

Government Responsibility for Lost of People's Life In Prison Fire Class I Tangerang

Heri Sukamto¹, Fajar Ari Sudewo², Sanusi³
{herisukamto950@gmail.com, drfajararisudewo@gmail.com, sanusi6362@gmail.com}

Magister of Law, Universitas Pancasakti Tegal, Indonesia

Abstract. The purpose of this study was to identify and examine the institutional arrangements of the penitentiary and the government's responsibility in the case of the Tangerang Class I Penitentiary fire which resulted in the loss of people's lives. The approach used in this research is the law approach and the case approach. This research data collection technique was carried out through conventional and online literature searches. The data analysis technique used in this research is qualitative because the data is presented in a descriptive-narrative way. The results of the study indicate that the legal basis for the existence of correctional institutions in Indonesia is contained in Article 1 Paragraph (3) of the Law of the Republic of Indonesia Number 12 of 1995. Correctional institutions carry out the duties and functions of correctional facilities, namely to provide guidance to inmates based on systems, institutions, and ways of coaching. based on Pancasila. Regulations of correctional institutions must try to minimize the differences between prison life and free life which aims to reduce the responsibility of prisoners or respect for their dignity as human beings.

Keywords: Fire; Government; Criminal

1. Introduction

A major fire incident occurred at the Tangerang Class 1 Penitentiary on Wednesday, September 8, 2021 in the early hours of the morning. Based on information from the media, in this incident, at least 41 people were identified, 8 people were seriously injured, and 72 people were lightly injured. The death toll on September 9, 2021 has increased by 3 people, bringing a total to 44 people dead. The police have raised the status of the Tangerang Class I Penitentiary fire case from investigation to investigation. This means that in this case there is a criminal element that must be accounted for. There are no suspects yet, but the police are continuing to examine witnesses. A number of items of evidence confiscated by the Police include CCTV footage, dozens of cellphones, padlocks and keys, as well as other evidence related to criminal acts.

The government is urged to take quick steps to conduct a thorough investigation and evaluation of the building and the condition of prison safety. The government also needs to immediately determine accountability measures for the loss of life and casualties. Including recovery and accountability to the victim's family. The government must also determine strategic steps in resolving the excess capacity of the correctional facilities by involving cross-sectoral law enforcement officers. In Indonesia, the principle of government accountability is not regulated in general criminal law (KUHP), which is adopted by corporate crimes which are spread in special criminal law.

Based on the monitoring of ICJR, IJRS, and LeIP, during the last three years there were 13 correctional institutions in Indonesia that experienced fires. He noted, of the 13 prisons that

were burned, there were 10 that were burned in overcrowding conditions or on the verge of overcrowding. Of the 10 prisons that were burned, 9 of them were in an overcrowding condition, while 1 of them was a prison with the number of occupants almost reaching the maximum limit. One such penitentiary is the Kabanjahe Penitentiary, with 97 percent of its occupants at the time the fire occurred. The overcrowding rate of the Tangerang Class I Penitentiary reaches 245 percent and is currently inhabited by 2,069 people. The density of correctional facilities is one of the contributing factors in exacerbating the dangers that occur due to the emergency caused, while other factors are the lack of readiness and training and the lack of funds from the government. The potential fire hazard in prisons when combined with the lack of preparedness in prisons and the lack of necessary resources can result in a risk of injury not only to prisoners but also to public safety.

The condition of correctional institutions that experience excess capacity will have an impact on the low fulfillment of the rights of inmates. The inmates will not get proper facilities such as proper housing, adequate cell space, clean sanitation, and medical care. Inmates in prisons are vulnerable to emotional changes. They will experience dissatisfaction with these conditions which can lead to disorder and then have the potential to create riots. This excess capacity is the root cause of the chaos in prisons lately, in addition to drug problems, lack of officers, conflicts between inmates and others. This is evidenced by the many riots in the correctional institutions which led to the fire of the correctional institutions. There are five penitentiaries that were burnt down due to rioting by the occupants. One of them was the fire at the Manado Class IIA Penitentiary in April 2020 [1].

The excess occupancy capacity of correctional institutions is the result of the accumulation of the number of inmates associated with the function of law enforcement officers who carry out functions in criminal cases [2]. On the other hand, if not, it will lead to "the crisis of overcriminalization" and "the crisis of overreach of the criminal law" (crisis of excess of criminal law) [3]. If this happens, in the end, the penitentiary as the last door in the criminal justice system will experience a surge in occupants which results in excess occupancy capacity and not achieving the purpose of sentencing itself [4]. The formulation of the problem in this research are How is the institutional arrangement of the correctional institution?, and What is the government's responsibility in the case of the Tangerang Class I prison fire which resulted in the loss of life?

2. Method

This type of research is library research [5]. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature. The approach used in this research is the statutory approach and the case approach [6]. The statutory approach is an approach that uses legislation and regulations.

3. Discussion

3.1. Institutional Arrangements of Correctional Institutions

Initially, there was no known prison system in Indonesia. The prison system was only known in the colonial era. In the VOC era, there were no prisons as they are today, there were detention houses that were intended for prostitutes, unemployed or drunken vagrants and so

on. Improvements began to be made in the British era (Raffles). After the government returned to the Netherlands, Raffles' efforts were repeated by the Dutch government, with the classification of people sentenced to forced labor using chains and people sentenced to ordinary forced labor for wages. The prison system is a treatment system for convicts (convicts), where this system is the goal of imprisonment. For those who have been proven to have committed a crime and were subsequently sentenced (criminal) by the court, then by the court the person who was sentenced was then sent to prison to carry out and serve his sentence until the end of his sentence. The guilty person in this place was treated in such a way by using a certain treatment system (in the form of torture and other corporal punishments) in the hope that the convicted person would really feel deterred.

From April 17 to May 7 1964, the Directorate of Corrections Service Conference was held in Lembang, Bandung. The conference issued a result in the form of a system of treatment of prisoners in Indonesia based on Pancasila which is called the correctional system. Correctional conception was first stated in 1964 by Dr. Sahardjo, S.H. when he received the title of Doctor Honoris Causa (Speech Banyan Tree Protection). The correctional system is a therapeutic process carried out based on the principles of humanity, Pancasila, protection, and Tut Wuri Handayani. The correctional system is an order regarding the direction and boundaries as well as the method of fostering correctional inmates based on Pancasila which is carried out in an integrated manner between the coaches, those who are fostered, and the community to improve the quality of correctional inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted. returned by the community, can play an active role in development, and can live normally as good and responsible citizens. The form and method of coaching the convict in all aspects of his life and limiting the freedom of movement as well as his association with the community outside the institution are adjusted to the progress of his attitude and behavior as well as the length of his sentence that must be served. Thus, it is hoped that the convict at the time of his release from the correctional institution is truly ready to live in society again properly.

The correctional system is a series of criminal law enforcement units, therefore its implementation cannot be separated from the development of a general conception of punishment [7]. The correctional system in addition to aiming to restore the prisoners as good citizens, also aims to protect the community against the possibility of repeating criminal acts by correctional inmates. Penitentiary as the spearhead of the implementation of the principle of protection is a place to achieve the goals of the correctional institution by providing guidance and coaching through education, rehabilitation, and integration.

The name change resulted in changing the purpose of the prison system to a correctional system. In the correctional system, the goal is no longer for prison, but for coaching. Coaching is carried out as a preparation to live again in the community in a fair and responsible manner. The purpose of the imprisonment is to inflict suffering on prisoners by eliminating their freedom, as well as to guide prisoners to repent and educate prisoners to become useful members of society. The implementation of imprisonment with the correctional system in Indonesia currently refers to the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections. The Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections consists of 8 chapters and 54 articles. The first chapter regulates general provisions, the second chapter regulates coaching, the third chapter regulates community fostered citizens, the fourth chapter regulates the community consideration center and community observer team, the fifth chapter regulates security and order, the sixth chapter

regulates other provisions, the seventh chapter regulates transitional regulations, the eighth chapter regulates closing provisions.

The concept of penitentiary is not merely to formulate the purpose of imprisonment, but is a system of guidance, methodology in the field of treatment of offenders which is multilateral oriented with a potential-centered approach. the potential that exists both in the individual concerned, and in the community as a whole (community base treatment). Thus, the correctional system and the prison system are conceptually different at all, in the prison system that is applied is a system based on rehabilitation with the focus of treatment being almost exclusively centered on the individual concerned, because in the prison system what is more highlighted is the goal of the treatment itself, namely deterrence (deterence or afschrikking). It can also be seen in the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections regarding the purpose and function of the correctional system, namely that it is held in the context of forming correctional inmates so that they become fully human, realize mistakes, improve themselves, and do not repeat criminal acts so that they can accepted by the community, can play an active role in building and can live naturally as good and responsible citizens. The correctional system functions to prepare the prisoners so that they can integrate in a healthy manner with the community so that they can play a role again as good and responsible members of society.

The implementation of imprisonment with the penitentiary system implemented in Indonesia today is more due to the demand that the implementation of imprisonment must also respect and respect the rights of a prisoner as a human being created by God who has human rights [8]. Based on the principles of the correctional system as stated in the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, it appears that the correctional system views the prisoners not only as objects but as subjects who are no different from other humans who are subject to criminal sanctions from time to time, so that they actually do not have to be eradicated, what must be eradicated are the causative factors that can cause the convict to commit acts that are contrary to law, morality, religion or other obligations that can be criminalized [9]. In other words, the strategy that must be addressed is a problem or condition that can either directly or indirectly lead to or kill the proliferation of crime.

The technique of implementing the full correctional system can only be carried out in institutions where most of the residents are sentenced to one year and above, this effort is carried out continuously and progressively in stages for each prisoner concerned from the time he enters as a prisoner until his release. It can be seen in general that the stages of implementing the correctional system begin with accepting prisoners and completing their administrative records, followed by observation or complete personal identification by a correctional council, after which the form and method of treatment will be determined. in addition to being given information about the rights and obligations as well as the way of life in the institution.

Correctional institutions are the final part of the criminal justice system in Indonesia after 3 (three) criminal justice systems, namely the police, prosecutors and courts that impose imprisonment (revocation of independence) on convicts. The legal basis for the existence of correctional institutions in Indonesia is contained in Article 1 Paragraph (3) of the Law of the Republic of Indonesia Number 12 of 1995. Of course, in the daily journey of the existence of prisons, it is certain that there are rules regarding the procedures for implementing the

development of prisoners and children. correctional education. This is called the correctional system as stipulated in Article 1 Paragraph (2) of the Law of the Republic of Indonesia Number 12 of 1995.

Correctional institutions are classified into 4 (four) classes based on capacity, domicile, and place of work activities. The four classes are:

1. Class I Correctional Institution.
2. Class IIA Penitentiary.
3. Class IIB Penitentiary.
4. Class III Penitentiary.

Institutional regulations should seek to minimize differences between prison life and free life with the aim of reducing the responsibility of prisoners or respect for their dignity as human beings. Prior to the completion of the sentence, it is desirable that measures be taken to ensure for the prisoner a gradual return to life in society. This goal may be achieved depending on the case by a pre-release regulation organized within the same institution or at another appropriate institution by probationary release under some kind of unreliable supervision. will to the police but must be combined with effective social assistance.

3.2. Responsibilities of the Government in the Case of the Tangerang Class I Penitentiary Fire which resulted in the loss of people's lives

The Tangerang Class 1 Penitentiary fire robbed the prisoners of their rights as regulated in Article 14 of the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, and caused losses to the victim's family. There are at least 3 articles of the Criminal Code that can be used in the case of a Tangerang Class 1 Penitentiary fire, namely Article 187 Paragraph (3), Article 188 and Article 359 of the Criminal Code. Article 187 Paragraph (3) of the Criminal Code regulates fire on purpose, which states that anyone who intentionally causes a fire, explosion or flood, is threatened with life imprisonment or for a certain period of twenty years at most, if the act causes danger to the lives of others. and cause people to die.

Article 188 of the Criminal Code which regulates fires due to negligence states that whoever due to his fault causes a fire, explosion or flood, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year or a maximum fine of four thousand five hundred rupiahs, if due to the act of there is a general danger to goods, if because of that act there is a danger to the lives of others, or if the act results in the death of a person. Furthermore, Article 359 of the Criminal Code which regulates negligence resulting in death states that whoever because of his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year.

The application of Article 188 stipulates that a person's death is caused by a fire that occurs as a result of the negligent act of the perpetrator. Meanwhile in Article 359, the death of a person is caused by the negligence of the perpetrator to perform an obligation, thus causing death due to fire, but the occurrence of the fire is not the result of the act of the perpetrator. For example, not opening prison cells when a fire broke out, causing the death of the inmates.

It is possible that the officer on duty when a fire occurs can be punished under Article 359 of the Criminal Code. For Article 359 of the Criminal Code, investigators have determined three correctional officers who are on duty as suspects. The determination was made after investigators obtained three pieces of evidence, namely witness statements, documents, and statements from the suspect. So far, investigators have not found any element of intent based on the title of the case. Therefore, investigators and related parties agree that there was no intentional element, but that exists because of his negligence.

It is known that the fire incident occurred last Wednesday, September 8, 2021. It is estimated that the fire started at 01.45 WIB in the morning in Block C2 which has 122 prisoners. The fire was seen grabbing the roof behind a ceiling. Because the ceiling is made of flammable plywood, the fire then spreads quickly. The origin of the fire is thought to have been caused by a short circuit. It could be due to the high use of gadgets by the inmates that lead to electrical network engineering that is not up to standard.

Allegedly, based on existing information, the warden only arrived 15 minutes after the fire had grown and burned several cells. Their arrival was judged late and could only open 5 of the 19 cells in block C2. The absence of a light extinguisher makes it more difficult for the firefighters to extinguish the fire. Reportedly, a perfunctory blackout had occurred, before 12 fire engines arrived at 02.00 in the morning.

The Ministry of Law and Human Rights is currently auditing the buildings of all prisons in Indonesia. The Head of the Regional Office of the Ministry of Law and Human Rights is deployed to conduct an audit to check facilities and infrastructure that have the potential to disrupt security and order [10]. One of the facilities and infrastructure that is very important to note is the electrical installation. This is considered very important because considering the condition of prisons in Indonesia, most of them are old buildings, such as the Class I Penitentiary in Tangerang, which was established in 1972, whose electrical installations have never been updated. The possibility of a penitentiary being burned down is actually not something unexpected. The Ministry of Law and Human Rights has anticipated this possibility through Article 24 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 33 of 2015 concerning Security in Community Institutions and State Detention Centers.

Where in Article 24 it is explained that in certain circumstances, including fires in it, the Emergency Response Team is the party that must take immediate action to save human lives. Because the incident occurred at night, at a time when people usually rest, the steps that had been arranged became chaotic. Rescues, which according to the guidelines allow officers to open and remove prisoners and detainees from their rooms to safer or more open places, were not able to be carried out. While waiting for the results of the investigation, the Minister of Law and Human Rights has promised to give condolence money to the families of the victims who are known to have died. Each family will be given compensation of Rp. 30 million rupiah. The compensation does not mean closing the investigation carried out by the Police. The police still have to carry out an investigation. If the results of the investigation find negligence, this humanitarian tragedy could result in a criminal offence.

Negligence in a crime does not mean it has a direct purpose and purpose. Such as intentionally wanting to cause harm to someone or deliberately wanting to kill another person's life which is already a real crime. Negligence, or so-called culpa, occurs because of the carelessness of the party or person who is responsible for his carelessness that harms others. Negligence imposed on criminal sanctions is not minor negligence (culpa levis). Negligence in a crime must be proven in advance that the negligence that occurred was clear and clear (culpa lata).

Regarding the government's responsibility to correctional institutions, it is based on Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections in Article 50 which states that provisions regarding security and order in prisons are further regulated by a Ministerial Decree [11]. The decision is contained in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 33 of 2015 concerning Security in Correctional Institutions and State Detention Centers.

Article 2 Paragraph (1) states that the Minister has the authority to provide security. The authority as referred to in paragraph (1) is carried out by the Director General of Corrections. The Director General of Corrections as referred to in Paragraph (2) delegates the authority to implement security to the Head of the Correctional Division through the Head of the Regional Office of the Ministry of Law and Human Rights. The Head of the Correctional Division as referred to in Paragraph (3) delegates the authority and responsibility for the implementation of security to the Head of the Correctional Institution or state detention center. As stated in Article 46 of the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, it is stated that the Head of the Correctional Institution is responsible for security and order in the correctional institution he leads.

Fulfilling the rights of prisoners is fully the responsibility of the government [12]. Responsibility according to the legal dictionary is a must for someone to carry out what has been required of him. Responsibility is human awareness of their intentional or unintentional behavior or actions. Responsibility is an obligation that must be borne as a result of an act of the party doing it.

Government responsibility arises as a result of the authority possessed by the government. In carrying out its authority there are rights and obligations that must be carried out by the government according to applicable regulations. Authority in legal language is not the same as power. Power only describes the right to do and not to do. Authority means rights and obligations. The parameters used in the use of authority are legal compliance and legal disobedience, so that if there is a use of authority that is not in accordance with the law, the government agency and/or official must be held accountable for it [13].

The fire at the Class I Penitentiary in Tangerang is proof of the government's unpreparedness in managing the inmates' premises. The incident was purely the correctional institution's negligence in controlling the environment. The prison emergency response team did not function in the fire conditions, as stated in the Regulation of the Minister of Law and Human Rights Number 33 of 2015 concerning Security in Corrections and State Detention Centers which was signed by the Minister of Law and Human Rights Yasonna Laoly on October 15, 2015.

In the case of this fire, not only the Head of the Correctional Institution must be held accountable, but the Director General of Corrections including the Minister of Law and Human Rights, Yasonna Laoly, must be removed or resign. This is a form of official and moral responsibility for a human tragedy that is purely due to their negligence as the holder of the authority to administer security.

4. Conclusion

The legal basis for the existence of correctional institutions in Indonesia is stated in Article 1 Paragraph (3) of the Law of the Republic of Indonesia Number 12 of 1995. Correctional institutions carry out the duties and functions of correctional facilities, namely to provide guidance to inmates based on systems, institutions, and methods of guidance based on Pancasila. Regulations of correctional institutions must try to minimize the differences between prison life and free life which aims to reduce the responsibility of prisoners or respect for their dignity as human beings.

The government's responsibility in the case of the Tangerang Class I Penitentiary fire is based on Article 50 of the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections and Article 24 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 33 of 2015 concerning Security in Correctional Institutions and State Prison House. The two articles state that the Minister of Law and Human Rights, the Director General of Corrections, the Head of the Correctional Division, and the Head of the Tangerang Class I Penitentiary must be responsible for the administration of security and order in prisons.

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