

# IMPLEMENTATION OF HEALTH LAW FOR PRISONERS WITH HAZARDOUS TRANSMITTED DISEASES AS A FORM OF FULFILLMENT OF HEALTH RIGHTS FROM A HUMAN RIGHTS PERSPECTIVE

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## ABSTRACT

This research aims to analyze the application of health law in the Class II B Penitentiary in Sleman to Prisoners with dangerous infectious diseases in the perspective of Human Rights. The author in writing this journal uses empirical legal methods with a sociological juridical research model. This research is descriptive in nature using a qualitative approach. As part of Indonesian citizens, prisoners have human rights as constitutional rights that must be given and protected by the state. The right to health is an important part of human rights, but the granting of health rights especially for prisoners with dangerous infectious diseases is not yet optimal. Many obstacles faced by the Penitentiary to make health efforts. The most significant obstacle and the significant impact of creating other barriers are the problem of over population in prisons or overcrowding and application of health laws that have not been properly implemented.

Keywords : Penitentiary; Prisoners; Infectious Diseases; Health Law; Human Right.

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## Introduction

Indonesia is a country that upholds the law, this is reinforced by the mandate of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945). Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that "the State of Indonesia is a state of law". This can be interpreted that the law has a very important role in the social functioning of the state. Law has various functions, one of which is to protect human interests, to become a binding medium between rights and obligations for every human being.

Every individual has rights which are legal authority, power or possession. The rights that are protected and are fundamental are Human Rights (HAM). Human rights are rights that arise in every individual, there is no distinction or discrimination that limits the acquisition of human rights, because basically it is a basic or basic right where everyone has the same acquisition in the eyes of the law. constitutionally governed and protected by the constitution of the state of Indonesia, namely the 1945 Constitution of the Republic of Indonesia. Therefore, convicts as part of the state community also have inherent rights.

Regulations related to human rights are regulated in Article 28 A – J of the 1945 Constitution of the Republic of Indonesia, and further regulated in Law Number 39 of 1999 concerning Human Rights. CHAPTER 1 General Provisions Article 1 point 1 states that Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty, and are gifts that must be respected, upheld, and protected by the state, law, government

and everyone for the honor and protection of human dignity.

Based on this explanation, it is obligatory for the state to protect the rights of its citizens, including prisoners who are undergoing a period of coaching in Correctional Institutions (LAPAS). A set of rights contained in human rights must be protected by the state, including the right to health which is an elaboration of the right to life as stated in Article 9 of Law Number 39 of 1999 concerning Human Rights.

The right to health as part of human rights must be realized in the form of providing various efforts to fulfill health to the entire community with the implementation of quality health development (Hafid Abbas, 2008:1). The form of obligation for citizens to fulfill the right to health is to provide the provision of appropriate health service facilities and public service facilities, this provision is contained in Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Continuing with the purpose of sentencing, one of which is not solely focused on retaliating against deviant and unlawful acts committed by prisoners, but also seeking prisoners to be able to return to society by understanding and applying the laws and regulations that apply in society, so as not to return to committing acts that are wrong. breaking the law. These efforts can be carried out by conducting coaching on the personality, character, morals and behavior of prisoners.

Good health conditions are very influential on increasing the productivity of prisoners after carrying out a period of coaching, to re-start life in

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society with a new chapter and to fulfill their needs. The coaching carried out in prisons is filled with skill activities that can support careers for prisoners after completing their coaching period in prisons. In order to be able to carry out new skills and expertise to fulfill their lives in the community, health is an important factor that must be fulfilled by LAPAS in guaranteeing the rights of prisoners as stated in Law Number 12 of 1995 concerning Corrections.

The number of sufferers of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) in prisons is not small. However, the treatment of people with HIV/AIDS still needs more focus. In 2014, the government revoked the budget allocated for handling HIV/AIDS sufferers in prisons and detention centers (RUTAN) in the Jakarta area. This is because there is no State Revenue and Expenditure Budget (APBN) to handle prisoners and detainees suffering from HIV/AIDS

(<https://www.cnnindonesia.com/nasional/20141127163757-20-14298/health-detainees-of-hiv-aids-neglected>, accessed at 10:44 am on 03 May 2020).

In general, the cumulative number of reported cases of HIV infection until June 2018 was 301,959 people for the whole community (<https://www.kompasiana.com/jepretpotret/5c29cd09bde5753de0745259/saat-hiv-beraksi-di-lapas?page=all#sectionall> accessed at 10:56 am on 03 May 2020). In 2017 HIV became the most dangerous infectious disease suffered by prisoners and detainees with a total of 1,678 people, while people with tuberculosis (TB) were 776 people (Rully Novian, 2018: 110).

Tuberculosis is a disease that is often suffered by inmates because of the easy spread of the virus that causes TB, besides that, TB requires a fairly long treatment in the healing process. It is estimated that the number of TB sufferers in prisons is more than 776 people, namely 1,224 people (Tempo.co, <https://gaya.tempo.co/read/1200864/tuberculosis-problems-kesehatan-di-lapas-yang-perlu-solution/full&view=ok> accessed at 11.14 03 May 2019).

The high number of dangerous infectious diseases in prisons should be of more concern to the government, because health is a right for everyone, including prisoners. In addition, dangerous infectious diseases have a risk of transmission to other healthy prisoners, while prisoners who suffer from infectious diseases themselves have a high risk of causing death. TB became the disease that contributed the most to death in the period 2012-2017 (Rully Novian, 2018: 108).

Therefore, the government needs to implement special health efforts for prisoners with infectious diseases to reduce the number of transmissions and deaths caused by dangerous infectious diseases.

Class II B Sleman Prison is located in Sleman Regency, Yogyakarta Special Region, the prison in 2019 was overcrowded or the number of inmates' loads was greater than the number of available cells. This condition can increase the risk of disease transmission because there is no free open space. The author is interested in researching the implementation of the fulfillment of health rights for inmates who suffer from infectious diseases, thus the author conducted a study entitled "IMPLEMENTATION OF HEALTH LAW FOR INCIDENTS WITH HAZARDOUS TRANSMISSION DISEASES AS A FORM OF FULFILLMENT OF HEALTH RIGHTS FROM THE PERSPECTIVE OF HUMAN RIGHTS (HUMAN RIGHTS).

### Method

The research method used by the author in writing this journal is empirical legal research with a sociological juridical research model (sociological jurisprudence). : 47). This research is descriptive, which describes and explains the data found in the study. In addition, the author uses a qualitative approach in empirical juridical research or the sociology of law is an approach by looking at a legal reality in society (Zainuddin, 2015: 105). The data collected by the researchers to support this research includes primary data, namely interviews, questionnaires, and observations, while secondary data includes primary legal materials, namely: the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 1995 concerning Corrections. Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Prisoners, Ministerial Decrees and related ministerial regulations. In addition, secondary legal materials used by the author are books, journals, theses, and articles published on the internet and issued by authorized institutions that can support in compiling this research. Research requires a data collection technique to collect the basic materials needed to conduct the author's research. Therefore, in conducting data collection techniques using 2 (two) ways, namely the Library Research Method and the Field Research Method. The data analysis technique as a stage in conducting the analysis used in this study uses the Inductive method where the author in drawing conclusions from the research, first draws the idea from the minor premise to the major premise, the minor premise is in the form of legal facts in the field then the major premise here is in the form of laws and regulations. -invitation.

### Result

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Health is a fundamental right that is inherent in human existence throughout their lives. Health as an issue and part of Human Rights (HAM), is the right to an optimal degree of health, which means that every human being has the right to an optimal health degree and thus has consequences for the state which is obliged to fulfill these rights, and this is not a something unfounded. Health is a crucial issue for a country because health itself has a direct correlation with personal integrity for each individual so that they can live with dignity (Titon Slamet K, 2007: 2).

The state as the holder of the obligation (duty bearer) to fulfill and protect human rights, including the right to health, is obliged to provide guarantees for the protection and fulfillment of health rights for all citizens without exception (Yenti Rosdianti, Jurnal HAM. Vol.8, 2012: 97 ). The phrase "for all Indonesian citizens" implicitly states that the government is also responsible for the fulfillment of health rights for prisoners who are part of Indonesian citizens (WNI).

The basis for granting rights to prisoners to obtain health services is that the sentencing of a criminal by a judge is limited to only the physical freedom of the convict, not his right to obtain health care. Health law itself is comprehensive to legal regulations and is directly related to health services (Endeh Suhartini, 2019: 107).

The importance of health for the community and its close relation for the state to fulfill the right to health has a causal relationship for the state to form an appropriate legal policy to fulfill the right to health for the community. The right to health services is defined in health law as one of the individual human rights or personal rights which is also referred to as the right to self-determination. Basically the personal rights of legal subjects, namely patients include; Right to life, Right to die a natural death, Right to respect for bodily and spiritual integrity; and the right to own body (Irsal Rias, 2007: 18).

The right to health care is a positive human right. The right to health care is different from the right to health. That is, what is a human right is an authority over guarantees related to the existence of a process to maintain health. Therefore, patients and doctors together find the most appropriate therapy to be applied. The relationship between doctor and patient has an equal position. The status of the object in the patient has been changed to a subject who has an equal position with the doctor. Prior to carrying out any healing efforts, the patient's consent, known as informed consent, is carried out, which is based on information from the doctor regarding the disease and alternative treatment efforts as well as all possible consequences (Veronica Komalawati, 1989: 86).

Medical personnel or health workers before making health efforts need to obtain prior approval of the patient, because the patient has a changed position no longer as an object but as a subject. In addition, because the right to health is an individual human right which includes the right to physical and spiritual integrity as well as the right to one's own body.

The paradigm that has been built regarding health services has shifted, where previously health services referred to illness, but at this time the meaning of health efforts is focused on ways to maintain and improve the health status of individuals or communities. Hendric L. Blum views a comprehensive and holistic healthy lifestyle, in which a healthy society is not seen from the point of view of curing disease but rather a continuous effort to maintain and improve the health status of the community (Siska Elvandari, 2015: 49).

Continuous efforts to maintain and improve health status can be carried out by carrying out health efforts. For Prisoners (WBP) including prisoners as a key population that has a relatively high risk of spreading or transmitting infectious diseases, the fulfillment of health rights is very important, both to reduce suffering due to illness or also to improve health status for prisoners with dangerous infectious diseases.

Prisoners' rights are stated in Law Number 12 of 1995 concerning Corrections, including the right to obtain health services. As for some of the prisoners' rights as stated in Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections, among others:

- 1) Worship according to religion and belief;
- 2) Get spiritual and physical care
- 3) Getting education and teaching;
- 4) Obtaining proper health and food services;
- 5) Submit a complaint;
- 6) Obtain reading materials and participate in mass media broadcasts that are not prohibited;
- 7) wages for the work he does;
- 8) Receive family visits, legal attention and certain people;
- 9) Get time off before it's free; and
- 10) Obtain other rights in accordance with other laws and regulations

In point 4 it is stated that one of the rights of prisoners is to get health services and proper food. Health services have various forms, it is intended that health services can be carried out properly. In addition, based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH.02.UM,06.04 of 2011 concerning Guidelines for Health Services in the Ministry of Law and Human Rights, what is meant by health

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services are all forms of health services or programs aimed at employees and their families. and Prisoners who are carried out both individually and collectively in organizations. The forms of health services include:

1. Promotive health services, is a series of health service activities that prioritize health promotion activities;
2. Preventive health service is an activity to prevent a health problem/disease;
3. Curative health service is an activity and/or a series of treatment activities aimed at curing disease, reducing suffering due to disease, controlling disease, or controlling disability so that the quality of the patient can be maintained as optimally as possible;
4. Rehabilitative health services are an activity and/or a series of activities to return former sufferers to the community so that they can function again as community members who are useful for organizing health efforts.eases.

There are 3 aspects that are closely related to health service efforts, namely efforts to meet the availability of health service facilities, efforts to increase public access to health care facilities directly through the existence of a public health insurance program, and carry out quality care programs by carrying out hospital accreditation (Endeh Suhartini, 2010). 2019: 18).

The health efforts implemented by LAPAS Class II B Sleman for prisoners with infectious diseases have been implemented but are not optimal, especially in the implementation of preventive and rehabilitative health efforts, due to various obstacles that hinder these health efforts. Overcrowded prisons are one of the main factors hindering the implementation of health efforts. Overcrowding in the Class II B Sleman Prison is caused by the fact that the LAPAS should only be dedicated to accommodating prisoners, but it also accommodates many detainees, which causes the capacity in the prison to increase quite high which can increase the risk of disease transmission. The average increase in prison capacity from August 2019 to March 2020 reached 38%. In addition, excess capacity also causes less residential rooms for inmates, which causes some inmates to have more occupants than usual, the isolation rooms needed for inmates with infectious diseases are also abolished and only formed from time to time or incidentally from one of the usual residential rooms. daily by prisoners.

Procurement of isolation rooms has been stated in the Government Regulation of the Republic of Indonesia Number 32 of 1999 concerning Conditions and Procedures for the Implementation of the Rights of Correctional Inmates, which explains that if in prisons there are prisoners with

infectious and dangerous diseases, they must be treated specifically, explanations for special care itself is in the form of separating prisoners with infectious diseases from healthy inmates to prevent transmission. The impact of excess capacity also causes the health budget to be insufficient to meet the health needs of prisoners. The calculated health budget is around 17,000 per person within 1 month, this figure is very minimal because the allocation of the health budget is allocated to fulfill 4 forms of health efforts and not only the procurement of medicines. Insufficient human resources such as health workers and guards/warriors to supervise and serve the many prisoners are also an obstacle. Furthermore, the absence of special regulations to oversee the continuity of the fulfillment of health efforts for prisoners with infectious diseases, this can be seen from the government's hasty policy in dealing with Covid-19 in general which is endemic in Indonesia.

The impact of being overcrowded also causes the minimum ratio of wardens in prison to be fulfilled. In conditions of prisons that have prisoners with infectious diseases, health workers and wardens must communicate to minimize the occurrence of relationships between prisoners with infectious diseases and other healthy prisoners so that transmission does not occur, especially for prisoners who suffer from tuberculosis because TB is a disease that can be transmitted by easy. The ratio of guards in the Class II B prison in Sleman with the occupants of the prison is around 1:25, 1:24. The ratio of guard officers and prison residents at the national level is 1:21, this is high compared to the international standard of 1:15 (Rully Novian, 2018: 142). In addition, too few health personnel are needed considering the large number of prisoners and detainees in prisons.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH.02.UM,06.04 of 2011 concerning Guidelines for Health Services in the Ministry of Law and Human Rights which in Chapter III concerning the Implementation of Health Services Point 4 Forms of Implementation states that the number of health workers needed in the unit health services (according to conditions), namely:

1. Medical personnel: at least 2 (two) people.
2. Nurses: at least 2 (two) people.
3. Midwife : at least 1 (one) person.
4. Lab analyst : at least 1 (one) person.
5. Pharmacist assistant : at least 1 (one) person.
6. Associate nutritionist : at least 1 (one) person.
7. Sanitarian : at least 1 (one) person.
8. Psychologist : at least 1 (one) person

There are 4 health workers in the form of nurses at the Class II B prison in Sleman, 1 nutritionist, and

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2 medical personnel in the form of 1 general practitioner and 1 dentist. This number is still very minimal because the number of prisoners and detainees in Sleman Class II prisons is quite high.

The obstacles faced by the Class II B Sleman Prison in fulfilling health efforts for prisoners with dangerous infectious diseases illustrate indirectly that the state still does not give special focus and attention to the health needs of prisoners. Meanwhile, the acquisition of health is an inseparable part of human rights, which should be fulfilled by the state. Judging from the point of view of health legal products that have developed gradually. This is influenced by various aspects related to the community's need for a healthy life. In addition, due to the development of various aspects that support life from technological, socio-economic factors which have led to increased critical awareness for the community of the importance of health, this has also become a factor in the development of health law.

However, in practice, the implementation of health efforts, especially for inmates with dangerous infectious diseases, has not been carried out properly by taking samples at the Class II B prison in Sleman. If it is said that the development of health law is developing gradually, but in reality, the special regulation related to health for Correctional Inmates, including prisoners and detainees, is still not a concern for the government.

The government needs to form special rules regarding good care patterns for prisoners with dangerous infectious diseases, because infectious diseases have a high risk of infecting other healthy prisoners or vice versa which can reduce health for sufferers. Unfavorable health conditions can lead to a decrease in the welfare index for the community, especially for prisoners who suffer from dangerous infectious diseases.

Making a policy requires careful analysis and formulation stages, by taking an appropriate approach model to the problems at hand. Therefore, in taking policies, one must really understand the problems that occur and the ways and tactics to solve them (Herabudin, 2016: 205).

According to H.J.J. Leenen, health law includes all legal provisions that are directly related to health care and the application of civil, criminal, administrative law, including in this connection international guidelines, jurisprudence and customary law relating to autonomous law, science and literature which are sources of law. health (Fred Ameln, 1991: 14)

The meaning of health law is very broad, not limited to policies or legal products. The implementation or enforcement of the law itself is also part of health law. The practice of health law

enforcement today is still not optimal even though it has been supported by the existence of several legal rules to implement it, especially the rules of a technical nature.

Supporting capacity to re-passive and develop health law for the fulfillment of health rights for prisoners is the responsibility of the state and state apparatus under the ministry of health and the ministry of law and human rights. Therefore, there is a need for coordination for the parties concerned to formulate as well as enforce the rule of law in order to achieve the ideals of the law.

## Conclusion

Health is part of Human Rights (HAM). Human rights themselves by every human being for prisoners. Convicts in carrying out crimes by judges are only limited by physical things, but in obtaining health efforts, prisoners still have the right to obtain it.

There are 4 health efforts that become the standard for fulfilling health fulfillment for prisoners, namely promotive health efforts, preventive health efforts, curative health efforts, and rehabilitative health efforts. Prisoners with infectious diseases must be a special concern for the government so as not to cause transmission to other healthy prisoners and vice versa for prisoners who have infectious but not dangerous diseases that can lower the immune system for prisoners with infectious diseases. The implementation of health for prisoners with infectious diseases has not been carried out optimally, preventive and rehabilitative health efforts have not been carried out properly, besides that there is no special policy for the implementation of special health, so there are significant differences in terms of food intake, special health services, room specialty, and training patterns.

Re-activating the existence of health law is very important to start reforming the law, especially for prisoners whose condition is very worrying. Health law is not limited to rules or legal products related to health alone, but also includes the enforcement of these rules. Therefore, there is a need for comprehensive cooperation between the parties involved in this matter which has a major influence on the making of the nation's goals.

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