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The Urgency of Implementing Conjugal Visit for Inmates from the Perspective of Positive Law and Human Rights

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Abstract

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This study examines the urgency of implementing conjugal visits in Indonesia through the lens of positive law and human rights, with a case study at the Class IIA Correctional Institution in Pangkalpinang. Limited access to healthy sexual relations with spouses contributes to stress, behavioral problems, and the spread of infectious diseases in overcrowded facilities. Conjugal visits are proposed to improve inmates' psychological well-being, maintain family ties, and support rehabilitation efforts. The research employs interviews, field observations, and literature reviews to address five key objectives: (1) identifying the legal vacuum in existing regulations, (2) examining practices related to inmates' sexual needs, (3) analyzing the relationship between overcrowding and deviant sexual behavior, (4) exploring legal considerations necessary for implementing conjugal visits, and (5) identifying challenges and proposing practical solutions. The findings show that conjugal visits reduce deviant sexual behavior, lower infection risks, and strengthen family relationships, thereby aiding successful reintegration into society. However, obstacles include the absence of a clear legal framework, budget constraints, and inadequate facilities in correctional institutions. This study emphasizes the need for legal reform, recommending a phased implementation of conjugal visits based on international best practices. Its novelty lies in proposing a progressive policy that aligns with the right to family life and procreation, as guaranteed by Articles 28B and 28H of the 1945 Constitution and the 1957 Standard Minimum Rules for the Treatment of Prisoners.

Keywords: *Conjugal Visit; Assisted Residents; Prison; Sexual Deviance; Protection of Human Rights*

1. INTRODUCTION

Conjugal visits remain a contentious and unresolved issue within Indonesia's correctional system, hindered by the absence of explicit legal frameworks and societal taboos. Although several countries, such as the U.S., Brazil, and Australia, have implemented these visits to support inmate rehabilitation and family stability, Indonesia has yet to follow suit.¹ The lack of regulations addressing inmates' biological needs leaves correctional institutions unable to facilitate conjugal visits, effectively denying inmates a key aspect of human dignity. Current policies only allow limited family visit leave after serving half of a sentence, which does not adequately address the need for regular, intimate connections between spouses.² This legal vacuum forces some inmates to resort to bribing officers or engaging in risky sexual behaviors, increasing the spread of infections and undermining prison safety.³ The absence of conjugal visits also obstructs efforts to promote rehabilitation, as family support plays a crucial role in reducing

¹ Ina Heliany, "Application of Conjugal Visit in The Indonesian Statutory System for Correctional Assisted Persons," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 4, no. 2 (2022).

² Nur Misyuari Maddolangeng, "Masalah Analisis of Procurement of Conjugal Visits for Prisoners (Study at Parepare City Class IIA Penitentiary)," *DELICTUM: Jurnal Hukum Pidana Islam*, 2023, <https://doi.org/10.35905/delictum.v2i1.6470>.

³ Sandra Nicole Roldan dan Sandra Nicole Roldan, "The Conjugal Visit," *Likhaan: The Journal of Contemporary Philippine Literature* 12, no. 1 (1 Januari 2018), <https://doi.org/10.4135/9781412972024.n501>.

recidivism and supporting emotional well-being. Without proper regulation, inmates' human rights remain insufficiently protected, reflecting a gap in Indonesia's evolving penal system. Addressing this issue through legal reform and infrastructure development is essential to align Indonesia's correctional policies with international standards and human rights principles.⁴

The transformation of Indonesia's penal system has shifted from retributive imprisonment to correctional institutions (LAPAS), emphasizing rehabilitative, restorative, and corrective justice.⁵ Under colonial rule, imprisonment focused on punishment for crimes (*rectdelichten/mala in se*) or violations (*wetdelichten/mala in prohibita*). With the enactment of Law No. 12 of 1995, prisons were replaced by LAPAS, and inmates became "*warga binaan*" (guided residents), with efforts aimed at behavior improvement, rehabilitation, and reintegration into society.⁶ Recent legal reforms, including Law No. 22 of 2022 and the new Criminal Code (KUHP) of 2023, further emphasize rehabilitation and human rights. However, the absence of conjugal visits—common in countries like the U.S., Brazil, and Australia—remains a key challenge. In Indonesia, conjugal visits are taboo and not legally regulated, restricting inmates' ability to fulfill biological needs, which can lead to stress, deviant behavior, and increased risks of sexually transmitted infections. Family visit leave, allowed only after serving half of a sentence, is rigid and insufficient to address these needs.⁷

The lack of clear legal frameworks and infrastructure limits LAPAS from accommodating inmates' biological needs, raising human rights concerns.⁸ Conjugal visits play a vital role in providing emotional and family support, promoting mental well-being, and reducing recidivism. Without these visits, inmates may resort to bribery or engage in risky sexual behavior, further complicating prison management.⁹ The limitations on correctional institutions in providing inmates access to fulfill their biological needs stem from a legal vacuum, as there are no regulations explicitly governing conjugal visits in Indonesia. While the right to biological needs isn't explicitly prohibited, the absence of access means inmates' rights in this area are not fully accommodated by the state. This issue raises broader concerns. From a rehabilitation perspective, conjugal visits are essential family support that aids in the rehabilitation process. In practice, alternatives

⁴ Ann Goetting dan Ann Goetting, "Conjugal Association in Prison: Issues and Perspectives," *Crime & Delinquency* 28, no. 1 (1 Januari 1982): 52–71, <https://doi.org/10.1177/001112878202800104>.

⁵ Brilian Capera, 2021. "Keadilan Restoratif Sebagai Paradigma Pemidanaan di Indonesia," *Jurnal Lex Renaissance*, 6 (2), 225-234, <https://doi.org/10.20885/JLR.vol6.iss2.art1>.

⁶ Mulya Nopriyansah dan Derita Prapti Rahayu, 2023. "Kontribusi Hukum Progresif Dalam Perubahan Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan," *Jurnal Keadilan* 21(1), 50–59, <https://doi.org/10.37090/keadilan.v21i1>.

⁷ Diah Ratna Sari Hariyanto dkk., 2021. "Efektivitas Pemenuhan di Tengah Ide Pemidanaan Dengan Pendekatan Keadilan Restoratif," *Jurnal Magister Hukum Udayana* 10, (2), 404-415, <https://doi.org/10.24843/jmhu.2021.v10i02.p15>.

⁸ Tengku Arif Hidayat dkk., 2023. "Conjugal Visit Dalam Perspektif Teori Relatif Sistem Pemidanaan di Indonesia," *Yustitia*, 9(2), 236-248, <https://doi.org/10.31943/yustitia.v10i2.187>.

⁹ Rizki Bagus Prasetio dkk., 2023. "Zero Overstaying: Harapan Baru Pasca Lahirnya Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan," *Jurnal Ilmiah Kebijakan Hukum*, 17, (2), 111-134, <https://doi.org/10.30641/kebijakan.2023.V17>.

such as bribing staff or engaging in risky sexual behavior heighten the risk of sexually transmitted infections, which violates basic human rights.¹⁰

The development of Indonesian criminal law, focused on enhancing human rights protection, should ideally include conjugal visits. However, the absence of such provisions indicates incomplete penal reform. This study, focused on the Class IIA Correctional Institution in Pangkalpinang, examines the challenges in implementing conjugal visits, highlighting the lack of legal frameworks and necessary infrastructure. Nonetheless, observations indicate the importance of conjugal visits for rehabilitation, health, and human rights. The research aims to provide policy recommendations for stakeholders in drafting regulations to support conjugal visit implementation in Indonesia, contributing to a more holistic approach to inmate rehabilitation and human rights protection.

The three journals discussing conjugal visits in correctional institutions each provide unique insights and highlight distinct challenges. The first journal by Ina Helianny and Muhenri Sihotang focuses on the unmet biological needs of inmates in Indonesia, emphasizing the ineffective implementation of existing regulations governing conjugal visits. Their research identifies key barriers, such as the absence of detailed procedures and a lack of institutional commitment, which hinder the practical realization of these visits.¹¹ The second journal, authored by Bambang Sumardiono and colleagues, proposes integrating conjugal visits into inmate rehabilitation programs, stressing the need for regulatory reform. They analyze weaknesses in the current institutional structure and regulations, suggesting that reform is essential to ensure social justice and improve inmate welfare. However, the study's focus leans heavily on policy modeling, leaving human rights considerations underexplored.¹² The third journal by Siti Sarah Ghalip and her team investigates the feasibility of conjugal visits in Malaysia through a qualitative lens. While offering valuable insights into regulatory potentials, the study lacks empirical data to assess how such visits impact inmate well-being in practice. This absence of practical evidence limits the applicability of its findings to policymaking and institutional reform.¹³ The third journal by Siti Sarah Ghalip and her team examines the potential for implementing conjugal visits in Malaysia through qualitative analysis, but it lacks empirical data on practical application.¹⁴ While these studies offer useful perspectives, they have notable limitations. A key research gap lies in their insufficient integration of human rights principles. Specifically, these studies either overlook the importance of recognizing

¹⁰ Bambang Sumardiono. 2018. "Rekonstruksi Membangun Pola *Conjugal Visit* Sebagai Program Pembinaan Warga binaan di Lembaga Pemasyarakatan Yang Berbasis Keadilan," *Disertasi*, Fakultas Hukum Universitas Islam Sultan Agung, Semarang.

¹¹ Ina Helianny, "Application of Conjugal Visit in The Indonesian Statutory System for Correctional Assisted Persons," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 4, No. 2 (2022).

¹² Bambang Sumardiono dkk., "Reconstruction of Conjugal Visit Pattern As Guide for Prisoners In Correctional Institutions Based On Justice," *Journal of Education and Social Sciences* 10, No. 3 (2018).

¹³ Bambang Sumardiono dkk., "Reconstruction of Conjugal Visit Pattern As Guide for Prisoners In Correctional Institutions Based On Justice," *Journal of Education and Social Sciences* 10, No. 3 (2018).

¹⁴ Siti Sarah Ghalib dkk., "Contemporary Implementation of Conjugal Visits as a Guideline for Prison Policies in Malaysia," *International Journal of Academic Research In Business and Social Sciences* 13, No. 13 (2023), <http://dx.doi.org/10.6007/IJARBS/v13-i12/19991>.

conjugal visits as a fundamental human right or fail to comprehensively analyze the impact of such visits on inmates' mental and emotional well-being.

This research addresses these gaps by adopting a dual perspective, combining positive law and human rights frameworks to explore the issue of conjugal visits. It emphasizes that implementing such visits is not only a legal obligation but also essential for promoting the emotional and psychological welfare of inmates—an area that has received limited attention in previous studies. The study argues for recognizing conjugal visits as a human right, highlighting their potential to support the rehabilitation and reintegration of inmates into society. The purpose of this research is to explore the multidimensional issues surrounding the implementation of conjugal visits in Indonesia through five key subtopics: (1) identifying the legal vacuum in current regulations, (2) examining practices related to the sexual needs of inmates, (3) analyzing the link between prison overcrowding and increased homosexual behavior, (4) discussing the necessary legal considerations for implementation, and (5) identifying challenges and proposing actionable solutions.

2. METHOD

This research distinguishes itself by combining the perspectives of positive law and human rights in discussing conjugal visits for inmates. It highlights the urgency of implementing this policy not only as a legal obligation but also as a way to promote the mental and emotional well-being of prisoners, which existing literature often overlooks. The study is significant for addressing the necessity of recognizing conjugal visits as a fundamental human right for inmates, offering a comprehensive analysis of current regulations within the Indonesian legal framework. The purpose of this research is to explore the multifaceted issues surrounding the implementation of conjugal visits in Indonesia through five key subtopics: analyzing the existing legal vacuum, examining practices related to inmate sexual needs, investigating the relationship between overcrowding and homosexual behavior, discussing necessary legal considerations, and identifying challenges and proposing solutions for implementation. Ultimately, the research aims to enhance inmate rights and promote their rehabilitation and reintegration into society.

This research utilizes an empirical research method, specifically employing a case study and stationary approach.¹⁵ Data collection involved a combination of interviews, field observations, and a comprehensive literature review, which included both primary and secondary data relevant to the research theme.¹⁶ Primary data was gathered from various sources, including the Class IIA Correctional Institution Pangkalpinang, the Regional Office of the Ministry of Law and Human Rights of the Bangka Belitung Islands Province, the Rusti Justicia Legal Aid Institute, a psychiatrist, and a penology lecturer.

¹⁵ Rhuks Ako dan Damiola S. Olawuyi, "Methodology, Theoretical Framework and Scholarly Significance: An Overview of International Best Practices in Legal Research," *Journal of Sustainable Development Law and Policy (The)* 8, No. 2 (1 Januari 1970): 225–41, <https://doi.org/10.4314/jsdlp.v8i2.11>.

¹⁶ Philip Langbroek dkk., "Methodology of Legal Research: Challenges and Opportunities," *Utrecht Law Review* 13, No. 3 (13 Desember 2017): 1, <https://doi.org/10.18352/ulr.411>.

The interviews were structured to elicit detailed information regarding the implementation of conjugal visits and the associated legal and human rights considerations.¹⁷ Field observations focused on the conditions within the correctional institution, allowing for an in-depth understanding of the environment in which inmates reside. The literature review encompassed legal documents, academic articles, and reports related to inmate rights and conjugal visits.¹⁸

Data analysis was conducted using a descriptive pattern to draw correlations between the primary and secondary data, forming the basis for the argument and discussion.¹⁹ This methodological framework ensures a comprehensive examination of the complexities surrounding conjugal visits, contributing to a nuanced understanding of the legal and social dynamics at play in the Indonesian correctional system.

3. RESULTS AND DISCUSSION

3.1 Legal Vacuum in the Implementation of Conjugal Visit in Indonesia

Indonesia's correctional system faces a legal vacuum regarding conjugal visits, leaving inmates without a formal avenue to fulfill their biological needs. While the right to engage in sexual relations with a legal partner is not explicitly denied, the absence of specific regulations results in the de facto exclusion of this right from inmates' rehabilitation process. This gap remains unaddressed despite ongoing penal reforms in Indonesia, including the enactment of Law No. 22 of 2022 on Correctional Institutions. The lack of provisions for conjugal visits undermines the effectiveness of rehabilitation efforts, as it neglects a fundamental aspect of inmates' emotional and biological well-being, which is crucial for their reintegration into society.

The redesign of the penal system in Indonesia to a correctional system, first introduced by Sahardjo in 1963, has brought with it the idea of granting inmates the right to fulfill their biological needs as a protected right. The rehabilitation approach shifted from a retributive system that viewed inmates as mere sufferers to a more rehabilitative perspective. Barda Nawawi Arief (1996) emphasizes that the penal system in correctional institutions should not restrict the right to engage in healthy sexual relations with a legal partner.²⁰ Restricting the right to engage in sexual relations turns inmates into "jailbirds," gradually leading to deviant and abnormal behavior.²¹

The development of conjugal visit implementation in other countries from 1980 to 2000 has expanded the discussion on forming regulations in Indonesia. Countries such as Australia, Saudi Arabia, the Netherlands, Brazil, Denmark, India, Germany, Canada, the United States, Pakistan, France, and Turkey have established clear legal frameworks for

¹⁷ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, No. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

¹⁸ Jonaedi Efendi dan Prasetyo Rijadi, *Metode Penelitian Hukum Normatif dan Empiris: Edisi Kedua* (Jakarta: Prenada Media, 2022).

¹⁹ I Made Laut Mertha Jaya, *Metode Penelitian Kuantitatif dan Kualitatif: Teori, Penerapan, dan Riset Nyata* (Yogyakarta: Anak Hebat Indonesia, 2020).

²⁰ Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 2005).

²¹ Ann Goetting, "Conjugal Association in Prison: Issues and Perspectives," *Crime & Delinquency* 28, No. 1 (1 Januari 1982): 52–71, <https://doi.org/10.1177/001112878202800104>.

the implementation of conjugal visit mechanisms.²² However, progress in Indonesia has not achieved regulatory consensus. Following the enactment of Law No. 22 of 2022 on Correctional Institutions, the reform of the penal system did not address the provision of access to conjugal visit.²³ The legal mechanism and alternatives for sexual relations are limited to Family Visit Leave (*Cuti Mengunjungi Keluarga*, CMK).

CMK is a rehabilitation program designed to provide inmates and their children with the opportunity to reintegrate with their families and society.²⁴ Family visit leave may be granted for a maximum of 2 days or 48 hours, starting from the time the inmate/child arrives at the designated residence, and it must be given at least once every 3 months.²⁵ Additionally, this leave can only be taken within the jurisdiction of the local Regional Office of the Ministry of Law and Human Rights and cannot be taken during major religious holidays. According to Permenkumham No. 3 of 2018, CMK is granted to inmates who have good behavior and have not committed any disciplinary violations, have a minimum sentence of 12 months, are not involved in other legal cases, have served half of their sentence, have a request from their family, and are deemed eligible for leave by the correctional monitoring team.²⁶

CMK is restricted and cannot be granted to inmates convicted of terrorism, drug offenses, death sentences, life imprisonment, those whose lives are at risk, or those likely to re-offend. CMK requests are submitted to the Head of the Correctional Institution. Alternative mechanisms for fulfilling biological needs, aside from CMK, include the assimilation program, conditional release, leave before release, and medical leave. All these mechanisms have two main characteristics: First, they are highly restricted and can only be granted to inmates who meet specific conditions and criteria. Second, they are non-judicial and based on the decision of the Head of the Correctional Institution, who assesses the eligibility for leave.

Based on the two characteristics above, the available mechanisms still adhere to the principle that the right to engage in sexual relations is not considered a protected and guaranteed right. Instead, it is treated as a special right with very limited access and only available within a long and specific timeframe.²⁷ The absence of specific regulations governing conjugal visit leaves room for regulation to be open, and with a rational

⁴¹ ²² Sandra Nicole Roldan, "The Conjugal Visit," *Likhaan: The Journal of Contemporary Philippine Literature* 12, No. 1 (1 Januari 2018), <https://doi.org/10.4135/9781412972024.n501>.

²³ Nopriyansah dan Rahayu, "Kontribusi Hukum Progresif Dalam Perubahan Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan."

²⁴ Muhammad Syahferi Adhi Ardani dan Odi Jarodi, "Analisis Pemenuhan Kebutuhan Seksual Narapidana di Rutan Kelas I Cipinang," *Jurnal Intelektualita Keislaman Sosial dan Sains*, 2023, <https://doi.org/10.19109/intelektualita.v12i002.19824>.

²⁵ Esti Cahya Ningsih dan Misrah Misrah, "Peran Layanan Bimbingan Individu Dalam Mengurangi Tekanan Mental Narapidana Perempuan Di Lembaga Pemasyarakatan," *Munaddhomah: Jurnal Manajemen Pendidikan Islam* 4, No. 2 (5 Juni 2023): 451–62, <https://doi.org/10.31538/munaddhomah.v4i2.484>.

²⁶ Dio Akbar Pratama, "Kunjungan Biologis Kebijakan Kunjungan Biologis di Lembaga Pemasyarakatan Sebagai Wujud Keadilan Sosial Bagi Warga Binaan," *PUSKAPSI Law Review* 1, No. 2 (30 Desember 2021): 132–132, <https://doi.org/10.19184/puskapsi.v1i2.28093>.

²⁷ Ina Heliandy and Muhenni Sihotang, "Application Of Conjugal Visit In The Indonesian Statutory System For Correctional Assisted Persons", *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 4, No. 2 (28 November 2022): 164–84, <https://doi.org/10.47006/ijierm.v4i2.158>.

consideration of urgency, it can be integrated into existing legislation or established through separate regulations.

To fill the regulatory gap on conjugal visits, practical recommendations are essential to align with Indonesia's correctional framework. One option is to amend existing rules, such as Permenkumham No. 3 of 2018, by incorporating provisions that allow intimate visits under strict conditions. Similar to the requirements for CMK, eligibility could be based on good behavior and approval from the correctional monitoring team. Another possibility is to create a new, dedicated regulation that explicitly addresses conjugal visits, ensuring safe implementation while supporting the rehabilitation process. Drawing insights from countries like Brazil and Germany, the Indonesian model can focus on family reintegration while excluding high-risk inmates. A pilot program in selected correctional facilities may also serve to evaluate the program's effectiveness before expanding it more broadly, balancing the need for biological fulfillment with the goals of the correctional system.

3.2 Practices of Fulfilling Inmate Sexual Needs of in Correctional Institutions

Incarceration removes inmates' freedom to directly interact with society. The modern penal paradigm requires the isolation of offenders to rehabilitate them before reintegration into society, or to detain them for life to keep them away from society, particularly for those convicted of serious crimes.²⁸ Restrictions on freedom, in practice in various countries and legal theories, cannot encompass biological needs. Joseph Nuttin and Gerson W. Bawengan categorize three types of biological needs that cannot be limited: physiological needs (such as food, shelter, rest, and personal hygiene), sexual needs, and protection. Restricting one or more of these biological needs constitutes a denial of the fundamental nature of human needs.²⁹

The function of incarceration cannot restrict sexual rights, with or without regulation. Benjamin Karpman, in *Sex Life in Prison*, asserts that sexual activity cannot cease with imprisonment. This logic is easily understood by recognizing that sexual drive is scientific, instinctual, and cannot be entirely controlled by confinement. Naturally, suppressed desires lead to tendencies toward rebellion, encouraging 'alternative efforts' to fulfill those needs.³⁰

The inability to meet sexual needs within correctional facilities carries significant social and psychological consequences. Suppressed sexual desires can increase frustration and emotional instability among inmates, which, in turn, may escalate into behavioral problems, such as violence, sexual harassment, or exploitation among prisoners. This situation not only disrupts the order within the facility but also undermines the primary goal of rehabilitation. Ignoring these needs risks fostering resentment and resistance, making inmates less receptive to reform efforts. Therefore, the inclusion of regulated mechanisms, such as conjugal visits, becomes an important consideration to prevent such negative outcomes. By addressing these biological needs in a controlled environment, the

²⁸ Andri Yanto, *Hukum dan Ketertiban: Fragmen Pemikiran Tentang Paradigma Hukum dan Perkembangannya* (Yogyakarta: Megalitera, 2022).

²⁹ Gerson W Bawengan, *Pengantar Psikologi Kriminal* (Jakarta: PT Pradnya Paramita, 1991).

³⁰ Benjamin Karpman, 'Sex Life in Prison', *Journal of Criminal Law & Criminology* 38, No. 5 (1948): 475-486.

correctional system can promote emotional well-being and create a safer, more humane atmosphere conducive to rehabilitation and eventual reintegration into society.

According to psychiatrist Feilin Tanita, the instinctual nature of sexual drive differs between male and female inmates. For women, this drive can be contained without causing the same level of turmoil experienced by men. Men who do not fulfill their sexual desires within an average period of 7-14 days may exhibit symptoms such as emotional changes, stress, depression, and aggression, due to the accumulation of testosterone. The release through unconscious means, such as wet dreams, is considered insufficient for a normal adult male and does not alleviate the desire for sexual expression through conjugal means.³¹

The turmoil arising from unmet sexual needs leads to various efforts and deviations within correctional facilities.³² First, this includes the practice of covert sexual relations, often involving bribery of prison staff.³³ According to Ferry, during his experience working in correctional facilities, it was not uncommon to encounter situations where spouses visiting together would enter the bathroom for sexual relations. In such cases, there was suspicion that some staff members received money from inmates.³⁴

The covert practices, often involving collusion with corrupt staff members in correctional facilities, align with the findings of Sony Sofyan (2005) at the Class IIB Sukabumi Correctional Institution. Sofyan's research revealed that similar practices had become common knowledge, referred to as 'manggul,' and were typically conducted in staff offices, storage rooms, and bathrooms.³⁵

Second, there is the practice of masturbation, either performed alone or with assistance from others. Masturbation is used as an alternative means to satisfy sexual urges, often involving the use of images or specific media to stimulate sexual excitement.³⁶ This situation correlates with the practice of smuggling magazines or smartphones into correctional facilities.³⁷ Meanwhile, masturbation with the assistance of another person occurs with a partner during visitation, where hands are inserted into the inmate's genitals through loose-fitting pants and done covertly. Although frequently encountered, correctional staff typically do not intervene as long as it occurs during visiting hours.

Third, there is the fulfillment of sexual needs through unnatural means, such as same-sex relationships (homosexuality). According to Eko Cahyono, there is no evidence

³¹ Researcher Interview with dr. Feilin Tanita, S.p., K.J, Bangka Belitung, July 23, 2024.

³² Muchamad Iksan dkk., "Fulfilling the Restitution Rights of Crime Victims: The Legal Practice in Indonesia," *Academic Journal of Interdisciplinary Studies* 12, no. 4 (5 Juli 2023): 152, <https://doi.org/10.36941/ajis-2023-0101>.

³³ Anastasya Ramadhini and Kasmanto Rinaldi, "Penanganan Lapas Terhadap Narapidana Homoseksual (Studi Kasus Lapas Kelas II A Pekanbaru)," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 2, No. 1 (17 February 2023): 29–35, <https://doi.org/10.55681/seikat.v2i1.368>.

³⁴ Researcher Interview with Ferry, Legal Extension Officer of the Ministry of Law and Human Rights, July 12, 2024.

³⁵ Sony Sofyan, "Pemenuhan Kebutuhan Seksual Narapidana Dalam Lembaga Pemasyarakatan (Studi Kasus di Lembaga Pemasyarakatan Sukabumi)" (Universitas Indonesia, 2005).

³⁶ Alexandra Vladu dkk., "Benefits and Risks of Conjugal Visits in Prison: A Systematic Literature Review," *Criminal Behaviour and Mental Health* 31, No. 5 (1 Oktober 2021): 343–61, <https://doi.org/10.1002/cbm.2215>.

³⁷ Humaira Afdini dan Amad Sudiro, "Urgensi Penanggulangan Over Capacity Lapas sebagai Upaya Pemenuhan Hak Bagi Narapidana," *Syntax literate: jurnal ilmiah Indonesia*, 2023, <https://doi.org/10.36418/syntax-literate.v8i11.14073>.

of homosexual relationships at the Class IIA Correctional Institution Pangkalpinang. However, there are no official reports on the number or occurrences of such relationships.³⁸ In general, homosexual practices, according to Merri Hafni, occur in two ways: through violence, threats, and coercion, or voluntarily. Voluntary homosexual relationships can happen either through personal relationships between homosexual individuals or through offers of compensation such as money, food, or cigarettes.³⁹

Based on interviews and observations at the Class IIA Correctional Institution Pangkalpinang, the practices for fulfilling sexual needs can be summarized in the following table:

Table 1. Practices for Fulfilling Sexual Needs at the Class IIA Correctional Institution Pangkalpinang

Normal Fulfillment	Unusual Fulfillment
Family Visit Leave (CMK)	Engaging in sexual activity discreetly during visiting hours, with or without bribing staff.
Pre-Release Leave (CMB)	Engaging in same-sex relationships, either through coercion or voluntary agreement.
Engaging in Other Activities	Smuggling images or smartphones through various methods to aid in masturbation.
Masturbation (performed solo)	

Source: Summary table by the Researcher.

According to Table 1, the practices for fulfilling sexual needs at the Class IIA Correctional Institution Pangkalpinang reveal a dichotomy between normal and unusual methods. Normal fulfillment methods include Family Visit Leave (CMK) and Pre-Release Leave (CMB), which provide inmates with limited opportunities to interact with their families. However, these methods often fail to adequately meet their sexual needs. In contrast, the table outlines several unusual practices that inmates resort to due to insufficient options. These include engaging in discreet sexual activities during visiting hours, which may involve bribing staff for facilitation. Additionally, some inmates participate in same-sex relationships, either through coercion or mutual consent, reflecting the impact of overcrowding on inmate behavior. The table also indicates that inmates smuggle images or smartphones into the facility to aid in masturbation, further highlighting the lengths to which they go to satisfy their needs in an environment lacking privacy and intimacy. These findings emphasize the urgent need for reform in addressing inmates' rights and well-being within correctional facilities.

Homosexuality and sexual deviations represent the greatest risks of unmet sexual needs among inmates in correctional facilities. Findings at the Class IIA Correctional Institution Pangkalpinang show that there are very few alternatives available to inmates, making deviant methods common despite being kept secret. This finding aligns with

³⁸ Researcher Interview with Eko Cahyono, Head of Bimker & Lohasker Subdivision of Class IIA Pangkalpinang Prison, July 24, 2024. 20

³⁹ Merri Hafni, Yuda Syahputra, and Lira Erwinda, "Homoseksual dan Transgender; Gender Dan Wilayah Tempat Tinggal", *Psychocentrum Review* 5, No. 1 (31 March 2023): 42–52, <https://doi.org/10.26539/pcr.511579>.

Gresham M. Sykes' research at the New Jersey State Prison in the United States, where 35% of the total sample studied had engaged in homosexual behavior in prison.⁴⁰

Morris G. Cadwell emphasizes that the prison community is an abnormal environment, notably including the formation of communities with sexual deviations driven by the restrictive conditions.⁴¹ This condition is further evidenced by Ahmad Taufik's findings (1996), who served as a political prisoner at Cipinang Correctional Institution. According to the Tempo journalist's findings, deviant practices became commonplace and were categorized into various types, including homosexuality through anal and oral methods, bestiality, bringing in sex workers, and the practice of 'being kept,' where a detainee is placed in a specific room for sexual gratification.⁴²

3.3 The Relationship Between Overcapacity in Correctional Facilities and Homosexual Behavior Among Inmates

Overcapacity is one of the most fundamental problems within correctional facilities.⁴³ According to Utomo Bintoro, overcapacity is a classic issue caused by insufficient available capacity, leading to cases of sexual harassment, health problems, stress, and violence within correctional facilities.⁴⁴ Similar views are expressed by V. Lee Bounds, who emphasizes that sexual issues within correctional facilities are driven by prison overcrowding.⁴⁵ Overcrowding within correctional facility rooms increases the vulnerability of inmates, particularly new and younger inmates, to threats from more senior and powerful inmates.⁴⁶ Cases reported by Donald Clemer and Gresham Sykes in *The Prison Community* and *The Society of Captives* also indicate that the correctional environment often forms communities led by one or more influential individuals who frequently exploit, including sexually, other weaker inmates, new inmates, younger inmates, or those not protected by strong groups.⁴⁷

Overcapacity in correctional facilities directly contradicts the principles of human rights, as it undermines the dignity, safety, and well-being of inmates. The overcrowded environment makes it difficult to ensure humane treatment, violating basic rights such as protection from inhumane or degrading treatment as outlined in international human rights standards, including the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). In such

⁴⁰ Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press, 2007), <https://doi.org/10.2307/j.ctv14164hw>.

⁴¹ Morris G Cadweel, "Group Dynamics in the Prison Community," *The Journal of Criminal Law, Criminology, and Police Science* 46, No. 5 (1956): 648–57.

⁴² Fausia Isti Tanoso, "Kebijakan Conjugal Visit Sebagai Pemenuhan Hak Bagi Narapidana" (Universitas Indonesia, 2012).

⁴³ Anita Triska, Muhammad Dzulfikar, dan Asep K. Supriatna, "The Dynamics of Prisoner Population Model in Indonesia with a Rehabilitation Regulation for Drug Users to Overcome Prison Overcapacity Issue," *Jambura Journal of Biomathematics (JJBm)* 4, No. 1 (27 Juni 2023): 55–62, <https://doi.org/10.34312/jjbm.v4i1.18898>.

⁴⁴ Utomo Bimantoro, Muhammad Irfan, dan Mara Sutan Rambe, "Dampak Over Kapasitas Di Lembaga Pemasyarakatan Kelas I Cipinang Bagi Narapidana," *Journal of Legal Research* 4, No. 4 (1 Agustus 2022): 1089–1104, <https://doi.org/10.15408/jlr.v4i4.21528>.

⁴⁵ Tanoso, "Kebijakan Conjugal Visit Sebagai Pemenuhan Hak Bagi Narapidana."

⁴⁶ B. Ricson Simarmata dkk., "The Remission and Detention Policy as an Effort to Overcapacity of Detention and Prison in Indonesia," *International journal of humanities & social studies* 10, No. 3 (31 Maret 2022), <https://doi.org/10.24940/thejhss/2022/v10/i3/hs2203-026>.

⁴⁷ Sykes, *The Society of Captives: A Study of a Maximum Security Prison*.

conditions, inmates are deprived of adequate space, sanitation, health services, and personal safety, exposing them to heightened risks of violence and abuse. This failure to provide a safe and dignified environment reflects a disregard for the state's obligation to uphold the fundamental rights of all individuals, including those deprived of their liberty. As a result, addressing overcapacity is not only a matter of improving prison management but also a necessary step to align the correctional system with human rights principles.

The phenomenon of overcrowding in correctional facilities is commonly encountered in almost all prisons across Indonesia. According to Poppy Rinafany, Head of the Subdivision for Legal and Human Rights Research and Development, the occupancy capacity of correctional facilities across the Bangka Belitung region and Class IIA Pangkalpinang Correctional Institution as of July 11, 2024, is as follows:

Table 2. Occupancy Capacity in Prisons Across Bangka Belitung and Class IIA Pangkalpinang Correctional Institution

No	Institution	Maximum Capacity	Occupied Number	Overcapacity Percentage
1	All correctional institutions in Bangka Belitung	1311 inmates	2689 inmates	205%
2	Class IIA Pangkalpinang Correctional Institution	513 inmates	247 inmates	208%

Source: Regional Office of Legal and Human Rights, Bangka Belitung Province (2024)

According to Table 1.1, the occupancy capacity of correctional facilities in the Bangka Belitung region reveals a significant issue of overcrowding. As of July 11, 2024, all correctional institutions in Bangka Belitung are operating at 205% over their maximum capacity, with a total of 2,689 inmates housed in facilities designed for only 1,311 inmates. Similarly, the Class IIA Pangkalpinang Correctional Institution is also experiencing severe overcrowding, accommodating 247 inmates, which exceeds its maximum capacity of 513 inmates, resulting in an overcapacity of 208%. These statistics highlight the critical challenges faced by the correctional system in managing inmate welfare and rehabilitation amid such overcrowding conditions.

According to Eko Cahyono, high levels of overcrowding in correctional facilities can influence homosexual activities through two factors. First, the use of living quarters that exceeds their intended capacity. At Class IIA Pangkalpinang Correctional Institution, the ideal number of inmates per room is 8-10, but the maximum occupancy can reach 20. With the number of inmates often doubling, rooms may be occupied by up to 40 individuals. The available facilities, such as single bathrooms and limited bedding, result in extremely cramped, restricted, and stuffy living conditions.⁴⁸ The air circulation in the hot living quarters causes most inmates to remove their clothing during the day and afternoon. In

⁴⁸Researcher Interview with Eko Cahyono, Head of Bimker & Lohasker Subdivision of Class IIA Pangkalpinang Prison, July 24, 2024.

such conditions, physical contact between inmates is unavoidable.⁴⁹ This situation increases the likelihood that an inmate may gradually become interested in homosexual activities, especially given the difficulty in engaging in sexual relations with a partner during visiting hours or family leave.⁵⁰

Second, the rehabilitation efforts within the prison environment, aimed at curbing inmates' desires, are difficult to optimize with the overcrowded conditions. Activities such as sports, work training, spiritual guidance, and other positive programs struggle to be effectively implemented due to the larger number of inmates than can be managed by the staff. Additionally, the facilities available for rehabilitation are insufficient, requiring them to be used on a rotating basis and scheduled according to the number of inmates. The ineffectiveness of rehabilitation leads to difficulties in detecting and addressing deviations among inmates.

The presence of homosexual practices within the prison environment is a well-known but unreported issue, except when involving violence or coercion. Over the past five years, from 2019 to 2024, there have been no formally reported cases of violence or coercion related to homosexuality. Generally, the Ministry of Law and Human Rights in Indonesia lacks data on inmates experiencing sexual deviations, as there has been no systematic recording of such cases. Research by Muklis Dinillah (2019), which involved interviews with several inmates at Bandung Prison, concluded that homosexual behavior is common within prisons. Inmates with deviant sexual orientations from the outset, such as transgender individuals, often become 'targets or favorite' and are frequently preyed upon and solicited. Meanwhile, younger, new inmates are often targeted by senior inmates who also have deviant sexual orientations.⁵¹

Further research on changes in sexual behavior among inmates was conducted by Christopher Hensley from the University of Tennessee at Chattanooga Prison. Hensley collected data on 142 male inmates regarding their sexual orientation before and after incarceration. According to the data obtained, it was found that 24 inmates experienced a change in sexual orientation. Specifically, 18 men transitioned from heterosexual to bisexual, 3 men shifted from bisexual to heterosexual, 1 man changed from bisexual to gay, and 1 man transitioned from gay to heterosexual.⁵² Although Hensley acknowledges that the sample size of the data collected was too small, there is a pattern indicating a change in sexual orientation within the inmate community. Given the average overcrowding conditions in Indonesian prisons and the lack of implementation of conjugal visit, the percentage of changes in sexual orientation might be even higher.

3.4 Legal Considerations for Implementing Conjugal Visit in Indonesia

⁴⁹ Henny Nuraeny dkk., "The Impact of Over Capacity On Fulfilling The Basic Rights Of The Assisted Citizen In Prison In The Perspective Of Human Right," *Proceedings of the First International Conference on Progressive Civil Society (ICONPROCS 2019)*, 1 Mei 2019, 149-52, <https://doi.org/10.2991/iconprocs-19.2019.30>.

⁵⁰ Muhammad Meidil dkk., "Vagueness in Law 35 of 2009 Regarding Narcotics Abuse That Makes Overcapacity Prisons," *Law and Justice*, 2022, <https://doi.org/10.23917/laj.v7i1.624>.

⁵¹ Mukhlis Dinillah, "Ragam Gerak-gerik Napi Gay Penghuni Penjara di Bandung," *Detik*, 10 Juli 2019, <https://news.detik.com/berita-jawa-barat/d-4618273/ragam-gerak-gerik-napi-gay-penghuni-penjara-di-bandung>.

⁵² Cristoper Hensley, "Attitudes Toward Homosexuality in a Male and Female Prison: An Exploratory Study," *Academy of Criminal Justice Sciences*, 80, No. 4 (2000), <https://doi.org/10.1177/0032885500080004008>.

The implementation of conjugal visit as a fundamental and inalienable human right is based on the mandate in Article 28B of the 1945 Constitution of Indonesia, which states that every person has the right to form a family and continue their lineage through lawful marriage.⁵³ Furthermore, Article 28H states that every person has the right to live a prosperous life, both physically and mentally, to have a place to live, and to receive a good living environment, as well as the right to receive health services. In Law Number 36 of 2009 on Health, Article 4 also states that everyone has the right to health, while Article 6 states that everyone has the right to a healthy environment for achieving a high level of health. The right to build a family through lawful and healthy marriage is a right that must be protected by the state. For inmates, who have had some of their rights revoked, the right to sexual needs, as part of maintaining a family and ensuring health, is a right that should not be neglected by the state.

Indonesia is also a country that recognizes the Standard Minimum Rules for the Treatment of Prisoners (SMR) 1957, which resulted from the United Nations Congress on Crime and the Treatment of Offenders (The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders). In the Social Relations and After-Care section of the SMR document, it is stated that: "...79. *Special attention shall be paid to the maintenance and improvement of such relations between prisoner and his family as are desirable in the best interest of both.* 80. *From the beginning of the prisoner's sentence, consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best of his family and his own social rehabilitation.*" Articles 79 and 80 mandate SMR member states to give special attention to the relationship between inmates and their families. In several countries, these articles have been implemented through the practice of conjugal visit.

According to Fitri Rusmono, conjugal visit are considered an instrument to reduce the rate of divorce among inmates. Data from Class IIA Correctional Institution Pangkalpinang shows that out of a total of 513 inmates, 105 are classified as divorced. From January to July 2024, there were 7 reported cases of divorce among inmates at Class IIA Correctional Institution Pangkalpinang.⁵⁴ In addition to financial factors due to the inability to provide support, divorce is also caused by unmet biological needs of partners. The high rate of divorces indicates that the lack of access to family maintenance through the fulfillment of sexual needs for inmates and their partners impacts the disruption of family structure, leading to more complex problems for inmates in the correctional institution.

The practice of conjugal visit is projected to be a solution that provides sustainable benefits for several parties, particularly for inmates, their families, and correctional officers. For inmates, the benefits of conjugal visit are divided into two aspects. First, it

⁵³ Eko Hidayat, "Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia," *ASAS: Jurnal Hukum Ekonomi Syariah* 8, No. 2 (2016), <https://doi.org/10.24042/asas.v8i2.1249>.

⁵⁴ Researcher Interview with Fitri Rusmono, Head of the Class IIA Prison Registration Subdivision of Pangkalpinang, July 24, 2024.

provides benefits by fulfilling sexual needs in a healthy and responsible manner. The mechanism of conjugal visit can prevent inmates from resorting to deviant and risky behaviors to satisfy their sexual needs, such as engaging in homosexual practices or hiring sex workers. Second, it reduces the risk of stress and depression by fulfilling sexual needs, which can release endorphins and positively affect the psychological condition of inmates, making them calmer. Inmates can experience the support of their family and loved ones, allowing them to undergo rehabilitation in a more peaceful manner.

For the families of inmates, conjugal visit offer benefits in two aspects. First, they help maintain family harmony and reduce the potential for divorce. Fulfilling sexual needs in a healthy manner can prevent the breakdown of family relationships and foster mutual trust. Second, it allows for the continuation of lineage even while serving a sentence. The right to continue one's lineage is a fundamental right for every family and cannot be restricted. For correctional officers, conjugal visit can enhance the effectiveness of rehabilitation efforts, with inmates who are calmer, maintain harmonious relationships with their families, and are healthier, thereby minimizing various forms of sexual misconduct within the correctional institution.

Throughout the reform of correctional institutions, conjugal visit were once held at the Police Detention Room (RTP) of Medan City Police in 2011. From May to October of that year, the conjugal visit room, named the "biological room," was used by 189 couples.⁵⁵ Each couple intending to use the biological room must undergo a baggage check by the officers, present their marriage certificate, family card, and ID card, and can only use the biological room for 30 minutes. The use of the biological room is also restricted to visiting hours, which are from 2:30 PM to 4:00 PM Western Indonesian Time (WIB). The first implementation of the biological room, which can be considered a prototype in 2011, serves as evidence that the implementation of conjugal visit can be applied in Indonesia. However, its implementation within correctional institutions has not yet been carried out.⁵⁶

According to Rita Ribawati, in 2019, a prototype space for conjugal visit named "bilik asmara" was created at the Kendari Women's Correctional Facility. A campaign to support the implementation of this space included the release of a song by Sri Puguh B. Utami titled "Jangan Patahkan Rindu Kami, Jangan Patahkan Cinta Kami" (Don't Break Our Longing, Don't Break Our Love). However, the implementation of the "bilik asmara" was hindered by budgetary and regulatory considerations, preventing its adoption.⁵⁷

The consideration for implementing conjugal visit at the Class IIA Correctional Institution Pangkalpinang, besides evaluating the benefits and adherence to international human rights regulations, also involves addressing the issue of homosexual practices among inmates within the facility. According to Ferry, based on his experience as a correctional officer, homosexual activities among inmates are frequently observed during nighttime inspections.⁵⁸ The procedures that correctional officers can follow are limited to

⁵⁵ Tanoso, "Kebijakan Conjugal Visit Sebagai Pemenuhan Hak Bagi Narapidana."

⁵⁶ Tanoso.

⁵⁷ Researcher Interview with Rita Ribawati, Head of the Child Guidance and Alleviation Subdivision of the Regional Office of the Ministry of Law and Human Rights of Bangka Belitung, July 12, 2024.

⁵⁸ Researcher Interview with Ferry, Legal Advisor at the Ministry of Law and Human Rights, July 12, 2024.

issuing warnings about the risks of sexually transmitted diseases, as long as there is no evidence of violence or coercion involved in the homosexual activities.

Many countries around the world have adopted conjugal visit programs as part of efforts to create a more humane correctional system. Nations such as Brazil, Canada, Germany, Spain, Mexico, and parts of the United States allow regulated intimate visits, recognizing that maintaining family relationships and fulfilling sexual needs can positively impact inmates' psychological well-being and reduce tension within correctional facilities.⁵⁹ These programs, implemented under strict conditions, require inmates to meet specific behavioral and eligibility criteria. The adoption of conjugal visits reflects a growing awareness that respecting inmates' basic human needs, including emotional and sexual needs, is essential to support rehabilitation, prevent violence, and align correctional policies with human rights standards.

Indonesia should also consider adopting such measures as part of its correctional reform to comply with human rights principles, particularly the SMR or Mandela Rules. These rules emphasize the importance of humane treatment, including maintaining family contact, which is essential for emotional stability and successful reintegration into society. Conjugal visits would help meet inmates' psychological needs, reduce the risks of violence or exploitation in overcrowded facilities, and promote rehabilitation.⁶⁰ As a party to various international human rights treaties, Indonesia is obligated to uphold the dignity and fundamental rights of all individuals, including those deprived of liberty. Without such reforms, the correctional system risks perpetuating inhumane conditions that hinder rehabilitation and contradict Indonesia's commitment to justice and social welfare.

3.5 Challenges and Solutions for Implementing Conjugal Visit in Indonesia

The practice of implementing conjugal visit in Indonesia, although discussed in plans for new regulations, has not been realized to date. Several key challenges are faced in applying conjugal visit in Indonesia. First, the prevailing penal paradigm in Indonesia has not fully shifted from the retributive theory. The transition from prisons to correctional facilities in Indonesia has brought about fundamental changes in the paradigmatic dimension to implement a penal approach based on the rehabilitation, reintegration, and recovery of inmates. However, in practice, the debate over the formation of conjugal visit regulations often faces opposition from lawmakers, particularly in Commission III of the Indonesian House of Representatives (DPR RI). There is a viewpoint that limiting the freedom to fulfill sexual needs is considered part of the punishment itself.

Second, there is concern about the potential for new methods of smuggling and bribery by certain individuals. Providing a special room for conjugal visit increases the vulnerability of security in correctional facilities to attempts to smuggle certain items that could be brought in by visitors for the inmates through the conjugal visit rooms. Physical searches conducted by correctional officers on visitors are limited and it is still possible for

⁵⁹ Alexandra Vladu dkk., "Benefits and risks of conjugal visits in prison: A systematic literature review."

⁶⁰ Aditya Yuli Sulistyawan dkk., "Kekerasan Seksual dan Cara Berpakaian Perempuan: Telaah Filsafat Hukum Dalam Paradigma Critical Theory, Et. Al.," *Jurnal Ius Constituendum* 8, no. 2 (15 Juni 2023): 259, <https://doi.org/10.26623/jic.v8i2.6093>.

contraband to go undetected, such as drugs that can be concealed in the mouth or anus. Additionally, there is the potential for bribery of correctional officers by inmates to gain access to the conjugal visit rooms, either by circumventing or violating existing regulations.

Third, the potential spread of sexually transmitted infections. Although conjugal visit may reduce the likelihood of homosexual behavior, an inmate who has already engaged in unhealthy sexual practices may transmit infections to their partner through the conjugal visit room. This situation could increase the risk of wider and more dangerous disease transmission. Fourth, the potential danger posed by inmates to their family members. There is concern that inmates might commit acts of violence against their partners in the conjugal visit room. This risk could be difficult to detect if inmates deliberately pretend to behave well while expressing their emotions during the visit. The limited supervision by correctional officers during conjugal visit presents a challenge that needs to be addressed.

Fifth, budget limitations and the need for additional facilities. The implementation of conjugal visit, if regulated by law, should not be restricted to male inmates but should also include female inmates. For female inmates, pregnancies resulting from conjugal visit present new challenges, necessitating additional facilities such as pregnancy support, healthcare services, delivery facilities, and facilities for children.⁶¹ This situation becomes complex and may lead to increased budget expenditures for managing the correctional institution.

To address the complexity of the above challenges and the urgency related to fundamental human rights principles and benefits, a precise strategy is required for implementing conjugal visit in Indonesia. First, it is essential to prepare a clear and firm legal foundation that regulates the implementation of conjugal visit, including mechanisms, requirements, and conditions for their execution in Indonesia. Regulatory aspects are necessary to ensure that conjugal visit are implemented with legal certainty.⁶²

Second, establish the types of facilities needed and grant accreditation to correctional facilities. Prisons should be authorized to implement conjugal visit only if they have adequate supporting facilities, including designated rooms for conjugal visit, healthcare professionals to assess the health of inmates and their partners, compliance officers, and the availability of appropriate standard operating procedures.⁶³ Third, conduct regular health checks for inmates to identify the spread of diseases, including sexually transmitted infections, drug use, and other symptoms emerging within the prison. Inmates known to have diseases before or after using the conjugal visit room should be restricted from accessing it until they are declared fit or healthy. Restrictions on using the conjugal visit

⁶¹ Natasha Maria Wangen Krahn dkk., "Conjugal Visits in the Context of Incarceration of Women and Girls in the State of Bahia, Brazil: Permissions, Prohibitions and (In)Visibilities" 10, No. 2 (1 April 2020): 415–41, <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1052>.

⁶² Muhammad Junaidi dan Khikmah Khikmah, "Perlindungan Hukum Dan Penempatan Pekerja Migran Indonesia Di Luar Negeri," *Jurnal USM Law Review* 7, no. 1 (1 Mei 2024): 490, <https://doi.org/10.26623/julr.v7i1.8127>.

⁶³ Muhammad Wirtsa Firdaus dkk., "Urgensi Resolusi Konflik Klaim Nine Dash Line Tiongkok Di Perairan Natuna Utara," *Jurnal Ius Constituendum* 8, no. 2 (28 Juni 2023): 277, <https://doi.org/10.26623/jic.v8i2.6972>.

room should be based on health-related reasons or proven misuse of the room for illegal activities, such as drug smuggling.

Fourth, phased implementation. The introduction of conjugal visit in Indonesia can be carried out in stages. This phased approach should start with prisons that have adequate facilities and progress as improvements are made in other prisons and as housing conditions are improved to address overcapacity issues. A phased implementation system allows for the gradual adoption of conjugal visit without having to wait for all prisons in Indonesia to be fully prepared.⁶⁴

The implementation of conjugal visit represents a progressive step in Indonesia's correctional system. The transformation of the penal paradigm from incarceration to correctional rehabilitation requires the gradual integration of human rights values until optimal criteria are met. The biological right to fulfill sexual needs is a fundamental right that cannot be restricted by the state, but its implementation can be regulated and limited based on reasonable considerations. In practice, the conjugal visit policy is recognized and implemented in various countries across Europe, North America, South America, and Central Asia. In Southeast Asia, conjugal visit are implemented in Thailand and Malaysia.⁶⁵

Malaysia implemented the conjugal visit policy based on the Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia (National Council for Islamic Religious Affairs) in its 86th session in 2009. The Muzakarah decided that the state is obligated to provide access for prisoners to meet both spiritual and physical needs in accordance with Islamic teachings. By adopting an approach similar to that implemented in Malaysia, the Indonesian government can incorporate conjugal visit into the prison system domestically. Formulating regulations and policies related to conjugal visit requires certainty and commitment in legal politics based on human rights values.

4. CONCLUSION

The restriction of inmates' rights to fulfill their sexual needs in prison is closely linked to various deviant behaviors, exacerbated by overcrowding. Limited access to meet these needs has resulted in the emergence of homosexuality, increased rates of sexually transmitted diseases, higher divorce rates, and difficulties in rehabilitation, all of which violate inmates' human rights. Articles 28B and 28H of the 1945 Constitution, alongside Articles 79 and 80 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (1957), guarantee the right to family formation. In the Class IIA Correctional Institution Pangkalpinang, the consequences of unmet biological needs have manifested in covert sexual activities and rising divorce rates among inmates. Current mechanisms for family visits and pre-release leave are insufficient to address these fundamental rights. Implementing conjugal visits presents a viable solution, offering psychological benefits, fostering family harmony, preventing sexual deviance, and enhancing rehabilitation.

⁶⁴ Muhamad Irfan Sofyana dan Rocky Marbun, "Ratio Legis dan Keberlakuan Sosiologis Pembaharuan Kebijakan Pembebasan Bersyarat Bagi Narapidana Korupsi," *Jurnal Ius Constituendum* 8, no. 3 (17 Oktober 2023): 359, <https://doi.org/10.26623/jic.v8i3.7104>.

⁶⁵ Sukardi, Angkasa, and Budiyo, "Efektivitas Conjugal Visit di Lembaga Pemasyarakatan Terbuka Kelas IIB Nusakambangan", *Jurnal Idea Hukum*, 2023, <https://doi.org/10.20884/1.jih.2023.9.1.411>.

However, challenges such as legal gaps, budget constraints, and facility limitations hinder its implementation. To overcome these obstacles, it is essential to establish a clear legal framework, gradually enhance prison facilities, and ensure the availability of healthcare resources and defined procedures for using conjugal visit spaces. By reflecting on practices from other countries and the 2011 prototype at Polresta Medan, the Indonesian government can accelerate the integration of conjugal visits into its correctional system reform agenda.

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