

# The Legitimacy of Conjugal Visit Facilities: a Legal Analysis under National and International Law

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## Abstract

This study examines national and international legal frameworks concerning the provision of conjugal visit facilities (commonly referred to as “bilik asmara”) for inmates in Indonesia, which currently lacks explicit legal regulation. The core issue lies in a legal vacuum (*rechtsvacuum*) that results in uncertainty regarding the legality of such facilities and weak protection of prisoners’ fundamental rights, particularly the right to family life and sexual rights. The objective of this research is to analyze the legitimacy of conjugal visit facilities from the perspectives of both national and international law. This study adopts a normative legal research method, utilizing statutory and analytical approaches. The findings indicate that Indonesia’s national legal system provides implicit legitimacy for the provision of conjugal visits, as reflected in Article 28B(1) of the 1945 Constitution, Law No. 1 of 1974 on Marriage, Law No. 22 of 2022 on Corrections, and Law No. 39 of 1999 on Human Rights. These legal instruments affirm the state’s responsibility to fulfill the sexual rights of inmates within the institution of marriage. Additionally, international legal legitimacy is implicitly found in Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Law No. 12 of 2005, and Article 10 of the Universal Declaration of Human Rights, both of which guarantee humane treatment of prisoners. The provision of conjugal visit facilities constitutes a fulfillment of inmates’ constitutional rights and the state’s international obligations in protecting human rights. This study underscores the importance of harmonizing international norms with national legislation to realize a humane and just correctional system.

**Keywords** : Prisoners’ Rights; Conjugal Visit; National Law; International Law; Human Rights

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## Introduction

Correctional institutions, as integral components of the criminal justice system, are not solely intended to impose deterrent effects but also to rehabilitate inmates so that they may reintegrate into society as law abiding citizens. The Indonesian correctional system continues to uphold the basic rights of prisoners as human beings, including sexual rights.<sup>1</sup> Sexual rights are universally recognized as part of fundamental human rights.<sup>2</sup> Within the context of incarceration

or rehabilitation in closed institutions such as prisons, the fulfillment of these rights is often contested particularly in relation to the discourse and practice surrounding the provision of conjugal visit facilities, which are designated spaces for married couples to engage in intimate relations under regulated conditions.

In various countries, conjugal visit programs have been formally incorporated into correctional policies as a legitimate and humanistic approach focused on social reintegration. These practices are generally grounded in the principle that inmates retain the right to maintain healthy and dignified family relationships.<sup>3</sup> In Indonesia,

<sup>1</sup> Utami, P. N., & Indonesia, H. A. M. R. (2017). Keadilan Bagi Narapidana di Lembaga Pemasyarakatan. *J. Penelit. Huk. E-Issn*, 2579, 8561.

<sup>2</sup> Dewi, A. (2022). Perlindungan Hukum dan Hak Asasi Manusia Dalam Perspektif Undang-Undang Tindak Pidana Kekerasan Seksual. *Juris Humanity*:

*Jurnal Riset dan Kajian Hukum Hak Asasi Manusia*, 1(1), 45-57.

<sup>3</sup> Lestari, V. E. (2024). Tinjauan Yuridis Kebijakan

similar proposals have gained attention among academics, legal practitioners, and the wider public. However, the Indonesian legal framework currently lacks specific regulations that explicitly govern the provision of conjugal visit facilities. The absence of legal norms creates a regulatory vacuum (*rechtsvacuum*), resulting in ambiguity regarding the legality and implementation of such programs.<sup>4</sup> This vacuum raises several issues, including inconsistent practices on the ground, differing perceptions of moral and legal appropriateness, and potential conflicts between legal norms and societal values.

The legal uncertainty surrounding conjugal visits reflects not only a regulatory gap but also a broader weakness in safeguarding fundamental rights, particularly for individuals within closed correctional settings. In such conditions, inmates face the loss of assurance regarding their right to privacy and family life rights that should remain protected even when their liberty is restricted. This situation presents a profound irony in light of Indonesia's commitments to international human rights instruments, which strongly advocate for the respect, protection, and fulfillment of fundamental rights. The right to establish and maintain family life, as articulated in international human rights standards, has yet to be adequately reflected in national legal policies particularly in the context of conjugal visit facilities within the prison system.

This misalignment reveals a clear disparity between internationally ratified norms and national legal provisions, which remain underdeveloped in terms of regulatory frameworks.<sup>5</sup> Therefore,

synchronization and harmonization of laws are necessary to ensure that the principles of human rights do not remain merely declarative but are translated into concrete national legal policies and practices particularly in regulating the rights of inmates to live a dignified family life.

Against this background, a normative legal study on the legitimacy of conjugal visit facilities is crucial, with a focus on both national and international legal perspectives. This research aims to contribute to the formulation of clearer, fairer, and more humane legal policies aligned with the prevailing legal system. It is both timely and urgent, considering the absence of explicit and specific regulations governing conjugal visit facilities in Indonesia. The lack of such legal norms directly results in legal uncertainty regarding their implementation within correctional institutions, potentially leading to human rights violations, unequal treatment, and abuse of authority at the institutional level.

Furthermore, the absence of a clear legal framework hampers the state's efforts to fulfill its constitutional obligations to protect and guarantee the rights of every citizen, including those who are incarcerated.<sup>6</sup> In this context, the rights to privacy and family life cannot be disregarded simply due to one's legal status. The urgency of this research is also driven by the need to harmonize national law with the principles of international law ratified by Indonesia, particularly concerning the respect for human dignity and the protection of fundamental rights. As long as conjugal visit facilities remain unrecognized in the national legal system, a critical gap persists between Indonesia's international commitments and the actual implementation of those norms at the domestic level.

### Research Methodology

This study is a normative legal research that focuses on the analysis of applicable legal

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<sup>4</sup> Wiwin, W., Rahman, M. S., Aditya, M., Yunus, M. K., & Sangker, N. R. (2024). Problematika Pengadaan Bilik Asmara di Lembaga Pemasarakatan Kelas II A Parepare Demi Pemenuhan Hak Seksual Narapidana. *UNES Law Review*, 7(1), 339-347.

<sup>5</sup> Maddolangeng, N. M. (2023). Masalah Analysis of Procurement of Conjugal Visits for Prisoners (Study at Parepare City Class IIA Penitentiary).

<sup>6</sup> Wiwin, W. (2023). Urgensi Pengadaan Bilik Asmara Bagi Narapidana Yang Telah Menikah. *Jurnal Litigasi Amsir*, 283-288.

norms within both national and international legal systems concerning the legitimacy of conjugal visit facilities.<sup>7</sup> The research employs a statute approach and an analytical approach. The statute approach is used to examine relevant national legislation and international legal instruments. Meanwhile, the analytical approach is applied to critically assess normative gaps, legal principles, and human rights doctrines related to the issue at hand. The legal materials used in this research consist of primary, secondary, and tertiary legal sources, all obtained through a comprehensive literature review. These materials are analyzed qualitatively to construct a comprehensive juridical argument regarding the legality and regulatory necessity of conjugal visit facilities within Indonesia's legal system.

### Analysis and Discussion

#### The Legitimacy of Indonesian Law in Regulating Conjugal Visit Facilities

Under the framework of the rule of law as enshrined in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the right to form and maintain a family constitutes a constitutional right of every citizen. Article 28B paragraph (1) of the Constitution explicitly affirms that "Every person shall have the right to establish a family and to procreate through legal marriage." This provision affirms that family and marital rights are recognized as fundamental human rights guaranteed by the Constitution.<sup>8</sup> In the context of Indonesia's particularistic interpretation of human rights, sexual rights are understood as part of the rights that may only be lawfully exercised within the framework of a legal marriage between a man and a woman. Thus, the exercise of such rights is not solely an individual entitlement but is inherently bound to the institution of lawful marriage.

The constitutional guarantee is further

elaborated in Law No. 1 of 1974 on Marriage, which stipulates the rights and obligations of spouses, including the duty to live together, love, respect, and support one another. This legal conception encompasses not only the biological dimension of sexual relations within marriage but also highlights its role in preserving familial integrity, equality, and well-being.<sup>9</sup> Within the constitutional framework, the state bears an obligation to protect and facilitate the fulfillment of its citizens' constitutional rights, including the rights of married couples to a dignified family life. The absence of regulatory or policy measures ensuring the realization of these rights particularly sexual rights in exceptional circumstances such as incarceration may be regarded as a neglect of constitutional duties. Therefore, a legal framework is needed that not only aligns with prevailing moral and religious values but also remains responsive to the fulfillment of constitutionally protected human rights as guaranteed by the 1945 Constitution.

Furthermore, Article 3(g) of Law No. 22 of 2022 on Corrections explicitly states that "the correctional system shall be implemented based on the principle that the deprivation of liberty is the sole form of suffering". This provision affirms that the primary objective of punishment is not to inflict suffering or to strip inmates of all their rights, but merely to restrict their freedom. In other words, the state continues to bear a constitutional and moral responsibility to ensure the protection of the fundamental rights of prisoners, which are not nullified by their legal status. These include the rights to health, education, religious practice, and, within the bounds of lawful marriage, sexual rights.<sup>10</sup>

<sup>7</sup> Efendi, J., Ibrahim, J., & Rijadi, P. (2016). *Metode Penelitian Hukum: Normatif dan Empiris*.

<sup>8</sup> Wiwin, W., Darwis, M., & Syam, E. Z. (2023). *Telaah Kritis Pemberian Izin Poligami dengan Alasan Sering Ditinggal Istri (Studi Putusan Nomor 28/Pdt. G/2021/PA. Ek)*.

<sup>9</sup> Vladu, A., Kalebic, N., Audley, J., Stevens, A., & Taylor, P. J. (2021). Benefits and risks of conjugal visits in prison: A systematic literature review. *Criminal Behaviour and Mental Health*, 31(5), 343-361.

<sup>10</sup> Helianny, I., & Sihotang, M. (2022). Application Of Conjugal Visit In The Indonesian Statutory System For Correctional Assisted Persons. *International Journal of Islamic Education, Research and Multiculturalism*

This principle forms a normative basis for examining the legitimacy of conjugal visit facilities as a means of fulfilling the rights of inmates who are lawfully bound in marriage. The state must not disregard the fact that prisoners, despite their incarceration, retain the right to maintain the integrity and harmony of their family life. The fulfillment of sexual rights through a regulated and dignified mechanism such as the provision of conjugal visit facilities can be understood as an implementation of the correctional principle mentioned above. It also represents a tangible form of a rehabilitative and humanistic approach oriented toward social reintegration.

The Indonesian legal system recognizes and upholds the protection of human rights, which are inherent, universal, inalienable, and applicable to all individuals, including those in conflict with the law. The principle of respect for human rights is reaffirmed in Law No. 39 of 1999 on Human Rights, which stipulates that every person, without exception, is entitled to the protection, respect, and fulfillment of their rights. This means that the enforcement of laws, including the execution of criminal sentences, must not be carried out in a manner that disregards or nullifies these fundamental rights. Human rights are attached to every person from the moment of conception to the end of life, and apply to all individuals within the jurisdiction of Indonesia including those serving prison sentences.<sup>11</sup>

As members of the citizenry, prisoners retain their status as legal subjects entitled to the protection of human rights, particularly during the period of incarceration. The restrictions imposed by the state on inmates are essentially limited to physical liberty and freedom of movement, as affirmed in various correctional law principles.<sup>12</sup> Other

rights such as the rights to health care, education, religious practice, and family life must not be revoked or neglected. This aligns with Article 9 of Law No. 22 of 2022 on Corrections, which affirms that inmates are entitled to humane treatment and the right to lead a dignified personal life. The provision of conjugal visit facilities can be seen as a concrete implementation of efforts to fulfill the fundamental rights of prisoners, particularly those who are lawfully bound in marriage. The right to maintain family life, including the fulfillment of lawful biological needs, is an essential component of human dignity that must be respected by the state.<sup>13</sup> The absence of a legal mechanism regulating this matter may lead to the neglect of inmates' human rights, which runs counter to the constitutional spirit and the principles of a just and humane correctional system.

### **The Legitimacy of International Law in the Provision of Conjugal Visit Facilities**

The legitimacy of conjugal visit facilities is not only grounded in national law but also finds recognition under international law, particularly through Article 12 of the *Universal Declaration of Human Rights* (UDHR). This article states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation". This provision places matters of personal and family life within a protected sphere that must be safeguarded from arbitrary interference or disproportionate restriction.<sup>14</sup> Accordingly, the right to family life including the right of legally married spouses to maintain their intimate relationship is internationally

(IJIERM), 4(2), 164-184.

<sup>11</sup> Pareke, J. T. (2019). Konsep Futuristik Bilik Asmara Bagi Narapidana. *Al Imarah: Jurnal Pemerintahan dan Politik Islam*, 4(1), 41-48.

<sup>12</sup> Larasati, N. U., Nurhadiyanto, L., Zaky, M., & Rozak, A. (2023). Analisis Manfaat dan Risiko Bilik Asmara di Lembaga Pemasyarakatan sebagai Upaya Pemenuhan Kebutuhan Seksual Narapidana. *Jurnal*

*Hukum Pidana Dan Kriminologi*, 4(2), 16-28.

<sup>13</sup> Pane, D. H. (2021). Pemenuhan Hak Biologis Pada Narapidana Yang Sudah Terikat Perkawinan Di Lembaga Pemasyarakatan (Studi Di Lapas Tanjung Gusta Medan). *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]*, 1(2).

<sup>14</sup> Alfredsson, G., & Eide, A. (Eds.). (2023). *The Universal Declaration of Human Rights: a common standard of achievement*. Martinus Nijhoff Publishers.

recognized as a fundamental human right.

The principle enshrined in Article 12 of the UDHR provides both a moral and juridical basis for United Nations member states to ensure that every individual, including prisoners, retains the right to privacy and a dignified family life.<sup>15</sup> Therefore, the provision of conjugal visit facilities for married inmates can be understood as a mechanism to uphold this right, provided it is implemented lawfully and within reasonable legal limits. The absence of such facilities may, in fact, constitute a violation of core human rights principles if the state imposes absolute restrictions without a valid and rational legal basis.

As a member of the international community, Indonesia has demonstrated its commitment to the protection of human rights through the ratification of the International Covenant on Civil and Political Rights (ICCPR) via Law No. 12 of 2005. The ICCPR reinforces the principles found in the UDHR and emphasizes the protection of privacy, family life, and human dignity even for individuals serving criminal sentences.<sup>16</sup> Accordingly, the regulation of conjugal visit facilities not only aligns with Indonesia's constitutional principles but also represents a concrete manifestation of the state's international obligations to uphold and protect human rights.

Although the provision of conjugal visit facilities is not explicitly regulated under international legal instruments including the International Covenant on Civil and Political Rights (ICCPR) the recognition of prisoners' rights to humane treatment and respect for human dignity offers a strong basis for legitimizing such facilities within Indonesia's correctional system. Article 10(1) of the

ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". This norm positions dignity as a foundational principle in the treatment of all individuals, including those serving criminal sentences.<sup>17</sup>

The need for intimacy within the context of lawful marriage is part of the human expression intrinsically tied to personal dignity. An absolute restriction on such basic needs may lead to the degradation of individual dignity within correctional settings.<sup>18</sup> In this regard, the provision of conjugal visit facilities can be understood as a form of humane treatment that supports the continuity of marital relationships for prisoners, provided that it does not compromise the order and security of the correctional institution. The principle of respect for human dignity, as articulated in the ICCPR, provides a normative foundation for the state to consider the legitimacy of such policies as part of broader correctional reform efforts.

Indonesia ratified the ICCPR through Law No. 12 of 2005, which legally binds the state to implement the covenant's provisions, including those stipulated in Article 10(1). This ratification signifies that the ICCPR's norms have become part of the national legal system and must be operationalized through institutional policies and practices, including the rehabilitation of inmates. Therefore, the development of a policy on conjugal visit facilities for married prisoners is not only morally and socially relevant but also consistent with Indonesia's international legal obligations as incorporated into its domestic legal framework.

<sup>15</sup> Lestari, V. E. (2024). Tinjauan Yuridis Kebijakan Conjugal Visit Dan Pengadaan Bilik Asmara Sebagai Upaya Preventif Pada Kasus Penyimpangan Seksual Oleh Narapidana Di Lembaga Pemasyarakatan. *Jurnal Ilmu Hukum Sui Generis*, 4(1).

<sup>16</sup> Kuraesin, S., Arifin, T., & Fauzia, I. (2025). Analisis Hukum Islam terhadap Perlindungan Hak atas Privasi dalam Pasal 12 The Universal Declaration of Human Rights. *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia*, 14(1), 157-178.

<sup>17</sup> Pasaribu, M. G. K. (2025). Pembatasan Kebebasan Hak Asasi Manusia dalam Freedom of Speech. *Honeste Vivere*, 35(1), 1-11.

<sup>18</sup> Hardiyati, R. Y., Subakti, N., Yuspin, W., Nugroho, B. S., & Bangsawan, M. I. (2022). Kebijakan Kesehatan Seksual: Urgensi Pemenuhan Hak Atas Kebutuhan Seksual bagi Narapidana di Lembaga Pemasyarakatan Kelas I Semarang. *Jurnal Penelitian Kesehatan" SUARA FORIKES"(Journal of Health Research" Forikes Voice"*, 13, 1-9.

## Conclusion

The legitimacy of conjugal visit facilities under national law is firmly rooted in the Indonesian legal framework, which upholds the right to form and maintain a family as a constitutional right, as guaranteed by Article 28B of the 1945 Constitution, Law No. 1 of 1974 on Marriage, Law No. 22 of 2022 on Corrections, and Law No. 39 of 1999 on Human Rights. The fulfillment of sexual rights for married inmates is regarded as part of the protection of a dignified family life and the implementation of correctional principles that respect human rights. This legal framework affirms the state's obligation to ensure the realization of prisoners' rights, and the failure to do so may be construed as a violation of constitutional mandates and fundamental humanitarian principles.

Recognition of the legitimacy of conjugal visit facilities is also reflected in international law, particularly through the principles enshrined in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* (ICCPR), which emphasize the importance of humane treatment, protection of privacy, and respect for the family life of inmates. Indonesia's ratification of the ICCPR has formally integrated these principles into its national legal system, making them legally binding. Accordingly, the provision of conjugal visit facilities can be interpreted as a concrete implementation of the state's international obligations to uphold human dignity and the fundamental rights of all individuals, including those within the correctional system.

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#### **Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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