

Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards

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Abstract

This study is grounded in the principle that human rights are inherent and cannot be separated from individuals under any circumstances, including those serving prison sentences. Although imprisonment restricts personal liberty, it does not eliminate basic rights; however, violations of prisoners' rights remain widespread globally and within Indonesia, including overcrowded and degrading prison conditions, forced labor practices, and inadequate access to healthcare, education, and legal aid. The research examines how international legal instruments regulate the protection of prisoners' rights and how these standards are implemented within Indonesia's correctional system. Employing a normative legal research method with a statutory approach, the study draws upon primary legal sources, such as international conventions and national legislation, as well as secondary materials consisting of academic writings, journal articles, and official reports. The findings indicate that several international instruments



establish universal standards for the treatment of prisoners, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Convention against Torture (1984), the Nelson Mandela Rules, and the Bangkok Rules for women prisoners. Indonesia has ratified key conventions and possesses a comprehensive domestic legal framework, including the 1945 Constitution, Pancasila, and Law Number 22 of 2022 on Corrections. Nonetheless, practical implementation remains limited due to persistent prison overcrowding, insufficient health facilities, unmet gender-specific needs of women prisoners, and the absence of ratification of the Optional Protocol to the Convention against Torture (OPCAT). The study concludes that despite strong normative foundations, there remains a significant gap between legal standards and correctional realities, and recommends ratifying the OPCAT, increasing correctional resources, strengthening rehabilitation-based programs, and adopting gender-responsive prison policies to align national practice with international human rights norms.

Keywords

Prisoners' Rights; International Instruments; Human Rights.

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Introduction

Human existence cannot be separated from the concept of human rights, as these rights are embedded within every individual from the moment of birth.¹ According to Wilujeng (2013), human rights represent a sacred endowment bestowed by God, which means that no human authority, organization, or state possesses the legitimacy to annul or diminish them. Any worldly power cannot sever the close interrelation between the individual and human rights, since these rights are fundamental to the very essence of being human.² John Locke was among the earliest thinkers to articulate this principle, emphasizing that human rights are intrinsic, originating from the Creator of all things. Consequently, the universality of human rights affirms that they are not subject to annulment or limitation by any governing authority, regardless of jurisdiction.

The matter of human rights has emerged as a paramount concern for the worldwide society. The adoption of the Universal Declaration of Human Rights (UDHR) on December 10, 1948, signifies the unified dedication of states to acknowledge, uphold, and safeguard the intrinsic dignity and liberties of all individuals without discrimination.³ The UDHR delineates fundamental principles, encompassing the acknowledgement of human dignity, the pursuit of harmonious international relations, the protection of rights through the rule of law, the advancement of gender equality, and the encouragement of international collaboration to ensure universal adherence to fundamental freedoms. This milestone declaration establishes an ethical framework and imposes a legal and political

¹ Sri Rahayu Wilujeng, "HAK ASASI MANUSIA: TINJAUAN DARI ASPEK HISTORIS DAN YURIDIS," *HUMANIKA* 18, no. 2 (13 Juli 2013), <https://doi.org/10.14710/humanika.18.2>.

² "Penyelesaian Pelanggaran Hak Asasi Manusia Di Masyarakat | Agatha | Indigenous Knowledge," diakses 5 Juli 2025, <https://jurnal.uns.ac.id/indigenous/article/view/76644>.

³ Meri Anggraeni dkk., "Menjembatani Barat Dan Timur: Implementasi Prinsip Ham Universal Dalam Yuriprudensi Islam Kontemporer," *JUSTITABLE - Jurnal Hukum* 7, no. 2 (5 Februari 2025): 148–55, <https://doi.org/10.56071/justitable.v7i2.1141>.

commitment on governments to uphold human rights as the basis for peaceful coexistence.

Every state, therefore, carries the responsibility to comply with the provisions enshrined in the UDHR and related conventions. The bond between the state and its citizens imposes a legal and moral duty upon governments to protect, respect, and fulfill the human rights of their populations. This obligation extends even to those who are deprived of liberty. Individuals serving prison sentences retain their basic rights as human beings, despite the restrictions imposed on their freedom.⁴ Article 6 of the UDHR affirms that all persons are entitled to equal recognition before the law, ensuring that incarceration does not nullify the essence of human dignity. The state must therefore take concrete actions to guarantee the fulfillment of such rights, particularly in correctional contexts.

Correctional measures should not be reduced merely to punishment or retribution for crimes committed.⁵ If punishment is narrowly viewed as penalizing offenders, it risks reinforcing the perception that incarceration serves only to segregate individuals temporarily without addressing the deeper issues of behavior and accountability. A more constructive approach emphasizes the importance of educating inmates about the consequences of their unlawful actions, with the broader objective of reducing recidivism and fostering personal responsibility toward themselves, their families, and society. Such an approach requires a rehabilitative process that integrates education, counseling, and structured guidance.

The role of correctional institutions extends beyond merely restricting liberty; they also function as centers for rehabilitation and reintegration. By

⁴ Andi Akhirah Khairunnisa, "PENERAPAN PRINSIP-PRINSIP HAK ASASI MANUSIA DALAM PEMBENTUKAN PRODUK HUKUM OLEH PEMERINTAH DAERAH," *JURNAL MP (MANAJEMEN PEMERINTAHAN)*, 13 Juni 2018, 65–78.

⁵ Umi Hamidah Alfita, "Perlindungan HAM Terhadap Narapidana Di Lapas," *Gudang Jurnal Multidisiplin Ilmu* 1, no. 4 (1 Oktober 2023): 12–16, <https://doi.org/10.59435/gjmi.v1i4.95>.

employing structured mentoring and educational programs, prisons aim to transform offenders into responsible individuals who can make positive contributions to society upon release. These institutions are mandated to uphold the principles of justice by striking a balance between accountability and rehabilitation.⁶ Within this framework, prisoners are entitled to protection from torture, access to healthcare, and equal recognition before the law.⁷ Correctional facilities thus embody a dual mission: ensuring security while simultaneously providing opportunities for reform and reintegration in alignment with human rights standards.

The universality of human rights also necessitates the formulation of international legal frameworks that establish minimum standards for the treatment of prisoners.⁸ These instruments are designed as benchmarks to guide governments in creating humane correctional policies. The development of such frameworks arises from the interconnected nature of states in the globalized era, where legal challenges often transcend national boundaries.⁹ As international relations become increasingly complex, global instruments are essential for regulating conduct among states and ensuring that fundamental human rights are uniformly respected, including within the correctional system.¹⁰

⁶ Fauzan Alkautsar, "Perlindungan Hukum Terhadap Hak Narapidana Wanita Berdasarkan Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan (Studi Kasus Lapas Kelas II A Kuningan)," *Uniku Law Review* 1, no. 2 (26 Desember 2023), <https://doi.org/10.25134/ulr.v1i2.21>.

⁷ Alfita, "Perlindungan HAM Terhadap Narapidana Di Lapas."

⁸ Sophia Diniyah Cahyaningsih, *Pelaksanaan Standard Minimum Rules for the Treatment of Prisoners Menurut Undang-Undang No. 12 Tahun 1995 tentang Pemasyarakatan di Lapas Kelas II A Sragen* (Skripsi, Fakultas Hukum Universitas Sebelas Maret, 2010), pp.34; Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 1 (2025): 127–51, <https://doi.org/https://doi.org/10.33756/jlr.v7i1.27595>.

⁹ Arya Pradipa dan Muhamad Jodi Setianto, "PERAN DAN FUNGSI MEMPELAJARI HUKUM INTERNASIONAL BAGI MAHASISWA," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 3 (5 September 2022): 214–21, <https://doi.org/10.23887/jpku.v10i3.52028>.

¹⁰ Tri Ayu Andira dkk., "Peran Hukum Internasional Pada Penyelesaian Sengketa Internasional (Studi Kasus Sengketa Palestine Serta Israel)," *AL-MIKRAJ Jurnal Studi Islam Dan Humaniora (E-ISSN 2745-4584)* 5, no. 01 (6 Juli 2024): 41–49, <https://doi.org/10.37680/almikraj.v5i01.5572>.

A wide range of international legal documents has been adopted to address these concerns, particularly those related to the treatment and protection of prisoners. Among them are the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners, which establish comprehensive guidelines for humane detention conditions. Complementary instruments include the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, the Optional Protocol to the Convention against Torture (OPCAT), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (Bangkok Rules). Collectively, these frameworks form a global standard that emphasizes respect for human dignity, regardless of an individual's incarceration status.

Indonesia has also undertaken significant reforms in its penal system, moving away from a punitive and retributive approach toward a model that emphasizes rehabilitation, mentoring, and reintegration. This transformation is embodied in Law No. 22 of 2022 on Corrections, which expands upon Law No. 12 of 1995 and reflects the philosophy of restorative justice. The reformed system underscores the importance of treating inmates with dignity, ensuring that correctional institutions prepare them for reintegration as responsible members of society. This direction aligns with constitutional guarantees under Article 28D(1) of the 1945 Constitution and with Indonesia's international commitments under the ICCPR and CAT, highlighting the nation's adherence to both domestic and international standards of human rights.

Yet, despite these strong legal foundations, serious challenges persist in practice. Chronic overcrowding in correctional institutions hinders access to adequate sanitation, healthcare, and food. The specific needs of female prisoners, such as reproductive health services and protection from sexual violence, remain insufficiently addressed. In addition, Indonesia's failure to ratify the Optional Protocol to the Convention against Torture (OPCAT) leaves the country without an independent preventive mechanism at the national level responsible for supervising detention facilities and preventing inhumane treatment. These shortcomings reveal a critical gap between Indonesia's legal commitments and the lived realities within its prisons, underscoring the urgent need to harmonize correctional practices with international standards, such as the Beijing Rules, the Nelson Mandela Rules, the Bangkok Rules, and the CAT.

Method

This legal article will describe the rights of prisoners in accordance with international law. The objective is to discover and categorize international legal instruments that govern the rights of prisoners. This essay will elucidate the significance and ramifications of international law on national correctional practices, particularly in Indonesia, to enhance comprehension, promote state adherence, and facilitate the reform of the penitentiary system.

Legal research is an analytical endeavor that employs a systematic and consistent methodological approach to data generation. Research methods are essential as they are a fundamental component of scientific research and development. In conducting research, it is necessary to ensure alignment between the research topic and the employed methodologies to obtain reliable and comprehensive data in this work.

The research approach employed in this work is normative legal research, which involves examining literature or secondary materials to address the author's inquiries. Normative legal research involves examining written rules and various legal documents accessible in libraries and legal publications. This research is categorized as "fact-finding" research, intended to uncover facts regarding the legal phenomena under investigation.

This research is fundamentally qualitative and descriptive in nature. This study is a descriptive qualitative research endeavor that aims to thoroughly and accurately depict phenomena, investigate subjective interpretations and significances from participants' viewpoints, employ adaptable methodologies such as interviews and observations, and analyze non-numeric data to discern patterns and themes. This study is inherently naturalistic since it refrains from manipulating factors and emphasizes the depth of data within the natural environment of the persons being studied.

This research employs the Statute Approach. Normative legal research is very strongly associated with the statutory method. The statutory method involves examining and analyzing all laws and regulations pertinent to the legal research problem under consideration.

Result and Discussion

A. Identification and Grouping of International Legal Instruments Concerning Prisoners' Rights

The assurance of human rights protection and the principle of legal equality apply to all citizens, even those experiencing incarceration in Correctional Institutions (Lapas) or referred to as prisoners.¹¹ The

¹¹ Sonia Rohmawati Sondjaya dkk., "Pengaturan Hak Dan Kewajiban Narapidana Lapas Kelas Iia Permisan Nusakambangan Di Dalam Sistem Peradilan Pidana: Sebuah Kajian Terhadap Implikasi

fundamental rights of inmates are entitlements that must not be disregarded, regardless of the crime committed or the term imposed. Irrespective of a prisoner's criminal actions, their fundamental rights as a citizen must be consistently safeguarded.¹² The jail system has evolved from one characterized by suffering and retribution, with violations of inmates' rights, to a correctional system that emphasizes protection and rehabilitation, ensuring the safeguarding of prisoners' rights.¹³

Prisoners is a modern iteration of the antiquated phrase referring to individuals who are condemned or penalized. Prisoners are individuals who have committed a crime and have been adjudicated guilty by a judge authorized to impose criminal penalties. Upon conviction, they are required to complete a rehabilitation period in jail. A convict is an individual who serves a designated period of incarceration. Despite the temporary loss of freedom, the rights of convicts are preserved within the framework of the penal system. Correctional prisoners denote those participating in rehabilitation programs. The rehabilitation of these convicts aims to facilitate their reintegration into society as responsible members with defined roles and responsibilities.¹⁴

According to Bambang Poeromo, inmates are still considered members of society; nevertheless, when incarcerated, they are temporarily separated from their community and must adhere to certain protocols and community structures. Upon release, inmates are expected to become law-abiding members of society. All three of these groups—inmates, correctional students, and correctional clients are housed in correctional

Perubahan Undang-Undang,” *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (14 Januari 2024), <https://journal.forikami.com/index.php/dassollen/article/view/589>.

¹² Ibid.

¹³ Febriana Putri Kusuma, “IMPLIKASI HAK-HAK NARAPIDANA DALAM UPAYA PEMBINAAN NARAPIDANA DALAM SISTEM PEMASYARAKATAN,” *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 2, no. 2 (1 Agustus 2013), <https://doi.org/10.20961/recidive.v2i2.32028>.

¹⁴ Alfita, “Perlindungan HAM Terhadap Narapidana Di Lapas.”

institutions. Inmates in rehabilitation programs enjoy the same rights as any other member of society, including the opportunity to grow spiritually and physically, religious freedom, social interaction, knowledge, and education.¹⁵

From ancient times to the present day, human rights violations in jails have often occurred in many parts of the world, where those who usually believe that those who have given up their freedom do not have any rights whatsoever.¹⁶ When compared to other countries, the United States has the highest incarceration rate and the largest jail population. Compelled labor for private and public companies is something that about two-thirds of American prisoners are required to do. According to reports, parolees in Alabama get a meager \$2 per day. From 1928 onward, this cultural practice of forced labor has persisted. In December 2023, it was recorded. The Alabama jail system is the target of a lawsuit. Claims of gross violations of prisoners' rights, including severe abuse, retaliation, dangerous working conditions, violations of parole regulations, and insufficient medical care, formed the basis of the lawsuit.¹⁷

Prisoners' rights are violated even in developed countries like the UK. Prohibiting incarcerated people from casting ballots in general elections violates their human rights. The European Court of Human Rights has ruled on the voting rights of prisoners and inmates. In its ruling, the court asked for a change to the law. A violation of Article 3 of the First Protocol to the European Convention on Human Rights, which pertains to the right to free elections, was found in the case involving 1,015

¹⁵ Ibid.

¹⁶ "Hak-hak Narapidana," ELSAM, diakses 5 Juli 2025, <https://www.elsam.or.id/bisnis-dan-ham/hak-hak-narapidana>.

¹⁷ "Modern American Slavery: Forced Prison Labor – UAB Institute for Human Rights Blog," diakses 5 Juli 2025, <https://sites.uab.edu/humanrights/2024/02/01/modern-american-slavery-forced-prison-labor/>.

prisoners.¹⁸

Human rights violations against prisoners are unfortunately widespread in many African nations, including Lesotho. After investigating allegations of abuse against Maseru Central Correctional Institution prisoners, the Ombudsman of Lesotho released a report outlining the findings in December 2023. The Lesotho Ombudsman found that prison staff deliberately caused disputes between convicts. It became clear that the jail wardens had planned the search to spark conflict among the prisoners. A broader plot to hide the information was also exposed by the Lesotho Ombudsman, who also exposed the brutality and mistreatment of injured inmates.¹⁹

There were also people detained in Indonesia who had been victims of human rights violations. Class IIB Demak Prison is overcrowded, as it now houses 277 inmates, despite having an optimal capacity of 100. This circumstance, together with the inmates' incapacity to exercise their rights as a result of the numerous riots and disturbances that occur within the facility, has led to inadequate usage of prison facilities. Evidence suggests that the facility's medical treatment is lacking, increasing the likelihood that convicts would get a wide range of infectious illnesses, including skin conditions. Group exercises, prayers, and personal development programs are also ineffective due to a lack of space and other facilities.²⁰

Any respectable administration must safeguard the human rights of its inmates. This will open the door to innovative methods of treating prisoners based on fundamental human rights worldwide. This

¹⁸ "UK Prisoner Voting Rights Breached, European Judges Rule," *BBC News*, 10 Februari 2015, bag. UK, <https://www.bbc.com/news/uk-31356895>.

¹⁹ "Lesotho - March 2024 | The Global State of Democracy," diakses 5 Juli 2025, <https://www.idea.int/democracytracker/report/lesotho/march-2024>.

²⁰ Indra Yuri Pradana dan Edi Pranoto, "Pelaksanaan Pemenuhan Hak-Hak Narapidana Di Rutan Kelas IIB Demak," *Terang: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (21 Februari 2024): 57-74, <https://doi.org/10.62383/terang.v1i1.61>.

foundation has been formally acknowledged by governments worldwide.²¹ The state must constantly uphold, protect, and safeguard the basic human rights of all detainees. On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was proclaimed. It is still considered the most important instrument for protecting human rights and gaining their worldwide acknowledgment.²² The Universal Declaration of Human Rights (UDHR) has been a watershed document for humanity since the conclusion of World War II, and almost everyone acknowledges this. The UDHR's stated principles are now recognized as basic principles that no state may violate, after years of being considered just international customary law.²³

It is believed that all people possess inherent rights simply because they are human, and the UDHR outlines these rights in its articles. Thus, it is the duty of every entity, the state, society at large, and every individual, to guarantee the safety, fulfillment, and respect of every person's human rights.²⁴ The human rights concepts outlined in the UDHR encompass civil, political, economic, social, and cultural issues. Throughout the world, governments are looking to a formal statement that outlines fundamental human rights principles for guidance on how to implement them.²⁵

²¹ Graciella Devi Maharani dan Herry Fernandes Butar Butar, "STUDI DESKRIPTIF PELAYANAN KESEHATAN BAGI WARGA BINAAN PEMASYARAKATAN DI LEMBAGA PEMASYARAKATAN KELAS II B WONOSARI," *Gema Keadilan* 9, no. 1 (24 Agustus 2022): 36–56, <https://doi.org/10.14710/gk.2022.15651>.

²² Nabila Nazifah, "Hak Narapidana Dalam Perspektif Hak Asasi Manusia Di Lembaga Permayarakatan Kelas II A Samarinda," *Nomos: Jurnal Penelitian Ilmu Hukum* 1, no. 3 (28 Mei 2021): 98–105, <https://doi.org/10.56393/nomos.v1i3.574>.

²³ John P. Humphrey, "The Revolution in the International Law of Human Rights," *Human Rights* 4, no. 2 (1975): 205–16.

²⁴ Mizaj Iskandar, "HAM Dalam Prespektif Islam," *Media Syari'ah: Wabana Kajian Hukum Islam Dan Pranata Sosial* 19, no. 1 (24 Oktober 2017): 111–26, <https://doi.org/10.22373/jms.v19i1.2017>.

²⁵ Abdul Muthalib dkk., "Evaluasi Pelaksanaan RANHAM 2004-2009 dan Rencana Ratifikasi Optional Protocol To The Convention Against Torture (CAT) dalam RANHAM 2004-2009 dan

The concept that would later become the UDHR, or United Nations Declaration of Human Rights, originated in the 17th century. Conceived during this era in opposition to theocracy and tyranny, the ideals of personal freedom and self-determination would later shape the French and American Revolutions. The broad acceptance of legal equality in the 19th century also led to the establishment of human rights. We succeeded in recognizing each person as a social entity worthy of legal protection. These two rights, which were developed in the 1900s, formed the basis of the Universal Declaration of Human Rights (UDHR). One of the primary objectives of the United Nations is to promote international cooperation in addressing economic, social, cultural, humanitarian, and human rights issues on a global scale, as outlined in Article 1, paragraph 3 of the UN Charter. The Universal Declaration of Human Rights established a foundation of consensus when it said that the UN is committed to preserving and protecting the rights of all people, regardless of their gender, socioeconomic status, language, or religion.²⁶

The approval and proclamation of the UDHR were prompted by UN Resolution 217 A (III). Many consider the UDHR to be the first truly global principle that applies to everyone. People from various regions of the globe have always held differing views on a variety of topics, including religion, politics, philosophy, economics, and culture. The Universal Declaration of Human Rights (UDHR) seeks to address these inconsistencies by asserting that human rights are rooted in natural law. The UDHR emphasizes the concept that people are born with unalienable rights, and there is a strong sense that natural law is superior to state law.²⁷

A call to action for the global community to uphold and defend the

Perencanaan RANHAM 2010-2014,” Report:Report (Kemitraan bagi Pembaruan Tata Pemerintahan, 2012), <https://www.neliti.com/publications/424/>.

²⁶ Zeffry Alkatiri, “Multikultur dan Multiperspektif dalam HAM Internasional,” *Wacana, Journal of the Humanities of Indonesia* 8, no. 2 (31 Oktober 2006), <https://doi.org/10.17510/wjhi.v8i2.235>.

²⁷ Ibid.

rights and freedoms outlined in the thirty articles of the Universal Declaration of Human Rights (UDHR). The UDHR's list of rights, based on the principles of liberty and fraternity, reflects this liberal spirit prevalent throughout the French Revolution. Additionally, reflecting a socialist viewpoint, the UDHR simultaneously recognizes social, cultural, and economic rights. Everyone is born free from discrimination, regardless of their race, color, sex, religion, national origin, ethnicity, wealth, or any other status. The UDHR states in Articles 1 and 2 that all people are entitled to the same rights and dignity. The first three sections address fundamental freedoms, while the second and third sections cover political rights. The last two parts encompass economic, social, and cultural rights.²⁸

In general, the fundamental human rights and freedoms of individuals in the UDHR are detailed as follows:

Articles 3 to 19 regulate fundamental civil rights and freedoms, namely:

- a. The right to live in liberty and security;*
- b. No slavery;*
- c. No more torture, punishment, or sadistic acts, which are inhumane and degrade human dignity;*
- d. The right to equal recognition before the law;*
- e. The right to receive legal aid when his rights are not fulfilled;*
- f. No more arrests, imprisonment, and exile without a clear basis;*
- g. The right to a transparent and fair trial by an impartial and independent judicial body;*
- h. The right to the presumption of innocence;*

²⁸ Dedy Nursamsi, (2015), Instrumen dan Institusi Internasional Dalam penegakan HAM, *Salam; Jurnal Sosial dan Budaya Syar'i*, 2(2), p. 427.

- i. Rights to housing, family, and communication;*
- j. The right to freely reside in any area;*
- k. The right to obtain asylum from another country to avoid persecution in one's own country;*
- l. The right to citizenship;*
- m. Individual rights in forming a family;*
- n. Rights in the form of wealth;*
- o. The right to freedom of thought, conscience, religion, and belief; and*
- p. The right to freely express opinions.*

Articles 20 and 21 regulate political rights, namely:

- a. The right to assemble and associate peacefully, and the right not to be involved in an association; and*
- b. The right to participate in government, including the right to participate in the government of one's country.*

Articles 22 to 28 regulate economic, social, and cultural rights, namely:

- a. The right to social and economic security, as well as guarantees of social and cultural rights;*
- b. The right to decent work, fair income, and the opportunity to join a trade union;*
- c. The right to get time off and rest;*
- d. The right to receive adequate standards of value;*
- e. The right to education;*
- f. The right to participate in the cultural life of society; and*
- g. Rights in the form of a social and international order in*

which these rights are recognized.

The rights articulated in the UDHR are generally applicable to all individuals, including those who are detained or serving prison terms. Article 5 of the UDHR forbids torture, punishment, and sadistic acts that are violent and demeaning to human dignity, whereas Article 7 asserts the right to equal respect under the law.²⁹

Article 5 of the UDHR defines inhumane treatment as any treatment that inflicts significant mental or physical pain, yet does not attain the severity of cruelty classified as torture. Prison facilities that fail to meet established standards, impose disproportionate punishment, and use discriminatory practices against inmates based on their backgrounds exemplify cruel treatment. The premise is that both the criminal justice system and law enforcement must prioritize individual dignity above everything else.³⁰

The United Nations Declaration on Human Rights (UDHR) is not a legally binding international treaty; it functions merely as a framework. International organizations that develop human rights accords, particularly those related to prisoner rights, use the UDHR as a standard for the proper acknowledgment and protection of these fundamental freedoms. The UDHR, as a kind of customary law, has become an integral

²⁹ Hanafi Hanafi, "Upaya Regulatif Pemenuhan Hak-Hak Narapidana Pada Sistem Pemasyarakatan Di Indonesia," *Al-Adl : Jurnal Hukum* 15, no. 2 (20 Juli 2023): 380–403, <https://doi.org/10.31602/al-adl.v15i2.7286>.

³⁰ Brilyan Yudha Pratama, Tajul Arifin, dan Ine Fauzia, "Relevansi Pasal 5 Deklarasi Universal Hak Asasi Manusia Dan Al-Qur'an; Kontruksi Historis Pidana Islam," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 10, no. 1 (2 Februari 2025): 67–84, <https://doi.org/10.32505/legalite.v10i1.10231>.

³⁰ Brilyan Yudha Pratama, Tajul Arifin, dan Ine Fauzia, "Relevansi Pasal 5 Deklarasi Universal Hak Asasi Manusia Dan Al-Qur'an; Kontruksi Historis Pidana Islam," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 10, no. 1 (2 Februari 2025): 67–84, <https://doi.org/10.32505/legalite.v10i1.10231>.

part of international law. The UDHR has evolved from a legally binding instrument to a reference point for United Nations member states, while preserving its treaty attributes.³¹

Furthermore, supplementary international instruments concerning the protection of prisoners' rights include the International Covenant on Civil and Political Rights (ICCPR). This covenant occupies a distinctive position among international human rights treaties, particularly when compared to agreements that emphasize economic, social, and cultural rights. The ICCPR primarily governs civil and political rights, often referred to as negative rights, which are obligations requiring the state to refrain from interfering with individual freedoms. These rights demand state non-intervention in areas such as arbitrary arrest, discrimination, torture, extrajudicial killings, and other violations of personal liberty. By emphasizing restraint rather than proactive provision, the ICCPR ensures that governments uphold their responsibility to respect the autonomy and dignity of every person.

In general, the ICCPR regulates civil and political rights, such as:

- a. the right to life as stipulated in Article 6 of the ICCPR;*
- b. protection from torture, inhuman and degrading punishment, and medical or scientific experimentation without consent, as articulated in Article 7 of the ICCPR;*
- c. prohibition of slavery and servitude as set out in Article 8 paragraphs (1) and (2) of the ICCPR;*
- d. guarantees of prisoners' rights as regulated in Article 10 paragraph (3) of the ICCPR;*
- e. release from imprisonment due to inability to fulfill contractual obligations as provided in Article 11 of the*

³¹ Dedy Nursamsi, *Op.Cit.*, p. 429

ICCPR;

- f. prohibition against the retrospective application of criminal law, as regulated in Article 15 of the ICCPR;*
- g. the right to recognition as a person before the law, as set out in Article 16 of the ICCPR; and*
- h. freedom of thought, conscience, and religion, as regulated in Article 18 of the ICCPR.*

The implementation of Articles 3 through 21 of the Universal Declaration of Human Rights (UDHR) is significantly reinforced by the ICCPR, underscoring that every individual is entitled to the civil and political rights enshrined within it. Nevertheless, certain practical limitations exist. For example, children under guardianship or those who have not yet reached the minimum legal age are unable to exercise some political rights, such as participating in general elections or forming associations. Despite these limitations, children's fundamental rights remain substantially equivalent to those of adults, as emphasized in the United Nations Convention on the Rights of the Child.³²

According to the ICCPR, all individuals possess the right to expect the prompt and effective realization of their civil and political freedoms. This principle reflects the inherent urgency and indispensability of such rights in human life. In cases where domestic legal frameworks have not yet recognized or enacted provisions aligned with the covenant, Article 2 paragraph (2) of the ICCPR obligates each state party to adopt legislative measures or other necessary actions. These steps must be consistent with national legal systems while ensuring the full protection of the rights

³² Muhammad Jailani, Dewi Sartika Mualipah, dan Muhammad Zainuddin, "Analisis Tanggung Jawab Negara Dalam Memberi Jaminan Perlindungan Hak Sipil Dan Politik Di Indonesia," *Jurnal Risalah Kenotariatan* 2, no. 2 (30 Desember 2021), <https://doi.org/10.29303/risalahkenotariatan.v2i2.45>.

guaranteed in the covenant. By doing so, states fulfill their duty to both respect and secure the fundamental freedoms that the ICCPR recognizes as universal and inalienable.

Then it is regulated in Article 2, paragraph (3) of the ICCPR, which stipulates that every state party to this covenant promises:

- a. There is a guarantee of rights or freedoms as recognized in this covenant for every individual; if violated, then they will receive effective remedies, even if the violation is committed by someone acting in the capacity of a state official.*
- b. the existence of guarantees for each individual who claims such remedies must have their rights determined through a judicial, administrative, or legislative process that has the authority, or by other competent bodies, regulated by the legal system of the country, and to develop the possibility of legal remedies; and*
- c. There is a guarantee that the institution with the authority will carry out the recovery efforts if they are granted.*

The International Covenant on Civil and Political Rights (ICCPR) stands as one of the most significant instruments of international law, providing a framework that regulates the way states exercise power and interact with their populations. The covenant obligates states to guarantee rights fundamental to human existence, including the right to life, liberty, and security. These provisions are not abstract declarations; they constitute binding legal commitments that shape the lived experiences of individuals by safeguarding freedom, dignity, and respect in their interactions with governing authorities. The ICCPR emphasizes the interconnectedness between political participation and civil liberties, granting individuals the capacity to express opinions, engage in political

processes, and influence the direction of public policy. At the same time, the covenant recognizes that liberty is not without limits. Certain restrictions may be legitimately imposed to protect broader societal interests such as justice, order, and security, provided that these limitations remain consistent with legal safeguards. For example, investigative actions involving entry into private residences are permissible when supported by lawful procedures, ensuring that enforcement practices remain subject to principles of fairness and proportionality.³³

The covenant extends its protection specifically to persons deprived of liberty, underscoring the principle that incarceration does not nullify fundamental human rights. Article 10, paragraph (3) requires that correctional institutions serve rehabilitative purposes rather than functioning solely as mechanisms of punishment. This provision requires states to establish prison systems that prepare inmates for reintegration into society, with a primary focus on reformation and rehabilitation. The ICCPR also establishes special safeguards for juveniles, requiring their separation from adult offenders and ensuring access to treatment appropriate to their developmental stage. This recognition illustrates the particular vulnerability of children and reflects the international consensus that their rehabilitation must prioritize growth, education, and protection. In doing so, the covenant reinforces the view that even individuals who have violated the law continue to hold claims to humane treatment and the opportunity to reconstruct their lives.³⁴

Civil and political rights under the ICCPR are not confined solely to criminal justice but extend to a wide array of protections that underpin a just and equitable society. These rights include the preservation of life, liberty, freedom of thought and expression, freedom of association,

³³ Ibid., p. 100.

³⁴ Zulfirman, (2013), Kebijakan Negara terhadap Hubungan Kontraktual Sebagai Hak Asasi Manusia di Indonesia, *Rechtsvinding*, 2(3), p. 419.

procedural fairness, and impartial adjudication. Article 11 serves as a critical example by prohibiting imprisonment solely for failure to fulfill contractual obligations. This provision distinguishes civil liability from criminal responsibility and ensures that economic incapacity or indebtedness does not result in punitive deprivation of liberty. In embedding such protections, the ICCPR strengthens the role of justice systems in safeguarding dignity and equality, preventing the misuse of legal institutions to oppress vulnerable groups, particularly those experiencing financial hardship.

In Indonesia, the protection of civil and political rights, particularly for juveniles, is supported not only by international obligations but also through domestic legislation. Law Number 11 of 2012 on the Juvenile Criminal Justice System (known as the SPPA Law) reflects the principle of the best interests of the child. It promotes diversionary measures to resolve cases outside the formal judicial process. Nevertheless, practical implementation remains problematic. Many law enforcement officials lack sufficient knowledge or the necessary skills to apply these principles effectively, resulting in prolonged judicial proceedings that expose minors to stigmatization. Juveniles are often processed within systems designed primarily for adults, creating additional layers of vulnerability.

The challenges extend to Special Child Correctional Institutions (*Lembaga Pembinaan Khusus Anak* or LPKA), where overcrowding, inadequate infrastructure, and limited resources significantly constrain rehabilitation efforts. Restricted access to education, healthcare, and recreational programs undermines the institutions' ability to provide holistic correctional care. Children in these facilities are highly susceptible to neglect, exploitation, and violence, which can lead to enduring psychological harm. Reintegration after release is equally challenging, as former juvenile offenders face social stigma, restricted educational

opportunities, and obstacles in securing employment. The absence of robust family support and community networks further exacerbates their marginalization, frequently resulting in recidivism. Overcoming these systemic shortcomings requires coordinated efforts between government institutions, civil society, and community actors to strengthen protective measures and foster constructive reintegration pathways.

International law reinforces these domestic obligations through the Convention on the Rights of the Child (CRC), widely regarded as one of the most comprehensive instruments for protecting minors. Article 2 of the CRC establishes the principle of non-discrimination, affirming that all children are entitled to equal educational opportunities regardless of race, gender, language, religion, socioeconomic status, disability, or parental background. This provision underscores that children must never be disadvantaged due to circumstances beyond their control, including parental behavior or identity. Furthermore, the CRC requires that in all decisions concerning children, whether judicial, legislative, or administrative, the best interests of the child must take precedence. By enshrining these obligations, the CRC affirms the universality of children's rights and compels states to shield minors from marginalization, exclusion, and inequality.

The protection of prisoners' rights has also been advanced by a variety of international instruments that complement the ICCPR and CRC. These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), its Optional Protocol (OPCAT), the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), the UN Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (Bangkok Rules), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). Together, these frameworks establish a

comprehensive global system that aims to prevent abuse, guarantee humane detention, and maintain respect for human dignity within correctional settings.

Among these, the Standard Minimum Rules for the Treatment of Prisoners, revised and adopted as the Nelson Mandela Rules, have played an especially influential role. Initially drafted in 1926 by the International Penal and Penitentiary Commission and subsequently refined under the auspices of the United Nations, the rules provide detailed standards for correctional administration. They cover critical aspects such as prisoner classification, accommodation, healthcare, nutrition, religious observance, access to legal representation, and disciplinary measures. The revised rules emphasize non-discrimination, strengthen oversight mechanisms, and create transparent systems for complaints and accountability, thereby aligning prison management more closely with contemporary human rights principles.³⁵

The unanimous adoption of the revised Nelson Mandela Rules by the UN General Assembly in December 2015 marked a significant milestone in advancing global standards for the treatment of prisoners. The revision paid tribute to Nelson Mandela's enduring legacy as a symbol of dignity, justice, and resilience, while simultaneously reinforcing the international community's resolve to ensure humane detention conditions. In conjunction with the CAT, which prohibits torture and cruel treatment, the Mandela Rules provide states with practical benchmarks and mechanisms for accountability. The establishment of the Committee Against Torture under the CAT further strengthens monitoring, ensuring that violations are addressed within an international framework of justice. Collectively, these mechanisms embody a vision of

³⁵ Anggian Cassilas dan Rugun Romaida Hutabarat, "Prinsip Individualisasi Pidana Dalam Penempatan Narapidana Berdasarkan Jenis Kejahatan," *UNES Law Review* 6, no. 2 (2023): 6473–79, <https://doi.org/10.31933/unesrev.v6i2.1504>.

correctional justice that integrates dignity, rehabilitation, and human rights, even within the restrictive environment of incarceration.³⁶

The CAT consists of 24 main articles whose common thread is regulating two elements: first, the obligation of state parties to oppose torture and other cruel, inhumane, and degrading treatment or punishment, and second, the existence of an order to form a committee that has the task of ensuring the implementation of the contents of the CAT by state parties. Regarding the first element, there are three regulations on the obligations of state parties to oppose torture, namely the limitations, the definition of torture, and the obligations of state parties to investigate and prosecute suspects of torture. Article 1, paragraph (1) of the CAT regulates the definition of torture and its limitations. Torture is defined as:

“Any act committed intentionally causing severe pain or suffering, whether physical or mental, to a person to obtain a confession or information from that person or a third person, by punishing them for an act that has been committed or is suspected of being committed by that person or a third person, or by threatening or coercing that person or a third person, or for any reason based on discrimination, if such pain or suffering is caused by, at the instigation of, with the consent of, or with the knowledge of a government official. This does not include pain or suffering arising only from, inherent in, or resulting from applicable legal sanctions.”

³⁶ Angkasa Angkasa, “Deprivation of Inmates in Conducting Imprisonment and Guidance in Penitentiary on Victimology Perspective,” *Journal of Indonesian Legal Studies* 5, no. 1 (4 Mei 2020): 53–74, <https://doi.org/10.15294/jils.v5i1.38520>.

The Convention against Torture (CAT) establishes several binding obligations for states that have ratified it. These provisions ensure that states actively prevent, criminalize, and respond to acts of torture within their jurisdictions:

1. *Article 2 of the CAT requires state parties to adopt effective measures, either through legislation, judicial mechanisms, or other legal frameworks, to prevent acts of torture in their territories. This provision emphasizes prevention as a central obligation and places responsibility on states to ensure their domestic systems provide sufficient safeguards.*
2. *Article 4, states are obliged to classify torture as a criminal offense under their national criminal law. This requirement ensures that acts of torture are not only morally condemned but also subject to prosecution and punishment under the law of each state party.*
3. *Article 5 obliges states to establish jurisdiction over acts of torture described in Article 4 in several circumstances:*
 - a. *Torture is committed in the territory under its jurisdiction or on board a ship or aircraft registered with the State Party;*
 - b. *The suspect of torture is a citizen of his country, and*
 - c. *The victim is considered a citizen of that country, and that country sees fit.*
4. *Article 8 requires that torture be recognized as an extraditable offense. This ensures that perpetrators cannot escape accountability by seeking refuge in other states.*
5. *According to Article 14, state parties must guarantee that victims of torture are provided with adequate redress, including fair compensation and rehabilitation. This obligation reflects the principle that justice requires not only*

the punishment of perpetrators but also the provision of remedies for victims.

6. *Article 10 obliges states to integrate education and awareness regarding the prohibition of torture into the training of law enforcement officials, civilian and military medical staff, public officials, and any persons who may be responsible for detainees or prisoners. This provision highlights the importance of preventive measures through systematic education.*

Beyond obligations concerning acts of torture, the CAT also imposes duties on states in their treatment of individuals suspected of crimes. These provisions ensure that the rights of accused persons are safeguarded during legal proceedings:

1. *Article 3 prohibits states from expelling, returning, or extraditing a person to another country where there are substantial grounds for believing that the person would be subjected to torture. This reflects the principle of non-refoulement.*
2. *Article 6 authorizes states to detain or take lawful measures necessary to secure the presence of suspects, ensuring that proceedings are not obstructed.*
3. *Article 7 requires states to submit cases of alleged torture to competent authorities for investigation and prosecution, thereby ensuring due process and impartiality.*
4. *Article 9 obliges states to provide mutual assistance in the investigation and prosecution of torture-related crimes, reinforcing international cooperation.*
5. *Article 11 requires states to systematically review*

interrogation rules, instructions, methods, and practices relating to detention and imprisonment. This obligation ensures that procedures remain consistent with international human rights standards.

- 6. Article 12 mandates that states promptly conduct impartial investigations whenever there are reasonable grounds to suspect torture. This prevents impunity by ensuring accountability at the earliest stages.*
- 7. Article 13 provides that individuals have the right to complain to competent authorities if they allege torture, and it requires that such complaints be promptly and fairly examined without bias.*
- 8. Article 15 establishes that statements obtained as a result of torture cannot be used as evidence in legal proceedings, except against the alleged perpetrator as proof that such statements were made under duress. This provision prevents the legitimization of torture as a method of extracting confessions.*

Additionally, the third special international document concerning the treatment and assurance of prisoners' rights is included in the OPCAT. OPCAT serves as a mechanism within the international community to combat torture, as well as cruel, inhuman, or degrading treatment or punishment. This tool serves as a deterrence against torture and capricious conduct. The OPCAT governs numerous proactive and creative measures. The activities involve risk identification, error analysis, suggestion submission, review, and management of the causes of torture and arbitrary acts.³⁷

³⁷ "AKIBAT HUKUM RATIFIKASI OPTIONAL PROTOCOL ON THE CONVENTION AGAINST TORTURE (OPCAT) DAN PENGARUHNYA PADA PERLINDUNGAN HAK

On December 18, 2002, the UN General Assembly ratified OPCAT with 172 votes in favor, 42 abstentions, and four votes against. OPCAT will be operational once the necessary criteria are fulfilled, as 20 nations have already approved it. As of now, OPCAT has been recognized by 51 nations, with 32 of these nations having instituted National Preventive Mechanisms (NPM). The stipulations of this protocol become applicable upon a country's ratification of the CAT and its subsequent decision to ratify the OPCAT. The OPCAT instrument operates on a straightforward procedure, specifically that international entities, such as the Subcommittee on Prevention, are not required to conduct inspections at sites of detention with unrestricted access. It also permits state parties to establish their own structures, akin to the Subcommittee on Prevention, but with limited competence.³⁸

Even if a government has not signed the OPCAT, it may implement an independent NPM concept if it is committed to reducing instances of torture. The NPM is fundamentally required to facilitate the oversight of detention and correctional facilities and provide a platform for addressing complaints regarding instances of torture or inhumane treatment. The monitoring function must be capable of autonomous implementation, free from external interference. Optimal oversight of detention and penal facilities should be feasible at any time and in any location. No advance notice is necessary to guarantee that the location under observation will not undertake measures to conceal the occurrence of torture or inhumane treatment that frequently transpires.³⁹

ATAS RASA AMAN DARI PENYIKSAAN DI INDONESIA | Jurnal Hukum to-ra : Hukum Untuk Mengatur dan Melindungi Masyarakat,” diakses 5 Juli 2025, <https://ejournal.fhuki.id/index.php/tora/article/view/167>.

³⁸ Muthalib dkk., “Evaluasi Pelaksanaan RANHAM 2004-2009 dan Rencana Ratifikasi Optional Protocol To The Convention Against Torture (CAT) dalam RANHAM 2004-2009 dan Perencanaan RANHAM 2010-2014.”

³⁹ Ibid., p. 16.

Upon the ratification of the Optional Protocol to the Convention against Torture (OPCAT), every state assumes a binding responsibility to maintain the full independence of its National Preventive Mechanism (NPM) and to guarantee that its members possess adequate expertise in human rights law, as prescribed under Article 3 of the OPCAT. This obligation reflects the principle that monitoring institutions must remain autonomous from government interference to ensure impartiality and effectiveness. Furthermore, States Parties are required to empower their NPMs to engage in ongoing oversight activities aimed at preventing torture and other forms of cruel, inhuman, or degrading treatment. Such mechanisms are also expected to submit recommendations for legislative amendments and improvements to the Government, in line with the mandate of Article 1 of the OPCAT.

The provisions of the OPCAT further emphasize the necessity for states to provide NPMs with comprehensive authority to carry out their functions in a manner that is both effective and consistent with international standards. Without sufficient authority, monitoring would risk becoming symbolic rather than substantive, thereby failing to protect individuals deprived of their liberty. To secure meaningful preventive measures, the protocol explicitly outlines several powers that must be granted to NPMs, including:⁴⁰

1. *The ability to obtain unrestricted access to information regarding individuals deprived of liberty and details about the facilities where they are confined;*
2. *Full and unhindered access to all forms of detention facilities and the conditions therein;*
3. *authority to conduct confidential interviews with detainees or*

⁴⁰ M. Rizki Yudha Prawira, "Regulation Act of Torture in Criminal Code: Opportunity and Challenge to Improve Human Rights Situation in Indonesia," *JUSTISI* 11, no. 1 (2025): 17–35, <https://doi.org/10.33506/js.v11i1.3653>.

other relevant individuals without the presence of external parties;

- 4. discretion in selecting both the locations of visits and the persons to be interviewed; and*
- 5. The right to communicate and exchange information freely with the subcommittee on prevention.*

Moreover, the fourth special international document concerning the treatment and assurance of prisoners' rights is included in the Bangkok Rules. Female inmates exhibit distinct features compared to their male counterparts. These distinctions are evident in the unique needs of women during menstruation, pregnancy, childbirth, and lactation. These specific requirements encompass reproductive health recovery, family planning initiatives, assistance for pregnancy and delivery, and post-trauma treatment following incidents of sexual abuse or torture. The rights of female convicts concerning specific requirements must be adequately met and safeguarded.⁴¹

The facilities of the Correctional Institution frequently fail to accommodate the distinct demands of convicts, resulting in a complete disregard for the rights necessary to address the specific requirements of women. Female inmates typically encounter challenges related to their gender identity as women.⁴² Consequently, the international community, through the UN, established an international mechanism known as the Bangkok Rules.

⁴¹ Mitro Subroto dan Johanes Situmorang, "Pelayanan Kesehatan Narapidana Perempuan Berdasarkan Bangkok Rules Di Lembaga Pemasyarakatan Perempuan," *Jurnal Pendidikan Tambusai* 8, no. 3 (2 November 2024): 43046–51.

⁴² Penny Naluria Utami, "Pemenuhan Pelayanan Kesehatan Bagi Narapidana Perempuan Di Lembaga Pemasyarakatan Narkotika Langkat (Fulfillment of Health Services for Female Inmates at Langkat Narcotics Correctional Institution)," *Sumber* 2019 (2020): 8–397.

The UN established the Bangkok Rules as a guideline for member states concerning the treatment of female inmates. The directive mandates the respect and fulfillment of the human rights of female inmates within the penitentiary system. The Bangkok Rules embody the values of gender equality and human rights that underpin international law.⁴³

The execution of gender equality in correctional facilities is a crucial aspect of guaranteeing the rights of female inmates in accordance with the principles outlined in the Bangkok Rules. The concept of gender equality articulated in the Bangkok Rules underscores the critical necessity of eliminating sex-based discrimination and ensuring specialized protection for the needs of female inmates. The establishment of gender equality starts with a thorough evaluation of the circumstances of female inmates. This encompasses the psychological, physical, health-related, and social requirements that may be intrinsic to female inmates in contrast to male inmates. Consequently, Correctional Institutions must ensure equitable access to medical, mental health, and social services tailored to the requirements of female inmates.⁴⁴

The implementation of gender equality principles includes initiatives aimed at optimizing rehabilitation and reintegration programs that take into account gender considerations. Female convicts should have equal access to educational programs, skills training, and social assistance as male prisoners to facilitate their reintegration into society.

Safeguarding against violence and harassment in correctional facilities is a crucial aspect of enforcing the concept of gender equality outlined in the Bangkok Rules. This feature demonstrates the

⁴³ Subroto dan Situmorang, "Pelayanan Kesehatan Narapidana Perempuan Berdasarkan Bangkok Rules Di Lembaga Pemasyarakatan Perempuan."

⁴⁴ Restu Sugestiawan Sembiring & Mitro Subroto, (2023), Pemenuhan Hak Narapidana Perempuan: Implementasi Bangkok Rules dalam Lembaga Pemasyarakatan, *Jurnal Intelektualita: Keislaman, Sosial, dan Sains*, 12(2), p. 153.

commitment to uphold the security and rights of female inmates. Additionally, prohibit behaviors that may inflict bodily and psychological harm on female inmates. Correctional facilities must implement concrete measures to safeguard female inmates from abuse and harassment. A preventive measure aims to provide a secure atmosphere and surroundings free from hazards. This necessitates the involvement of a meticulous review committee to assess the conduct of officials, wardens, and inmates who may engage in violent or harassing behavior.

An essential aspect of implementing the principle of gender equality outlined in the Bangkok Rules is the provision of education and training for female inmates. Correctional facilities must offer educational programs that align with the needs and interests of female inmates. This encompasses formal educational initiatives, including academic disciplines, occupational competencies, and vocational training. Educational programs must be developed with awareness of numerous factors that may impact female convicts. Examples encompass traumatic experiences, mental health requirements, and more specific needs.

B. Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards

The establishment of a state in the international arena is inherently intended to realize the aspirations of its people, foster the moral development of individuals and society, and create conditions of safety, comfort, and harmony by ensuring respect for human rights.⁴⁵ Indonesia, as a sovereign state whose independence has been acknowledged by the global community, has integrated itself into international relations. Such

⁴⁵ Rafiqah Hayati dan Annisa Zakia Nasution, "Konsep Dasar Negara dalam Sistem Kenegaraan," *JURNAL TIPS JURNAL RISET, PENDIDIKAN DAN ILMU SOSIAL* 1, no. 1 (9 Mei 2024): 30–36.

recognition provides not only legitimacy but also the opportunity to participate in cooperation with other states. The acceptance of sovereignty by the international community becomes the initial gateway for a nation to engage in diplomacy, agreements, and cross-border commitments that shape its role in the global order.

A country that has been formally recognized as a subject of international law obtains specific rights and obligations in relation to the international community. Legal recognition underlines its authority to act within the sphere of global diplomacy and imposes on it the duty to comply with binding norms of international conduct. Indonesia is thus regarded as a responsible member of the international community, entitled to equal standing as a legal entity. This equal standing is akin to the rights possessed by individuals under the law, as the state itself functions as a public legal subject capable of upholding duties and claiming entitlements in international forums.⁴⁶

The acknowledgment of human rights in Indonesia did not originate solely from global agreements such as the UDHR but was already embedded in the nation's philosophical and constitutional foundations.⁴⁷ Pancasila, together with the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and its subsequent amendments, reflects a commitment to protecting fundamental rights from the country's inception in 1945. These principles emphasize justice, humanity, and solidarity, serving as the moral compass of Indonesia's legal and political system. The values of civilized humanity and social justice within Pancasila are intrinsically aligned with the universal principles of human rights

⁴⁶ Firdaus Firdaus, "KEDUDUKAN HUKUM INTERNASIONAL DALAM SISTEM PERUNDANG-UNDANGAN NASIONAL INDONESIA," *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 1 (2014), <https://doi.org/10.25041/fiatjustisia.v8no1.285>.

⁴⁷ Alfida Hamidah Ramadhani, Regita Dara Kirana, dan Safira Aulia Putri, "HAK ASASI MANUSIA BERDASAR PANCASILA," *Indigenous Knowledge* 2, no. 6 (8 Januari 2024): 431–39.

recognized at the international level.⁴⁸

The Constitution explicitly provides legal guarantees that bind the state to protect rights. Article 1, paragraph (3) of the UUD NRI 1945 affirms Indonesia as a state based on the rule of law. A fundamental feature of such a system is the limitation of state power, ensuring that rulers are subject to legal mechanisms that safeguard individual rights and liberties. The Constitution underscores that every person is entitled to fair and equal treatment before the law, with Article 28D paragraph (1) emphasizing that each citizen is entitled to recognition, protection, and certainty of rights under just legal treatment. The inclusion of these principles in the highest legal instrument demonstrates Indonesia's firm commitment to ensuring justice as the core foundation of governance.⁴⁹

The entitlement to human rights, as guaranteed by the Constitution, extends universally, including to those undergoing criminal sanctions within correctional institutions.⁵⁰ Prisoners are not excluded from constitutional protections, since their basic rights remain intact despite the loss of liberty.⁵¹ Incarceration does not equate to the forfeiture of human dignity. Acknowledging the rights of prisoners reflects Indonesia's transition from a punitive system, once marked by retribution, toward a corrective model that emphasizes guidance, rehabilitation, and assistance. By guaranteeing prisoners' rights, the penitentiary system shifts its focus from punishment alone to the broader purpose of reintegration

⁴⁸ Haposan Siallagan, "PENERAPAN PRINSIP NEGARA HUKUM DI INDONESIA," *Sosiohumaniora* 18, no. 2 (26 Oktober 2016): 122–28, <https://doi.org/10.24198/sosiohumaniora.v18i2.9947>.

⁴⁹ Alkautsar, "Perlindungan Hukum Terhadap Hak Narapidana Wanita Berdasarkan Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan (Studi Kasus Lapas Kelas II A Kuningan)."

⁵⁰ Viona Marchanda & Asep Suherman, *Loc. Cit.*

⁵¹ Anggraeni Mulyana, *et.al.*, *Loc. Cit.*

and personal development.⁵²

Membership in the United Nations imposes additional moral and legal responsibilities upon Indonesia to honor the human rights conventions it has ratified. Article 75 of Law No. 39 of 1999 on Human Rights clearly outlines the obligation to create conditions conducive to the fulfillment of rights, based on the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, the UN Charter, and the Universal Declaration of Human Rights. This legislative framework demonstrates Indonesia's commitment to aligning its domestic law with international obligations.⁵³

The ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005 further demonstrates Indonesia's commitment to aligning with global standards. This law signifies not merely a legal compliance but also a declaration of Indonesia's moral commitment to uphold civil and political rights as fundamental aspects of human rights. The decision to ratify the ICCPR was consistent with the UUD NRI 1945 and the values embedded in Pancasila, ensuring that international commitments do not conflict with Indonesia's foundational principles. The ratification reflects Indonesia's active participation as a responsible global citizen, committed to upholding the principles of the UN Charter and the UDHR while integrating these values into its national legal framework.⁵⁴

The ICCPR states in Article 10, paragraphs (1) and (3), that all individuals detained must be treated with humanity and respect for their inherent dignity. Additionally, it states that the primary goal of the prison

⁵² Sonya Hellen Sinombor, "KEDUDUKAN DEKLARASI UNIVERSAL HAK ASASI MANUSIA (UDHR) DALAM SISTEM HUKUM DI INDONESIA," *AL WASATH Jurnal Ilmu Hukum* 3, no. 1 (20 April 2022): 1–12, <https://doi.org/10.47776/alwasath.v3i1.336>.

⁵³ Ibid.

⁵⁴ Zulfirman, *Op.Cit.*, p. 427.

system should be social reform and rehabilitation in the treatment of prisoners. Separation from adults and therapy tailored to each offender's age and legal standing are necessary for juvenile offenders. The sound of both articles is in harmony with the objectives of the Correctional System in force in Indonesia, which aims to develop prisoners.⁵⁵ This is proven in Article 2 of Law Number 22 of 2022 on Corrections, which stipulates that,

“The correctional system is organized to shape Correctional Inmates to become complete human beings, aware of their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted back into the community, can play an active role in development, and can live normally as good and responsible citizens.”

The legal basis for building correctional facilities has been enhanced and revised; as a result, Law 12 of 1995, which pertains to corrections, has been repealed. Legislation Number 22 of 2022, which is now in effect, is also known as the existing correctional legislation and is responsible for governing the construction of correctional institutions. Correctional law is one of the components that make up the criminal justice system as a whole. While jailed, all prisoners, including teenagers, those being detained, and those convicted of a crime, are required to adhere to the treatment guidelines established by it. The Institutional Law was established to improve the current institutional framework and address societal dynamics, all within the context of restorative justice principles. The passage of this law was primarily motivated by the concept of

⁵⁵ Manggala Gita Arief Sulistiyatna, “Hak Remisi Dan Asimilasi Narapidana Di Indonesia Dalam Perspektif Hak Asasi Manusia,” *Lex Renaissance* 6, no. 1 (19 Oktober 2021): 57–77, <https://doi.org/10.20885/JLR.vol6.iss1.art5>.

correctional facilities, which are responsible for treating prisoners with respect and fairness.⁵⁶

The national legal system of Indonesia has not yet integrated the Nelson Mandela Rules, as far as that country's legal system is concerned. Basan Baran Management of the Directorate General of Corrections, which is part of the Ministry of Immigration and Corrections of the Republic of Indonesia, has stated that the Director of Prison Services has confirmed that the Corrections Law is fully in compliance with the Nelson Mandela Rules. He noted that the Corrections Law has two main objectives: the protection of human rights within the penal system and the safeguarding of the rights of those who are incarcerated in correctional facilities.⁵⁷

Law Number 5 of 1998, also known as the OPCAT Ratification Act, was passed by the Republic of Indonesia, officially ratifying the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The ideas that guide the CAT are in alignment with those outlined in the 1945 Constitution of the Republic of Indonesia. Articles 28G and 28I provide real-world examples of how this is put into practice. The government of Indonesia has an obligation to ensure that all of its citizens have a greater grasp of human rights. The requirement for this is outlined in Article 1 of Decree No. XVII/MPR/1998, which was issued by the MPR RI and pertains to human rights. Furthermore, provided that they are not in conflict with Pancasila or the Constitution of the Republic of Indonesia, which was

⁵⁶ Riki Afrizal, Iwan Kurniawan, dan Fajar Wahyudi, "RELEVANSI PELAYANAN TAHANAN DALAM SISTEM PEMASYARAKATAN TERHADAP TUJUAN PEMASYARAKATAN (TINJAUAN PERUBAHAN UNDANG-UNDANG PEMASYARAKATAN)," *Masalah-Masalah Hukum* 53, no. 1 (30 Maret 2024): 101–110, <https://doi.org/10.14710/mmh.53.1.2024.101-110>.

⁵⁷ Codingest, "Undang-Undang Pemasyarakatan 100% Refleksikan Mandela Rules," Ditjenpas, diakses 5 Juli 2025, <https://www.ditjenpas.go.id/undang-undang-pemasyarakatan-100-refleksikan-mandela-rules>.

adopted in 1945, several human rights accords must be ratified by the government. This obligation is described in Article 2 of the Human Rights MPR RI No. XVII/MPR/1998.⁵⁸

The Indonesian government has taken the initial step toward eradicating torture in the country by ratifying the Convention Against Torture (CAT). Five major consequences are expected to result from the adoption of the Convention Against Torture (CAT). To begin with, it necessitates that Indonesia update its Criminal Code to comply with the Convention against Torture. Secondly, it bolsters Indonesia's reputation as a country that is committed to combating torture. Third, it acknowledges the significance of international collaboration in the battle against this. Lastly, it reaffirms that the United Nations Committee Against Torture has the authority to preside over matters of torture. To a considerable extent, the final point guarantees that efforts taken to avoid and eradicate torture will be successful.⁵⁹

Despite this, the Indonesia government has not yet approved the OPCAT agreement. Indonesia is now implementing the Human Rights Action Plan (RANHAM) program to safeguard human rights, with a special emphasis on those that protect against torture. RANHAM is committed to the ongoing ratification of several international human rights treaties that Indonesia has already ratified. This dedication extends beyond the community's need for the protection of human rights. The objective of RANHAM 2004–2009 was to ensure that by 2008, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) would have been approved. However, the Indonesia government has not yet

⁵⁸ Ali Isnandar, "POLITIK HUKUM NASIONAL TERKAIT PENGATURAN LARANGAN PENYIKSAAN DALAM PERSPEKTIF PERLINDUNGAN HAK ASASI MANUSIA DI INDONESIA," *BULETIN KONSTITUSI* 3, no. 2 (21 Oktober 2022), <https://doi.org/10.30596/konstitusi.v3i2.10578>.

⁵⁹ *Ibid.*, p. 103.

succeeded in achieving this crucial objective.⁶⁰

The establishment of a mechanism at the national level to fight against torture is essential to implement the International Convention Against Torture (CAT) in practice. The responsibility for overseeing this system falls to the OPCAT. The Overseas Prisons and Confiscation Assistance Treaty (OPCAT) mechanism aims to establish a framework that allows for the routine inspection of prisons and detention centers by neutral national and international organizations. The purpose of these inspections is to identify any evidence of torture or other forms of treatment that are cruel, humiliating, or otherwise detrimental to human dignity. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) outlines the procedures that are to be followed in prisons and correctional institutions in Indonesia. The existing state of these correctional facilities and prisons is strongly related to these protocols.⁶¹

To date, the national legislative framework of Indonesia has not been successful in incorporating the Bangkok Rules. Indonesia formally adopted the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) after ratifying the treaty. The Bangkok Rules are analogous to CEDAW in that they both concern the treatment of female convicts. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the primary focus of the study of legal culture, structure, and substance in connection with the protection and implementation of women's rights and the eradication of all forms of discrimination against women.⁶²

Additionally, the Indonesian criminal justice system, overseen by

⁶⁰ Abdul Muthalib, *et.al.*, *Op.Cit.*, p. 2.

⁶¹ *Ibid.*, p. 54.

⁶² Febri Handayani, (2024), *Perlindungan Hukum Perempuan Yang Berhadapan Dengan Hukum Perspektif HAM, Jurnal Al-Himayah*, 8(1), p. 14.

the Corrections Law, adheres to the Bangkok Rules. Inmates are obliged to undergo medical examinations when they are first admitted, according to the second paragraph of Article 36 of the Corrections Law. The paragraph makes it clear that the medical conditions of detainees, as well as the legitimacy of their identity documents, must be confirmed. Furthermore, Article 6 of the Bangkok Rules stipulates that female offenders are expected to undergo comprehensive health examinations that evaluate several significant factors. These examinations are conducted to determine the appropriate medical treatment the offender requires.

As Hetty Widiastuti has stated, efforts are currently underway to enhance healthcare for Indonesian prisoners, former inmates, and female adolescents in accordance with the Bangkok Rules. These regulations apply to individuals who are incarcerated, including women, as well as children who are in foster care situations. To ensure that women who are incarcerated, detained, or in foster care can get what they are due and fulfill their duties, there are several mechanisms in place.⁶³ Indonesia boasts a robust legislative framework and has ratified numerous international agreements. Nevertheless, the actual execution of these laws and agreements is subject to substantial problems, which are sometimes overlooked in debates on regulatory concerns. These limitations have real-world consequences, serving as proof that there is a difference between ideal laws (*das sollen*) and actual conditions (*das sein*). Overpopulation is a problem that is pervasive across Indonesia's correctional facilities. The execution of the fundamental rights of prisoners, which include the right to receive medical treatment, enough nutrition, and suitable sanitary facilities, is significantly affected by this situation.

Additionally, the adoption of the Convention on the Elimination

⁶³ Codingest, "The Bangkok Rules, Kunci Ditjenpas Tingkatkan Pelayanan Bagi Warga Binaan Perempuan," Ditjenpas, diakses 5 Juli 2025, <https://www.ditjenpas.go.id/the-bangkok-rules-kunci-ditjenpas-tingkatkan-pelayanan-bagi-warga-binaan-perempuan>.

of All Forms of Discrimination Against Women (CEDAW) and the formation of a legal framework through the Corrections Law have not made it any less necessary to focus on the protection of the rights of women who are detained. There are a great number of correctional facilities that do not have the facilities that are required to address certain requirements, such as safeguards against sexual assault and services related to reproductive health. This inconsistency suggests that the needs of female prisoners are often overlooked in practice. The occurrence of such situations can be attributed to several different factors. The number of female prisoners is much smaller than the number of male criminals at the beginning of the process. The majority of prison wardens have received less training on how to deal with female offenders compared to their male counterparts, and the majority of jails do not have facilities that are equipped to meet the specific requirements of female inmates.⁶⁴ In Indonesia, there are approximately 526 correctional institutions. However, only 34 of them are specifically intended to house women and minors.⁶⁵ The majority of women who are being held in detention in Indonesia are detained in normal jails alongside male offenders, which means that they are exposed to the danger of sexual assault while they are within these institutions. Because of the extreme overcrowding and the lack of adequate medical care for women who are serving jail sentences, prison conditions in Indonesia have emerged as a serious issue of concern in terms of human rights. The fact that the human rights standards of Indonesian jails are insufficient is not a result of a lack of core statutory safeguards; instead, it is a result of their deficient implementation. In accordance with Law No. 22 of 2022, which pertains to correctional

⁶⁴ Rosemary Barberet dan Crystal Jackson, UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules): A Gendered Critique, ISSN 2013-9004 (digital); ISSN 0210-2862 (paper) Papers 2017, 102/2, https://ddd.uab.cat/pub/papers/papers_a2017v102n2/papers_a2017v102n2p215.pdf, p. 216-217

⁶⁵ Syahrial M. Wiryawan et al., Women Behind Bars in Indonesia, Indonesia Criminal Law Updates, Issue No. 1/2019 (Jakarta: Institute for Criminal Justice Reform), <https://www.icjr.or.id>

facilities, inmates have the right to receive adequate medical attention and pharmaceuticals. As a result, it is of the utmost importance to prioritize the supply of sufficient healthcare facilities and medical professionals in Lapas. The progress of human rights for criminals in Indonesia is further hindered by the absence of follow-ups regarding Article 63 of Law No. 22 of 2022 on Correction, which pertains to additional laws in healthcare for convicts.

In addition, Indonesia experiences challenges in its efforts to prohibit the use of torture. Ratification of the Convention Against Torture (CAT) is an extremely important step; nevertheless, the fact that the Optional Protocol to the Convention Against Torture (OPCAT), which deals with the regulation of national preventive mechanisms (NPMs), has not been ratified makes it more difficult to supervise torture and cruel treatment in correctional facilities independently. This makes convicts vulnerable to activities that violate their fundamental human rights. The inefficient execution of rehabilitation programs is another problem worth mentioning. These programs often fail to reach their full potential due to an insufficient number of employees in rehabilitation, limited finances, and an emphasis on security in prisons rather than rehabilitation, even though the purpose of the Corrections Law is to rehabilitate individuals. As a result, those who have been convicted of a crime face obstacles when they make efforts to return to society beneficially. This can lead to increased rates of recidivism.

Conclusion

Based on the analysis above, the conclusions that can be drawn from the article entitled Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards are:

This article concludes that prisoners' rights are a universal issue of primary concern to the international community, even after they have lost

their freedom. These rights are protected by various international legal instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Nelson Mandela Rules, the Convention Against Torture (CAT), and the Bangkok Rules for women prisoners. Although Indonesia has ratified several of these instruments, such as the ICCPR and CAT, and has a strong legal foundation, including the Pancasila and the 1945 Constitution, implementation on the ground still faces significant challenges.

The actual situation in Indonesia demonstrates a significant gap between the ideal law and the reality on the ground (*das sein*). The main problem faced is overcrowding in correctional institutions, which directly impacts the fulfillment of prisoners' basic rights, such as access to adequate sanitation, medical services, and food. Despite the existence of the Corrections Law, protection of women prisoners' rights remains inadequate, and facilities are often insufficient to meet their specific needs. Furthermore, the Indonesian government's failure to ratify the OPCAT makes independent oversight of torture and inhumane treatment difficult. The lack of effective implementation of rehabilitation programs due to budget constraints and a focus on security also makes it difficult for prisoners to reintegrate into society, which can ultimately increase recidivism rates.

Suggestions

Human rights violations in prisons from ancient times to the modern era are now occurring in other parts of the world. Various efforts are needed, such as empowering human rights monitoring committees at the international level, such as the Committee Against Torture. Empowerment is carried out to create human resources who possess the capability and increased authority to participate in various human rights monitoring committees. Other efforts include increasing multilateral and bilateral cooperation to address and prevent human rights violations, particularly those affecting prisoners' rights. Cooperation can be carried out with technical assistance and capacity building from countries that are already

qualified to countries that are not yet qualified in treating prisoners in prisons. No less important, related to national issues, it is necessary to increase the ratification and harmonization of national legislation. Like Indonesia, which has not ratified the OPCAT, this has implications for the implementation of the CAT. Given that, to create an effective implementation of the CAT, an instrument from the OPCAT is needed. In addition, it is not enough to merely ratify international instruments; rather, the harmonization of national legislation is necessary to create legal certainty and prevent violations of prisoners' rights.

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