights. Loss of liberty does not limit the civil rights of detainees or convicts.

Therefore, the government must be present to guarantee the fulfillment of the civil rights of detainees or convicts under Correctional Institutions' supervision. One of the rights that must be fulfilled is being present to defend one's rights in civil trials (especially marriage cases). Attending the trial and carrying out all legal response processes is an absolute right for anyone considered a party to the case. Guarantees for their presence at the trial need to be a consideration for law enforcement officials. Limitations in detention rooms or correctional institutions must find new solutions or regulations so detainees or convicts can attend trials in person or virtually.

Reducing the divorce rate as one of the reasons for divorce is in Article 39 paragraph (2) letter c of Law Number 1 of 1974 jo. Article 19 letter c Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage must be balanced between parties not serving a detention period. Mediation and reconciling the parties must be enforced as stipulated in statutory regulations.

Conclusion

From the discussion above, several conclusions can be drawn from this article, as follows: For Prisoners or convicts who are serving their sentence in prison, their rights, including civil rights, are regulated and guaranteed in the form of laws or regulations, as in Chapter IV, part one of PP no. 58 of 1999, Article 14 of Law no. 12 of 1995, as well as articles 51 and 52 of PP no. 32 of 1999. However, despite this, there are no legal regulations regulating detainees or convicts being able to attend divorce trials. So, this is a reference for the prison authorities to refrain from giving detainees or convicts the right to undergo the civil case process they are currently facing. The Head of the Prison or Detention Center may make a policy for prisoners to participate in divorce trials but still through the trial mechanism of a correctional observer team and police escort. Or through virtual trial options in prisons or detention centres.

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