

Regulation of “Bilik Asmara” in Indonesian Correctional Institutions Between Human Rights and Security

Elvi Susanti Syam¹, Andi Hartawati², Sunardi Purwanda³

^{1,2,3} Institut Ilmu Sosial & Bisnis Andi Sapada, Pare-Pare, Indonesia

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Corresponding Author:

Author Name*: Elvi Susanti Syam

Email*:

elvisusantisyam@gmail.com

Abstract: The arrangement of conjugal visits or "romance rooms" for inmates in Indonesia is in a state of legal vacuum, leaving its implementation to the discretion of non-standardized correctional officers. This normative legal research aims to analyze these problems from the perspective of human rights (HAM) and state administrative law, as well as formulate proposed policy reformulation. Using legislative, comparative, and conceptual approaches, this study finds that current discretionary practices create legal uncertainty, inconsistencies, and are susceptible to abuse of authority, thus contradicting the General Principles of Good Governance (AAUPB). A comparative analysis of international jurisprudence (ECHR vs. the Italian Constitutional Court) and practice in different countries shows that although there is no absolute obligation, regulation-based conjugal visit arrangements are a global trend in support of rehabilitation goals. This study argues that the indefinite handover of authority to officers cannot be justified. As a solution, a policy reformulation model is proposed in the form of a Ministerial Regulation that comprehensively regulates principles, objective criteria, procedures, and accountability mechanisms. This regulation is recommended as a middle way to balance proportionately between the fulfillment of the right to personal life and the family of prisoners with the mitigation of security risks, in line with the mandate of Law No. 22 of 2022 concerning Corrections.

Keywords : Romance Room; Conjugal Visit; Prisoners' Rights; Correctional Law; Human Rights

INTRODUCTION

The modern correctional system faces a fundamental dilemma that reflects the tension between the state's sovereignty in punishing and its obligation to protect human dignity. On the one hand, imprisonment aims to deter and restrict the freedom of criminals. On the other hand, universal recognition of human rights affirms that prisoners do not lose their status as legal subjects whose fundamental rights must continue to



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be respected and protected, except for the right to freedom of movement, which is legally deprived through a court decision.¹

Fulfilling the rights of prisoners is very important because it is part of the correctional process in the correctional system to achieve the goals of rehabilitation and social reintegration.² One of the rights that has been the center of debate in this context is the right to family life and the fulfillment of sexual and marital intimacy rights which is manifested in correctional institutions (prisons) in the form of “conjugal visit facilities” or conjugal visits.

In Indonesia, the discourse on conjugal visits has emerged as a progressive yet controversial correctional innovation. This facility, which allows prisoners to receive private visits from their legal spouses, is seen as a step forward in the fulfillment of sexual rights, which are an integral part of human rights. However, this practice operates in a legal grey area. The absence of explicit legal protection in national legislation means that its implementation depends entirely on the discretion of correctional officers at the prison level. This situation is complicated by the new context following the enactment of Law No. 22 of 2022 on Corrections, which explicitly affirms a paradigm shift from punishment to social reintegration. This law, although it does not specifically mention conjugal visits, provides a strong philosophical basis for policies that support the maintenance of prisoners' family ties as part of the rehabilitation process.³ This concept of social reintegration is in line with the philosophy that crime is a conflict between the convicted person and society, so punishment must be oriented towards restoring that relationship.⁴

The main problem lies in the fact that conjugal visits, which according to media reports and official statements have been implemented in several pilot prisons since 2019⁵, operating without a clear legal basis and uniform operational standards. Reliance on officer discretion opens the door to inconsistency, subjectivity, and potential abuse of authority. For example, a case of abuse of authority occurred in 2025, when a warden at the Class IIA Metro Prison in Lampung was arrested for distributing methamphetamine and ecstasy pills to inmates. The arrest stemmed from an internal prison raid, which was then reported to the police. This phenomenon demonstrates a serious abuse of authority, where the facilities and access granted to officers were used to facilitate crime. This raises crucial questions about legal certainty, fairness, and accountability in the correctional system. This study aims to fill this analytical gap by comprehensively examining the issues surrounding the regulation of conjugal visits in Indonesia.

¹ Hartawati, A., Pararangi, A. A., & Syam, E. S. (2023). Perwujudan Membentuk Ketahanan Keluarga Dan Ketahanan Nasional Atas Peningkatan Pernikahan Di Bawah Umur. *EJOIN: Jurnal Pengabdian Masyarakat*, 1(12), 1414-1421.

² Pettanase, I. (2019). Pembinaan narapidana dalam sistem pemasarakatan. *Solusi*, 17(1), 57–63.

³ Daulay, R. M. A. (2023). Pemasarakatan Profetik : Tinjauan Politik Profetik Terhadap Undang-Undang Nomor 22 Tahun 2022. *An-Natiq Jurnal Kajian Islam Interdisipliner*, 3(1), 42–53. <https://doi.org/10.33474/an-natiq.v3i1.18984>

⁴ Kurniawan, A. (2023). Rehabilitasi dan reintegrasi sosial narapidana terorisme. *Gema Keadilan*, 10(1), 1–11.

⁵ CNN Indonesia. (2025, March 11). *Apa Itu Bilik Asmara di Penjara? Legalkah di Indonesia?* <https://www.cnnindonesia.com/gaya-hidup/20250311154250-277-1207576/apa-itu-bilik-asmara-di-penjara-legalkah-di-indonesia>

This article will outline four main issues. First, what is the legal status and regulation of conjugal visit rights for prisoners in Indonesia within the framework of Law No. 22 of 2022? Second, how do the practices and regulations of conjugal visits in Indonesia compare with international human rights standards and practices in other countries as benchmarks? Third, what are the legal and practical implications of the use of discretion by correctional officers in regulating conjugal visits on the fulfillment of prisoners' rights and institutional security? Fourth, how should conjugal visit policies be reformulated in the Indonesian legal system to create a proportional balance between the fulfillment of human rights and security interests?

By answering these questions, this study is expected to make a significant academic contribution to the discourse on correctional law and human rights, while offering concrete policy recommendations for the Ministry of Immigration and Corrections to regulate this practice in a fair, transparent, and accountable manner. The novelty offered is a critical analysis of the discrepancy between implicit regulations and discretionary practices in the field, as well as the formulation of a comprehensive policy framework by comparing contrasting international jurisprudence (the Italian case vs. the European Court of Human Rights) as a basis for argumentation. This study uses normative legal research methods with a legislative, comparative, and conceptual approach to achieve its objectives

METODOLOGI

This study uses prescriptive analytical normative legal research methods. The prescriptive nature of this research aims to offer solutions to legal issues arising from the absence of norms related to the regulation of conjugal visits in Indonesia, while its analytical nature is used to thoroughly examine and analyze relevant legal materials. To answer the research questions that have been formulated, this study adopts three main approaches⁶.

First, the statute approach is used to systematically and hierarchically analyze relevant legislation. The main focus is on Law No. 22 of 2022 on Corrections to identify norms, both explicit and implicit, related to the rights of prisoners that can be the basis for the implementation of conjugal visits. In addition, the analysis also covers other laws and regulations such as Law No. 39 of 1999 on Human Rights and its implementing regulations, including the Minister of Law and Human Rights Regulation governing order and security in correctional institutions.

Second, a comparative approach was applied to broaden the perspective and provide a benchmark for policy reformulation in Indonesia. This approach includes two levels of comparison. At the international level, comparisons were made with human rights legal instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). At the jurisprudence and practice level, a comparative analysis was conducted of Italian Constitutional Court Decision No. 10/2024, which requires the provision of conjugal visits, and the European Court of Human Rights (ECtHR) decision in the case of *Lesław Wójcik v. Poland* (2021), which gives broad margin of appreciation to the state, as well as practices in various countries that have institutionalized this facility, such as Spain, Brazil, and Canada.

Third, a conceptual approach is used to analyze the legal concepts and theories that form the theoretical basis of the research. The main concept explored is the theory of discretion or *freies ermessen* in state

⁶ Mawardi, Adv, et.al. 2025. Metodologi Penelitian Hukum. Cv. Harfa Creative. Bandung, Hal.74

administrative law to dissect the authority of correctional officers. In addition, this study is also based on the theory of the purpose of punishment, particularly the theory of rehabilitation and restorative justice, which is the spirit of the modern correctional system, as well as human rights theories relevant to the right to privacy and family life.

The legal sources in this study consist of primary legal materials, namely legislation and court decisions, as well as secondary legal materials, which include accredited legal journals, textbooks, research reports, and credible media articles. All of these legal materials were analyzed qualitatively using relevant legal interpretation techniques, such as systematic, historical, and teleological interpretation, to construct a coherent and comprehensive argument.

RESULTS AND DISCUSSION

Status and Legal Regulations in Indonesia Regarding the Right to Conjugal Visits for Prisoners

The legal status and regulations regarding conjugal visits are not addressed in Law No. 22 of 2022: Law No. 22 of 2022, which replaces Law No. 12 of 1995, does not yet specifically provide for conjugal visits or "love rooms" for prisoners. The rights guaranteed are the right to receive visits from family, advocates, companions, and the community within designated areas of special function.

Despite its benefits, conjugal visits are not without criticism, such as the potential for abuse, corruption, and value conflicts within society. In Indonesia, these challenges can be addressed through strict regulation, transparent oversight, and public education to change public perceptions of prisoners' sexual needs. A holistic legal approach, considering legal substance, legal structure, and legal culture, is key to effectively implementing this policy.

Following the enactment of Law No. 22 of 2022 concerning Correctional Institutions, correctional system reform does not include providing access to conjugal visits⁷. The legal mechanism and alternative for sexual relations is limited to Family Visiting Leave (CMK).

CMK is a rehabilitation program designed to provide opportunities for inmates and their children to reintegrate with their families and communities. Family visitation leave can be granted for a maximum of 2 days or 48 hours, starting from the time the convict/child arrives at their designated residence, and is granted at least once every 3 months. Furthermore, this leave can only be taken within the jurisdiction of the local Regional Office of the Ministry of Law and Human Rights and cannot be taken on religious holidays. According to Minister of Law and Human Rights Regulation Number 3 of 2018, CMK is granted to inmates who are well-behaved and have not committed any disciplinary violations, have served a minimum of 12 months of their sentence, are not involved in other legal cases, have served half their sentence, have been at the request of their family, and are deemed entitled to leave by the correctional monitoring team.

CMK is limited and cannot be granted to inmates convicted of terrorism, drug offenses, death sentences, life imprisonment, those whose lives are in danger, or those who are likely to reoffend. Applications for

⁷ Ni Nyoman Ome Tania Langden, et al. (2022). "A Legal Review of the Urgency of the Conjugal Visit Policy as a Fulfillment of the Rights of Prisoners." Journal of the Faculty of Law, Udayana University

CMK are submitted to the Head of the Correctional Institution. Alternative mechanisms for fulfilling basic needs, besides CMK, include assimilation programs, conditional release, pre-release leave, and medical leave. All of these mechanisms have two main characteristics: First, they are very limited and can only be granted to inmates who meet certain requirements and criteria. Second, they are non-judicial and based on the decision of the Head of the Correctional Institution, who assesses the eligibility for leave. Based on these two characteristics, existing mechanisms still adhere to the principle that the right to sexual intercourse is not considered a protected and guaranteed right. Instead, this right is treated as a special right with very limited access and only subject to rational and urgent considerations. This can be integrated into existing laws and regulations or stipulated through separate regulations.

In the relative theory of punishment in Indonesia, punishment must have a rehabilitative purpose, namely changing the behavior of prisoners so they can return to being productive members of society. In this context, fulfilling sexual needs through conjugal visits is not only a human right but also a tool to support rehabilitation. By fulfilling these needs, prisoners can reduce stress, maintain family relationships, and improve their emotional stability⁸. This aligns with sexual rights, which are a key human rights issue. Internationally, this right is recognized as a basic need that cannot be ignored, even under conditions of imprisonment. In a humane correctional system, fulfilling this right must be a priority, as implemented in countries like France. The French legal system provides prisoners with access to conjugal visits with adequate facilities, so that these needs can be met without neglecting security and order.

Legal Vacuum and Implicit Regulations in Indonesia: Normative Analysis and Practical Implications
An in-depth analysis of the correctional legal framework in Indonesia reveals a significant legal vacuum regarding the regulation of private family visits or conjugal visits. Law No. 22 of 2022 on Corrections, which was expected to be a modern legal umbrella for the correctional system, does not contain a single article that explicitly mentions or regulates this facility. This right can only be interpreted implicitly from more general norms. For example, Article 7 letter (d) of Law No. 22 of 2022 mentions the right of prisoners to “communicate with family or certain individuals through visits, correspondence, telephone calls, and other electronic means of communication.” Although the phrase “visits” can be interpreted broadly, the lack of further elaboration on private visits creates fundamental legal ambiguity and triggers interpretative debates among legal practitioners and academics. The absence of specific regulations creates legal uncertainty for prisoners and their families, as well as for correctional officers in carrying out their duties.

This ambiguity is reinforced by a comparison with the previous law, Law No. 12 of 1995, which also did not specifically regulate this matter. Although Law No. 22 of 2022 is philosophically more progressive with an emphasis on social reintegration, its failure to translate this philosophy into concrete norms regarding the private rights of prisoners indicates regulatory stagnation in this aspect. This stagnation contrasts with developments in legal thinking that recognize the importance of maintaining family ties as an integral part of the rehabilitation process. As a result, the practice has reportedly been implemented in several pilot prisons, such as Ciangir Prison, Kendal Open Prison, and Nusakambangan Prison⁹, operates under an unwritten ad hoc policy that lacks a solid legal basis. This situation creates disparities in treatment between correctional institutions and has the potential to give rise to discriminatory practices,

⁸ Ina Heliandy and Muhenri Sihotang, ‘Implementation of Conjugal Visits in the Indonesian Legal System for Correctional Inmates’, International Journal of Islamic Education.

⁹ CNN Indonesia. (2025, March 11). *Apa Itu Bilik Asmara di Penjara? Legalkah di Indonesia?* <https://www.cnnindonesia.com/gaya-hidup/20250311154250-277-1207576/apa-itu-bilik-asmara-di-penjara-legalkah-di-indonesia>

whereby access to conjugal visit facilities depends on the internal policies of each prison or even the discretion of individual officers, rather than on legally guaranteed rights.

In the absence of legal provisions, the discretion of correctional officers has de facto become the only source of “living law” in the practice of granting conjugal visit permits. This authority, known in administrative law as *freies ermessen*, gives officials the freedom to make decisions based on their own judgment when legislation does not provide clear guidance¹⁰. *Diskresi* merupakan sarana yang memberikan ruang gerak bagi pejabat administrasi negara untuk melakukan tindakan tanpa harus terikat sepenuhnya dengan undang-undang, terutama dalam situasi yang mendesak atau ketika terdapat kekosongan hukum¹¹. In the Indonesian context, discretionary powers have been formulated in Law No. 30 of 2014 on Government Administration, which stipulates that discretion must be exercised within the framework of the objectives of the law and must not be arbitrary.¹² Larasati's research shows that in practice, officers weigh various factors, including benefits such as the emotional stability of prisoners and security risks such as the potential misuse of facilities for smuggling contraband or covert prostitution¹³. Other studies also confirm that the provision of conjugal visit rooms in correctional institutions requires careful consideration of the preventive aspects of sexual deviance, but must still be based on clear regulations to avoid abuse of authority.¹⁴

However, the use of unlimited discretion and unclear guidelines has given rise to a number of crucial problems. First, there is a high potential for inconsistency between prisons, where one prison may allow something while another prohibits it, creating inequality among prisoners. Second, there is a high degree of subjectivity in decision-making, which can be influenced by personal perceptions, biases, or even personal relationships between officers and prisoners. Third, the absence of uniform standards opens up opportunities for corrupt practices, such as illegal fees for accessing these facilities¹⁵. Zailani emphasized that discretion in the form of unrestricted *freies ermessen* can cause antinomy in governance, where freedom of action actually contradicts the principle of legal certainty.¹⁶

¹⁰ Syam, E. S., Supriyanto, H. E., Hartawati, A., & B., S. (2024). Execution of State Administrative Judicial Decisions a Mirror of the Authority Court. *Journal of Law and Sustainable Development*, 12(1), e2571. <https://doi.org/10.55908/sdgs.v12i1.257>

¹¹ Dewi, D. A. S. (2016). Pendayagunaan *Freies Ermessen* Pejabat Pemerintahan dalam Konsep Negara Kesejahteraan. *Yustisia*, 5(1), 184–200.

¹² Suparto, S., Adinda, F. A., Esanov, A. E., & Normurotovna, Z. E. (2024). Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations. *Journal of Human Rights, Culture and Legal System*, 4(1), 75–100.

¹³ 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. <https://doi.org/10.51370/jhpk.v4i2.142>

¹⁴ 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).

¹⁵ Faisal, F., Jamaluddin, F., Hasima, R., & Tarta, A. F. (2021). Diskresi Dari Sudut Pandang Hukum Pidana. *Mulawarman Law Review*, 32–41. <https://doi.org/10.30872/mulrev.v6i1.466>

¹⁶ Zaelani, M. A., Handayani, I., & Isharyanto, I. (2019). Antinomi Diskresi dalam Bentuk *Freies Ermessen* untuk Penyelenggaraan Pemerintahan Berwawasan Pancasila. *Jurnal Jurisprudence*, 9(1), 64–80.

Discretion must be viewed as a policy innovation that remains bound by legal and accountability corridors, so that discretion becomes a tool for achieving legal objectives rather than a potential source of legal uncertainty and injustice. Policy reform and increased strict internal oversight are needed to address this issue, as suggested in various legal and social analyses.

International Landscape: Comparison of Obligations, Policy Options, and Human Rights Jurisprudence

Comparative studies show that there is no global consensus requiring states to provide conjugal visit facilities. International human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) do not contain an explicit right to conjugal visits. However, the Nelson Mandela Rules establish an important principle: if such facilities are permitted, access to them must be provided fairly and without discrimination.¹⁷ This principle of non-discrimination has been the focus of human rights monitoring bodies such as the Subcommittee on Prevention of Torture (SPT), which has criticized gender-based discriminatory practices in the provision of conjugal visits in several countries, such as Panama and Peru, where female prisoners face more complex procedures or are even denied access to facilities available to male prisoners.¹⁸ This shows that although there is no absolute obligation to provide, if a country chooses to do so, it must comply with the principles of equality and non-discrimination.

At the regional level, there is contrasting and interesting jurisprudence to analyze, which illustrates the spectrum of approaches to this issue. On the one hand, the European Court of Human Rights (ECtHR) in the case of *Lesław Wójcik v. Poland* adopted an approach that gives a wide margin of appreciation to the state.¹⁹ The court stated that the state has broad discretion to determine whether conjugal visits should be provided based on considerations of resources, security, and community needs. This ruling confirms that Article 8 of the European Convention on Human Rights (right to private and family life) does not automatically oblige the state to provide this facility. However, on the other hand, the Italian Constitutional Court in Decision No. 10/2024 took the opposite stance. The Italian court stated that an absolute ban on conjugal visits is unconstitutional because it violates the right to family life guaranteed by Article 8 of the ECHR and is contrary to the rehabilitative purpose of punishment. This ruling effectively changed conjugal visits from a privilege to a right in the context of Italian law, with implementation beginning in April 2025, allowing for one visit per month with a maximum duration of 2 hours and supervision from outside the room.

Practices in various countries also vary greatly, which can be summarized in the following table, showing the diversity of approaches and underlying considerations:

¹⁷ United Nations. (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*.

¹⁸ Bosi, G. (2025, June 10). *Sex in Prison: The International Human Rights Framework on Conjugal Visits, Starting from the Case of Italy*. EJIL:Talk! <https://www.ejiltalk.org/sex-in-prison-the-international-human-rights-framework-on-conjugal-visits-starting-from-the-case-of-italy/>

¹⁹ European Court of Human Rights. (2021). *Case of Lesław Wójcik v. Poland* (Application No. 66424/09). <https://hudoc.echr.coe.int/eng?i=001-210957>

Country/Region	Policy Status	Frequency (General)	Special Notes
Spain	Permitted & Regulated	Permitted & Regulated	Permitted & Regulated
Canada	Canada	Canada	Canada
Brazil	Brazil	Brazil	Brazil
United States	United States	United States	United States
Italy	Italy	Italy	Italy
ECtHR	Country Options	-	Countries have broad discretion to decide; there is no absolute obligation.

Source: Compiled from research sources²⁰

The table above shows that there is no single model for conjugal visit arrangements. Countries that allow them generally do so with strict regulations and as part of a broader rehabilitation strategy. This comparison provides a valuable lesson for Indonesia that if it wishes to adopt this policy, the measure must be based on a clear, comprehensive, and measurable regulatory framework, rather than being left to unstandardized discretion. This is important to ensure that any policy adopted not only fulfills human rights aspects, but can also be implemented effectively and accountably, as well as mitigating any security risks that may arise.

The regulation of conjugal visits in Indonesia reflects a classic paradigm clash in correctional law, namely between the fulfillment of prisoners' human rights and the enforcement of institutional security. From a human rights perspective, the right to form a family and continue one's lineage, as well as the right to privacy, are fundamental rights guaranteed by national (Law No. 39 of 1999) and international (Article 17 of the ICCPR) legal instruments. Although prisoners are deprived of their liberty, they do not automatically lose their status as legal subjects whose other rights must continue to be respected and protected. The principle of proportionality requires that any restriction of rights must be legitimate, necessary, and proportionate to the objectives to be achieved. A total ban on the fulfillment of biological needs and the maintenance of family intimacy can be considered a disproportionate restriction, especially when linked to the modern objectives of punishment, which focus on rehabilitation and social reintegration. The concept of "loss of liberty as the sole punishment" mandated in Article 3 letter (g) of Law No. 22 of 2022 implicitly affirms that the rights of prisoners beyond their freedom of movement must continue to be respected, including the right to maintain family relationships and fulfill biological needs within a regulated context.

²⁰ Van Hout, M. C., Klankwarth, U.-B., & Stöver, H. (2025). Conjugal visitation rights, privileges and standards of provision inside European prisons: A socio-legal study of extant literature. *Social Science & Medicine*, 374, 117879.

The theory of punishment oriented towards rehabilitation and social reintegration, which is the basis of Law No. 22 of 2022, provides a strong argument in favor of conjugal visits. The theory of rehabilitation emphasizes the recovery of individuals through education, therapy, and social support, with the aim of reducing crime rates and preparing prisoners to return to society.²¹ Various studies show that prisoners who are able to maintain strong family ties have lower recidivism rates after release.²² Conjugal visits can be a vital means of maintaining marital harmony, reducing stress and depression caused by imprisonment, and minimizing deviant sexual behavior and sexual violence within prisons.²³ A systematic study by Vladu et al. confirmed that the benefits of conjugal visits include maintaining family relationships, improving the mental health of prisoners, and reducing aggressive behavior within correctional institutions.²⁴ As emphasized by the Italian Constitutional Court, policies that hinder the expression of family affection risk being counterproductive to the very goal of rehabilitation²⁵. By maintaining family relationships, prisoners are expected to be more motivated to behave well and prepare themselves to return to society, thereby supporting the broader goals of rehabilitation. This approach is also in line with the principle of restorative justice, which emphasizes the creation of justice and balance, rather than mere retribution.²⁶ The application of restorative principles in the criminal justice system aims to restore relationships damaged by crime, including relationships with family.²⁷

On the other hand, security concerns cannot be ignored. Prisons, especially in Indonesia, which faces chronic overcrowding, are high-risk environments. Concerns that conjugal visit facilities could be misused for smuggling drugs or weapons, or even as a cover for prostitution, are valid and must be mitigated through strict and effective monitoring procedures. In addition, the public perception, which tends to be punitive, often views such facilities as a form of “luxury” that is inappropriate to give to prisoners, which can lead to social and political resistance to their implementation.²⁸ Therefore, the right balance must be found, where the fulfillment of rights does not sacrifice security, and the enforcement of security does not

²¹ Putri, N. K., Salam, A., Ramadhan, A., Mulitalia, M., & Anasti, M. (2024). Pengaruh teori rehabilitasi terhadap kebijakan pemidanaan di Indonesia: Tinjauan pustaka. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(2), 210–224.

²² Saputra, F. (2020). Peranan Lembaga Pemasyarakatan Dalam Proses Penegakan Hukum Pidana Dihubungkan Dengan Tujuan Pemidanaan. *Reusam Jurnal Ilmu Hukum*, 8(1), 1. <https://doi.org/10.29103/reusam.v8i1.2604>

²³ Atmojo, P. S., & Pangestuti, N. (2024). Gambaran Tingkat Depresi Narapidana Narkotika Lembaga Pemasyarakatan Kelas 1 Tangerang. *Jiip - Jurnal Ilmiah Ilmu Pendidikan*, 7(1), 201–205. <https://doi.org/10.54371/jiip.v7i1.3171>

²⁴ 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.

²⁵ Bosi, G. (2025, June 10). *Sex in Prison: The International Human Rights Framework on Conjugal Visits, Starting from the Case of Italy*. EJIL:Talk! <https://www.ejiltalk.org/sex-in-prison-the-international-human-rights-framework-on-conjugal-visits-starting-from-the-case-of-italy/>

²⁶ Chandra, T. Y. (2023). Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak di Indonesia. *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 11(01), 61–78.

²⁷ Irwanto, I., santosa, T. A., Ghoni, A., Jaya, A., & Hartawati, A. (2025). Literature Review: The Effectiveness of the Implementation of Restorative Justice in the Criminal Justice System in Indonesia. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(3), 4718–4723.

²⁸ Wulandari, S. (2023). Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional. *Seminar Nasional Teknologi Dan Multidisiplin Ilmu (SEMNASTEKMU)*, 3(2), 26–36.

absolutely negate rights. A risk-based approach combined with a rights-based approach can be a solution to achieve this balance.

The current practice, which leaves the regulation of conjugal visits entirely to the discretion of officials, is fundamentally problematic from the perspective of administrative law. The theory of discretion (freies ermessen) does provide room for officials to act in situations of legal uncertainty, but this authority is not unlimited. Discretion must be exercised within the framework of the objectives of the law (doelmatigheid) and be bound by the General Principles of Good Governance (AAUPB), which include the principles of legal certainty, non-discrimination, and accountability²⁹. The AAUPB serves as a guideline for the government in carrying out its functions and as a tool for judges in assessing government decisions. Without clear limitations, discretion has the potential to become unlimited discretion, which could undermine the foundations of the rule of law.³⁰

Discretionary practices without guidelines in cases involving conjugal visit facilities have the potential to seriously violate these three principles. The absence of clear standards creates legal uncertainty for prisoners—they do not know whether they are eligible, what the requirements are, and what the procedure is. This also opens up the possibility of violating the principle of non-discrimination, where access may be granted based on subjective or even transactional factors, rather than on objective and transparent criteria. Furthermore, without regulations to serve as a basis for decisions, the accountability of officials becomes unclear. It is difficult to measure whether a discretionary decision has been abused (detournement de pouvoir) or arbitrary (willekeur). This condition is highly susceptible to abuse of authority, which can lead to unlawful acts, corruption, and erosion of public trust in the correctional system.³¹ Therefore, the urgency of limiting discretion through clear regulations is imperative to protect the rights of prisoners and maintain the integrity of correctional institutions.

Formulating a Middle Ground: Proposed Policy Reformulation in Indonesia for a Balance between Human Rights and Security

Considering all of the above analysis, the current policy is ad hoc, non-transparent, and reactive, making reform urgent. Indonesia does not have to choose between two extremes: a complete ban (as in US federal prisons) or a constitutional mandate (as in Italy).

The most rational middle ground is to explicitly regulate these facilities through a balanced model, which recognizes the rights of prisoners while also setting strict limits and conditions for risk mitigation. This approach will ensure that the fulfillment of human rights can go hand in hand with the need for security and order in correctional institutions.

The most appropriate form of regulation is a Regulation of the Minister of Law and Human Rights, given the technical and operational nature of this regulation. This regulation must contain a detailed policy framework as follows:

²⁹ Muhlizi, A. F. (2012). Reformulasi Diskresi dalam Penataan Hukum Administrasi. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(1), 93–111.

³⁰ Gandaria, R. Y. (2015). Implementasi asas-asas umum pemerintahan yang baik (AAUPB) dalam mewujudkan prinsip good governance and clean government di pemerintahan daerah. *Lex Administratum*, 3(6).

³¹ Faisal, F., Jamaluddin, F., Hasima, R., & Tarta, A. F. (2021). Diskresi Dari Sudut Pandang Hukum Pidana. *Mulawarman Law Review*, 32–41.

1. **Basic Principles:** The policy must explicitly state that its purpose is to support the process of rehabilitation and social reintegration while maintaining security and order, and that it is based on the principles of proportionality, non-discrimination, and accountability. These principles must form the philosophical and operational basis for every provision in the regulation.
2. **Objective Criteria for Beneficiaries:** To avoid subjectivity and potential discrimination, the criteria must be clear, measurable, and transparent. The proposed criteria include: (a) Legally valid and verified marital status, as evidenced by official documents; (b) Only applicable to prisoners with low to medium risk classifications (minimum and medium security), as evidenced by standardized and periodic risk assessment instruments; (c) Having served at least one-third of the sentence, as an indication of commitment to the rehabilitation process; and (d) Demonstrating consistent good behavior as recorded in the Prisoner Rehabilitation Assessment System (SPPN) or a similar performance assessment system, without significant disciplinary violations within a certain period.
3. **Procedures and Supervision:** Regulations must establish a standard procedure flow, starting from the submission of an application by the inmate or their family, verification by the registration and rehabilitation unit, to the scheduling of visits. The duration and frequency must be set uniformly across all prisons (for example, once every one or two months with a duration of 2-3 hours). The supervision model must be designed to maintain the privacy of prisoners and their partners, for example, officers standing guard outside the room without audio-visual monitoring equipment but still able to respond to emergencies and prevent smuggling through strict checks before and after visits.
4. **Accountability Mechanisms:** To prevent abuse of authority and corruption, strong oversight mechanisms must be established. This includes internal oversight by the Ministry of Immigration and Corrections, as well as external oversight by independent institutions such as the Indonesian Ombudsman and the National Human Rights Commission. In addition, there must be clear, accessible, and secure channels for prisoners and their families to file complaints in cases of illegal fees, discriminatory practices, or other procedural violations. The entire process must be documented transparently and be auditable.

With this regulatory framework, officer discretion is not eliminated, but rather limited and directed (bounded discretion). Officials still have the authority to reject requests based on concrete and accountable security assessments, but no longer have the freedom to make their own arbitrary rules. This will create legal certainty, enhance justice, and strengthen the integrity of the correctional system as a whole, in line with the spirit of Law No. 22 of 2022, which prioritizes respect for human rights and social reintegration.

CONCLUSIONS

This study concludes that the regulation of conjugal visits in Indonesia is currently in a legal vacuum. The practice in several correctional institutions is not based on explicit regulations, but is left entirely to the discretion of correctional officers. This situation, although perhaps based on good intentions to fulfill the rights of prisoners, fundamentally fails to provide legal certainty and creates risks of inconsistency, subjectivity, and potential abuse of authority. This practice of unlimited discretion is not in line with the principles of good governance and human rights standards, which demand clear, transparent, and accountable legal rules. Comparative analysis shows that although there is no absolute international

obligation to provide these facilities, global trends and modern jurisprudence (such as in Italy) are moving towards recognizing conjugal visits as an important instrument to support rehabilitation goals, provided that they are strictly regulated to balance the fulfillment of rights and the mitigation of security risks.

Based on these findings, this study recommends two main points. First, it is recommended that the Ministry of Immigration and Corrections immediately draft and enact a Ministerial Regulation that specifically and comprehensively regulates private family visits. This regulation must be a proportionate middle ground, setting objective criteria, standard procedures, and clear accountability mechanisms to limit officer discretion and ensure fairness for all prisoners. Second, for the next research agenda, it is highly recommended that empirical or sociological legal research be conducted to quantitatively and qualitatively measure the impact of the love booth practice in pilot prisons on stress levels, disciplinary records, and the success of social reintegration of prisoners after release, so that future policies can be formulated based on solid data and evidence.

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