

Islamic Perspective in the Fulfillment of Prisoners' Health Rights As a Government Responsibility

Burhanuddin,^{a,1,*} Maskawati,^{a,2} Andriani M.^{b,3}

^a IAIN Bone, Jl. Hos. Cokroaminoto, Kel. Macanang Kec. Tanete Riattang Barat, Kab. Bone, Sulawesi Selatan 92733, Indonesia

^b BPSDM Pemprov. Sulawesi Selatan, Indonesia

¹ burhanuddinbasir82@gmail.com ² maskawatiumar77@gmail.com ³ andrianimisdar@gmail.com

* Corresponding Author

ARTICLE INFO

Article history

Received: October 27, 2022

Revised: June 1, 2023

Accepted: October 23, 2023

Keywords

Right to Health

Prisoner

Government Responsibility

ABSTRACT

This study aims to determine the government's responsibility in fulfilling the rights to health services for prisoners. The primary data in this study were obtained through an empirical (nondoctrinal) approach in Watampone Class IIA Prison and analyzed qualitatively descriptively in an Islamic perspective based on the theory of Maqoshid Al Shari'ah. The results showed that state responsibility is a constitutional obligation of the state, especially the government to strive for the fulfillment of prisoners' rights. In the conception of Hifz al Nafs, this responsibility is a form of protection / safeguarding the human soul not only for the general public but also for prisoners (prisoners) with the fulfillment of their rights as human beings.

Penelitian ini bertujuan untuk mengetahui tanggung jawab pemerintah dalam pemenuhan hak pelayanan kesehatan narapidana. Data primer dalam penelitian ini diperoleh melalui pendekatan empirik (nondoktrinal) pada Lapas Kelas IIA Watampone dan dianalisis secara deskriptif kualitatif dalam perspektif Islam yang bertumpu pada teori Maqoshid Al Syari'ah. Hasil penelitian menunjukkan bahwa tanggung jawab negara merupakan kewajiban konstitusional negara terutama untuk mengupayakan pemenuhan hak-hak narapidana. Dalam konsepsi Hifz al Nafs, tanggung jawab ini merupakan bentuk perlindungan/menjaga jiwa manusia bukan saja bagi masyarakat umum tetapi juga bagi warga binaan pemasyarakatan (narapidana) dengan jalan pemenuhan hak-haknya sebagai manusia.

This is an open access article under the [CC-BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



1. Introduction

The state is a political entity that has both influence and power to provide maximum protection to its people. In principle, state power comes from people's power which is expected to be a tool to ensure the welfare of its people, especially in terms of providing protection to all its people (Suu & Tung, 2023). When the people delegate their power to the state (government) to exercise, then at the same time the government is responsible for the protection and fulfillment of the rights of its people as stated in the country's constitution.

The Constitution requires the protection and fulfillment of the rights of the people as a whole without exception. Included in this case are citizens who under certain conditions experience limitations in accessing their rights. One group of citizens who have difficulty accessing their rights is prisoners or inmates. Against this group, the state must not discriminate in providing treatment in the fulfillment of its rights.

The development of prisoners is directed at the orientation of improving the quality of personality and independence of prisoners so that they can later return to being good citizens. Further according to (Qarnain & Naibaho, 2021), The function of inmate development is directed at revitalizing the correctional system that focuses on the principle of resocialization which not only encourages changes in prisoner behavior but also encourages a system that allows *overcrowded* prison conditions to develop the potential of skilled human resources.

The role of the state, especially the government, is very important and even becomes an obligation in the protection and fulfillment of prisoners' rights. This can be seen in the constitutional provisions, Article 28I paragraph (4) of the 1945 NRI Constitution. The provision states that the state, especially the government, is responsible for the protection, promotion, enforcement, and fulfillment of human rights. As mandated by the constitution, the state is responsible for ensuring that everyone can easily access health services (Mikho Ardinata, 2020).

The urgency of the protection and fulfillment of the rights of prisoners is the enforcement of humanitarian principles against a group of citizens deprived of their independence. Such conditions make prisoners very potential to receive discriminatory treatment that leads to human rights violations by the state.

Affirmation in Law No. 39 of 1999 concerning Human Rights that what is meant by human rights violations is the actions of a person or group of people including state officials whether intentional or unintentional or negligence, limiting and or depriving a person or group of people of human rights guaranteed by this Law, and not getting, or fearing that they will not get a fair and correct legal solution, based on applicable legal mechanisms. Violation of prisoners' rights can cause disruption to efforts to realize the purpose of punishment itself. (Irawati, 2006). Therefore, on the basis of the principle that everyone is born free and equal to others, it cannot be done in a discriminatory manner for any reason. (Sabila et al., 2019)

One of the rights of prisoners specifically affirmed in the Correctional Law is the right to get health services and proper food in accordance with nutritional needs.¹ In this provision, the right to health services becomes an integral part of the right to get proper and nutritious food. That is, to achieve a good degree of health for prisoners it is not enough just to provide health services by health workers in clinics, but also must be accompanied by nutritious feeding.

The results of research by Riyan Firmansyah, et al., revealed that the implementation of the fulfillment of the right to health services and consumption in Banda Aceh Prison has not been effective and has not met the established standards. This study also revealed the causative factors including overcapacity, infrastructure and limited budget. (Firmansyah et al., 2019) In addition, there is also a comparative study conducted by Aplan Sarkawi. In his research, he found a difference where the fulfillment of health service rights in Makassar Class I Prison was better than Bengkulu Class II Prison. (Sarkawi, 2013).

The implementation of provisions to fulfill the rights of prisoners in obtaining adequate health and food services is considered ineffective. With various causal factors, the results of existing studies conclude that the rights of prisoners in this case are not fulfilled properly. While the State, especially the government through related ministries, is constitutionally responsible for fulfilling the rights of prisoners.

This study found influential factors that are not only an obstacle but also a supporting factor in efforts to fulfill the right to health services in Watampone Class IIA Prison. This contributing

¹ Article 7 letter d of Law Number 22 of 2022 concerning Corrections

factor has never been revealed in previous studies. One of the findings in this study is the existence of value-based services. That with various limitations, services carried out by health workers and prison officers are always carried out optimally based on human values which are realized by considering all fostered residents as family.

The correlation of value-based service is very closely found in an Islamic perspective with various postulates both the Qur'an and Hadith as well as implementation in the history of Islamic government during the time of the Prophet Muhammad SAW and his companions. The substance of human values-based services is very much in line with the command on how to treat prisoners in the history of Islamic rule.

What we want to achieve in this study is to reveal the Islamic perspective in fulfilling the rights of prisoners. Concretely, this Islamic perspective will be encouraged substantively to provide reinforcement in correctional policy making as a responsibility of the state, especially the government in efforts to fulfill the rights of prisoners.

2. Method

Primary data in this study were obtained through empirical (nondoctrinal) approach. Juridical provisions related to the rights of prisoners, especially in the Correctional Law and technical provisions related to basic health care service standards in Lapas, were confirmed through interviews with health workers and officials at Watampone Class IIA Prison. The data were analyzed in a qualitative descriptive manner in an Islamic perspective that rested on the theory of *Maqoshid Al Shari'ah*.

3. Result and Discussion

The right to prisoners' health services is normatively regulated in the provisions of Article 9 letter d of the Correctional Law. This provision affirms that prisoners have the right to receive health services and adequate food in accordance with nutritional needs. Technically, through the Ministry of Law and Human Rights, basic health care service standards are established in Lapas. These provisions are regulated in the Decree of the Director General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia Number PAS-32. PK.01.07.01 Year 2016 concerning Basic Service Standards for Health Care in Lapas, Rutan, Bapas, LPKA, LPAS (Decree of the Director General of PAS 2016).

The technical determination in the Decree of the Director General of PAS 2016 broadly regulates 2 (two) things, namely the need for health workers and the need for facilities and infrastructure. These two needs show the health care system of prisoners that must be fulfilled as the responsibility of the government. The needs are as outlined in the following table:

Table 1. Health Worker Needs

No	Profession	Number of Executors	Competence of Implementers		Execution Objects
			Education	Training	
1	General practitioner	1 persons	Strata I General Medicine	HIV and NAPZA, ACLS, ATLS, PPGD uproar	General health check
2	Dentist	1 persons	Strata I Dentistry	Dentistry Emergencies	Dental health check
3	General Nurse	2 persons	Diploma III in Nursing	BTCLS, Wound Care, fluid balance, TB, HIV and drugs	General Health Check

4	Dental Nurse	1 persons	Diploma III in Dental Nursing	Dentistry Emergencies	Dental Health Check
5	Midwife	1 persons	Diploma III Midwifery	Ultrasound training, Training on other supporting equipment	Maternal and child health check-up
6	Assistant Pharmacist	1 persons	Diploma III Pharmacist	Seminars and Training	General and dental health services
7	Laboratory Analyst	1 persons	Diploma III Health Analyst	Seminars and Training	Supporting inspection services
8	Psychologist	1 persons	Strata 1 Psychology	Seminars and training	Public health care
9	Sanitarian	1persons	Strata 1 Sanitarian	Seminars and Training	Environment al Health Services
10	Nutritionists	1 persons	Diploma III science of nutrition	Seminars and Training	Nutrition Health Services
11	Administrator	1 persons	Diploma III Computer	Seminars and Training	Yankes Report Logging Service

In addition to the needs of health workers, the 2016 PAS Director General Decree also sets standards for the provision of facilities and infrastructure. The needs of prison facilities and infrastructure can be seen through the following table:

Table 2. Facilities and Infrastructure Requirements

No	Facilities and Infrastructure	The Amount	Information
1	Public Service Room	1	To carry out general health checks
2	Dental Service Room	1	To carry out dental health checks
3	Emergency Room	1	For emergency management
4	Mother and Child Service Room	1	For maternal and child health services
5	Medicine Room	1	Where to store the drug
6	Waiting Room and Administration	1	Waiting places and patient registration points are kept separate

7	Infectious Disease Isolation Room	1	For the separation of infectious diseases
8	Laboratory	1	To carry out supporting examinations
9	Water Installation	1	For the fulfillment of water facilities
10	Air Installation	1	for the fulfillment of air circulation
11	Standard instructions and evacuation arrangements	1	For guidelines in case of riots
12	Information and communication systems	1	For information facilities
13	Health waste disposal plants	1	For the fulfillment of environmental health
14	Ambulance	1	For referral patient transportation
15	General medical devices	1 set	For public healthcare
16	Dental devices	1 set	For dental health services
17	Maternal and child medical devices	1 set	For maternal and child health services
18	Consumables	1 package	For general and dental health services
19	Basic medicines	1 package	For general and dental health services

The availability of health workers and facilities and infrastructure is an indicator of the fulfillment of prisoner health services. Both health workers and prison facilities and infrastructure are very important and become the main support in fulfilling the rights of prisoners in various age classes (Hermansyah & Masitoh, 2020).

Based on field data, it shows that the needs of health workers as stipulated have not been met properly. This can be seen from the availability of health workers at the Watampone Prison clinic which only has 1 (one) general practitioner and 1 (one) general nurse from 11 (eleven) health workers according to its provisions.

3.1. Government Responsibility in the Fulfillment of the Rights of Prisoners in Islam.

The responsibility of the government begins with a constitutional order to carry out or not carry out an action. Therefore, responsibility can be interpreted as an obligation that directly concerns the interests of its citizens. Interest in question relates to the rights of citizens that are recognized, guaranteed and fulfilled by the state as a social contract between the state and its citizens.

In principle, constitutional orders that give birth to obligations for the state, especially the government, are characteristic of the concept of statehood that makes welfare its goal. This concept is popularly known as the concept of the welfare state. Where the state based on its constitution is obliged to strive for welfare by means of one of which is the fulfillment of the rights of its citizens.

One of the perspectives of fulfilling the rights of citizens in the context of responsibility is the religious perspective (Islam) whose provisions are found in the Qur'an and Hadith. Islam views human rights as a principle or basic value that must receive guarantees and protection. Islam views human rights as a value that places human beings in glory, dignity and dignity. The struggle for the establishment of human rights in Islam has been going on since it was handed down as a human guide, long before modern man discussed human rights itself. (MUHAMMED, 2021)

The fulfillment of rights for prisoners is something that also receives attention in Islam. In the Qur'an, ALLAH SWT says:

“And they gave the food they liked to the poor, orphans and the captive.” (QS. Al Insan : 8).

Moreover, one of the hadiths narrated by Imam Buhari explained that

'Abd Allah bin Muhammad: said Ibn'Uyainahdari 'Amr and heard him Jabir bin 'Abd Allah ra. He said, "On the day of the Battle of Badr, the captive polytheists were brought (before the Holy Prophet). At that time 'Abbas was taken in a state of no clothes. So the Prophet (peace be upon him) found him a long shirt. The Companions found the long clothes of 'Abd Allah bin Ubay bin Salul suitable for the body of 'Abbas bin 'Abdal-Muttalib. So the Prophet (peace be upon him) gave the long clothes of 'Abd Allah bin Ubay bin Salul to 'Abbas bin 'Abdal-Muttalib for him to wear. Therefore, the Prophet (peace be upon him) took off his long clothes and put them on the body of 'Abd Allah bin Ubay (when he was about to be buried). The narrator Sufyan bin Uyainah said, 'Abd Allah bin Ubay had merit to the Holy Prophet (peace be upon him) (by giving his long shirt to 'Abbas bin 'Abdal-Muttalib). Therefore, the Holy Prophet (peace be upon him) repaid the kindness.” (HR. Bukhari, no. 3008).

The Qur'an and Hadith above are one of the references in Islam regarding how to treat prisoners humanely. If the human value approach is used as a basis for providing services to Lapas residents, it can be ascertained that the fulfillment of rights for fostered residents can be realized. The question then is to what extent does the state, especially the government, place human values as exemplified by the Prophet Muhammad SAW as a value framework in designing policies oriented towards fulfilling the human rights of prisoners?

Jurisprudence experts agree that prisoners who, because they are in the custody of the state, fulfill all their needs are the responsibility of the state. This need then becomes a right that must be fulfilled by the state, namely in the form of food, medical care and other basic needs (Mashood A. Baderin, 2007:93). Included in its fulfillment are the rights to personal needs, body, mind and self-esteem to be maintained. Even married prisoners are entitled to regular spousal visits.(Mashood A. Baderin, 2007)

Ali ibn Abi Talib, who while serving as the fourth Caliph, made frequent unannounced visits to prisons to ensure prisoners were subjected to humane treatment and to hear his grievances. The government's practice of fulfilling the rights of prisoners has historically continued until Muawiyah's leadership in Syria and the caliphs thereafter (Mashood A. Baderin, 2007).

Departing from the provisions of Nash and its historical practice, it is necessary to carry out an effort to transform values as an Islamic perspective in fulfilling the rights of prisoners. Health services with a human value approach are important to assess the extent to which the implementation of the fulfillment of the right to health services for prisoners can be held as a state responsibility towards its citizens.

The state has an important role in efforts to realize humane correction. This is inseparable from the goals and functions of the country itself which broadly wants to achieve happiness for its people. Through its organs, the state performs functions in the resolution of disputes, conflicts, and the fulfillment of the needs of common life. Therefore, the state becomes a tool for the common interest in achieving happiness.(Ahmad Sukardja, 2012:59)

The 1945 NRI Constitution in Article 28I affirms that the state, especially the government, is responsible for the protection, promotion, enforcement and fulfillment of human rights. So in the context of fulfilling the right to health services without exception for Lapas-assisted residents, it is the responsibility of the state, especially the government. Who is a government? according to Utrech as quoted by M.Solly Lubis² states that the term government encompasses three different meanings. One of the three definitions is government in the sense of the head of state (President) together with his Ministers, which means the executive organ, commonly called the cabinet.

One form of government responsibility in protecting and fulfilling human rights can be seen from the policies, both regulations and budgeting. According to the Correctional Law, corrections are placed as a sub-system of criminal justice that organizes law enforcement in the field of treatment

² dalam Ahmad Sukardja.*Ibid.* hlm. 56

of prisoners, children and fostered citizens. In addition, law enforcement carried out in prisons is carried out through the function of coaching prisoners as fostered citizens. Therefore, the coaching process carried out by prisons will be an important stage for assisted citizens in ensuring their rights to health services can be fulfilled.

In Islamic law, punishment is necessarily in relation to the detention of prisoners, known as an approach to the purpose of the law itself. To this, an approach is known in the theory of *Maqasid Al Shari'ah* proposed by Abi Ishaq Al Syatibi. According to this theory, there are 5 (five) interests or objectives of Islamic law, one of which is the purpose of preserving the soul (*Hifzh al Nafs*). Islam provides strict provisions in providing life protection for society against its violators which if carried out seriously will guarantee the soul of every individual. (Wahyuni F, 2018 : 216)

Prisons are actually places where the purpose of the law to preserve souls is carried out. As a form of law enforcement, prisons must be a place that on the one hand becomes a means to avoid the community from the threat of crime, but on the other hand in the context of the coaching function carried out by the government through Lapas, it must also prioritize the values of *Hifzh al Nafs*. That is, there should be no prisons that in the process of coaching their citizens at the same time things happen that are contrary to the principles of *Hifzh al Nafs* for Lapas residents.

With the service standards made by the government, the need for health workers and facilities and infrastructure should be met as part of the fulfillment of optimal health services. Budgeting which is a factor inhibiting health services should also get attention. Because the budget is sufficient not only for the needs of health workers and infrastructure, but no less important is for the provision of proper food for the residents of Lapas.

ALLAH SWT says:

"O man! Eat of the lawful and good (food) found on earth and do not follow the steps of Satan. Truly, Satan is a real enemy to you." (QS. Al Baqarah :168)

The above verse confirms that the food that is commanded to be eaten is food that is not only halal but also *Thoyyiban* (good). The problem that is common in prisons in Indonesia, with various studies conducted is food that is far from decent. Of course, in the context of *Toyyiban* the food in question is food that meets nutritional standards and sufficient portions are again suitable for Lapas residents. This is important to note because with *overcrowded* prison conditions, various diseases suffered by fostered residents can vary, so it is very important to sort food for residents who suffer from certain diseases.

4. Conclusion

The responsibility of the state in fulfilling the rights of prisoners, especially the right to health services, is an obligation affirmed in the constitution and laws and regulations. As a state that adheres to the welfare state, the state, especially the government, is obliged to strive for the fulfillment of the right to health services for all its citizens, including citizens who are undergoing training in prisons. Islam affirms this both in the Qur'an, Hadith and the practice in the time of the Prophet and his companions in treating prisoners. Islam provides guidance on how prisoners are treated humanely by providing for their various needs that enable them to live a decent life in detention. This came to be known as the fulfillment of the rights of prisoners. Only then, can the conception of *hifzh al nafs* as found in the theory of the purpose of Sharia maqashid law be applied, where the penitentiary is not only to protect the wider community, but also against prisoners, the conception of *hifzh al nafs* must be applied with the fulfillment of their rights as human beings. Thus, the state, especially the government, not only protects / protects the lives of the wider community but also protects / safeguards the lives of prisoners.

References

- Ahmad Sukardja. (2012). *Hukum Tata Negara & Hukum Administrasi Negara* (K. A. T. K. Zada, Ed.). Sinar Grafika.
- Firmansyah, R., A.Rani, F., & Adwani, A. (2019). Pemenuhan Pelayanan Kesehatan dan Konsumsi Bagi Narapidana di Lapas dan Rutan. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(3), 433. <https://doi.org/10.24843/jmhu.2019.v08.i03.p10>
- Hermansyah, A., & Masitoh, M. (2020). Pemenuhan Hak Narapidana Lanjut Usia Bidang Kesehatan di Lembaga Pemasyarakatan Kelas IIA Banda Aceh. *Syiah Kuala Law Journal*, 4(1), 88–96. <https://doi.org/10.24815/sklj.v4i1.16775>
- Irawati, D. (2006). *Menuju Lembaga Pemasyarakatan Berwawasan Hak Asasi Manusia*. UKI Press.
- Mashood A. Baderin. (2007). *Hukum Hak Asasi Manusia Dan Hukum Islam*. Komisi Nasional Hak Asasi Manusia.
- Mikho Ardinata. (2020). Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM). *Jurnal HAM*, 11(2), 319–333.
- MUHAMMED, M. (2021). Human Rights and Religion: Islam in Perspective. *Lectio Socialis*, 5(1), 25–34. <https://doi.org/10.47478/lectio.788811>
- Qarnain, A., & Naibaho, N. (2021). Revitalization of Correctional Organizations: Current Development of Correctional System in Indonesia. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 6(2), 156–165. <https://doi.org/10.22373/petita.v6i2.119>
- Sabila, Y., Bustamam, K., & Badri, B. (2019). LANDASAN TEORI HAK ASASI MANUSIA DAN PELANGGARAN HAK ASASI MANUSIA. *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial*, 3(2). <https://doi.org/10.22373/justisia.v3i2.5929>
- Sarkawi, A. (2013). Hak Atas Pelayanan Kesehatan Bagi Narapidana Di Lembaga Pemasyarakatan Dalam Upaya Perlindungan Hak Asasi Manusia. In *Program Pascasarjana Universitas Hasanuddin Makassar*. Universitas Hasanuddin.
- Suu, N. Q., & Tung, B. H. (2023). NEW THEORETICAL PERCEPTIONS OF THE CONTROL OF STATE POWERS IN BUILDING THE RULE-OF-LAW STATE. *Revista de Gestao Social e Ambiental*, 17(7). <https://doi.org/10.24857/rgsa.v17n7-018>
- Wahyuni F. (2018). *HUKUM PIDANA ISLAM* (Azmi M, Ed.; 1st ed.). Nusantara Persada Utama.