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The Right to Be Forgotten Regulation for Former Convicts in Indonesia

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Abstract. *This paper discusses the regulation of the right to be forgotten for former prisoners in Indonesia as an effort to support social reintegration and reduce recidivism rates. Based on normative legal research with legislative, comparative, and conceptual approaches, this study examines the regulation of the right to be forgotten in several countries such as the European Union, Japan, and South Korea, which have comprehensively regulated it in personal data protection laws. Meanwhile, in Indonesia, although it has been recognized in Article 26 of the ITE Law, Article 15 of Government Regulation No. 71 of 2019, and Article 8 of the PDP Law, the regulation is still partial, non-operational, and does not specify the requirements and mechanisms for its implementation, especially for former prisoners. Therefore, the author recommends a revision to Article 26 of the ITE Law to change the lawsuit mechanism to a request and add clear, selective, and proportional substantive provisions and exceptions to optimize the granting of the right to be forgotten for former prisoners who meet certain requirements.*

Keywords: *Convicts; Law; Regulation; Right.*

1. Introduction

The state has a responsibility to ensure the welfare and security of the Indonesian people. Thus, criminal law exists as a set of rules that regulate actions categorized as violations or crimes and their criminal sanctions. Criminal law in Indonesia is regulated in the Criminal Code and other specific legal regulations such as Law No. 39 of 1999 concerning Human Rights, Law No. 35 of 2009 on Narcotics, Law No. 20 of 2001 on Eradication of Corruption, and others. Article 51 of Law No. 1 of 2023 on the Criminal Code stipulates that the objectives of punishment are to prevent crime through the enforcement of legal norms, to rehabilitate convicts through guidance and counseling, to resolve conflicts arising from crime, to restore balance, to foster a sense of security and peace in society, and to foster remorse and relieve convicts of guilt (Law No.1 of 2023).

Based on these objectives, the state introduced Law No. 22 of 2022 concerning Corrections, which is an integral part of the integrated criminal justice system administered by the government as part of the law enforcement process in the context of service, guidance, and counseling for social reintegration. Article 2 of Law No. 22 of 2022 also stipulates that the purpose of correctional services is to improve the quality of life of former prisoners and to protect society from repeat offenses (UU No.222022). To that end, correctional services will carry out their duties with a focus on recovery or rehabilitation. Article 1 point 23 of Law No. 8 of 1981 concerning Criminal Procedure defines "rehabilitation as the right of a person to have their rights restored in terms of their abilities, position, dignity, and honor, which are granted at the level of investigation, prosecution, or trial because they were arrested, detained, prosecuted, or tried without legal grounds or due to an error regarding the person or the law applied in accordance with the procedures stated in this law" (UU No.8 of 1981). Rehabilitation is in line with the restorative justice approach, which prioritizes reconciliation between the victim and the perpetrator as well as the relationships that have been damaged after the crime occurred. The restorative justice approach is expected to reduce the high crime rate and recidivism in Indonesia.

However, sociological facts show that rehabilitation has not been fully effective in overcoming the high rate of recidivism in Indonesia. In 2020, the Directorate General of Corrections stated that 18.12% of the total number of prisoners 268,001 prisoners were repeat offenders. The data shows that the global recidivism rate in Indonesia ranges from 14-45% (Ahmad Arif, 2020). The high recidivism rate in Indonesia is influenced by several factors, one of which is external factors. External factors are factors that come from outside the former prisoner, such as the community, parents, school, and others. In the community, it is very difficult for ex-convicts to reintegrate, given that information about them has spread widely and they are often labeled as ex-convicts in society. Howard Backer, through his theory called labeling theory, states that a person commits deviant behavior, even repeatedly, because of the label given to them by society. This makes it difficult for ex-convicts to return to society because they carry a label that is no longer relevant.

In addition, the factor of recidivism can also be caused by economic factors. When ex-convicts are released from prison, they must work to continue their lives. However, many ex-convicts are unable to work due to administrative requirements and their criminal records, which are still on file even though the information is no longer relevant. The requirements for applying for a job can include a cover letter, a photocopy of an identity card (KTP), a police clearance certificate (SKCK), and other documentation. The SKCK is a major administrative obstacle for ex-convicts who want to work, because it contains information about their behavior, such as whether they have been convicted or not, and so on. Even though this information is irrelevant or the ex-convicts have fulfilled their

obligations, information about their status as ex-convicts remains on record. This is what causes the recidivism rate to increase because it is difficult for ex-convicts to reintegrate and continue their lives.

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2. Research Methods

This study uses a normative legal research method, which is essentially a method of knowledge to achieve maximum research results, with sources of problems derived solely from library materials and discussed through the application of positive law. Three approaches are used, namely the statute approach to examine norms at various levels of legislation, a comparative approach to compare Indonesian regulations with those of other countries with similar legal systems, and a conceptual approach to analyze legal facts resulting from regulatory gaps or ineffectiveness. The data sources used are secondary data consisting of primary legal materials such as the 1945 Constitution, the Criminal Procedure Code, the ITE Law, the Correctional Law, the Personal Data Protection Law, and the Criminal Code; secondary legal materials in the form of books, journals, and previous studies; and tertiary legal materials such as dictionaries and encyclopedias. Data collection techniques were carried out through library research by reviewing and analyzing various legal literature, while data analysis techniques used descriptive methods to describe the research object regularly and prescriptive methods to assess the right or wrong of a legal event based on research findings.

3. Result and Discussion

3.1. Regulations Regarding the Right to be Forgotten for Former Convicts in Several Countries

The right to be forgotten is a right that arises from the fulfillment of privacy rights and personal data protection. Historically, in 1890 Warren and Louis introduced privacy rights as a necessity to protect individuals' private lives. Meanwhile,

personal data protection rights arise due to the prevalence of fraud, fake news, and other cases that exploit the media (Majida, AZ, 2024). For this reason, the right to be forgotten is important to facilitate the optimal implementation of both rights. Mayer Schonberger, in his book entitled "Delete: the Virtue of Forgetting in the Digital Age," states that the extension of human memory is indeed important, but it must be in harmony with the rights and obligations of others. For humans, the right to be forgotten can ensure that irrelevant memories of the past are erased for the sake of future survival (Graux, H., etc., 2012).

The concept of the right to be forgotten was first implemented by the European Union. As a pioneer in regulating the right to be forgotten, the European Union based its implementation on considerations of proportionality between the right to privacy and freedom of expression and the public's right to know (Dessers, VK, & Valcke, P, 2025).In practice,the European Data Protection Boardhas developed guidelines that take into account several critical factors, including: the nature and gravity of the crime, the time that has elapsed since the conviction, the public role of the former convict, and evidence of rehabilitation.Thelandmark ruling in the case of Google Spain SL v. Agencia Española de Protección de Datos has set an important precedent that search engines are responsible asdata controllerswho is obliged to process requestsfor the right to be forgotten(Kulk, S., & Borgesius, F. Z, 2014).

In addition, Japan first implemented the right to be forgotten in 2011 when a man was arrested and convicted of child prostitution and filed a request for the right to be forgotten. At that time, the Saitama District Court ruling applied a proportionality test by considering: the degree of guilt and nature of the crime, the public benefit of publishing the information, the public status of the individual concerned, and the negative impact on the applicant's personal life. Although not binding, the guidelines issued by the Japanese Personal Data Protection Commission provide guidance for courts in handling requests for the right to be forgotten (Saitama District Court, 2016). Japan opened up the possibility of granting the right to be forgotten to former convicts on the basis of facilitating social reintegration.

Finally, South Korea first applied the right to be forgotten in the case of MC Mong and Naver. In 2015, MC Mong sued Naver to remove negative articles related to his past military service evasion case, arguing that the reports continued to damage his reputation and hinder his efforts to return to the entertainment industry, even though he had been found not guilty by the court on the most serious charges. Naver initially refused, citing its archiving policy and public interest, but the High Court Seoul finally ruled partially in favor of MC Mong, considering that the damage he suffered as a result of the irrelevant and inaccurate information was greater than the value of the news. This ruling, although not explicitly mentioning the right to be forgotten, reflects a similar

principle by balancing individual rehabilitation. It was this jurisprudence that ultimately gave rise to specific regulations governing the granting of the right to be forgotten in South Korea (GDPR2016/679).

Inthe context of ex-convicts, recognition of the right to be forgotten has particular urgency given the impact of digital stigmatization, which can hinder the process of social reintegration (Lageson, S. E, 2020). Information about criminal history that remains accessible digitally for an unlimited period of time has the potential to cause long-term consequences in the form of discrimination in employment, education, and social life. Therefore, regulating the right to be forgotten for ex-convicts needs to be seen as an integral part of corrective policies that aim to rehabilitate and restore inmates as useful members of society. The following are several countries that have regulated the right to be forgotten in their positive law.

Table of Comparison Matrix of Right to be Forgotten Regulations in Several Countries

Items Reviewed	Legal Basis	Application of The Right to be Forgotten	Exceptions
European Union	General Data Protection Regulation 2016/679 (GDPR)	The Right to be Forgotten may be exercised appropriately to a number of considerations, including, inter alia: where the personal data is no longer relevant to the original purpose for which it was collected; where the data subject has withdrawn consent for the processing; or where the data subject has been objected to the further processing of their data. Furthermore, this right shall also apply where the processing of the data is unlawful; where the erasure of the data is a legal obligation under European Union or Member State law; or where the personal data has been obtained from a child below the age of 16 through the offer of online societal services in the absence of valid parental or guardian consent.	The right to be forgotten shall not apply under the following specific circumstances: a. Where necessary to protect the right to freedom of expression and information; b. Where the processing of data is carried out for the purpose of: (1) complying with a legal obligation under applicable European Union or Member State law to which the data controller is subject; (2) performing a task carried out in the public interest; or (3) exercising official authority vested in the data controller; c. For reasons of public interest in the area of public health; d. For archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes; e. For the establishment, exercise, or defense of legal claims.
Japan	Act on the Protection of Personal	Pursuant to Article 29, which governs requests for the	Lesser criminal act

	Information (APPI) no. 57 of 2003	correction, addition, or erasure of personal data, a data subject may submit a request to the business operator once the data in question has been factually identified; upon receipt of such request, the business operator shall be obligated to efficiently conduct an investigation without due delay, and, where any amendments have been effected, the business operator shall be required to notify the applicant of the outcome thereof.	
South Korea	Act on Promotion of Information and Communications Network Utilization and Information Protection (Network Act)	Article 44 (2): A Petitioner may submit an application to exercise the right to be forgotten to an Electronic System Operator. In the event of any complications in effecting such rights, the Electronic System Operator is authorized to implement a temporary access block for a period not exceeding thirty (30) days.	None
Indonesia	Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law)	It is comprehensively specified in Article 26 that any processing of personal data through electronic means by an Electronic System Operator must be based on the consent of the data owner, unless otherwise provided by laws and regulations. A data owner who alleges an infringement of their rights shall be entitled to file a claim for losses incurred in accordance with the prevailing laws and regulations. An Electronic System Operator is obligated to delete irrelevant electronic information and/or electronic documents under its control upon the request of the data owner and based on a court order. Furthermore, the Electronic System Operator is required to establish a mechanism for the deletion of irrelevant electronic data in compliance with statutory and regulatory provisions, it being stipulated that the specific terms and procedures for implementation shall be further governed by government regulation.	None

	Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions	Article 15 stipulates that every Electronic System Operator is obligated to delete irrelevant Electronic Information and/or Electronic Documents under its control upon the request of the relevant data subject. This deletion obligation encompasses the right to erase and the right to delist. This obligation is incumbent upon Electronic System Operators that acquire and/or process Personal Data under their control in accordance with the provisions of the prevailing laws and regulations.	None
	Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection (PDP Law)	The data subject has the right to terminate the processing, delete, and/or destroy Personal Data concerning themselves, in accordance with the provisions of the applicable laws and regulations.	Article 15(1) shall limit the exercise of the rights provided for in Article 8 for the following purposes: a. National defense and security; b. The process of law enforcement; c. The public interest in the conduct of state administration; d. The supervision of the financial services sector, monetary affairs, payment systems, and financial system stability, as carried out in the framework of state administration; or e. Statistical and scientific research purposes.

Based on the matrix, several differences are evident. First, the European Union, Japan, and South Korea regulate the right to be forgotten in only one legal regulation, such as the GDPR, APPI No. 57 of 2003, and the Network Act. Meanwhile, Indonesia regulates it in three laws, namely through the ITE Law, Government Regulation No. 71 of 2019, and the PDP Law. Second, the European Union, Japan, and South Korea comprehensively and explicitly regulate the procedures for granting the right to be forgotten, the obligations of electronic providers, the rights of personal data subjects, and exceptions to the granting of the right to be forgotten. Indonesia has not yet explicitly and in detail regulated the procedures for granting and exceptions to the granting of the right to be forgotten. Third, the European Union, Japan, and South Korea regulate the right to be forgotten in personal data protection regulations to protect the rights of individuals regarding personal data or information. Indonesia is regulated in the ITE Law because it is related to legal certainty in the context of the use of information technology, media, and electronic transactions (UU No.19 of 2016). A

comparison of these countries shows the high urgency for Indonesia to immediately optimize the regulation of the right to be forgotten as a form of positive law enforcement. The regulation of the right to be forgotten for ex-convicts is essentially not only about the protection of personal data, but also about the fulfillment of constitutional rights to rehabilitation and the right to be free from discriminatory treatment as guaranteed in the constitution. Therefore, its regulation requires a comprehensive and fair approach.

3.2. Regulations Regarding the Right to be Forgotten in Indonesia

The regulation of the right to be forgotten has had a positive impact on the European Union, Japan, and South Korea. Since its regulation in the GDPR, the European Union has had a fair and robust mechanism of checks and balances for the protection of personal data, strengthening the harmonization of personal data protection across all member states and giving rise to independent institutions in each member state that are obliged to consistently protect the privacy rights of the entire community. Then, Japan provides individuals with the opportunity to start a new life without the burden of their past records and has formed a Personal Information Protection Commission to protect the rights and interests of individuals and to consider the appropriate and prudent use of personal information. The right to be forgotten is a right of the people that is promised in legislation. Finally, South Korea provides rehabilitation to all members of society, including former convicts (Fadli Zaini Dalimunthe, 2019).

Article 8 of Law No. 7 of 2022 concerning Personal Data Protection (PDP Law) also emphasizes that personal data subjects have the right to terminate the processing, delete, and/or destroy personal data about themselves in accordance with the provisions of laws and regulations (UU No. 27 of 2022). However, the granting of the right to be forgotten in Indonesia is not as good as the regulations in the European Union, Japan, and South Korea. According to the author, there are two things that must be improved and added by lawmakers in order to optimize the implementation of the right to be forgotten in Indonesia. First, the author considers that there is an inconsistency in the initial procedure for submitting a request for the right to be forgotten in Indonesia. Article 26 of the ITE Law regulates the use of court rulings as the legal basis for granting the right to be forgotten. Based on this provision, anyone whose rights have been harmed as a result of the publication of personal information about them in the mass media that is no longer relevant can file a lawsuit for the losses incurred. If the lawsuit has obtained a court ruling, every electronic system operator is obliged to delete electronic information and/or electronic documents that are deemed no longer relevant based on the ruling. The phrases "court ruling" and "lawsuit" can be problematic in terms of the implications of the right to be forgotten in Indonesia.

If the wessenchau of the lawmaker is for contentious lawsuits to be filed, then the final outcome of the trial should be a court ruling, not a court decision.

Contentious lawsuits are not appropriate when applied to the right to be forgotten. The phrase "the use of any information through electronic media concerning a person's personal data must be done with the consent of the person concerned" will result in many parties being sued because it is based on the phrase "the use of any information." Electronic activities that can be easily accessed by anyone, anywhere, without limits will broaden the scope of the process of granting the right to be forgotten. In addition, Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP Number 71 of 2019), specifically in Article 17 paragraph (2), states that the right to be forgotten can be granted by submitting a request for a court ruling, in contrast to Article 26 of the ITE Law. The author considers the request to be more appropriate as the initial procedure for applying the right to be forgotten. Considering that the request does not need to involve many parties and the result is a decision in accordance with Article 26 of the ITE Law (Ramadaani, KF, & Muaalifin, MDA 2023).

Furthermore, the author considers that the second issue is caused by the fact that the right to be forgotten has never been regulated in the same way as in the European Union, which explicitly stipulates the conditions for granting the right to be forgotten in the GDPR (Alchemist Group, 2025). This is necessary in order to comply with the principle of justice, which upholds fairness by providing equal, balanced, and proportional treatment to all parties, both former convicts and victims. Granting the right to be forgotten to ex-convicts who have completed their sentences is a concrete implementation of the principle of equality before the law as guaranteed in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). This principle affirms that everyone has the right to recognition, guarantees, protection, and legal certainty as well as equal treatment before the law. The fulfillment of this right aims to break the chain of digital stigma that can hinder the social reintegration of ex-convicts, so that they do not continue to receive additional punishment (collateral punishment) outside of the court's verdict (Faris, AM, & Gumelar, DR 2024). The mechanism for granting the right to be forgotten must be selective and based on legal certainty, whereby it can only be submitted after the person concerned has obtained a court ruling stating that they are entitled to this right. The court ruling serves as formal proof that the legal process has been completed and that they have fulfilled their obligations to the state.

In addition to the qualification requirements, the author also considers that other substantive requirements are necessary in granting the right to be forgotten, namely, first, that the person is not a repeat offender. In criminology, recidivism is a strong indicator of the risk of future crime (high recidivism risk) (Hersyanda, MD, ETC, 2024).Therefore, data on their status as a recidivist is no longer just a record of the past, but predictive data that is still very current and relevant. Second, the author believes that granting the right to be forgotten to former prisoners with a

basic sentence of less than 7 years is very relevant in Indonesia. Crimes with prison sentences of less than 7 years are usually classified as ordinary or non-extraordinary crimes. They do not meet the criteria of massive and systematic impact that characterizes extraordinary crimes. Therefore, the criminal law and enforcement against perpetrators of crimes with sentences of less than 7 years are not classified as extraordinary crimes and are therefore eligible for the right to be forgotten. The Constitutional Court, through its decisions, namely Constitutional Court Decision No. 14-17/PUU-V/2007, Constitutional Court Decision No. 004/PUU-VII/2009, and Constitutional Court Decision No. 42/PUU-XII/2015, also stated that criminal offenses carrying a basic sentence of less than 7 years are ordinary criminal offenses. Therefore, their rights should be restored. One example is the restoration of constitutional rights in political participation, where former prisoners who received prison sentences of less than 7 years have the right to vote and be elected.

Third, the author believes that the right to be forgotten cannot be granted to former convicts who have been sentenced to additional punishment of publication of the court's decision. The additional penalty of announcing the court's decision is recognized and regulated in Article 10 letter b of Law No. 1 of 1946 concerning the Criminal Code or Wetboek van Strafrecht (KUHP) and Article 66 paragraph (1) letter c of the National Criminal Code (UU No. 1 of 1946). This additional punishment is imposed when the basic punishment alone is not sufficient to achieve the objectives of the punishment. The Criminal Code imposes the additional punishment of publicizing the judge's decision for several criminal acts, such as Article 128 paragraph (3), which regulates the criminal act of fraud in the delivery of goods required by the army or navy during wartime, Article 377 concerning embezzlement as regulated in Articles 372, 374, and 375 of the Criminal Code, and others (Wulandari, N. 2016).One application of additional punishment in the form of public announcement of the judge's decision is for former convicts of embezzlement and corruption. This additional punishment is appropriate to prevent former convicts from running for strategic positions in both government and private sectors (Haris, OK, etc., 2024). This makes it easier for the public to assess changes in the behavior of these former convicts.

In addition, the author considers that the right to be forgotten should be granted exceptions for reasons such as national defense and security interests, law enforcement interests, public interests in the context of state administration, interests in the supervision of the financial services sector, monetary sector, payment systems, and financial system stability carried out in the context of state administration, or statistical and scientific research interests. The exceptions are also regulated as exceptions in the PDP Law. The interests of national defense and security are those related to maintaining the sovereignty of the nation and state. The interests of law enforcement are interests related to efforts or steps taken to implement or enforce legal regulations based on the provisions of laws and

regulations, including investigation, examination, and prosecution processes. The public interest in the context of state administration includes the administration of population administration, social security, taxation, customs, and integrated electronic business licensing services. The interests of financial services sector supervision include banking, capital markets, insurance, financing institutions, pension funds, technology-based regulations, financial technology, and other technology-based institutions under the supervision of Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation. Based on the description of the mechanism for regulating the right to be forgotten in Indonesia and several other countries, it is necessary to revise Article 26 of the ITE Law by adding a paragraph that formulates the norms for granting the right to be forgotten to be applied in Indonesia as follows:

RIGHT TO BE FORGOTTEN

(1) Unless otherwise specified by law, the use of any information through electronic media concerning a person's personal data must be done with the consent of the person concerned.
(2) Any person whose rights have been violated as referred to in paragraph (1) may file a claim for damages incurred under this Act.
(3) Every Electronic System Operator is required to delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the person concerned based on a court order.
(4) Every Electronic System Operator shall provide a mechanism for deleting Electronic Information and/or Electronic Documents that are no longer relevant in accordance with the provisions of laws and regulations.
(5) The provisions regarding the procedures for deleting Electronic Information and/or Electronic Documents as referred to in paragraphs
(3) and (4) are regulated in government regulations.
(6) The deletion of Electronic Information and/or Electronic Documents may be granted to former prisoners under the following conditions as follows :
a. Has obtained a court ruling;
b. Have completed the principal criminal sanction;
c. Has been sentenced toa principal criminal sanctionof less than7 years;
d. Has not been sentenced toan additional penalty in the form of a public announcement of the judge's decision; and
e. Not a repeat offender.
(7) The implementation of the removal referred to in paragraph (6) is exempted on the following grounds:
a. National defense and security interests;
b. The interests of law enforcement;
c. Public interest in the context of state administration;
d. The interests of supervision of the financial services sector, monetary sector, payment systems, and financial system stability carried out in the context of state administration; or
e. Statistical and scientific research interests

Specific and technical regulations regarding the mechanism for requests and the obligations of Electronic System Operators for the implementation of the right to be forgotten will be integrated into the national legal framework through revisions to the ITE Law. This is because the right to be forgotten in Indonesia was first enshrined in the ITE Law. Furthermore, regulations on the deletion of data that are no longer relevant are found mostly in two regulations governing the implementation of electronic systems, namely Law No. 19 of 2016 and Government Regulation Number 71 of 2019. This reinforces that the right to be

forgotten is regulated within the scope of electronic system administration. This revision is necessary to fill the legal void before the Government Regulation as a derivative of the ITE Law is issued, which regulates the procedures for deleting irrelevant electronic information and/or electronic documents in accordance with court rulings. Thus, this policy not only restores individual rights but also maintains a balance with the public interest in security and information through jurisprudence. In Indonesia, the regulation of the right to be forgotten is currently still partial and not yet operational. Although the legal basis has been recognized in Article 26 of the ITE Law and Article 66 of the PDP Law, these provisions have not yet outlined the substantive requirements and mechanisms, especially for former convicts. This comparison shows that Indonesia needs to develop its own model that is in line with the context of the national legal system.

4. Conclusion

The regulation of the right to be forgotten for ex-offenders has been globally recognized as a vital instrument for facilitating social reintegration. Jurisdictions such as the European Union, through its General Data Protection Regulation (GDPR), have adopted a comprehensive approach that balances an individual's right to privacy with freedom of expression and public interest by means of a proportionality test. Conversely, the United States relies more heavily on expungement mechanisms, while Japan has acknowledged the right to be forgotten as a component of the right to personality through its jurisprudence. In Indonesia, the regulatory framework for the right to be forgotten remains partial and is not yet operational. Although its legal basis has been acknowledged under Article 26 of the Electronic Information and Transactions Law and Article 66 of the Personal Data Protection Law, these provisions fail to elaborate on the substantive requirements and specific mechanisms for its implementation, particularly for ex-offenders. This comparative analysis indicates that Indonesia needs to develop its own model, one that is congruent with the context of its national legal system.

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