

CHAPTER I

INTRODUCTION

A. Background

On 22 March 2011, Prisoners of Detention Institution at Karawang, Raswan (35) passed away. From the news, Raswan died of illness. However, exit permit for treatment have been filed, and before treatment did, he already died. Raswan who are prisoner entrusted by the prosecutor on trafficking cases, he has complained of his pain since he arrested about 6 months ago.

Even in fact, they are already taken care of its permissions," he said. Similar opinion is also expressed by Sukatani the head of his village, Wawang. It allowed, if the family ever manages permissions for treatment. "But I do not know for sure what the disease is and whether it could be get medical treatment out of detention. But the family ever ask permission for it," he said.¹

"All human being are born free and equal in dignity and rights"². In the modern world human rights are often invoked to justify a variety of fundamental political, social, economic and cultural claims. The origins of rights (whether anchored in natural law, positive law, a theory of human needs, capabilities and flourishing, or some other theoretical position) and their justifications are diverse. There is nevertheless considerable

¹ <http://www.pikiran-rakyat.com/node/139001>, accessed on August 4, 2013, at 8.09 pm.

² <http://www.un.org/en/documents/udhr/>, accessed on August 6, 2013, at 7.15 pm.

international consensus about a central core of human rights claims, in particular those embodied in explicit international obligations accepted by Nation-States in the principal United Nations (UN) and regional human rights instruments adopted since World War II.³

Human rights are often described as a moral issue which is universal. Most human rights exist that are interaliable (cannot be eliminated) and inviolable. Human rights similar as called non-derogable rights, i.e. rights that cannot be denied or infringed even if the state in case of "internal Unrest", "civil war or public emergency"⁴

Related to the non-derogable rights, Muladi specify some rights which are included in the category of human rights non-derogable are as follows:

1. right to life;
2. prohibition of torture;
3. prohibition of slavery;
4. prohibition of inprisonment solely for inability to fulfill a contractual obligation;
5. prohibition of expost facto;
6. right to recognition as a person by the law; and

³Center for the Study of Human Rights, 2005, 25+ *Human Rights Documents* Columbia University, New York. Taken from <http://globalhealth.usc.edu>, accessed on May 12, 2013 at 8.03 pm.

⁴Tubagus Ronny Rahman Nitibaskara, 2001, *Ketika Kejahatan Berdaulat*, Penerbit Peradaban, p. 83.

7. freedom of religion.⁵

Human rights issues lately become something much talked about. This is related to the strength of demand protection of human rights of citizens concerning their interests. Strengthening demand for the protection of human rights cannot be separated from the effects of global development, namely the emergence of various international agreements that ensure protection and respect.

This is so notwithstanding the challenges of cultural relativism and the need for universal human rights to be realised in the specific contexts of different communities. Challenges to dominant discourses of human rights have come in waves, with new claims to the enjoyment of universally guaranteed rights being brought by marginalised groups (racial and ethnic minorities, women, children, persons with disabilities, among others), who realise both the promise of rights and the shortfall in their practical enjoyment. Enriched by new perspectives, human rights today play an important role in shaping public policies, programs and practice aimed at improving actual and potential individual and social welfare.⁶

The right of everyone to the enjoyment of the highest attainable standard of physical and mental health or the right to health as it is commonly

⁵ Muladi, 2004, *Penerapan Asas Retroaktif dalam Hukum Pidana Indonesia*, explored in the National Seminar on "Asas-asas Hukum Pidana Nasional", Hotel Ciputra, Semarang, p. 7.

⁶ Baxi U, 2002, *The Future of Human Rights* (2nd Edn), Oxford University Press, and Steiner H and Alston P, 2000, *International Human Rights in Context: Law Politics and Morals*, Oxford University Press, New York, Taken from [http:// globalhealth.usc.edu](http://globalhealth.usc.edu), accessed on May 12, 2013 at 9.26 pm.

referred to appears in one form or another in many international and regional human rights documents. Furthermore, nearly every other article in these international instruments also has clear implications for health.

The right to health builds on, but is not limited to, Article 12 of the International Covenant on Economic, Social, and Culture Rights (ICESCR). Most of the other principal international and regional human rights treaties contain provisions relevant to health, for example, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

In addition to clarifying governmental responsibility for policies, programs and practices influencing the conditions necessary for health, it sets out requirements for the delivery of health services, including their availability, acceptability, accessibility and quality. It lays out directions for the practical application of Article 12 and proposes a monitoring framework indicating the ways in which the State's responsibility can be implemented through national law. Currently, over 100 national Constitutions have recognised a right to health and this number continues to increase as Constitutions are rewritten or updated.⁷

⁷ Kinney E, 2001, 'The International Human Right to Health: What Does this Mean for Our Nation and World?' 34 *Indiana Law Review* p. 1457-1475. Taken from <http://globalhealth.usc.edu>, accessed on May 13, 2013, at 10.37 am.

Health is important aspect of human life. Similarly, health is needed by human as the basic need of life. The 1945 Indonesian Constitution Article 28(H) Sub-article (1) rules:

“Every person shall have the right to live in welfare both physically and spiritually, have a place to reside, and receive a proper and healthy environment, as well as receive medical care.”

Based on the article 28(H) of the Constitution, health is the rights of citizen. Indonesian citizens have a right to get healthy environment and receive medical care in order to fulfill their rights. In other hand, human right consist of health.

Then, according to the 1945 Indonesian Constitution Article 34 Sub-article (3) states:

“The state shall have the obligation to provide sufficient medical and public service facilities.”

B. Research Question

Based on the background, it can be formulated a research question:
How is Health Care Protection of Prisoner in Indonesia applied at LAPAS Klas IIA Yogyakarta?

C. Objective of Research

The objective of the research is:

- a. To know whether prisoners get their rights as prisoners in Lapas.
- b. To analyze whether any inhibiting factor in health service and health facility.

D. Benefit of Research

There are some benefits of research, namely:

1. Theoretical Benefit,

The research will describe about the health care protection on prisoner in the LAPAS Klas IIA Yogyakarta.

2. Practical Benefit

The research will give the benefit on understanding more about the health care protection on prisoner in the LAPAS Klas IIA Yogyakarta.