

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Value of Legal Certainty in the Protection of Breastfeeding Mothers as Inmates in Women's Correctional Institutions: An Analysis of Unlawful Acts Committed by Correctional Institutions

Fulan

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: fulan@gmail.com

Abstract. *Fulfillment of the rights of breastfeeding mothers serving sentences in correctional institutions is a legal issue related to the protection of human rights, women's rights, health, and the best interests of children. Being a prisoner results in restrictions on freedom based on court decisions, but does not eliminate the basic rights inherent in every human being. In practice, breastfeeding mothers as inmates may face limited access to health facilities, nutritional needs, breastfeeding facilities, and relationships with their children. This situation raises questions about the extent to which legal certainty can guarantee the fulfillment of breastfeeding mothers' rights and the limits of the correctional institution's authority in imposing restrictions. This study aims to analyze the legal certainty regarding the rights of breastfeeding mothers as inmates, identify forms of actions or omissions in correctional institutions that have the potential to be categorized as unlawful acts, and analyze legal protection and institutional responsibility in ensuring the fulfillment of these rights. This study uses a normative legal research method with a statutory and conceptual approach. Primary, secondary, and tertiary legal materials were obtained through literature studies and analyzed qualitatively. The results indicate that legal certainty is an important instrument to ensure the fulfillment of breastfeeding mothers' rights through clear norms regarding health services, nutritional needs, breastfeeding facilities, and mother-child relationships. Actions or omissions by correctional institutions that restrict these rights without legal basis, authority, or proportionate justification have the potential to create unlawful acts. Effective protection requires institutional accountability through the provision of adequate facilities, oversight, complaint mechanisms, and redress in the event of violations. Therefore, correctional institutions must balance security and order with respect for human rights and the best interests of children.*



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Keywords: *Breastfeeding Mothers; Correctional Institutions; Female Prisoners; Legal Certainty; Unlawful Acts.*

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

1. Introduction

Correctional institutions are a vital part of the criminal justice system, serving not only as a place for the execution of criminal penalties but also as an institution responsible for the development and fulfillment of inmates' rights. Although a person loses their freedom as a consequence of a criminal sentence, this does not mean that they lose all their inherent rights as human beings. The state remains obligated to guarantee respect for the dignity, health, and basic rights of inmates during their prison sentences. This issue becomes even more complex when inmates are pregnant, giving birth, or breastfeeding, as they have different biological and health needs than other inmates. (Alkautsar, F; 2023).

Breastfeeding mothers serving sentences are in a vulnerable position, having to meet their own biological needs while also meeting the needs of their children, who are still dependent on breast milk. This situation demands legal protection and adequate facilities from correctional institutions. The right to receive health services, adequate nutrition, the opportunity to breastfeed, and maintaining relationships with their children are aspects that must be considered in the administration of correctional facilities. Children who have relationships with female prisoners also require protection, as they are not the ones serving sentences and should not bear the consequences of their parents' punishment. (Anshar and Syawal Abdulajid; 2021).

Legal certainty is crucial in these circumstances because the fulfillment of breastfeeding mothers' rights cannot depend on the subjective policies of officers or the conditions of each correctional institution. Clear legal norms are needed to define the rights that must be granted, the obligations of correctional institutions, the procedures for fulfilling these rights, and the oversight and complaint mechanisms. Unclear norms or inconsistencies between legal provisions and practice can lead to potential violations of the rights of breastfeeding mothers and children. (Martiyanto, Hanida, and Mitro Subroto; 2023).

Problems also arise when correctional institutions engage in actions or omissions that hinder the fulfillment of these rights. Restricting access to children, not providing breastfeeding facilities, neglecting health needs, or administrative policies without adequate legal basis have the potential to lead to unlawful acts. Therefore, it is necessary to analyze the limits of correctional institutions' authority and the forms of legal accountability in the event of violations. (Prastika, Salis, and Anggrita Esthi; 2023).

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Based on these issues, this study examines three main aspects: legal certainty and the rights of breastfeeding mothers as inmates, forms of unlawful acts in fulfilling breastfeeding rights, and legal protection and institutional responsibility of correctional institutions. This study is expected to provide an understanding of the importance of legal certainty in ensuring the protection of breastfeeding mothers and children, while also encouraging the implementation of correctional institutions that are oriented towards human rights, justice, accountability, and the best interests of children. (Prihananti, Duwita Aisya Trisna; 2022).

2. Research Methods

This research uses a normative legal research method with a statutory and conceptual approach. Primary, secondary, and tertiary legal materials were obtained through literature studies and analyzed qualitatively.

3. Results and Discussion

3.1. Legal Certainty and the Rights of Breastfeeding Mothers as Inmates in Women's Correctional Institutions

Legal certainty is a fundamental principle in a state governed by the rule of law, requiring that every action of state officials be based on clear, predictable, and accountable legal norms. This principle is increasingly important in the administration of correctional institutions because prisoners are a group that faces limitations due to the implementation of criminal penalties. Restrictions on freedom through imprisonment do not mean that all rights as human beings and citizens are lost. Prisoners still have basic rights that must be respected and fulfilled by the state as long as they are not legally restricted by court decisions and statutory provisions. In the context of female prisoners who are breastfeeding, legal certainty has a more complex dimension because protection is not only aimed at women as inmates, but also relates to the interests and rights of children who depend on them.

Women serving sentences in correctional institutions face different conditions than male inmates. Women's biological differences and reproductive needs require treatment that takes these characteristics into account. Pregnancy, childbirth, menstruation, reproductive health, and breastfeeding are all part of a woman's biological condition that cannot be eliminated simply because she is serving a sentence. Therefore, a correctional system oriented toward respect for human dignity must be able to provide policies and facilities that address the specific needs of female inmates. Fulfilling these rights is not a form of

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

unwarranted privilege, but rather a form of treatment necessary to achieve substantive equality.

The right to health protection is a crucial aspect of breastfeeding in correctional facilities. Breastfeeding requires adequate physical and psychological well-being, adequate nutrition, access to healthcare, and an environment that allows mothers to breastfeed safely. If these needs are not met, the mother's health can be compromised, ultimately impacting the child. Therefore, meeting the health needs of breastfeeding mothers must be understood as part of the state's obligation to guarantee the basic rights of inmates.

This issue becomes more complex when the infant or child is still highly dependent on their mother. In certain situations, the child may be with a mother who is serving a sentence in accordance with applicable regulations. The presence of a child in a correctional environment has legal and social consequences because the child is not essentially serving a sentence. The child should not be treated as a co-contributor to the suffering caused by the mother's crime. Therefore, correctional policy must distinguish between the restriction of the rights of prisoners as a consequence of the crime and the protection of innocent children.

The principle of the best interests of the child is crucial in this context. Any policy related to breastfeeding mothers and their children must consider the child's developmental needs, health, nutrition, safety, and emotional bond between mother and child. Breastfeeding is not only related to nutritional needs but can also be related to the child's health and development, as well as the psychological bond between mother and child. Therefore, restrictions on breastfeeding must have a strong legal basis and cannot be based solely on administrative considerations within the correctional institution.

Legal certainty in protecting breastfeeding mothers requires clear regulations regarding the rights, obligations, procedures, facilities, and responsibilities of correctional officers. General norms without clear implementation mechanisms can create a gap between normatively recognized rights and those actually received in practice. In such circumstances, female inmates may experience uncertainty regarding available facilities, procedures for obtaining health services, access to children, and complaint mechanisms when their rights are not met.

Legal certainty also relates to the principle that any restrictions on rights must have a legal basis. Correctional institutions do have the authority to regulate the lives of inmates for the sake of security, order, and development. However, this authority is not absolute. Correctional officers must exercise their authority within

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

the limits determined by laws and regulations. Internal institutional policies should not be used to eliminate or restrict inmates' basic rights if such restrictions lack a sufficient legal basis.

From a constitutional perspective, administrative actions taken by correctional institutions must comply with the principle of legality. This principle requires that every action by the government or any agency exercising governmental functions be based on clear authority. If an institution restricts the rights of breastfeeding mothers without a valid basis, such action has the potential to raise legal issues. Therefore, legal certainty means not only the existence of written regulations but also ensuring that officials consistently enforce these regulations and do not act based on subjective desires.

Another important aspect is the principle of non-discrimination. Protection for breastfeeding mothers must be provided without discriminating against inmates based on social background, economic status, type of crime, or other status, as long as there is no legitimate legal basis for differential treatment. However, the principle of equality does not necessarily imply identical treatment for all inmates. In the context of breastfeeding women, special treatment may be justified due to biological needs and specific circumstances not experienced by other inmates. This is what distinguishes formal equality from substantive equality.

3.2. Unlawful Acts by Correctional Institutions in the Fulfillment of Breastfeeding Rights

Fulfilling the rights of breastfeeding mothers in correctional institutions is part of the state's obligation to guarantee respect for the basic rights of inmates. Even though a woman is serving a sentence based on a court decision, this status does not deprive her of her fundamental human rights. Therefore, correctional institutions have an obligation to provide conditions that enable female inmates to meet their reproductive health needs and breastfeed their children. If these obligations are ignored or restricted without a valid legal basis, the actions or omissions of the correctional institution can give rise to legal issues, including the possibility of being classified as an unlawful act.

Unlawful acts are not only active actions but can also involve negligence in fulfilling legal obligations. In the context of fulfilling the rights of breastfeeding mothers, such acts can occur when correctional institutions fail to provide adequate facilities, restrict mothers' access to their children without justifiable legal grounds, neglect the health needs of mothers and infants, or implement internal policies that conflict with statutory provisions. Therefore, assessing the existence

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

of unlawful acts requires considering not only the actions of officers but also the legal obligations that correctional institutions should fulfill.

Restrictions on mothers' rights to breastfeed must have a clear legal basis and be implemented proportionally. Correctional institutions do have the authority to maintain security, order, and the implementation of inmate development. However, this authority cannot be used arbitrarily to deprive prisoners of rights not directly related to the execution of their sentence. If restrictions on breastfeeding or mother-child relationships are imposed solely on administrative grounds without adequate legal basis, such actions potentially violate the principles of legality and human rights protection.

This issue must also be viewed from a child protection perspective. Infants or children who are still breastfeeding are not subject to criminal penalties, and their interests require separate protection. When correctional institutions hinder breastfeeding or reduce a child's access to basic needs, the impact is felt not only by female inmates but also by the child. Therefore, any policy that restricts mother-child contact must consider the child's best interests, as well as their health and developmental needs.

3.3. Legal Protection and Institutional Responsibility for Breastfeeding Inmates

Legal protection for female prisoners who are breastfeeding is the state's responsibility to ensure the fulfillment of basic human rights and dignity. Correctional institutions are required to provide access to health services, nutritional needs, breastfeeding facilities, and conditions that support the mother-child relationship. This responsibility extends beyond the existence of regulations but must be realized through effective implementation and oversight mechanisms. If correctional institutions neglect these obligations or impose restrictions without a valid legal basis, a complaint mechanism, investigation, and redress are required. Therefore, institutional accountability is a crucial element in ensuring the protection of breastfeeding mothers and the best interests of children.

This protection must also be supported by gender-sensitive correctional policies that address the specific needs of women. Correctional officers need to understand reproductive health, breastfeeding, and children's rights so that any decisions they make do not discriminate or harm mothers and babies. Furthermore, clear and uniform service standards are needed so that the fulfillment of rights does not depend on the policies of individual officers or the conditions of the correctional institution. Regular monitoring by authorized

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

institutions is also crucial to ensure the implementation of these obligations. Thus, legal protection can be realized through certainty of regulations, adequate services, oversight, and accountability for violations.

4. Conclusion

Protection for breastfeeding mothers serving sentences in correctional institutions is part of the state's obligation to guarantee the fulfillment of human rights and respect for the dignity of inmates. While being a prisoner does restrict a person's freedom based on a court decision, it does not eliminate their inherent fundamental rights. In the context of breastfeeding mothers, legal protection has a broader dimension because it relates not only to the mother's interests but also to the rights and best interests of the child who still depends on breast milk. Legal certainty is a crucial foundation for ensuring the fulfillment of breastfeeding mothers' rights in correctional institutions. Clear norms are needed to regulate the rights of female inmates, the obligations of correctional institutions, the provision of health and breastfeeding facilities, access to children, and complaint and oversight mechanisms. Fulfillment of these rights should not depend on the subjective policies of officers or the conditions of each correctional institution. The application of the principle of substantive equality is also necessary to ensure that the special needs of breastfeeding mothers can be met without being considered a form of discriminatory treatment. Actions or omissions by correctional institutions that hinder the fulfillment of breastfeeding rights can give rise to legal issues if they are carried out without legitimate authority or contradict applicable legal obligations. The lack of adequate facilities, unjustified restrictions on mother-child contact, and neglect of health needs require evaluation based on the principles of legality, proportionality, and accountability. Under certain circumstances, these actions can be considered unlawful acts, giving rise to an obligation to provide reparations. Therefore, legal protection for breastfeeding mothers must be accompanied by institutional responsibility on the part of correctional institutions through the provision of facilities, health services, supervision, complaint mechanisms, and accountability for any violations. A human rights-oriented correctional system must be able to balance security interests with the protection of mothers and children. Legal certainty ultimately not only guarantees the rights of female prisoners but also ensures that the implementation of punishment does not result in additional suffering without legal basis and continues to consider the best interests of the child.



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

5. References

Journals:

- Alkautsar, F. "Perlindungan Hukum terhadap Hak Narapidana Wanita Berdasarkan Undang-Undang Nomor 12 Tahun 1995 tentang Pemasyarakatan (Studi Kasus Lapas Kelas II A Kuningan)." *Uniku Law Review* 1, no. 2 (2023). <https://doi.org/10.25134/ulr.v1i2.21>.
- Anshar and Syawal Abdulajid. "Pemenuhan Hak-Hak Khusus Narapidana Perempuan (Studi pada Lembaga Pemasyarakatan Perempuan Kelas III Ternate)." *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 8, no. 1 (2021): 74–84. <https://doi.org/10.24252/jurisprudentie.v8i1.21364>.
- Irawan, Bambang, Isharyanto, and Hartriwiningsih. "Pemajuan Hak atas Kesehatan Reproduksi bagi Perempuan Narapidana di Lembaga Pemasyarakatan Kelas IIA Sragen." *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 1. <https://doi.org/10.20961/hpe.v5i1.18360>.
- Martiyanto, Hanida, and Mitro Subroto. "Perlindungan Hukum terhadap Anak dari Narapidana Perempuan di Lembaga Pemasyarakatan Indonesia." *Jurnal Intelektualita: Keislaman, Sosial dan Sains* 12, no. 2 (2023). <https://doi.org/10.19109/intelektualita.v12i002.19698>.
- Prastika, Salis, and Anggrita Esthi. "Implementasi Pemenuhan Hak Pelayanan Kesehatan bagi Narapidana di Lembaga Pemasyarakatan Kelas I Surabaya." *Judiciary: Jurnal Hukum dan Keadilan* 12, no. 2 (2023): 53–67. <https://doi.org/10.55499/judiciary.v12i2.178>.
- Prihananti, Duwita Aisya Trisna. "Pemenuhan Hak Narapidana Hamil dan Menyusui di Lembaga Pemasyarakatan Perempuan." *Indonesian Journal of Criminal Law and Criminology* 3, no. 2 (2022): 68–78. <https://doi.org/10.18196/ijclc.v3i2.15526>.
- Puspitasari, Citra Anggraeni. "Tanggung Jawab Pemerintah dalam Pelanggaran Hak Narapidana dan Tahanan pada Lembaga Pemasyarakatan/Rumah Tahanan Negara." *Jurnal Panorama Hukum* 3, no. 1 (2018): 33–46. <https://doi.org/10.21067/jph.v3i1.2342>.

Books:

- Abdullah, Edi. *Hukum Pemasyarakatan di Indonesia*. Yogyakarta: Deepublish, 2023.
- Lamintang, P. A. F., and Theo Lamintang. *Hukum Penitensier Indonesia*. Jakarta: Sinar Grafika, 2010.



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2015.

Waluyo, Bambang. *Sistem Pemasyarakatan di Indonesia*. Jakarta: Sinar Grafika, 2023.

Widyawati, Anis. *Hukum Penitensier di Indonesia: Konsep dan Perkembangannya*. Jakarta: Rajawali Pers, 2020.