

The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?



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ARTICLE INFO

Article history

Received: June 10, 2021

Revised: August 11, 2021

Accepted: August 20, 2021

Keywords

Equality Before the Law;

Corruption;

Indonesia;

ABSTRACT

Article 28D paragraph (1) of the NRI Constitution of 1945 states that "Everyone is entitled to the recognition, guarantee, protection, and certainty of fair law and equal treatment before the law". Unfortunately, the implementation of the article is not in accordance with the theory. Cases that go against the principle of equality before the law include cases of corruption convicts who get lavish facilities in poor prisons. The purpose of this research to find out the form of facilities obtained by corruption inmates is reviewed from the principle of equality before the law, as well as the extent of the government's efforts in dealing with cases like this. The methodology used to resolve this error uses empirical juridical research methods. Data collection techniques by conducting interviews, observations, documentation and re-analysis with qualitative methods that aim to understand phenomena occurring in the field. The results showed that the form of facilities obtained by corruption inmates such as televisions, cell phones, air conditioners made it easier to get in and out of prisons, and so on. The Government's efforts in dealing with this are to revitalize the coaching of inmates and the revised plan of Law no. 12 of 1995 on correctional with the aim of improving the personality quality of inmates until the presence of the intention to improve themselves and do not want to repeat the validity.



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1. Introduction

The Republic of Indonesia is a country based on the law.¹ The Constitution of 1945 stipulates that the State of the Republic of Indonesia is a state of law (*rechstaat*) as evidenced by the provisions in the opening, torso, and explanation of the Constitution 1945.² The state of law rests on two principles of human rights

¹Sholahuddin Al-Fatih, 'Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi', *Jurnal Ilmiah Hukum LEGALITY*, 25.2 (2018), 247 <https://doi.org/10.22219/jihl.v25i2.6005>

²Klaus Gründler and Tommy Krieger, 'Using Machine Learning for Measuring Democracy: A Practitioners Guide and a New Updated Dataset for 186 Countries from 1919 to 2019', *European*

namely freedom and equality, it is in line with the opinion of A.V. Dicey in the concept of the state law "rule of law" there are three kinds of meanings namely, the highest power is in the law, not on the ruler or also on the policy of the arbitrary ruler (supremacy of law), there is a principle of equality before the law that no one is above the law, and there is a constitution that is the basis for all applicable laws. There must be a prohibition against violations of people's rights and freedoms (the principle of the constitution based on individual right).³

Law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violations or irregularities of the law committed by the subject, either through judicial procedures or arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflicts resolution). In a narrow sense, law enforcement concerns the act of suppressing any violation or deviation of the rule of law. In the Amendment to the Constitution 1945, the principle of equality before the law is included in Article 27 paragraph (1) which states that all citizens are at the same time in law and government and are obliged to uphold the law and government with nothing but it. This is an acknowledgment and guarantee of the equal rights of all citizens in law and government.⁴

The theory and concept of equality before the law as embraced by Article 27 paragraph (1) of the Constitution 1945 becomes the basis of protection for citizens to be treated equally before law and government. It is meant, that everyone is treated equally before the law. In addition to article 27 paragraph (1), the article containing the principle of equality before the law is article 28D paragraph (1). In the 1945 Constitution Article 28D paragraph (1) which reads "Everyone is entitled to the recognition, guarantee, protection, and certainty of fair law and equal treatment before the law". So the importance of the principle of equality before the law is clearly seen by the affirming of the rules on equality before the law.

Today's problematic case is very much a case that goes against the principle of equality before the law, not in accordance with the mandate that has been given by the Constitution. Examples of cases that prove to be incompatible with this principle are like corruption convicts who get very luxurious prison facilities. Corruption inmates housed in Sukamiskin Correctional Institution (Prison). The results of a surprise inspection from the Ministry of Law and Human Rights

Journal of Political Economy, 70.June 2020 (2021), 102047
<https://doi.org/10.1016/j.ejpoleco.2021.102047>

³Philippe van Gruisen and Christophe Crombez, 'The Commission and the Council Presidency in the European Union: Strategic Interactions and Legislative Powers', *European Journal of Political Economy*, 70.April (2021), 102040 <<https://doi.org/10.1016/j.ejpoleco.2021.102040>>.

⁴Fabian Lechtenberg and others, 'Targeting Economic and Environmental Benefits Associated with the Integration of Regeneration Units in Water Systems', *Journal of Cleaner Production*, 323 (2021) <https://doi.org/10.1016/j.jclepro.2021.129022>

(Kemenkumham), found that many violations were committed in Sukamiskin Prison.⁵

If indeed the state of Indonesia is really a state of law (*rechtstaat*) that glorifies and prioritizes the value of equality before the law, everyone is equal before the law, unfounded in criminal cases, especially corruption cases the defendants get special treatment when compared to other defendants such as not subject to detention. Everyone has the same position before the law, equality before the law, has been analogous to society being "only ordinary people who have the same position before the law". That's the public's view of law enforcement issues.⁶

Equipping residential rooms with refrigeration equipment, fans, televisions and/or electronic devices is prohibited for inmates. In Article 5 letter B of Law no. 12 of 1995 which says "equality of treatment and service"¹⁰ it is very clear that an inmate has the same rights and obligations, no distinction from each other. This is carried out based on equal treatment and service in the correctional development system, namely the provision of equal treatment and service to Correctional Residents without discriminating against people. While in Article 28 paragraph (3) government Regulation No. 32/1999 on the Terms and Procedures for the Implementation of Correctional Residents, stating that Inmates and Correctional Students are prohibited from bringing television and radio or other electronic media into prison for personal gain.⁷

Violations committed by inmates have luxurious room facilities also contrary to Article 4 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 6 of 2013 on the Code of Conduct of Correctional Institutions and State Prisons in letter I which says each inmate is prohibited from equipping residential rooms with refrigeration devices, fans, televisions, and/or other electronic devices, and in the letter J possesses, carries and/or uses electronic devices, such as laptops or computers, cameras, recording devices, mobile phones, and the like.⁸

The poor prison conditions in Indonesia are well below the UN minimum standard rules for the treatment of inmates or known as the Nelson Mandela Rule. This Mandela rule requires the availability of basic needs and services in accordance with national standards. The standard stipulated by the Ministry of Health for calorie intake per person is between 2,475-2,725 kilos of calories, but

⁵ Sholahuddin Al-Fatih, 'DARUS AS AN ANTI-CORRUPTION EDUCATION', *Asia Pacific Fraud Journal*, 3.1 (2018), 117–23 <https://doi.org/10.21532/apfj.001.18.03.01.14>

⁶ Luciano Campos and Agustín Casas, 'Rara Avis: Latin American Populism in the 21st Century', *European Journal of Political Economy*, 70.October 2020 (2021), 102042 <https://doi.org/10.1016/j.ejpoleco.2021.102042>

⁷ Mariam Abdulkareem and others, 'Life Cycle Assessment of a Low-Height Noise Barrier for Railway Traffic Noise', *Journal of Cleaner Production*, 323 (2021), 129169 <https://doi.org/10.1016/j.jclepro.2021.129169>

⁸ Amir N. Licht, Chanan Goldschmidt, and Shalom H. Schwartz, 'Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance', *Journal of Comparative Economics*, 35.4 (2007), 659–88 <https://doi.org/10.1016/j.jce.2007.09.001>

prisons in Indonesia are only able to provide 1,559 to 2,030 kilos of calories due to a low budget. The grocery budget for inmates in Indonesia is USD \$ 1.5 per inmate per day or about Rp15,000 per inmate per day for health services, each inmate only gets a budget of USD \$ 1.2 per years or about Rp1,000 per month. An inmate needs to share a cell with 6-7 others in a cell designed for 3 people only. They eat, sleep, and defecate there. If the inmates are without any financial support, life will be very heavy.⁹ Faced with such difficult conditions, inmates of corruption will use their financial resources to alleviate their suffering while in prison and ironically this will get them involved in new corrupt practices while in prison. With the money they have, convicts of corruption can get or rent a bed that is more viable.

2. Research Method

This research is useful for the development of legal science,¹⁰ especially in the field of enforcement of legal principles and criminal law. This type of research in this study is empirical juridical¹¹ which in other words is a type of sociological legal research and can also be called field research, namely reviewing the provisions of the prevailing law as well as what happens in society.¹² Or in other words, a study conducted on the true circumstances or real circumstances that occur in the community with the intent to know and find the facts and data needed, after the data has been collected then leads to the identification of the problem that ultimately leads to the resolution of the problem.¹³

3. Results and Discussion

The facility obtained by the inmate has regulations governing it. Related to its standardization or what provisions can be for inmates and what is prohibited for inmates. The author tries to sit this discussion gradually. Before the author goes too far in explaining what regulations and conditions are allowed and what is prohibited for inmates, the authors seek to collect data from various cases of corrupt inmates who are in prison, there are at least five instances of cases

⁹ Anu Lähteenmäki-Uutela and others, 'Legal Rights of Private Property Owners vs. Sustainability Transitions?', *Journal of Cleaner Production*, 323.September (2021) <https://doi.org/10.1016/j.jclepro.2021.129179>

¹⁰ J.D. M. H. Hoeflich, B.A., M.A., 'Law & Geometry: Legal Science from Leibniz to Langdell', *American Journal of Legal History*, 30.2 (1986), 95–121 <https://doi.org/https://doi.org/10.2307/845705>

¹¹ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. by Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

¹² Soeleman Djaiz Baranyanan, 'Simplification of Law Regulations in Copyright Criminal Act Settlement', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 80–91 <https://doi.org/10.53955/jhcls.v1i2.9>

¹³ Andi Akbar Herman and Muhammad Jihadul Hayat, 'Management of High Secondary Education After Regional Government Law', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 395–96 <https://doi.org/10.53955/jhcls.v1i2.11>

involving corruption inmates with prison guards along with explanations of what cases and violations have been violated.¹⁴

The results of research from Indonesia Corruption Watch or abbreviated ICW in six major cities in Indonesia on patterns of corruption in the judiciary in 2001, found at least five patterns of corruption that occurred in the Correctional Institution, namely:¹⁵

1. Special treatment and treatment during his time in custody. By paying a certain amount of money to the officer, the inmate will get different treatment from the other inmates. Special facilities can also be provided, such as separate cells with other inmates (except for the poor prison that was indeed the concept of a room for only 1 person per room.) Eat and drink nutritious, television furniture, refrigerator, air conditioner, mobile phone, and so on. If agreed, even the cell room can be converted into a temporary office and inmates are notabene a businessman.
2. The provision of security services. In general, the condition of rutan or prison in Indonesia is not as safe as imagined. The number of wardens with inmates is not comparable to that of inmates, making violent acts more common in prisons. This condition can be utilized by some people in prisons and inmates who are being guarded by officers to ask for security services money. If the security money is not handed over, it may be that the threat of violence will be experienced by inmates.
3. Granting permission to get out of jail. It's not really a matter of an inmate coming out of prison. For example, to take medication or leave to visit family. However, it must be in accordance with the established procedures. Which is where the permission is granted by the head of The Prison and Kakanwil Department of Law and HAM. The right to out inmates has been clearly regulated in Law no. 12 of 1995 on correctional. Article 14 letter D governs the right to obtain health care and Article 14 letter J governs the right to leave, such as visiting family. For example, marry a child, marry or marry a close friend.
4. Granting remission (Sentencing Reduction) is a fast way that inmates can immediately breathe free air. Remission is one of the rights of inmates as stipulated in the Law on Correctional. Which is if an inmate behaves well while in prison, the head of Prison can propose to the Minister of Law and Human Rights to grant remission to the inmate concerned.

¹⁴ Huiping Dai and others, 'In Search of the Exclusion/Low-Accumulation Mechanisms: Cadmium Uptake and Accumulation from Soil by Cultivated (*Solanum Melongena* L.) and Wild Eggplants (*Solanum Torvum* L.)', *Journal of Cleaner Production*, 323, September (2021), 129141 <https://doi.org/10.1016/j.jclepro.2021.129141>

¹⁵ Juniati Gunawan, Paulina Permatasari, and Carol Tilt, 'Sustainable Development Goal Disclosures: Do They Support Responsible Consumption and Production?', *Journal of Cleaner Production*, 246 (2020) <https://doi.org/10.1016/j.jclepro.2019.118989>

5. Charges for guests. It has become a common secret when there are families or guests who want to visit prisoner, it turns out that there is an "unofficial" levy that seems to be standardized. Not only uang, food is often requested by guards. Even by paying a larger number of bribes, guests can visit inmates without being tied to visiting hours.

Among the above cases the author chose to focus on the most recent case (in 2018) in the prison of Sukamiskin, Bandung, West Java. As carried out at night by the Directorate General of Corrections of the Ministry of Law and Human Rights on Sunday, July 22, 2018. If is done from 19.00 WIB to 23.00 WIB, the officer advances various items that violate the regulation, such as money, television, refrigerator, stove, microwave, pot, spatula, cell phone, to air conditioning. Before that, the Corruption Eradication Commission (KPK) had conducted a hand-catch operation on Saturday, July 21, 2018 against people who took bribes between inmates in corruption cases and officials in Sukamiskin Prison. From the bribes, inmates can obtain several facilities while inside the prison. Therefore, it was done by the Directorate General of Correctional Law and Human Rights. The Corruption Eradication Commission said that to get additional facilities in Sukamiskin prison it would cost 200 million-500 million.¹⁶

Prisons with luxurious facilities are certainly not just in the poor, such as similar cases such as the Haryanto Chandra case. Yang where the National Narcotics Agency (BNN) on May 31, 2017, managed to find a luxurious cell room occupied by inmates at Cipinang Correctional Institution, East Jakarta, Haryanto Chandra aka Gombak. In the cell, BNN authorities found several items such as a laptop unit or carry-on computer, one Ipad unit, four mobile phone units and one token unit, and had air conditioning and CCTV facilities to monitor everyone who came. In the search, there is a situation in the cell room that is not like the cell room in general. In the room there is air conditioning, CCTV that can monitor everyone who comes, wifi, aquarium fish arowana and special food menu. As Said Budi Waseso, who was then the Head of BNN. The absence of luxury cells in the prison is not a surprise to us, because this subject has been very common almost all prisons in Indonesia. But the only thing that is different from the prison is that the trade in luxury facilities is carried out by former top officials in Indonesia. As explained by the.¹⁷

The very interesting thing to look out for in this case is that the luxury facilities of course correlate with the abuse of authority committed by certain people, as in the example of the above cases. In the abuse of authority almost always related to

¹⁶Michael R. Dove and Daniel M. Kammen, 'Vernacular Models of Development: An Analysis of Indonesia under the "New Order"', *World Development*, 29.4 (2001), 619–39 [https://doi.org/10.1016/S0305-750X\(01\)00002-X](https://doi.org/10.1016/S0305-750X(01)00002-X)

¹⁷D. Dirhamsyah, 'Indonesian Legislative Framework for Coastal Resources Management: A Critical Review and Recommendation', *Ocean and Coastal Management*, 49.1–2 (2006), 68–92 <https://doi.org/10.1016/j.ocecoaman.2005.09.001>

bribery bribes, the absence of tributes, offerings, bribe money and so on. The phenomenon of cells with privileged facilities in prisons can only be enjoyed by certain inmates and this is clearly very contrary to Law No. 12 of 1995 on Correctional In Article 5 letter b, namely equality of treatment and service, which in its explanation is affirmed that the meaning of "equality of treatment and service" is the provision of equal treatment and service to the citizens of the correctional facility without discriminating against people. The presence of luxury cells in prisons can certainly only be enjoyed by certain inmates, and it can be said that this is a violation of the human right for fellow inmates to be treated equally and a denial of equality before the law, as mandated in our constitution.¹⁸

Of course, regarding the prohibition on inmates obtaining luxury facilities there has been a provision in the Regulation of the Ministry of Law and Human Rights No. 6 of 2013 on the Discipline of Correctional Institutions and State Prisons in Article 4, Every inmate is prohibited to do some things. From the results of the research, the authors want to focus on the prohibition of inmates above in the letters I, J, and K. The prohibition has been very clear and firm about the prohibition. In letter I it is about the prohibition of equipping residential rooms with refrigeration, fans, televisions, or other electronic devices. In letter J the prohibition on possessing, carrying or using electronic devices, such as laptops or computers, cameras, recording devices, mobile phones, pagers, and the like. In the letter K inmates are prohibited from installing electrical installations in residential rooms.¹⁹

It is also not in accordance with the mandate of our constitution. As in Article 27 paragraph (1) of the State Law of the Republic of Indonesia of 1945 which reads "All citizens concurrently position in law and government and shall uphold the law and government with nothing but." And stated in Article 28 paragraph (3) of Government Regulation No. 32 of 1999 on the Terms and Procedures for the Implementation of Correctional Residents, states that Inmates and Correctional Students are prohibited from bringing television and radio planes or other electronic media into prison for personal gain. The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 12 of 2016 on the Terms and Procedures for Granting Exit Permits for Inmates in the Framework of Coaching has regulated such strict exit permits for inmates, but there are still some special inmates who violate it as some examples of cases the authors have

¹⁸Asjad Naqvi, 'Decoupling Trends of Emissions across EU Regions and the Role of Environmental Policies', *Journal of Cleaner Production*, 323, February (2021) <https://doi.org/10.1016/j.jclepro.2021.129130>

¹⁹Yeling Zhu and others, 'Biowaste-Based Biodegradable Flocculants for Clean and Sustainable Tailings Management in Industrial Mining and Mineral Processing', *Journal of Cleaner Production*, 323 (2021), 129195 <https://doi.org/10.1016/j.jclepro.2021.129195>

described above. In Article 17 of the Minister of Law and Human Rights of the Republic of Indonesia No. 12 of 2016 has stipulated that.²⁰

The penalty obtained if an inmate is found to be violating the prison code during the execution of an exit permit is revoked while granting his/her exit permit, cannot be granted an exit permit again within one year from the date the granting of the exit permit is revoked. The rules and regulations are very clear. For example, in prisons want to provide correctional services that are free from "Halinar" Mobile, Pungli, and Narcotics, but still there are people who provide and offer such things. For inmates who find themselves uncomfortable in the prison room, then that is where the offer of sale and who get the pleasure of only those who can afford the offer and who cannot afford to pay must remain in uncomfortable condition. As Malik, one of the former inmates who was a speaker at the Indonesia Lawyers Club event, said "Mobile phones are not formally prohibited, but those that sell a lot of credit, who sell mobile phones there."²¹

From the example of the above case is also evidence that the implementation of the Principle of Equality before the Law has not been efficient or maximal. The "only" equation before the law seems to signal to us that socially and economically people should not get equality. For those corrupt inmates who have suffered despite having obtained soft mattresses and various other facilities, the Author does not mean that corrupt inmates should be treated the same as a chicken thief. It's not like that. But the author's intent is that the authorities, who handle similar cases, should make a new plan and commit wholeheartedly to resolving this case, and focus on improving to the root of the existing case so as not to re-occur similar cases.²²

In the explanation of times in the author trying to explain the latest efforts made by the government or the parties concerned who have the right to issue the latest strategies or ideas related to this issue that hopefully can minimize the onsevent of cases such as this happening again, either corruption convicts who do so or other criminal convicts. This information was obtained based on the results of the author's interview with one of the parties from the Directorate General of Human Rights, Ministry of Law and Human Rights. Revitalizing Coaching For Inmates. The Ministry of Law and Human Rights is conducting a Revitalization of Correctional Administration, as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 35 of 2018 on the

²⁰Marta Ramos-Andrés, Beatriz Aguilera-Torre, and Juan García-Serna, 'Biorefinery of Discarded Carrot Juice to Produce Carotenoids and Fermentation Products', *Journal of Cleaner Production*, 323 (2021) <https://doi.org/10.1016/j.jclepro.2021.129139>

²¹Amadou Boly and Robert Gillanders, 'Anti-Corruption Policy Making, Discretionary Power and Institutional Quality: An Experimental Analysis', *Journal of Economic Behavior and Organization*, 152 (2018), 314–27 <https://doi.org/10.1016/j.jebo.2018.05.007>

²²Tijana Adamovic and others, 'A Feasibility Study on Green Biorefinery of High Lignin Content Agro-Food Industry Waste through Supercritical Water Treatment', *Journal of Cleaner Production*, 323 (2021) <https://doi.org/10.1016/j.jclepro.2021.129110>

Revitalization of Correctional Administration. Through the Revitalization of Correctional Administration, the construction of inmates will be classified into Super Maximum Security Prison, Maximum Security Prison, Medium Security Prison, Minimum Security Prison. From the information obtained, this has been done on Nusakambangan Island.²³

In Article 8 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 35 of 2018, explained that the Revitalization of Inmate Coaching aims to improve the cauldron of inmate coaching function in encouraging behavior change and decrease the risk level of Inmates. The author seeks to first explain one by one the definitions, criteria, and how the inmate coaching program of The Super Maximum Security Prison, Maximum Security Prison, Medium Security Prison, Minimum Security Prison as this explanation has been in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 35 of 2018.²⁴

Revised Plan of Law No.12 of 1995 on Correctional. This latest Correctional Bill, expected to be a legal basis for the state to provide protection for all targeted citizens, children, and correctional institutions, while improving the personality quality of correctional residents, to improve themselves does not repeat the crime. In the view of the author regarding the revised plan of Law No.12 of 1995 on Correctional, this will be implemented properly if the development of religious awareness becomes the focus in this improvement. Why? because the improvement of the external aspect has been done by the government, while the improvement of the internal aspects of individuals sourced from the teachings of this religion is still very minimal. This is the determinant of a person who can submit and obey a rule.²⁵

4. Conclusion

Based on the analysis and various discussions above, the conclusions that can be drawn are as follows, the form of facilities obtained by prison corruption inmates who are reviewed from the principle of equality before the law such as money, televisions, refrigerators, pots, mobile phones, air conditioners is very clearly contrary to existing regulations do not conform to the principle concept of equality before the law. Show the case that the author has described above. Luxury facilities obtained by prison corruption inmates like the poor, is not a surprise, because similar cases have been very common throughout Indonesia

²³Fatma Ulfatun Najicha, 'Oil and Natural Gas Management Policy in Realizing Equal Energy in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 71–79 <https://doi.org/10.53955/jhcls.v1i2.8>

²⁴Mohd Rizal Palil and Ida Suriya Ismail, 'Social Enterprise and Taxation Policy: A Systematic Literature Review', *Bestuur*, 9.2 (2021), 135–43 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v9i2.55569>

²⁵M. Jamil, 'Fiduciary Security Arrangements and Issues in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 109–19 <https://doi.org/10.53955/jhcls.v1i2.1>

prisons. The prison is a prime target because the trade in luxury facilities is carried out by former top officials in Indonesia who are entangled in corruption cases. The Government's efforts in applying the principle of equality before the law against corruption inmates who obtain luxury facilities, namely there has been a ruling in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 35 of 2018. That explains that the revitalization of inmate coaching aims to improve the quality of inmate coaching functions in encouraging behavior change and decreased inmate risk levels. Which has inmate coaching program from Super Maximum Security Prison, Maximum Security Prison, Medium Security Prison, Minimum Security Prison. Unfortunately, this effort has not spawned anything maximal, the regulation has not made the inmates deter to commit crimes, although this concept has been applied in some prisons. A person will not obey the rules, if in him there is no desire to change for the better. The second is the revised plan of Law No.12 of 1995 on Correctional with the aim of improving the personality quality of inmates, the presence of awareness of inmates to improve themselves and not wanting to repeat the crime.

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