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Criminal Liability in Prison Fire Case: A Case Study of Class I Tangerang Prison Fire

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ABSTRACT

The existence of Correctional Institutions is part of the criminal system in Indonesia. The criminal law policy which is not yet ideal and the management of prisons that are not optimal have caused over capacity in all prisons. Therefore, in the event of a prison fire disaster, mitigation and rapid evacuation of the inmates cannot be carried out and cause death toll. When there are inmates who die as a result of a prison fire, of course, there must be a party who is responsible politically, sociologically and juridically. This study aims to determine criminal liability in prison fire cases based on the Criminal Code, Law Number 12 of 1995 concerning Corrections and other laws and regulations. This research uses normative juridical research method. Based on the results of the study, it can be seen that politically and sociologically those responsible for the fire incident were government officials who handled prison affairs, namely the Minister of Law and Human Rights, the Director General of Corrections, and the head of the prison. While juridically those responsible for the prison fire incident were the perpetrators who were found guilty either by intention or negligence, namely the prison

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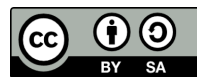
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officer for general affairs who handled prison electricity and the prison warden on duty when the fire occurred. To prevent prison fires from causing the inmates to die, it is expected that the government, will improve prison management and carry out criminal law policy reform to improve the criminal system in Indonesia.

KEYWORDS

Criminal Liability, Correctional Institution, Prison Fire Case

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1 INTRODUCTION

Indonesia is a state of law. Law has a central role in regulating state life.¹ The explanation of this rule of law is contained in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia 1945. Based on these provisions, the law becomes very important and must be enforced. The law must be obeyed by all citizens. Therefore, every state action must be based on the applicable law. Thus, the law should be used as a steppingstone to regulate and resolve various problems in carrying out the wheels of social, national and state life.²

One indicator of the rule of law is the success in enforcing the law. Law enforcement is the process of making efforts to enforce legal norms that apply and have been regulated as guidelines for behavior in traffic or legal relations in human life in society and the state.³ In law enforcement efforts, of course, supporting tools are needed. Here there are several factors that can affect the success of law

¹ Deramayati, Tiara Yahya, and Satria Unggul Wicaksana. "Peradilan In Absentia Dalam Tindak Pidana Korupsi dan Hak Pembelaan Terdakwa dalam Perspektif HAM." *Jurnal Komunikasi Hukum (JKH)* 7, No. 2 (2021): 570-591.

² Setiyono, Joko. *Kebijakan Legislatif Indonesia, dalam Hak Asasi Manusia Hakekat, Konsep dan Implikasi dalam Perspektif Hukum dan Masyarakat*. (Jakarta: PT Refika Aditama, 2007).

³ Riyanto, Agus. "Penegakan Hukum, Masalahnya Apa?", *Binus Online*, 18 December (2018). Retrieved from <https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/>

enforcement in Indonesia, namely the law itself, law enforcement actors, facilities factors, community factors and cultural factors.⁴

If we look at law enforcement in Indonesia, it cannot be separated from the existence of Correctional Institution (*Lapas*) which is facilities factor. Correctional Institution is a euphemism for the term prison (*penjara*) that has been used for a long time. So far, prisons have been a "scary" place for some people because in the community's view, prison is a place where someone loses their independence. In order to achieve the objectives of law enforcement, prison operational standards must be met. Prison conditions that do not meet standards will have an impact on the lack of fulfillment of the rights of Correctional Inmates who are the responsibility of the government, in this case is the Ministry of Law and Human Rights.

Almost all news media, on September 8, 2021, reported there was a great fire accident in Tangerang Class I Prison that killed at least 41 inmates.⁵ Even after observing the results of the *visum et repertum*, the death toll increased to 48 after several victims were hospitalized. *Visum et repertum* is a written report made by a doctor who has taken an oath about what he sees and finds in the examination of evidence to the person being examined who dies or is injured as a result of a crime or accident.⁶

According to the results of the police investigation, the fire was caused by an electrical short-circuit, of course, in this case, there were officers responsible for its maintenance. In the process of investigation, the police examined several witnesses. The witnesses examined included prison officers who were on duty at the time of the fire, prison officers who were in the vicinity of the crime scene at the time of the fire, and safe inmates inhabiting Block C2. Seeing this negligence, four Tangerang Class I prison employees were named as suspects, namely one general prison officer who handled electricity and three prison guards.⁷ This incident became a hard slap to the

⁴ Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. (Jakarta: Raja Grafindo, 2011). See also Windari, Ratna Artha. "Penegakan Hukum Terhadap Perlindungan Anak di Indonesia (Kajian Normatif Atas Bekerjanya Hukum Dalam Masyarakat)." *Media Komunikasi FPIPS* 10, No. 1 (2011); Darmika, Ika. "Budaya Hukum (Legal Culture) Dan Pengaruhnya Terhadap Penegakan Hukum di Indonesia." *to-ra* 2, No. 3 (2016): 429-436.

⁵ CNN Indonesia. "Kronologi Kebakaran Lapas Tangerang, Api Berkobar Lebih 2 Jam". *CNN Indonesia*, 8 September (2021). Retrieved from <https://www.cnnindonesia.com/nasional/20210908100640-20-691267/kronologi-kebakaran-lapas-tangerang-api-berkobar-lebih-2-jam>

⁶ Wijayanti, Asri, et al. "Existence of *Visum Et Repertum* on the Occurrence of Persecution as Evidence of Work Termination." *Jurnal Cita Hukum* 9, No. 3 (2021): 449-460.

⁷ Ayu Cipta. "4 Petugas Terdakwa Kebakaran Lapas Tangerang Tak Keberatan dengan Dakwaan JPU". *TEMPO*, 25 January (2022). Retrieved from <https://metro.tempo.co/read/1553933/4-petugas->

government and especially the world of prisons in Indonesia, because the inmates who should have been protected became victims of fire. This incident attracted international attention.

This is not the first time that a prison fire, such as the one in Tangerang Class I Prison, has occurred in Indonesia. Several prisons in Indonesia have experienced fires before. If noted, several prison fire incidents since 2016 can be described as follows.⁸

- 1) Fire in Banceuy Class IIA Prison, Bandung City, West Java
The fire occurred on April 23, 2016. The fire occurred because of drug convicts who sparked the riots. The riots occurred because there were prisoners who committed suicide while serving their sentences. The other inmates could not accept it because their colleague had died. Dissatisfied, they set fire to the prison. Luckily, no one died in this incident.
- 2) Fire in Jambi Class IIA Prison
The fire occurred on March 2, 2017. It started with a riot that occurred in the prison. The riot was caused by a drug raid by prison officers. The overcapacity of the prison caused the uproar quickly to spread. At first, the inmates only burned one room but eventually they burned the other room until the fire got bigger.
- 3) Fire in Banda Aceh Class IIA Prison
The fire was caused by a riot committed by the inmates. Initially, several inmates refused if their colleagues had to be transferred to the Tanjung Gusta Prison, Medan. Then the inmates threw stones at the prison officers and set fire to several prison buildings.
- 4) Fire in Siak Class IIB Prison, Riau
The fire occurred on May 11, 2019. The incident began when prison officers found items suspected of being drugs in the women's prison block. Then they were taken by officers for interrogation. In fact, during the interrogation process, some inmates were beaten by prison officers. This makes other inmates can not accept. They ended up burning down a number of prison buildings.
- 5) Fire in the Class III Women's Prison, Sigi, Central Sulawesi
The fire occurred at the Palu Women's Prison on September 29, 2019. The fire

terdakwa-kebakaran-lapas-tangerang-tak-keberatan-dengan-dakwaan-jpu

⁸ Hakim, Rakhmat Nur. "Deretan Peristiwa Kebakaran Lapas di Indonesia". *KOMPAS*, 9 September (2021). Retrieved from <https://nasional.kompas.com/read/2021/09/09/15431021/deretan-peristiwa-kebakaran-lapas-di-indonesia?page=all>

caused 6 of the 15 blocks to be burned. From the results of the police investigation, it is suspected that the detainees' block was burning on purpose in order to escape.

6) Fire in Kabanjahe Prison, Karo, North Sumatra

The fire occurred on February 12, 2020. The incident was triggered by a riot carried out by a number of inmates who did not accept that their colleagues were chained by prison officials. Finally, they set fire to a number of rooms. There were no casualties in this incident.

7) Fire in Tuminting Prison, Manado

The fire occurred on April 11, 2020. The fire was caused by several inmates rioting in the prison. They demanded to be included in the repatriation program in the early days of the Covid-19 pandemic, just like prisoners who feeling dissatisfied they ended up burning several prison rooms.

8) Fire in Purwokerto Prison

The fire occurred on October 29, 2020. The fire occurred because of a fire that originated from a mini market inside the prison. According to the suspicion, the fire was caused by an electrical short circuit in the minimarket, and it got bigger.

From those records, it can be seen that the majority of prison fires occur because of the inmates' intentionality. This, of course, should be given special attention by the Ministry of Law and Human Rights, especially, the fire incident that causes the loss of life, such as in the Class I prison in Tangerang.

This research is new research. Previously there have been studies discussing prison fires, but the prison fire cases that have been discussed have not resulted in the death of inmates. Several previous studies were conducted by Antono Indriyatmoko with the title "Penerapan Manajemen Kebakaran di Lembaga Pemasarakatan Wanita Kelas II A",⁹ by Rizki Kurniawan and Markus Marselinus Soge with the title "Menelaah Kesiapan Pencegahan dan Penanganan Kebakaran di Lapas Kelas II A Lahat",¹⁰ and by Padmono Wibowo with the title "Pentingnya Mitigasi Risiko Dampak Kepenuhsesakan Pada Lapas dan Rutan di Indonesia".¹¹

⁹ Indriyatmoko, Antono. "Penerapan Manajemen Kebakaran di Lembaga Pemasarakatan Wanita Kelas II A." *HIGEIA (Journal of Public Health Research and Development)* 4, No. Special 1 (2020): 262-273.

¹⁰ Kurniawan, Rizki, and Markus Marselinus Soge. "Menelaah Kesiapan Pencegahan dan Penanganan Kebakaran di Lapas Kelas IIA Lahat." *ADI Pengabdian Kepada Masyarakat* 2, No. 1 (2021): 43-50.

¹¹ Wibowo, Padmono. "Pentingnya Mitigasi Risiko Dampak Kepenuhsesakan pada Lapas dan Rutan di Indonesia." *Jurnal Ilmiah Kebijakan Hukum* 14, No. 2 (2020): 263-283.

In prisons, inmates are not only objects but also subjects who are no different from other humans who can make mistakes at any time which can be subject to criminal sanctions. Therefore, it is not the existence of inmates that must be eradicated, but the factors that cause prisoners to make mistakes that must be eradicated. Thus, the government in this case is obliged to protect and fulfill the rights of the inmates, as mandated by the 1945 Constitution of the Republic of Indonesia, which is stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. It is explained that the government is obliged to protect the entire Indonesian nation, where inmates are included in it. Therefore, the prison fire that resulted in the death of the inmates becomes a crucial problem that must be immediately resolved because it is related to the citizens' right to life.

One of the causes of the large number of victims who died in the Tangerang Class I Prison fire was the overcapacity condition. The Institute for Criminal Justice Reform (ICJR) noted, that as of August 2021 the Tangerang Class I prison was inhabited by 2,087 inmates, while ideally the prison would only be sufficient to accommodate as many as 600 inmates. With these conditions, the burden of Tangerang Class I Prisons reached 245%.¹² Meanwhile, another data from the Public Correctional Database System (SDP) of the Directorate General of Corrections of the Ministry of Law and Human Rights dated January 2, 2021, states that in 2021 almost all prisons and detention centers in Indonesia will experience over capacity. The percentage of this over capacity reaches 208 percent. The total residents of prisons and detention centers throughout Indonesia are 274,387 people with a standard capacity of 132,107 people.¹³ This condition is certainly not ideal for the existence of the inmates of the correctional facility. The over capacity of prisons will complicate the process of supervision, prison maintenance, and also have an impact on prison mitigation efforts to the rapid evacuation process in an emergency or disaster such as a fire. But in fact, there are 122 inmates who inhabit the block. In addition to over capacity, maintenance of prison facilities and infrastructure is also a concern of many parties, because it is known for almost the last 50 years, namely since 1972,

¹² Rahmawati, Maidina. "Harus Ada Solusi Bersama Institusi dan Lembaga Negara Terhadap Kondisi Lapas". *Institute for Criminal Justice Reform*, 8 September (2021). Retrieved from <https://icjr.or.id/harus-ada-solusi-bersama-institusi-dan-lembaga-terhadap-kondisi-lapas/>

¹³ Dirjen Pemasyarakatan. *SDP Direktorat Jenderal Pemasyarakatan*. (Jakarta: Dirjen Pemasyarakatan, 2021). Available online at <http://sdppublik.ditjenpas.go.id/>

Tangerang Class I Prisons have never repaired their electrical installations.¹⁴ So, this over capacity is believed to be the main cause of the many victims who died in the Tangerang Class I prison fire.¹⁵ In this case, the reform of criminal law policy related to the criminal system is something that is very urgent to answer these problems. Based on the explanation above, the problem formulation of this research is:

- 1) Can the perpetrators who cause prison fires to be subject to criminal liability?
- 2) What are the legal consequences for perpetrators who cause people to die due to prison fires?

2 METHOD

This research uses a normative juridical research method with statutory approach. The statutory approach is used to find out the rules related to criminal liability in prison fire cases. The primary legal materials used are the Constitution of the Republic of Indonesia 1945, the Criminal Code (KUHP), Law Number 12 of 1995 concerning Corrections and Decree of the Director General of Corrections of the Ministry of Law and Human Rights Number Pas-459.PK.01.04.01 of 2015 concerning Standards for Enforcement of Security Disorders and Order in Prisons and Detention Centers. Secondary legal materials used include books and journal articles. The collection of legal materials is carried out by conducting a literature study, then the legal materials are analyzed qualitatively juridically.

3 RESULT AND DISCUSSION

A. Criminal Theory and Criminal Liability on Prison Fire Case

In criminal law, the term "punishment/*pidana*" is known. This term is a translation of the word *straf* (Dutch) which has a more specific purpose, namely indicating a sanction in criminal law.¹⁶ Further explanation of the criminal concept is

¹⁴ Ma'ruf, Irfan. "Siapakah yang Harus Bertanggung Jawab Atas Tragedi di Lapas Tangerang?" *iNews*, 14 September (2021). Retrieved from <https://www.inews.id/news/nasional/siapakah-yang-harus-bertanggung-jawab-atas-tragedi-di-lapas-tangerang-pantau-terus-news-rcti>

¹⁵ Ditjen Pas. "Overcrowded Penyebab Utama Kebakaran Lapas, Wamenkumham: Seluruh APH Carikan Solusi Bersama.", *Online* 27 September (2021). Retrieved from <http://www.ditjenpas.go.id/overcrowded-penyebab-utama-kebakaran-lapas-wamenkumham-seluruh-aph-carikan-solusi-bersama>

¹⁶ Atmasasmita, Romli. *Strategi Pembinaan Pelanggar Hukum Dalam Konteks Penegakan Hukum di Indonesia*. (Jakarta: Alumni, 19820).

needed to be able to find the meaning and essence of the crime itself. Sentencing can also be interpreted as punishment. When we hear the word "punishment", what comes to our mind is the suffering inflicted on those who have broken the law. Roeslan Saleh argues that crime is a reaction to an offense, in the form of a misery deliberately inflicted by the state on the perpetrator of the crime or offense.¹⁷ Meanwhile, Muladi and Barda Nawawi Arief argue that there are several elements of criminal understanding, namely:

- 1) the punishment is essentially an imposition of suffering or other unpleasant consequences;
- 2) the punishment is given intentionally by a person or body that has power (authorized party);
- 3) the punishment is imposed on someone who has committed a crime according to the law.¹⁸

The imposition of a punishment even if it is light is a form of revocation of human rights. Therefore, the use of punishment as a criminal law policy must be based on reasons that can be justified, both philosophically, sociologically and juridically. Lawrence M. Friedman argues that the reality of law enforcement is a determining factor for the effectiveness of punishment. This is closely related to legal elements, namely legal structure, legal material or substance, and legal culture including education and training for law enforcement officers, as well as the development of legal culture in society.¹⁹ Therefore, in order to achieve the implementation of law enforcement, it is necessary to integrate these three elements into the Criminal Justice System.²⁰

Criminal law has a function to regulate and protect as an effort to create community regulation and order in the life of the nation and state. In particular, criminal law has the following functions:

- 1) determining which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.
- 2) determining when and in what cases the perpetrators who violate the prohibition

¹⁷ Saleh, Roeslan. *Stelsel Pidana Indonesia*. (Jakarta: Aksara Baru, 1983).

¹⁸ Muladi, Muladi, and Barda Nawawi Arief. *Teori-teori dan Kebijakan Hukum Pidana*. (Bandung: Alumni, 2010).

¹⁹ Ihsan, Ahmad Yulianto. "Penegakan Hukum Keimigrasian Menurut Undang-undang Keimigrasian." *Journal of Legal and Policy Studies* 2, No. 1 (2016).

²⁰ Isnawati, Muridah. "Arah Penegakan Hukum Tindak Pidana Korupsi Oleh Korporasi Dalam Sistem Hukum Pidana Nasional." *Al Qist Law Review (AQREV)* 1, No. 2 (2018): 108-118.

can be imposed or sentenced to the punishment as threatened.

- 3) determining in what way the imposition of a crime can be carried out or imposed on the perpetrator of a crime.²¹

Punishment is one of the most important parts of criminal law, because punishment is the culmination of the whole process of accountability for someone who has been guilty of committing a crime. Therefore, it can be interpreted that someone who makes a mistake, both intentionally and unintentionally, will receive a definite consequence from his mistake. In other words, there is no punishment without any mistake. Thus, the conception of guilt has a very large influence on the imposition of crime and the process of its implementation. Therefore, if we understand the error as "*something despicable*", then punishment can be considered as "*a manifestation of the reproach*".²²

Criminal liability is closely related to wrongdoing. Furthermore, there is a close relationship with the determination of the subject of criminal law.²³ In criminal law, a person can be subject to criminal liability must meet several conditions, namely: committing a criminal act, being above a certain age is able to be responsible, there are errors both intentional and negligent, and there is no excuse for forgiveness.²⁴ Regarding criminal liability, it can be formulated that a person can be subject to a criminal offense and must be held accountable for his criminal act if that person has committed a crime either intentionally or due to negligence, or a criminal act by not doing something then that person has violated his obligations and is considered to have made a mistake in criminal law. It is not enough to punish a person if that person has committed an act that is against the law or is against the law.²⁵

²¹ Isnawati, Muridah. "The urgency of Indonesian Penal Code (KUHP) reform to realize humanistic-based imprisonment." *Borobudur Law Review* 3, No. 1 (2021): 73-83.

²² Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan. Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. (Jakarta: Kencana Prenada Media, 2006).

²³ Roup, Abdul. "Pertanggungjawaban Pidana Korporasi Lingkungan Hidup Pasca Peraturan Mahkamah Agung No. 13 Tahun 2016." *Justitia Jurnal Hukum* 1, No. 2 (2017): 294-322

²⁴ Mulia, Koes Dirgantara Adi, Muhammad Septa Afrizal, and Lukman Dwi Hadi Putera. "Pertanggungjawaban Pidana Anggota Organisasi Papua Merdeka (OPM) Sebagai Pelaku Makar." *Justitia Jurnal Hukum* 4, No. 2 (2020): 221-237.

²⁵ Yustitiningtyas, Levina. "Pertanggungjawaban Pidana oleh Korporasi dalam Tindakan Pelanggaran HAM di Indonesia." *Jurnal Ilmu Hukum Novelty* 7, No. 1 (2016): 25-42. See also Sularman, Agus, and Umar Ma'ruf. "Pertanggungjawaban Pidana Korporasi Kepada Korban Tindak Pidana." *Jurnal Hukum Khaira Ummah* 12, No. 2 (2017): 387-396; Siahaan, Nimrot. "Pertanggungjawaban Pidana Korporasi Terhadap Tindak Pidana Eksploitasi Seksual Anak." *Jurnal Ilmiah Advokasi* 6, No. 2 (2018): 102-115.

B. The Role of Correctional Institutions in the Criminal System in Indonesia

Among academics, the existence of correctional institutions is recognized as an institution that is included in the ranks of law enforcement, although some people in the community do not know or do not want to admit this. Many think that prisons are not law enforcement agencies. Especially if this is compared to correctional facilities in developed countries such as the United States. The United States is known to have an integrated law enforcement system called the 'integrated criminal justice system', so the existence of corrections is involved and aligned with the Police, Prosecutors and Courts.²⁶

The Law Number 12 of 1995 concerning Corrections becomes the legal in a series of law enforcement processes in Indonesia which aims to make inmates improve themselves, be able to realize their mistakes for committing criminal acts, and not repeat their mistakes so that the community and the environment can accept them again. In Article 1 point 1 of the Correctional Law, what is meant by Correctional is an activity to provide guidance to Prisoners based on the system, institution, and method of coaching which is the final part of the criminal justice system in the criminal justice system. Article 1 point 3 explains that the Correctional Institution, hereinafter referred to as LAPAS, is a place to carry out the development of Prisoners and Correctional Students. In Article 1 number 7 it is stated that a convict is a person who is serving a sentence of loss of independence in prison.²⁷ Whereas in Article 8, it is stated that the Correctional Officer is a functional official of law enforcement who carries out duties in the field of coaching, securing and guiding the inmates of the prison. As a law enforcement functional official, Correctional Officers have an obligation to uphold the integrity of the profession in carrying out the Correctional mission. From this understanding, it can be seen that the essence of correctional facilities is the development of prison residents.

Correctional Institutions are technical implementing units under the auspices of the Directorate General of Corrections, Ministry of Law and Human Rights. Meanwhile, prison residents consist of inmates or convicts, or it could be those who are still prisoners. What is meant by a detainee is a person who is still undergoing the judicial process and the judge has not yet found him guilty or not. While civil servants who are tasked with handling and fostering prisoners and convicts in correctional institutions are called Correctional Officers, or previously called prison

²⁶ Atmasasmita, Romli. *Kapita Selekta Hukum Pidana dan Kriminologi*. (Jakarta: Mandar Maju, 1995).

²⁷ Republic of Indonesia. "Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan" (1995).

wardens.²⁸

Corrections are law enforcement agencies that fulfill and protect the human rights of suspects, defendants and convicts,²⁹ so that they have a very important role in the law enforcement process in Indonesia. This is because prisons are directly involved in the law enforcement process, from the pre-adjudication, adjudication to post-adjudication stages.

C. The Party Responsible for the Death of Inmates Due to Prison Fires

Prison fire is an event that is never wanted by all parties, both prison residents and the prison itself. Moreover, the incident claimed lives, so an in-depth investigation must be carried out to determine whether the incident contained elements of a criminal act or not. According to S. R. Sianturi, briefly the elements of a crime can be arranged as follows:

- 1) the presence of a subject;
- 2) there is an error;
- 3) is against the law (of action);
- 4) an action that is prohibited or required by law/regulation and the violation is punishable by a criminal offense;
- 5) certain time, place and circumstances (other objective elements).

Referring to the elements of the crime, the definition of a criminal act can be formulated as: an action at a certain place, time and condition, which is prohibited (or required) and is threatened with punishment by law, is against the law, and is punishable by law. mistakes made by someone (who is able to take responsibility).³⁰ Meanwhile, P. A. F. Lamintang in his book entitled "*Dasar-dasar Hukum Pidana Indonesia*", explains that every criminal act contained in the Criminal Code can be divided into two kinds of elements, namely subjective elements and objective elements.³¹ The subjective element here contains the intent, namely the elements that are related to or attached to the perpetrator, including everything that is contained

²⁸ Lapas Sukamiskin. "Pemasyarakatan", 2021. Online at <http://lapassukamiskin.kemenkumham.go.id/prosedur-pelayanan/pemasyarakatan>

²⁹ Supriyono, Supriyono, and Anang Dony Irawan. "Semangat Kebangkitan Nasional Untuk Menghadapi Covid-19 Dalam Konteks Pancasila dan Konstitusi." *Jurnal Pendidikan Sosial Keberagaman* 7, No. 2 (2020): 141–148. <https://doi.org/10.29303/juridiksiam.v7i2.137>

³⁰ Kanter E. Y., & Sianturi S R. *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. (Jakarta: Stora Grafika, 2002).

³¹ Lamintang, P. A. F. *Dasar-Dasar Hukum Pidana Indonesia*. (Jakarta: PT Citra Aditya Bakti, 2012).

in the heart of the perpetrator. While the objective element has a purpose, namely the elements related to the circumstances, namely in the circumstances in which the actions of the perpetrator must be carried out. The subjective elements of a crime are:

- 1) presence of intentional or unintentional (*dolus* or *culpa*);
- 2) there is an intention or voornemen in an experiment or poging as described in Article 53 paragraph (1) of the Criminal Code;
- 3) various purposes or oogmerk, such as those contained for example in crimes of theft, fraud, extortion, forgery, and others;
- 4) planning in advance or voorbedachte raad, as contained in the crime of premeditated murder in Article 340 of the Criminal Code;
- 5) feelings of fear or vrees, as contained in the formulation of a crime according to Article 308 of the Criminal Code.

While the objective elements of a crime are:

- 1) unlawful nature (*wederrechtelijkheid*);
- 2) the quality or condition of the perpetrator, for example the state as a civil servant in a crime according to Article 415 of the Criminal Code or the state of being the administrator of a limited liability company in a crime according to Article 398 of the Criminal Code;
- 3) causality, which is a relationship between an action or action as a cause with a reality as a result.

In each formulation of the offense (*delict*), the element of violating the law (*wederrechtelijkheid*) must always be a prerequisite, even though the element of violating the law is not explicitly stated by the legislators as one of the elements of the offense. In the opinion of P. A. F. Lamintang, if the element of violating the law is expressly stated as an element of offense, then the failure to prove that element in the court will cause the judge to have to decide on an acquittal. On the other hand, if the element of violating the law is not explicitly stated as an element of the offense, then the judge must decide on the acquittal of all lawsuits, because the element has not been proven in court. And if an act fulfills the elements of the offense in question, then the act can be called a criminal act.³²

To find out whether in the case of a prison fire that resulted in the death of the inmate, a criminal act has occurred, it is necessary to first determine the elements of the crime. If we look at the example of the fire case in the Tangerang Class I prison, we will find a subjective element, namely the existence of a subject and an element of error. In this case the prison is the subject where there are prison officers on duty

³² Lamintang, 2012.

when the fire occurs and there is negligence (*culpa*), namely the occurrence of an electric short circuit that causes the fire to be an element of error.

According to the police's suspicions, the Tangerang Class I Prison fire occurred due to a criminal act in the prison. It is very possible that the inmates who died were trapped in the room, and no one opened the cell door so that the inmates could not get out and save themselves from the fire. These conditions indicate that there is a possibility that when a fire occurs, there are no prison officers on standby so that mitigation and evacuation efforts as a form of saving prisoners/inmates from fires do not work. In fact, the action of saving inmates and prisoners should be a top priority. Prisoners and detainees must be released as soon as possible and evacuated to a safer place. This refers to the Decree of the Director General of Corrections of the Ministry of Law and Human Rights Number Pas-459.PK.01.04.01 of 2015 concerning Standards for Enforcement of Security and Order Disturbances in Prisons and Detention Centers.³³

D. Legal Consequences for Perpetrators Who Cause Death of Inmates Due to Prison Fires

If we look at the chronology of the fires, there are at least 4 articles of the Criminal Code that can be used as a reference in the imposition of crimes against the fire incident, namely Article 187 number 3, Article 188, Article 304 and Article 359 of the Criminal Code. In this case, the police check the implementation of the Standard Operating Procedure (SOP), the results of the post-mortem and expert statements.³⁴

The regulation regarding intentional fires is stated in Article 187 point 3 of the Criminal Code. This article describes an actor who intentionally causes a fire, explosion or flood that endangers the lives of others and causes people to die. If the act is proven, the perpetrator is threatened with life imprisonment or a maximum of twenty years. Next, the regulation regarding fires that occur due to negligence is stated in Article 188 of the Criminal Code. This article describes the perpetrators who because of their mistakes cause fires, explosions or floods which can cause general danger to property, the lives of others or cause people to die, then the perpetrators

³³ Republic of Indonesia. "Keputusan Direktur Jenderal Pemasyarakatan Kementerian Hukum dan HAM Nomor Pas-459.PK.01.04.01 Tahun 2015 Tentang Standar Penindakan Gangguan Keamanan dan Ketertiban di Lapas dan Rutan", (2015).

³⁴ Polda Metro Jaya. "Polisi Dalami Dugaan Unsur Kelalaian Kasus Kebakaran Lapas Tangerang". *Online News*, 21 September (2021). Available at <https://humas.polri.go.id/2021/09/21/polisi-dalami-dugaan-unsur-kelalaian-kasus-kebakaran-lapas-tangerang/>

are threatened with a maximum imprisonment of five years or a maximum imprisonment of one year or a fine according to criteria. Meanwhile, the arrangements regarding maintenance obligations based on applicable law or according to the agreement are contained in Article 304 of the Criminal Code. This article explains about an actor who intentionally causes or leaves a person in a state of misery while according to the law he is obliged to provide life, care or maintenance to that person, the perpetrator can be threatened with a maximum imprisonment of two years and eight months or a fine in accordance with the provisions. Furthermore, the regulation regarding negligence resulting in death is stated in Article 359 of the Criminal Code. This article describes the perpetrators who due to negligence caused another person to die, the perpetrators are threatened with a maximum imprisonment of five years or a maximum imprisonment of one year.

Article 188 of the Criminal Code explains that the death of a person is caused by a fire that occurs due to the negligence of the perpetrator. Meanwhile, Article 359 explains that the death of a person is caused by the perpetrator who is negligent in carrying out his obligations, so that negligence causes another person to die due to fire, but the fire that occurs is not the result of the actions of the perpetrator. For example, the prison cell door was not opened by the perpetrator during a fire, causing the inmates to be trapped in the room and died. Based on this, according to Article 359 of the Criminal Code, it is very possible that prison officers who are on duty when a fire occurs can be subject to criminal sanctions. In the case of a fire, the general prison officer in charge of electricity could be threatened with article 188 of the Criminal Code because his negligence caused a prison fire, while three prison guards could be threatened with article 359 of the Criminal Code because his negligence caused people to die. So here it is clear that there is an element of negligence on the part of the prison officer which resulted in the death of another person, so that it has fulfilled the elements for the prison officer to be subject to a crime.

In the formulation of article 304 of the Criminal Code, it states that the care obligation referred to refers to one of two things, namely based on the law that applies to him, or because of an agreement. Meanwhile, the person who is given the obligation to care for the detainees is the state through the Minister of Law and Human Rights, then the obligation is delegated to prison officials. From this explanation, it can be concluded that a person who has an obligation in this fire accident can be subject to a crime. Judges have the authority to impose criminal penalties in Indonesian constitutional regulations. So, in making decisions, judges

must adhere to normative and sociological juridical aspects, and also not only focus on broader aspects of the convict, namely society, nation and state.³⁵

Regarding criminal liability, in addition to the perpetrators who are considered guilty according to Article 187 or Article 188 or Article 359 of the Criminal Code, there are parties who are responsible for the security and orderliness of the prison. Article 46 of the Correctional Law states that security and order in prisons are the responsibility of the Head of Prisons. Referring to the article, with the occurrence of a prison fire, the Head of Prison and the Minister of Law and Human Rights must be responsible for the events that occur.

Politically and sociologically those responsible for the fire incident are government officials who handle prison affairs, namely the Minister of Law and Human Rights, the Director General of Corrections, and the Head of Prisons. With the increasing number of fires that killed many inmates, this is an indicator that disaster mitigation efforts and maintenance of facilities and infrastructure in prisons are not run properly. Fires that occur as a result of negligence should be avoided so as not to take many lives or injuries. Meanwhile, legally responsible for the prison fire incident is the perpetrator who was found guilty either by intention or negligence, namely the prison officer who was on duty when the fire occurred.³⁶

Prison fires of course rob the prisoners of their rights as regulated in Article 14 of the Correctional Law, besides that they also cause moral and material losses to the families of the victims. With the loss suffered as a result of the fire, the government through the Menkumham as the responsible party must provide compensation to the victim or the victim's family. In addition, if referring to Article 1365 of the Civil Code (KUHPerdata), which reads that every act that violates the law, which causes harm to others, obliges the person affected by the error to issue the loss, to compensate for the loss. Based on the article, prisoners who are victims and the families of victims of prisoners who died can claim compensation through a lawsuit on the basis of acts against the law, in this case the prison party must compensate the victim and or the victim's family.

³⁵ Fahlevi, Mirza Hilmi, and Achmad Hariri. "Analisis Terhadap Hilangnya Hak Politik Bagi Terpidana Korupsi Ditinjau Dari Hak Asasi Manusia." *Madani Legal Review* 5, No. 1 (2021): 42-55.

³⁶ Resty Shelya Pujiani, Suwinda. "Pertanggungjawaban Pemerintah Dalam Peristiwa Kebakaran Lapas Kelas I Tangerang." *Buletin Lex Scientia* 1, No. 3 (2021). Available online at <http://lexscientia.ukm.unnes.ac.id/buletin-lex-scientia-vol-1-no-3-2021/pertanggungjawaban-pemerintah-dalam-peristiwa-kebakaran-lapas-kelas-i-tangerang/3650/>

4 CONCLUSION

From the description that has been explained before, it can be concluded that the perpetrators who caused prison fires can be subjected to criminal liability. Juridically, the party who was criminally responsible for the prison fire case that resulted in the loss of life was a prison officer for general affairs who handled prison electricity and the other prison officers who were on guard at the time of the fire. The prison officer for general affairs in charge of electricity can be threatened with article 188 of the Criminal Code because his negligence caused a fire, while the other three prison guards can be threatened with article 359 of the Criminal Code because of their mistakes or negligence caused people to die. These three officers were considered negligent in carrying out their duties, such as not opening the door of the room as soon as possible and evacuating the inmates, resulting in many casualties. However, politically and sociologically those responsible for the fire incident were government officials in charge of prison affairs, namely the Minister of Law and Human Rights, the Director-General of Corrections, and the Head of Prisons. In the prison fire incident, there were indications that efforts to maintain facilities and infrastructure as well as disaster mitigation in prisons were not run properly. In law enforcement efforts, prisons have a very important role in fulfilling and protecting the rights of inmates, whether suspects, defendants, or convicts. The government should pay attention to the condition of all prisons by reforming a criminal law policy and a criminal system to overcome overcapacity in prisons so that many deaths during prison fires can be prevented. While a more in-depth analysis of all aspects needs to be done upon the Tangerang Class I Prison fire case, the decision to put prison officers as suspects is not a perfectly legal solution because there is a collective responsibility from the government regarding prison conditions, in this case, the Ministry of Law and Human Rights.

5 DECLARATION OF CONFLICTING INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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