

Legal protection of pregnant women as suspects, defendants and convictions in Indonesia

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Abstract

It is undeniable that the perpetrator of a criminal act or criminal case could be a woman, this of course also applies in the form of punishment and makes the woman the status of a suspect, defendant and convict. Whether it is during the investigation process, investigation, detention, prosecution, court trial or even imprisonment. The problems that will be studied in this paper are: namely first, what is the legal protection for pregnant women as suspects and defendants? Second, what is the legal protection for pregnant women as convicts? The research method used is a normative research method using a statutory approach. The conclusion obtained is that pregnant women as suspects, defendants and convicts in Indonesia receive legal protection both in terms of the right to obtain health services, care for children, additional food and other rights.

Keywords: Pregnant women, suspect, defendant, convict

Introduction

In principle, the legal rights of women and men who commit criminal acts are the same, but because women have the natural nature of women, namely menstruation, pregnancy, giving birth, breastfeeding and caring for the children they give birth to, women must be treated according to their nature compared to men who do not experience this. Like women. Because without paying attention to the things that must be given to women, especially pregnant women, who commit criminal acts, it will cause problems for themselves and their wombs, especially regarding health and safety. Therefore, women need legal protection, in contrast to men who do not experience the nature of women, even though men also have protection rights by the state. A pregnant woman herself is a woman who is carrying a fetus in her stomach which consists of three groups, namely pregnant women, Trimester I which is usually referred to as young pregnant women, Trimester II which is referred to as pregnant women aged 4 to 6 months, and the last are pregnant women in the third trimester which is referred to as pregnant women aged 7 to 9 months (Murkoff, 2006) ^[10]. In general, the definition of pregnancy is a condition where a woman has a fetus growing in her body (which is generally in the womb). Pregnancy in humans ranges from 40 weeks or 9 months, calculated from the start of the last menstrual period until delivery (Sarwono, 2005) ^[12]. Meanwhile, pregnancy is the conception of a fetus resulting from the fertilization of an egg cell by a sperm cell (Kushartanti, 2004) ^[6]. It cannot be denied that pregnant and giving birth women can commit criminal acts so that they have the status of suspects, defendants and convicts. Whether it is during the process of inquiry, inquiry, detention, prosecution, District Court trial or imprisonment, based on the background above, there are two things that need to be studied in this article, namely first, how to protect pregnant women as suspects and defendants, secondly, how legal protection for pregnant women as convicts.

Research methods

The type of research used in preparing this research is normative juridical research, or normative or doctrinal legal research. Normative legal research uses normative case

studies in the form of legal products (Peter Mahmud Marzuki, 2011) ^[11]. In this research, the analysis used uses the statutory approach method, which is the act of reviewing laws and regulations that correlate with the legal issue that is the focus of handling.

Discussion

1. Legal Protection for Pregnant Women as Suspects and Defendants

According to Satjipto Rahardjo, legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law (Satjipto Rahardjo, 2000) ^[13]. According to the KBBI, legal protection is an action that aims to provide protection to legal subjects, based on the laws and regulations currently in force. Legal protection is an effort aimed at providing a person with a sense of security to carry out their obligations. Legal protection aims to create order so that a balance is achieved between rights and obligations (Hetty Panggabean, 2018) ^[5]. There are 2 (two) principles of legal protection. The first principle is the concept of recognition of human rights which then leads to the limitation and mapping of community obligations, giving rise to action taken by the government to provide protection for these rights. The second principle is the connection between the principles of the rule of law and the recognition of human rights which occupy the main place and are in line with the objectives of the rule of law (Bianca Agnetha, 2022) ^[2]. Meanwhile, a pregnant woman, as previously explained, is a woman who is carrying a fetus in her stomach. Pregnancy itself consists of three groups, namely pregnant women, Trimester I which is usually referred to as young pregnant women, Trimester II which is referred to as pregnant women aged 4 to 6 months, and the last one is Trimester III pregnant women which is referred to as pregnant women aged 7 to 9 months. In Law (UU) Number 8 of 1981 concerning Criminal Procedure Law, a suspect is a person who, because of his actions or circumstances based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act, namely at least 2 pieces of evidence contained in Article 184 of the Criminal Procedure Code, while the defendant is

a suspect who prosecuted, examined and tried in court. The Criminal Procedure Code clearly and firmly regulates matters relating to the rights of suspects or defendants in Articles 50 to 68. In general, suspects and defendants have the right to a number of things, namely to receive an explanation regarding the things they are accused of, the right to prepare a defense, the suspect has the right to be informed clearly in a language that he understands about what he is suspected of/accused of, the suspect/defendant can prepare the necessary defense, for the suspect, determine whether or not it is necessary to seek legal assistance for the defense, provide information freely to investigators or judges, Get an interpreter, get legal assistance from one or more legal advisors and choose your own legal advisor, claim compensation and rehabilitation. Pregnant women also have these rights, if a pregnant woman has been named a suspect or defendant and detained, women have rights protected by the state, namely as follows

a. Right to Suspension of Detention

Suspension of detention is an effort to remove a suspect or accused from detention before the detention time limit ends (Khambali, 2018). With a suspension of detention, a suspect or defendant will be released from detention while the legal and official detention period is running. Suspension of detention can be carried out by investigators, public prosecutors, or judges according to which agency handles the process of the criminal act being committed. If you look at Article 31 paragraph 1 of the Criminal Procedure Code, suspension of detention can be carried out at the request of a suspect or defendant, investigators or public prosecutors or judges, in accordance with their respective authorities, can hold suspension of detention with or without cash or personal guarantees, based on specified conditions. In paragraph 2, because of their position, investigators or public prosecutors or judges can revoke the suspension of detention at any time if the suspect or accused violates the conditions as intended in paragraph (1).

The background to the suspension of detention with bail in the Criminal Procedure Code actually adopts the criminal justice system in developed countries, especially Europe. The philosophical basis of bail for suspension of detention is actually related to the principle of protection for crime victims. Therefore, even if it is adjusted to the capabilities of the suspect, defendant or guarantor, usually the monetary value set is very high. If it turns out that after being suspended it turns out that the suspect/defendant has run away, the bail money will be confiscated by the state to be distributed as compensation for crime victims. So, even if the suspect or defendant is not caught again and is not brought to court, at least the victim will not completely lose their right to justice (Al Wisnubroto and G. Widiartana, 2005)^[1]. Conditions for Suspension of Detention According to the provisions contained in Article 31 paragraph (1) of the Criminal Procedure Code, suspension of detention occurs

1. at the request of the suspect or accused;
2. The request is approved by the agency that is detaining or that is juridically responsible for the detention with or without cash collateral or person's guarantee based on specified conditions.

The KUHAP stipulates conditions for suspension of detention, which are included in the last sentence of Article

31 paragraph (1) of the KUHAP, which states "based on specified conditions". In the Elucidation to Article 31 paragraph (1) it is stated that what is meant by the specified conditions is mandatory reporting, not leaving the house or city. Suspension of detention must be at the request or application of the suspect or defendant, his family, or can also be submitted by the suspect's or defendant's legal advisor with a cash guarantee and personal guarantee based on predetermined conditions. Determination of the conditions for suspension of detention by the official who will grant the suspension of detention is a factor that forms the basis for granting a suspension of detention. Without pre-determined conditions, a suspension of detention cannot be granted. The prisoner must state that he is willing to wait for the conditions set. Upon willingness to comply, the authorized official will grant a suspension of detention. Thus, the stipulation of conditions for suspension of detention is a condition sinequanon in granting suspension of detention. Without determining the requirements, the suspension is considered invalid and contrary to Article 31 paragraph (1) of the Criminal Procedure Code. A suspect or defendant who is pregnant can have their detention suspended, as long as they fulfill the applicable requirements by submitting a request at the request of themselves, their family, or can also be submitted by the suspect's or defendant's legal advisor with a letter of application to the agency that has detained them.

b. The right to apply for a change of type of detention

Investigators, prosecutors and judges have the authority to transfer the type of detention from one type of detention to another for a suspect or defendant, including when the suspect or defendant is a pregnant woman. This transfer is stated in Article 23 (1), namely that investigators or public prosecutors or judges have the authority to transfer one type of detention to another type of detention as intended in Article 22. If you pay attention to the type of detention mentioned in Article 22, the type of detention can be house detention, state detention, house arrest and city detention.

Types of Detention

a. Detention in State Detention Center (Rutan)

Detention in detention centers or Detention in State Detention Centers (Rutan) is regulated in Article 18 of the Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code which has stipulated that in each district capital or municipality a detention center (state detention center) shall be established.). Detention in a state detention center is a place for suspects or defendants to be detained during the process of investigation, prosecution and examination in court (Yahya M. Harahap, 2000)^[16]. The reduction in detention period is equivalent to the amount of ordinary detention period.

a. House Arrest

House arrest is the placement of a suspect or defendant in his or her residence and supervised by the agency that provides the detention to prevent incidents from occurring that could cause difficulties during the investigation process. 27 The suspect or defendant is permitted to leave his residence with permission from the agency that issued the detention order in accordance with the provisions of Article 22 paragraphs (2) and (3). The reduction in the detention period is equal to one third of the total length of detention,

meaning that three days of detention in the city is the same as one day in a detention center (Monang Siahaan, 2017) ^[8].

b. City Containment

City detention is a type of detention where a suspect or accused is placed in his or her city of residence with the obligation to report periodically to the agency providing the detention. 29 City detention is the lightest type of detention because suspects or defendants are allowed to move or carry out activities as long as they are still in their city of residence, as long as they do not violate the provisions and continue to report themselves according to the provisions (Yahya M Harapan, 2003). The reduction in the city detention period is equal to one fifth of the total length of detention time, meaning that five days of city detention is the same as one day in detention.

A transition to the type of detention can be given with the following considerations

- a. Application from the suspect/family/legal advisor accompanied by reasons
- b. Results of medical examination regarding the suspect's health condition; And
- c. Recommendations for case results.

This transfer of type of detention must be accompanied by a transfer order for the type of detention issued by the investigator or the investigator's superior as investigator. Detention in detention centers is the most severe type of detention, followed by house detention and the lightest is city detention (Luthan, 2014) ^[7].

c. The Right to Obtain Care Services

Women who are in detention centers or prisons in accordance with Article 61 and Article 62 of Law No. 2 of 2022 concerning Corrections which states that pregnant women are specifically included in detention centers or prisons, therefore women who are menstruating, pregnant or giving birth, and breastfeeding are expected to receive care services. Maintenance Services in the form of:

1. Sanitary napkins for each month
2. Additional foods and vitamins to fulfill nutrition during pregnancy and breastfeeding.
3. Periodic pregnancy checks according to doctor's recommendations to see the condition of fetal development.
4. Equipment for giving birth and after giving birth (Evy Harjono, 2022) ^[4].

Another thing that pregnant women need is an additional room with sleeping conditions that support comfort during pregnancy and breastfeeding. This of course greatly influences the growth and development of the fetus in the womb or the child who has been born, where a mother during pregnancy and breastfeeding will experience hormonal changes, so a healthy mind, healthy body and strength are needed to look after or take care of her child while in detention. . If she gives birth in a detention center, she will get health protection. This is stated in article 20 paragraph (3) of Government Regulation (PP) Number 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates, namely that children of female convicts who are taken to prison or who are born in prison can be given additional food.

doctor's instructions, no later than until the child is 2 (two) years old.

d. Right to Obtain a Health Examination

The detention center has an obligation to carry out regular health checks. Thus, the condition of the inmates is well controlled and monitored. This is regulated in article 23 of Government Regulation (PP) Number 58 of 1999 concerning Requirements and Procedures for the Implementation of Authority, Duties and Responsibilities for the Care of Prisoners as follows:

1. Health checks are carried out at least 1 (one) time in 1 (one) month and recorded in the health card.
2. In the event that there is a complaint regarding health, the doctor or health worker at the prison/detention center branch or prison/prison branch is obliged to carry out an examination of the detainee.
3. In the event that the results of the health examination as intended in paragraphs (1) and (2) reveal an infectious or dangerous disease, the detainee must be given special care.

According to the explanation in paragraph 3, what is meant by special treatment is being placed in a certain place to prevent infection to other detainees or being placed in a hospital under guard by police officers. If it turns out that you have an illness that cannot be treated by a doctor in the detention center, then based on article 24 of Government Regulation (PP) Number 58 of 1999, health services can be provided outside the detention center. However, this must be preceded by permission from the detaining agency and the head of the prison/remand center branch. The maintenance costs are also borne by the State (Tirsa DG Ticoalu, 2013) ^[15]. For more details, regarding the editorial of article 24 PP Number 58 of 1999 as follows

1. In the event that a sick detainee requires further treatment, the doctor or health worker of the detention center/detention center branch or prison/prison branch provides a recommendation to the head of the prison/detention center branch or prison/prison branch that health services be provided in a hospital outside the detention center/detention branch. or prison/prison branch
2. Health services in hospitals as intended in paragraph (1) must obtain permission from the detaining agency and the head of the prison/remand center branch or prison/prison branch.
3. In the event of an emergency, the head of a prison/prison branch or prison/prison branch can send a sick prisoner to the hospital without prior permission from the detaining agency.
4. Within a period of 1 x 24 (one time twenty four) hours, the correctional officer notifies the delivery of the detainee as intended in paragraph (3) to the detaining agency.
5. Detainees as referred to in paragraph (2) who are brought and treated in hospital must be escorted by police officers.
6. The costs of health care in hospitals are borne by the State.

e. Other Rights of Pregnant Women as Suspects or Defendants

Pregnant women as suspects or defendants who are detained have been regulated to obtain their rights, as stated in Article 7 of Law No. 2 of 2022 concerning Corrections, have the right to:

1. Carry out worship according to one's religion or beliefs;
2. Get Treatment, Both Physical and Spiritual;
3. Get Education, Teaching, and Recreational Activities, as well as Opportunities to Develop Potential
4. Get appropriate health services and food according to nutritional needs;
5. Obtaining Information Services
6. Get legal counseling and legal assistance
7. Submitting complaints and/or complaints;
8. obtain reading materials and follow mass media broadcasts that are not prohibited;
9. receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all acts that are physically and mentally harmful;
10. getting social services; And
11. accept or reject visits from family, advocates, companions, and the community.

2. Legal Protection for Pregnant Women as Convicts

Convicts according to article 1 number 6 of Law No. 2 of 2022 are convicts who are serving prison sentences for a certain time and life or death row convicts who are awaiting the implementation of their decisions, who are undergoing guidance in correctional institutions. In the Criminal Procedure Code, a convict is a person who is sentenced based on a court decision that has permanent legal force. The government has made efforts to guarantee the fulfillment of the rights of prisoners, this has been stated in Article 9, that every prisoner has the right to carry out worship in accordance with his religion or belief, receive care, both physical and spiritual, receive education, teaching and recreational activities as well as opportunities to develop potential, get health services and adequate food in accordance with nutritional needs; get information services, get legal counseling and legal aid, submit complaints and/or grievances, get reading materials and follow mass media broadcasts that are not prohibited, get treatment in an appropriate manner. humane and protected from acts of torture, exploitation, neglect, violence, and all actions that are physically and mentally harmful, get work safety guarantees, wages or work premiums, get social services, accept or refuse visits from family, advocates, companions, and public.

Meanwhile, article 10 continues, apart from the rights mentioned in article 9, prisoners who have fulfilled the requirements are also entitled to remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, conditional release; and other rights in accordance with statutory provisions. Apart from getting these rights, pregnant women as convicts are also specifically regulated regarding the rights they obtain, this is contained in Law Number 22 of 2022 concerning Corrections, namely the right to care in Article 60, the right to special treatment in Article 61, the right to care for children. Article 60 paragraph (1), right to separate residential rooms Article 60 paragraph (2). And regulated in Government Regulation Number 32 of 1999 concerning Conditions and Procedures for Implementing the Rights of

Correctional Inmates, there is the right to health services in Article 14-Article 17), the right to obtain additional food in Article 60 paragraph (1). Regarding the details as follows:

a. Treatment Rights

The right to care will be given to prisoners who are pregnant and breastfeeding, this is stated in Article 60 paragraph 1, namely Detention Centers, LPAS, Prisons, and LPKA in carrying out the Service and Development function of providing care to Prisoners, Children, Prisoners, and Assisted Children. This care consists of health maintenance, rehabilitation and meeting basic needs. The implementation of this right to care is carried out in the Yogyakarta class IIB women's correctional institution by providing care services to female inmates who are menstruating, pregnant and breastfeeding every month, including providing and providing sanitary napkins, periodic pregnancy checks, providing additional food and vitamins, providing maternity equipment and childbirth and immunization. The facilities provided by correctional institutions for inmates who are pregnant or breastfeeding are the provision of health facilities such as periodic obstetric checks at least once a month, namely Ultrasonography (USG) at the Regional Government Hospital which is a referral hospital by the Yogyakarta Women's Correctional Institution. aims to find out what the condition of the baby in the womb is (Duwita Aisya Trisna Prihananti, 2022) ^[3].

b. Rights to Special Treatment

Women who are pregnant, giving birth and breastfeeding must be treated with special treatment, because this is stated in Article 61 and Article 62 of Law No. 2 of 2022 concerning Corrections. Detention centers or places that carry out the function of serving prisoners and prisons or are usually referred to as places that carry out the function of developing prisoners, providing special treatment for groups with special needs, one of which is pregnant women. This is based on article 61 paragraph (1) consisting of:

1. Child
2. Assisted Children;
3. Women in reproductive function;
4. people with chronic diseases;
5. people with disabilities; And
6. old human

Women in this reproductive function are women who are menstruating, pregnant, giving birth, or breastfeeding. So that pregnant women who commit criminal acts are of special concern both while they are being detained in detention centers and while serving criminal sentences in prison.

c. Child Parenting Rights

Women as convicts who have given birth to children have the right to care for their children until the child is 3 years old in accordance with the latest Corrections Law. There are no time restrictions for breastfeeding and caring for children. In accordance with Article 62 paragraph 1 of Law No. 2 of 2022 concerning Correctional Services, children of prisoners or children of female prisoners who are taken to detention or prison or who are born in prison can stay with their mother until the child is 3 (three) years old.

d. Right to Separate Residential Spaces

This right of separation has been carried out by the Malang Women's Prison, namely there are five blocks, each of which has special criteria. As follows

Block I is the mother and child block, this block is inhabited by all inmates who have children or are breastfeeding and are in rehabilitation.

Block II is a special block for correctional residents for narcotics cases. Block III is a block for prisoners with sentences of one year or more, Block IV is a block for cases other than narcotics cases. This block is inhabited by convicts with various criminal acts such as fraud, embezzlement, theft and others.

Block V is a block specifically occupied by detainees and convicts who have just entered the Malang Class Women's Prison.

e. Health Service Rights

Obligation to provide services such as regular health checks. This is regulated in article 23 of Government Regulation (PP) Number 58 of 1999 concerning Requirements and Procedures for the Implementation of Authority, Duties and Responsibilities for the Care of Prisoners as follows:

1. Health checks are carried out at least 1 (one) time in 1 (one) month and recorded in the health card.
2. In the event that there is a complaint regarding health, the doctor or health worker at the prison/detention center branch or prison/prison branch is obliged to carry out an examination of the detainee.
3. In the event that the results of the health examination as intended in paragraphs (1) and (2) reveal an infectious or dangerous disease, the detainee must be given special care.

f. The Right to Receive Supplementary Food

In general, convicts in prison receive food, including female convicts who are pregnant and breastfeeding, who receive adequate and nutritious food, but based on Government Regulation Number 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Inmates, pregnant and breastfeeding inmates receive the right to additional food. This size is in accordance with the doctor's instructions and regulations, namely additional food for pregnant women plus 300 (three hundred) calories per day, for women who are breastfeeding it can be added between 800 (eight hundred) to 1000 (one thousand) calories per day.

Conclusion

Based on these results, it is known that pregnant women who commit criminal acts have legal protection, when as a suspect or defendant in accordance with Articles 50 to 68 of the Criminal Procedure Code, namely receiving an explanation regarding the things they are accused of, preparing a defense, the suspect has the right to be informed clearly about what is suspected or what is happening. accused, the suspect/defendant can prepare the necessary defense, the suspect determines whether or not he needs to seek legal assistance for the defense, provides information freely to the investigator or judge, obtains an interpreter, obtains legal assistance from one or more legal advisors and chooses for himself. his legal advisor, demanded compensation and rehabilitation. Pregnant women also have these rights, if a pregnant woman has been named a suspect or defendant and detained, then the pregnant woman has

rights that are protected by the state in addition to article 7 of Law No. 2 of 2022 concerning Corrections, namely the right to be able to carry out suspension. detention, the right to apply for a change of type of detention, the right to receive treatment services and receive a medical examination.

Meanwhile, pregnant women who commit criminal acts while being convicted have rights which in general the Government guarantees the fulfillment of prisoners' rights as stated in Article 9 and regulated in Law Number 22 of 2022 concerning Corrections, namely the right to care in Article 60, the right to special treatment in Article 61, the right to care for children in Article 60 paragraph (1), the right to separate residential rooms in Article 60 paragraph (2). And regulated in Government Regulation Number 32 of 2022 concerning Conditions and Procedures for Implementing the Rights of Correctional Inmates, there is the right to health services in Article 14 - Article 17), the right to obtain additional food in Article 60 paragraph (1).

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