

## **Development of Elderly Prisoners: Policy Implications for The Fulfilment of Human Rights**

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### **Abstract**

Criminals do not look at the age limit because human behaviour manifested as an act sometimes creates unrest for the community, which is called a crime. Criminal law views that anyone who commits a crime should be subject to criminal sanctions. However, the application of criminal law is also required to consider the limitations of the fundamental rights of Indonesian citizens as a whole without being reduced in the slightest, even with the status of a prisoner. This study focuses on criminal law policies in fulfilling the rights of elderly prisoners from the perspective of Human Rights Human. Doctrinal legal research with the primary source of the material is legislation, Law no. 12/1995 and Regulation of the Minister of Law and Human Rights No. 32/2018. The results describe whereas the aim of fostering Elderly Prisoners is humanistic. However, the policy is not accompanied by the government's seriousness because not every penitentiary in Indonesia is built with facilities and infrastructure to support the fulfilment of human rights, especially elderly prisoners. The policy too not accompanied by a target of achieving the fulfilment of rights for Elderly prisoners. Actually creates problems for officers because elderly prisoners require different treatment.

**Keywords:** Policy Implication, Guidance, Elderly Prisoners, Human Rights

### **Introduction**

Crime has different forms; even the same criminal behaviour can be based on different reasons. Basically, humans are based on two principles, namely, matter and form. The matter is in the form of a body because the body possessed by humans will surely die. The second is a form that is more inclined to the soul that fills human matter. Moreover, humans have a mind that can distinguish between good and evil (Huijibers, 2019).

The problem of good and bad character is also closely related to acts of violence. We often think that only bad people commit violence when what is happening in our reality is not like that—humans as a species like violence, but only the kind of violence advantageous for each group. Although reason has a critical position and position, reason is not the main factor that can make humans the best and noblest creatures because reason can not determine and determine the truth without guidance. religious law and faith (Rahmatiah, 2015).

The ability of human reason is often not balanced with the actions taken so that humans can do anything in certain circumstances. Not only based on reason, but perpetrators of criminal acts also do not look at social strata, gender or age. Criminals in Indonesia can be classified in the form of, firstly children, secondly adults and thirdly elderly. However, the high level of

criminal sanctions imposed, such as imprisonment for twenty years and life imprisonment, leaves a problem for inmates. They will live the rest of their lives in a penitentiary and age with the changing times and years.

The high level of crime in a country causes correctional institutions to overcrowd because there is no comparison between the perpetrators and the number of detention rooms. It is known that the number of inmates of correctional institutions in Indonesia reached 274043 as of June 2021, with a capacity level of 201.5%. Such a situation as one of the causes of depression rates for prisoners.

In 2018 data from the Directorate General of Corrections shows that there are around 4,408 inmates in the elderly category scattered in various regions. The practice of criminalizing perpetrators in the elderly category itself is still rampant in Indonesia, including the case of Asyani's grandmother, with age 70, who is required to be imprisoned for one year and a probationary period of 18 months and a fine of Rp. 500 million, a subsidiary of confinement, for stealing timber belonging to Perum Perhutani. Then there is also the case of Ms Minah, who is 50 years old and was charged with theft of three cocoa beans weighing less than 50 years over 3 kilograms (Saptono, 2015). Busrin, who cut down mangroves in 2014, and Ngatmanu, who was charged with stealing one kg of soybeans for Rp. 9,000 (Nine Thousand Rupiah) (Lembaga Bantuan Hukum Jakarta, 2015).

If viewed from the function and purpose of punishment, the government must make a special policy related to prisoners. Although various regulations have been issued, for example, relating to children in conflict with the law, the main factor in protecting children is the child's position as a child and hope—nation in the future, so that trauma and labelling of them also need to be minimized (Harris et al., 2011).

In fact, the government has echoed the discourse on criminalizing elderly criminals, both of which will be accommodated in the RKUHP and RKUHAP (Saptono, 2015). However, this is still at the planning stage, and we know for ourselves that Indonesia adheres to the principles of continental European law where the law is the rule codified so that the treatment and fulfilment of rights for suspects and elderly prisoners can not be implemented (Kurniyawan, 2020). It is necessary for the government to make a special regulation to provide the rights of elderly prisoners to realize the standards of the fulfilment of elderly prisoners and in accordance with the purpose of punishment. Itself (Western & Pettit, 2002).

The existence of elderly prisoners becomes a problem if they are not handled properly. A number of questions arise: what are the implications of coaching policies for elderly prisoners? Furthermore, how do prison officials carry out the supervisory system against elderly prisoners? This question can only answer through a comprehensive investigation of actual data so that the problem of fostering elderly prisoners can be resolved and the correctional system can achieve its goals according to the ideals of justice as promoted by Pancasila. So the purpose of this article is to analyze the implications of the policy for fostering advanced prisoners age and find a model of fostering elderly prisoners based on the fulfilment of human rights.

## **Method**

This is legal research because it examines the rule of law to solve the problem studied using literature and other sources (Muhdar, 2019). To support the smoothness of the focus of this research, the approach used is doctrinal (Effendi Jonaedi & Ibrahim Johnny, 2020). In

particular, it examines the law, which is conceptualized as the rule of law according to the positivism doctrine.

The legal materials used are : 1945 Constitution of the Republic of Indonesia, Law Number 12 of 1995 concerning Corrections, Law Number 13 of 1998 concerning Elderly Welfare, Government Regulation Number 31 of 1999 concerning Guidance and Guidance of Correctional Inmates, Government Regulation Number 43 of 2004 concerning Implementation of Efforts to Improve the Social Welfare of the Elderly, Government Regulation Number 32 of 1999 concerning Terms and Procedures for Implementing the Rights of Correctional Inmates, Regulation of the Minister of Law and Human Rights Number 12 of 2013 concerning Risk Assessment and Needs Assessment for Prisoners and Correctional Clients, Regulation of the Minister of Law and Human Rights Number 32 of 2018 concerning the Treatment of Elderly Detainees and Convicts, and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

The legal materials are collected comprehensively, then systematized with principles, norms and interpreting unclear norms. Legal materials are also analyzed in depth using a qualitative method, and this is done to answer the formulation of the problem posed.

## **Result And Discussion**

### ***Implications of Coaching Policies for Elderly Prisoners***

Crime is basically a relative social process, amoral, political, and social process. So, it is necessary to make efforts to restore his dignity as human nature as a whole (Durrant, 2021). One of the ways that the government does to criminals is to provide guidance, both spiritually and physically, to become dignified humans in the future.

The purpose of punishment, in general, should be seen in the Criminal Code (Noorda, 2021). However, the Criminal Code does not explicitly include the purpose of punishment in the formulation of its articles, but it is the legal experts who interpret it by using developing criminal theories and looking at the selection of types of punishment or heavy criminal sanctions in various criminal formulations. Moreover, if the interpretation is extended to specific criminal provisions outside the Criminal Code, the purpose is more visible of this unpatterned punishment in Indonesia. Nevertheless, Sahardjo tried to unify the purpose of punishment in Indonesia by giving birth to a correctional theory as one of the purposes of punishment and has been adopted in the Indonesian criminal system with the existence of Law No. 12 of 1995 concerning Corrections (Karlsrud & Felix, 2012).

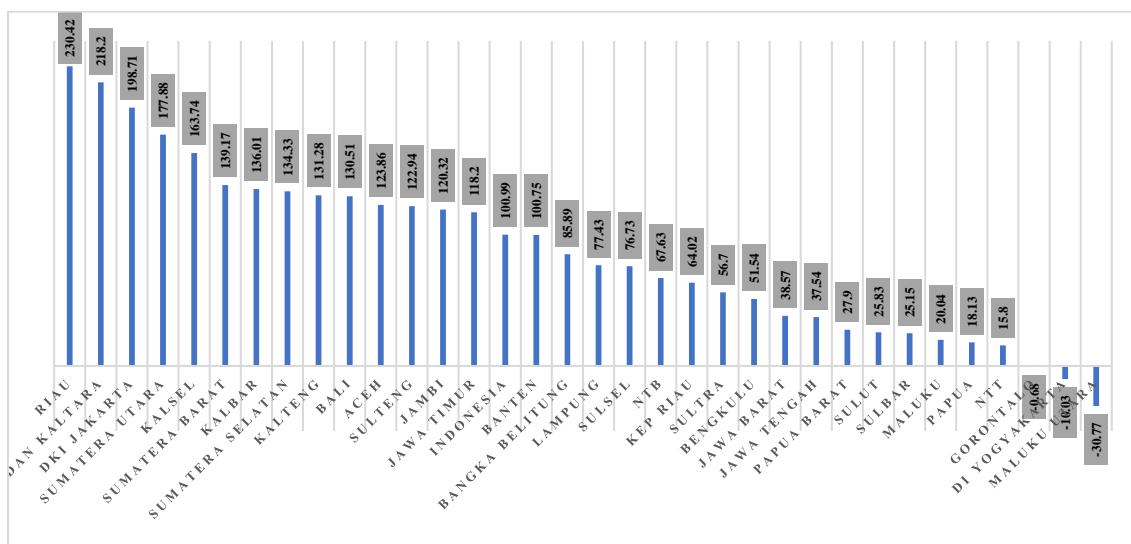
Several theories have become a reference for scientists in responding to construction, one of which is the theory of retaliation or known as deterrence. This theory assumes that the crime caused injustice to society, then the perpetrator must be repaid with an emphasis on sentencing sentiments (Mudzakkir, 2010). The shift in the purpose of punishment is seen in the utilitarian theory or special prevention, which states that the purpose of punishment is to deter punishment by correcting it and by making the criminal himself incapable of repeating the unlawful act (Muhammad, 2006).

The expansion of the purpose of punishment in Indonesia shows that the imprisonment imposed on the perpetrator causes pain as a result of the actions he has committed. The state is limiting or even eliminating the freedom of movement, guiding the convict to repent and educating the convict to become a criminal. It is a Useful member of Indonesian society. This

treatment is in accordance with the purpose of imprisonment, which is correctional, which is symbolized by a banyan tree (Atmasasmita, 1982).

Correctional institutions as a place for mental and spiritual reform of prisoners are expected to recover so that when they are free, they can return and be accepted in their community well (Zulfa, 2017). However, the fact is that due to the overpopulation of the occupants of this correctional institution, it is precisely in the institutions that are given The authority to rehabilitate mentally does not have adequate facilities and human resources; as a result, even death can occur in correctional institutions (Ravena & Mahmud, 2019).

**Figure 1.** Graph of overcapacity of correctional institutions in 34 Regional Offices of the Ministry of Law and Human Rights



**Source:** graph of excess/lack of papas capacity in 34 Regional Offices, Ministry of Law and Human Rights, 2021.

The overachievement in several correctional institutions in Indonesia certainly impacts the pattern of development and fulfilment of both facilities and other needs. At least the criminal law policy in accommodating the fulfilment of human rights against perpetrators of criminal acts is based on five principles, namely : (1) physical/mental health, (2) age, (3) pathways for making decisions, (4) post-release support, (5) nature of crime, and (6) evaluation stage. The main basis for fulfilling special treatment for elderly prisoners refers to the concepts contained in the following rules :

**Table 1.** Regulation of elderly prisoners

No	Rules of Law	Description
1	Law No.13/1998	Article 5 paragraph (3) and Article 12 Respect and appreciation are given the right to improve social welfare, including : 1. Religious and mental-spiritual service 2. Health services 3. Ease of use of public facilities, facilities and infrastructure 4. Ease of service and legal assistance, and 5. Social protection

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- 2 Government Regulation No. 43/2004 Article 8 paragraph (2), health services that can be provided :
1. Counseling and disseminating health information for the elderly
  2. Curative healing efforts
  3. Development of care institutions for the elderly who suffer from chronic diseases
- Article 22  
Public facilities and infrastructure procurement is oriented towards accessibility for the elderly.
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- 3 United Nations Principles for Older People (1991)
12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.
  13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
  14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.
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The policies contained in Law no. 13/1998 differentiated between potential elderly and non-potential elderly. Considering that the subjects studied in this study were prisoners classified as elderly, they were represented as non-potential. Follow-up guidance for elderly prisoners is the issuance of the regulation of the Minister of Law and Human Rights No. 32/2018. Although it can be said to be late, it can be seen that within ten years from the ratification of Law no. 13/1998, the spirit of coaching human rights-based elderly prisoners continued to be implemented.

The form of special treatment given to elderly prisoners is a personality and independence program (Stal, 2012). To maximize this fulfilment, recovery and development are also related to social functions that can be provided in the form of optimizing mental and spiritual programs, implementing recreation, and providing support in the form of pre-freedom. However, this is problematic for elderly inmates who spend the rest of their lives in prison. In fact, not every facility and infrastructure is oriented to the needs of elderly prisoners, as is the case in several correctional institutions in Indonesia, for example, the provision of sitting closets accompanied by safety handles.

In Uruguay, elderly convicts who commit crimes (not serious crimes), if the prisoner is 70 years old, the sentence can be changed to house arrest. Indonesia needs to refer to Uruguay to develop elderly prisoners, especially prisoners with non-severe cases (Atabay & United Nations Office on Drugs and Crime., 2009).

### ***Supervision System for Elderly Convicts***

In 2016, deaths in place of detention occurred in 25 provinces. Most deaths occurred in East Java Province, namely 15 cases out of 120 cases or as many as 12.5%. Meanwhile, West Java and North Sumatra were in the same position with 14 cases (11.7%). The lowest or as

many as 1 cases were in Southeast Sulawesi, Papua, Southeast Maluku, and Bangka Belitung (Wirya, Albert & Permata, 2017).

The relatively more extended length of time spent in prisons also has the potential to cause the death of inmates in prisons compared to the other two locations. The time limit for detention at the Police Office and Detention Center has adjusted to the criminal justice process that a person goes through. Based on the Criminal Procedure Code, a person can be detained in police custody or a detention centre for a maximum of two hundred (200) days. Under certain conditions, the period of detention may be extended to a maximum of three hundred and eighty (380) days (Wirya, Albert & Permata, 2017).

In the last two years, the death rate in correctional facilities has increased; namely, throughout 2018, as many as 385 died in detention houses and prisons. This figure classified 326 people as prisoners, and the rest are still in detention status. Not only die, but some prisoners also suffered from mental disorders as many as 37 people, with details 34 as prisoners and three people still being prisoners (Saputra, 2018).

October was the month with the highest number of deaths and victims throughout 2018 and was one of the months with a different number of cases and victims, namely 18 cases (15.52%) and 19 victims (15.45%). This number shows that there is a difference between the number of victims and the number of cases in which there is one case with more than one victim. Cases with more than one victim occurred not only in October but also in August and May (Mulia, 2020).

In one case of suicide, the victim allegedly had depression, so he decided to end his life. This indication arose because the victim kept screaming until he was finally transferred to solitary confinement because he was considered disturbing other convicts. In this solitary confinement, the victim ended his life by hanging himself. The victim is a resident of a homicide case who has just served four years of his coaching period out of a total of 12 years in prison. Even in Ethiopia, depression reaches 44.05% of the existing prison inmates (Id et al., 2020).

Although the reasons differ, these cases show a fundamental similarity, namely the government's lack of attention to the psychological condition of the prisoners or inmates. As can be seen from the case discussed above, when a prisoner is suspected of having a mental disorder, he is not given mental health services but is locked up in solitary confinement. Maybe it was the solitary confinement that ultimately worsened his mental health (Wirya, Albert & Permata, 2017).

A similar situation has occurred in prisons in England and Wales, from 203 male inmates aged over 59 years spread over 15. More than half of elderly inmates have a psychiatric diagnosis. The most common diagnoses are personality disorders and depressive illness. The prevalence of depression is five times greater than that found in other studies of younger adult inmates and older adults in the community. Undetected and untreated depressive illness in elderly prisoners increases public health problems (Kingston et al., 2011).

If referring to the purpose of coaching in correctional institutions, then the implementation of coaching for prisoners in Indonesia is one indicator of the success of this institution, especially even though prisoners can be said to be people who have been guilty of committing a crime. However, prisoners' basic rights as human beings must be wholly upheld and fulfilled.

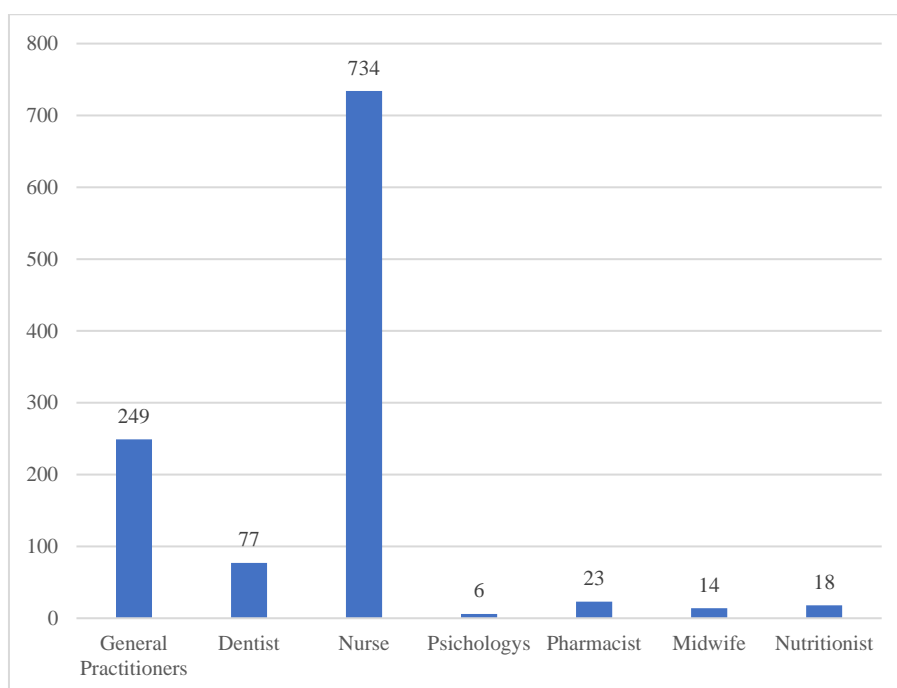
Characteristics of older adult inmates, the special needs of older offenders and the accompanying service delivery problems, and the use of selective declaration as a strategy to address the problem of prison overcrowding (Snyder et al., n.d.). The increase in the number of prisoners classified as elderly is in Indonesia and several countries. This raises concerns that prisons are not adequately equipped to meet the special needs of elders, such as special dietary needs and those arising from physical limitations (Ginn, 2012). Prisons have implemented various solutions.

Some prisons have released non-violent elderly inmates; others have released inmates who are terminally ill and deemed low risk for recovery. Some prisons have developed programs that release inmates with ankle bracelets that monitor their movements. Finally, some prisons have formed geriatric units separate for older inmates. These units are tailored to the needs of the elderly. Most of these options were implemented because prisons were not physically or financially able to meet the needs of elderly inmates.

The Directorate General of Penitentiary is the institution for fostering prisoners, does not only carry out coaching for prisoners but also has to pay attention to post-coaching. This is a form of state responsibility in minimizing the repetition of criminal acts. This means that the coaching concept applied in this directorate is valuable and successful in accordance with the purpose of the punishment itself.

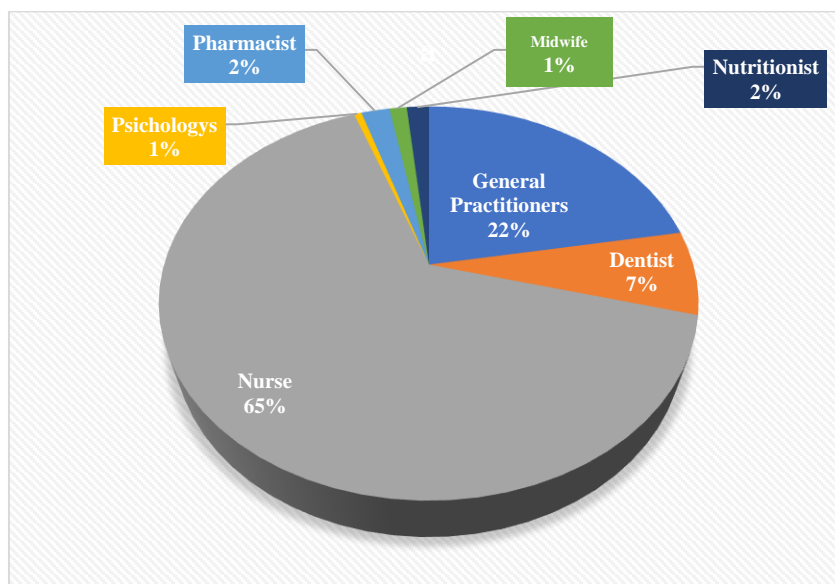
Overall, of the 256,273 inmates who are placed and spread across various correctional institutions in Indonesia, they are only supervised and served by 1121 medical personnel, with the following details (Saputra, 2018):

**Figure 2.** Classification of the number of medical personnel in Correctional Institutions



The number and classification of medical personnel owned by the Directorate General of Corrections, if presented, can be seen in the following figure :

**Figure 3.** Percentage of types of medical personnel



As part of the fulfilment of the health sector, the government has provided health service rooms and the availability of medicines in each correctional institution (Sanusi, 2016). In terms of the needs of elderly prisoners, periodic inspections also need to be carried out because this will impact providing nutrition services for children and elderly inmates. If look at the graph above, not every regional representative office of the ministry of law and human rights has nutritionists. In fact, each regional office has several correctional institutions, at least two institutions.

Talking about prison inmates, Thailand ranks first in ASEAN, which is 364,288. Indonesia ranks second and third, followed by the Philippines with a total of 188,278 convicts (Walmsley, 2018). Meanwhile, the number of occupants of detention houses and correctional institutions in Indonesia is 248,340 from a total capacity of 125,159. a period of four years, namely :

**Table 2.** Number of periodic overpopulation

No	Year	Over Population
1	2013	143
2	2014	142
3	2015	147
4	2016	170
5	2017	188

**Source:** overpopulation Correctional Institutions in Indonesia, <http://sdppublik.ditjenpas.go.id/>

Today, the number of inmates in correctional institutions is 270,978 with the following details:



**Table 3.** Classification and Number of Prisoners in Indonesia

No	Categorized Residents	Amount	Percentage
1.	Child	2714	1%
2.	Mature	263957	97%
3.	Elderly	4307	2%
Overall Total		<b>270978</b>	<b>100%</b>

**Source:** <http://sdppublik.ditjenpas.go.id/>

Although the number of prisoners in the elderly category is 1.59 %, this number is quite large when compared to child prisoners. Functionalization and management in correctional facilities should be able to provide the needs of elderly prisoners, especially for prisoners with life imprisonment (Coyle, 2003).

Now we compare it with the principles and objectives of punishment in Indonesia; article 4 of Law No. 12 of 1995 concerning Corrections states that Correctional Institutions and Correctional Centers are established in every district and city. However, until now, 23 years after this provision was enacted, the government can still establish correctional institutions and correctional institutions in every district and city. So this is also not appropriate and not in line with the policies that the government has issued. Supposedly, in this case, the government is the ministry of law and human rights working together with the local government and stakeholders to build facilities and infrastructure for correctional institutions or correctional centres. Based on the facts, this problem impacts the visiting rights of prisoners and their families.

Furthermore, there is no clarity regarding the fulfilment of the needs of prisoners and prisoners as stated in the Nelson Mandela Rules, which regulates the minimum standard of treatment for prisoners and prisoners (UNODC, 2015). The most visible example is the overpopulation conditions that currently occur in almost. In all detention centres and prisons in Indonesia, is the fulfilment of the right of prisoners or convicts to obtain separate beds at night and bed sheets that are guaranteed to be clean cannot be fulfilled. Even though the government has issued a special policy related to elderly prisoners as outlined in Articles 7 and 8 of the Regulation of the Minister of Law and Human Rights No. 32/2018.

Article 7 talks about security issues, namely the separation of special residential rooms and the use of minimum standard security facilities. Then in Article 8, more specifically for elderly prisoners who are helpless, namely the problem of facilities and infrastructure such as wheelchairs, ramps, toilet seats, access buildings, handrails on stairs, walls and bathrooms, and emergency warning signs or signals. However, what happens is that there is no emphasis on every penitentiary to provide facilities as stated in the Ministerial Regulation. Even though every institution Correctional facilities have the potential for the existence of prisoners in the elderly category (Wolfe, 2018).

Prisoners can have complex and diverse health and care needs, especially elderly prisoners, which can be exacerbated through detention (Lee et al., 2019). This will only become more difficult to address if they are not provided with access to good nursing care and if arrangements do not make the necessary adjustments to support prisoners with varying capacities to care for themselves. As both the age of prisoners serving time of detention and the age of new prisoners, it is imperative that the availability of health services in prisons must

be managed in a way that offers high-quality care to which everyone is entitled (Enggist et al., 2014).

Routine and periodic health facilities are a form of part and supervision of elderly prisoners. This is in accordance with Article 93 paragraph (1) letter b and Article 94 of the Mandela Rules. This distinction is a form of social supervision and rehabilitation. Fulfilment of services and care for elderly prisoners Based on operational standards that apply in Indonesia, it is divided into three stages, namely : when you are just entering, when you are in prison, and when you are about to be released. Each stage of service and care provided varies.

**Table 4.** Stages of service for elderly prisoners

New entry-stage		Stage of being in prison		The stage before being free	
a.	Health checkup	a.	Health checkup	a.	Providing pre-free
b.	Health education	b.	Special needs additional food (high protein foods)		counselling, especially for those who suffer from certain diseases or conditions
		c.	Vital sign check	b.	Giving medical resume
		d.	Physical fitness	c.	Coordinate and
		e.	Providing health (mental guidance, spiritual, counselling)		cooperate with related parties

From the stage model given to elderly inmates, it can be seen that the orientation is elderly convicts who have the potential to be free, not yet oriented to elderly prisoners who are likely to end their lives in prison. This orientation needs to be changed with reference to the operational delivery (MOD) model. The form of supervision of elderly inmates needs to be adjusted to the Model Operational Delivery (MOD) concept, which emphasizes three concepts, namely (Neill & et al, 2020):

1. The regime and activity considerations for older prisoners;
2. Supporting older prisoners' needs, including around health and social care, and release and resettlement; and
3. Providing palliative and end of life care and other arrangements for prisoners nearing the end of their lives.

According to MOD, it is necessary to strengthen for elderly prisoners, and then the coaching model must be distinguished from adult prisoners (Wilkinson & Caulfield, 2020). Because of these common characteristics of aging in place in prison, participants in the True Grit Program may have physical disabilities, chronic health problems, substance abuse, sexually deviant behavior, post-traumatic stress disorder, depression, terminal illness, chronic pain, and end-of-life issues, as well as concerns about community reintegration, especially for those who have been incarcerated for a long time (Maschi et al., 2016).

Correctional facilities that are better suited to dealing with older inmates will not appear by chance (Wolfe, 2018). They must be carefully planned and structured, and they must take into account the evidence we know about how imprisonment affects the elderly. Not all elderly inmates want to be confined to a cell with only other elderly people. Some people may object to being placed in specialized facilities that are far away from their families. Mixed housing of criminals also has some well-accepted correctional benefits, with senior offenders, for example, serving as a calming influence over younger offenders. Giving the elderly criminal 'choice', on the other hand, may be the most powerful thing can do (Porporino, n.d.).

## Conclusion

The treatment of prisoners needs to be differentiated based on gender and age classification, especially for the elderly category. This difference in treatment is a form of fulfilling the human rights of every prisoner. Several regulations governing the needs of elderly prisoners in Indonesia have not been followed up with technical rules that contain compliance and intensive supervision. This is because the existing regulations have not yet accommodated elderly inmates who have spent their lives behind bars. Likewise, the facilities and infrastructure available in various correctional institutions in Indonesia are not yet available oriented to the needs of elderly and disabled prisoners.

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