



Interpretation of the Maslahah-Based Principle as the Protection of Female Prisoners in the Criminal Justice System

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Abstract: Female prisoners face multidimensional vulnerabilities within a criminal justice system that predominantly reflects androcentric perspectives. Gender-specific needs, including reproductive health, psychological trauma, and motherhood, are often neglected, leading to systemic injustices. This study proposes the *maslahah* principle of Islamic law as a philosophical and normative foundation for strengthening the protection of female prisoners. The research aims to examine interpretations of *maslahah* relevant to addressing the specific vulnerabilities of female prisoners and to formulate a model for its application within criminal justice policies. This study employs a juridical-normative methodology supported by conceptual and philosophical approaches. The findings indicate that the *maslahah* principle can be operationalized through both substantive and structural dimensions. Substantively, it requires legal reforms that ensure the protection of reproductive rights and promote alternatives to detention for women. Structurally, it necessitates the establishment of women's protection units, the training of gender-sensitive legal and correctional officials, and the transformation of legal culture through the internalization of values of justice and dignity for women. The study concludes that the protection of female prisoners constitutes an essential interest (*ḍarūriyyāt*) under the framework of *maqāṣid al-sharī'ah*. By integrating Islamic legal principles with justice-oriented and gender-responsive policies, this research contributes an integrative and practical model for criminal justice reform aimed at enhancing gender responsiveness.

Keywords: *Maslahah*, Criminal, Justice System, Female Prisoners

Introduction

The Republic of Indonesia has officially ratified and committed to upholding the United Nations (UN) Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, also known as The Bangkok Rules, as the fundamental standard for the treatment of women prisoners. These international guidelines are critically important as they emphasize the necessity of protecting health rights, including reproductive health, the formulation of gender-sensitive programs, and the provision of

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special protection for pregnant and breastfeeding women.¹ The implementation of The Bangkok Rules reflects the fundamental principles of justice and gender equality within the correctional system, while also ensuring the enforcement of the human rights of female inmates. This issue warrants special attention due to the unique physiological needs of women, which include menstruation, pregnancy, childbirth, and breastfeeding.²

Based on the 2022 Correctional Statistics Data from the Directorate General of Corrections, the prison population consists of approximately 10,000 female inmates and 214,000 male inmates. Although continuing to increase, the population of female inmates in Indonesia is still much smaller compared to male inmates. The total number of inmates across Indonesia in detention centers or correctional facilities reached around 276,000, representing about 109% of the capacity of correctional institutions, as of September 2022. Among these inmates, 13,000 are female.³ This proportion indicates a significant segment of the prison population, yet it is often overlooked. Although a substantial number of female inmates are currently housed in dedicated women's correctional institutions, in certain regions, they are still accommodated in general prison wings, where the facilities are not exclusively designed to meet their distinct gender-specific needs. This demographic underscores the critical nature of the overrepresentation of women in prisons, particularly given the lack of facilities and services tailored to their specific needs.⁴

The criminal justice and correctional system in Indonesia is largely structured based on an androcentric framework, which emphasizes male norms and experiences. This results in limited gender responsiveness in practice. This phenomenon is clearly evident in regulations, administrative procedures, and institutional culture that adopt a uniform approach, often neglecting or marginalizing the specific needs of female inmates.⁵ The Criminal Procedure Code has not yet established operational implementation that is sensitive to the physical, reproductive, and psychosocial conditions of women in conflict with the law. In general, it only stipulates provisions regarding coercive measures (Article 17), the rights of suspects and defendants (Articles 50-68), and pre-trial procedures (Article 77). Discrimination against women, whether as perpetrators, victims, or witnesses, still occurs at various stages of the legal process, from pre-judgment, trial, to post-judgment.⁶ The lack of awareness among officers regarding specific gender issues, such as trauma history, reproductive health, and the challenges faced by mothers and children in detention, hinders the integration of gender justice as well as the achievement of substantive equality and operational protection, resulting in injustice, particularly concerning women's rights related to pregnancy and child-rearing during detention.⁷

Although Indonesia's correctional system has made efforts to establish a legal foundation for protecting the rights of prisoners, the existing regulatory framework,

¹ Andriawan and Rodliyah, "Protection for Children With Mothers as Prisoners in Correctional Institutions," *Lex Journal: Law & Justice Studies* (2025): 114-115, <https://ejournal.unitomo.ac.id/index.php/hukum/article/view/10757/4883/>.

² Mitro Subroto and Johanes Situmorang, "Pelayanan Kesehatan Narapidana Perempuan Berdasarkan Bangkok Rules Di Lembaga Pemasyarakatan Perempuan," *Jurnal Pendidikan Tambusai* 8, no. 3 (2024): 43409, <https://jptam.org/index.php/jptam/article/view/20624>.

³ *Data Statistik Pemasyarakatan Tahun 2022 Triwulan III* (Jakarta: Direktorat Jenderal Pemasyarakatan Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2022), 38-39, <https://sdppublik.ditjenpas.go.id/artikel/data-statistik-pemasyarakatan-triwulan-iii-tahun-2022>.

⁴ Nur Paikah, "Responsibility for Fulfilling the Rights of Women Prisoners," *Journal of Indonesian Scholars for Social Research* 3, no. 2 (2023): 95, <https://www.ojs.ycit.or.id/index.php/JISSR/article/view/110>.

⁵ Ester Febe, "PKBI Yogyakarta Untuk Ibu Hamil Di Penjara: Sebuah Perspektif Kesehatan Masyarakat," *Berita Kedokteran Masyarakat* 35, no. 4 (2019): 1, <https://journal.ugm.ac.id/bkm/article/view/45023/25758>.

⁶ Lysa Angrayni et al., "Women in The Criminal Justice System in Indonesia: Study of Gender Discrimination in The Criminal Procedure Code," *International Conference on Law and Social Science* (2024): 2-3.

⁷ Yunandar A Supu, Fenty U Puluhalawa, and Fence M Wantu, "Criminal Legal Protection for Pregnant Women from A Human Rights Perspective," *International Journal of Law* 11, no. 5 (2025): 48, <https://www.lawjournals.org/assets/archives/2025/vol1issue5/11108.pdf>.

including Law No. 22 of 2022 on Corrections, Minister of Law and Human Rights Regulation No. 8 of 2024 on the Implementation of Security and Order in Correctional Work Units, Government Regulation No. 99 of 2012, Government Regulation No. 28 of 2006 concerning the Conditions and Procedures for Exercising the Rights of Correctional Inmates, and related regulations regarding female inmates, demonstrates significant shortcomings in meeting specific requirements for female prisoners. While Law No. 22/2022 emphasizes respect, protection, and the fulfillment of human rights for all inmates and allows children to stay with their mothers up to the age of three, there remain gaps in enforcement and normative clarity during implementation.⁸

The principle of *maslahah* in Islamic jurisprudence places significant emphasis on the public interest, prevention of harm (*dharar*), and the preservation of societal welfare (*maslahat*).⁹ This principle provides a fundamental philosophical and normative framework for addressing gaps in regulation and ethics concerning the protection of female prisoners. In the Indonesian correctional system, existing formal regulations often do not explicitly recognize specific rights of women, such as access to maternity facilities, gender-sensitive mental health services, or environments that acknowledge reproductive roles and childcare needs, including breastfeeding, pregnancy, and childbirth. Nevertheless, Law No. 22/2022 establishes certain basic rights; however, the law still falls short in providing essential facilities, such as lactation rooms, and lacks specific provisions designed for pregnant or breastfeeding inmates.¹⁰ Integrating the concept of *maslahah* into the interpretation of correctional law facilitates the development of policies that address the unique needs of women, including reproductive health, maternal and child care, and psychological support, while simultaneously ensuring the protection of universal human rights. This approach not only advances substantive gender justice but also reinforces the legal and moral legitimacy of administrative and judicial actions within the correctional system. The application of *maqāshid* principles, including *hifz an-nafs* (protection of life), *hifz al-aql* (protection of intellect), and *hifz an-nasl* (protection of progeny), can establish a comprehensive framework for reforming the correctional system.¹¹

Previous studies examining the conditions, rights, and life events of female prisoners have highlighted various issues related to their protection, such as research on the implementation of reproductive health services in women's correctional facilities, which underscores the uneven provision of services and challenges due to limited facilities and resources despite the existence of an established structure.¹² Similar studies have examined the fulfillment of female prisoners' rights during pregnancy and postpartum¹³, and analyzed the extent to which Law No. 22/2022 meets women's needs¹⁴, revealing that the legally recognized framework remains gender-neutral and is further hampered in practice and implementation by specialized facilities that are insufficiently equipped, such as lactation

⁸ Didik Purnomo, "Kontradiksi Dan Transformasi Hukum Pada Pergeseran Sistem Pemasyarakatan Dari Retributif Ke Reintegrasi Sosial Di Indonesia," *Yustitia Tirtayasa* 5, no. 2 (2025): 150–152.

⁹ Sutikno, Kurniati, and Lomba Sultan, "Konsep Maslahat Dalam Pandangan Imām Mālik, Al Ghazali, Dan Al Tufiy," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* 11, no. 1 (2023): 46, <https://jurnal.staialhidayahbogor.ac.id/index.php/am/article/view/3908>.

¹⁰ Rizki Kurniawan, "Program Kesehatan Bagi Narapidana Perempuan Seumur Hidup," *Gema Keadilan* (2021): 5–7, <https://ejournal2.undip.ac.id/index.php/gk/article/view/12308>.

¹¹ Bunyamin et al., "Reforming Indonesia's Correctional System: The Role of Maqāshid Al-Syarī'ah in Ensuring Justice and Rehabilitation," *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 1 (2025): 56–57.

¹² Elhana Theodora Simanungkalit, Dedah Ningrum, and Iis Aisyah, "Implementation of Reproductive Health Services for Female Prisoners at Class IIA Women's Penitentiary in Bandung," *Viva Medika: Jurnal Kesehatan, Kebidanan Dan Keperawatan* 17, no. 1 (2024): 98–105, <https://ejournal.uhb.ac.id/index.php/VM/article/view/1344>.

¹³ Kusomo Wahyu Bintoro, Budi Santoso, and Budi Ispriyarto, "Legal Protection of Female Inmates in Pregnancy, Childbirth, and Breastfeeding in Correctional Institutions," *Jurnal Akta* 11, no. 3 (2024), <https://jurnal.unissula.ac.id/index.php/akta/article/download/38345/pdf>.

¹⁴ Rini Fathonah et al., "Legal Study on Fulfilling the Rights of Women Prisoners in Correctional Institutions," *Journal of Law and Sustainable Development* 11, no. 12 (2023): e2204, <https://ojs.journalsdsg.org/jlss/article/view/2204>.

rooms, healthcare personnel, and inadequate supervision. To protect female prisoners, this study formulates how the principle of *Maslahah* can be interpreted to respond to the vulnerabilities of female inmates within the criminal justice system, and how the implementation of *Maslahah*-based principles can be applied in policies for the protection of female prisoners at the levels of substance, structure, and culture. The study aims to analyze and construct the interpretation of the *Maslahah* principle in relation to female prisoners and also to formulate *Maslahah*-based protection for female inmates within Indonesia's criminal justice system.

Research Methods

This study employs a juridical-normative research design aimed at analyzing and interpreting the *maslahah*-based principles as a foundation for the protection of female prisoners within the criminal justice system. The approach used is a conceptual approach, constructing applicable *maslahah* principles in the context of legal protection, alongside a philosophical approach that explores values of justice and humanity as a normative basis in the application of these principles. The conceptual approach was employed, entailing the summarization, compilation, and reformulation of the concepts of *maslahah mursalah*, *dharuriyat*, and *hajiyyat* into a framework of applicable legal principles pertaining to the protection of female prisoners. Thereafter, a philosophical approach was implemented through an in-depth exploration and interpretation of the values of substantive justice, gender equality, and human rights as a normative basis for the application of the *maslahah* principle. Legal materials were obtained, including legislation related to the criminal justice system and the protection of female prisoners, books, journals, and relevant scientific literature. The analysis was conducted qualitatively using deductive and interpretative logic, which allows for the systematic and contextual interpretation and construction of the *maslahah* concept, contributing to the development of legal protection for female prisoners.¹⁵

Results and Discussion

Deconstructing the Vulnerabilities of Female Prisoners in the Criminal Justice System through the Lens of *Maqāshid al-Sharī'ah*

The present study examines the vulnerability of female prisoners within the criminal justice system by considering *maqāshid al-sharī'ah*, an Islamic legal theory conceived with the objective of fostering global peace and ensuring felicitous outcomes in the hereafter (*rahmatan lil 'alamin*). These aspects include the constitutional right to self-protection and health as outlined in Article 28H paragraph 1 of the 1945 Constitution, the right not to be treated discriminatorily in law as stipulated in Law No. 39 of 1999 concerning Human Rights, and the obligation of state administrators to guarantee substantive justice for vulnerable groups, especially female prisoners, as outlined in Law No. 12 of 1995 on Corrections. The extent to which positive law and institutional practices reflect the protection of female prisoners is examined through the lens of *maqāshid al-sharī'ah*.¹⁶

Comprehensively, there are several challenges and issues faced especially by female inmates in Indonesia. First, there is disparity in reproductive health services with limited access to menstrual hygiene, prenatal and postnatal care, as well as reproductive health screenings, which exacerbate their health conditions.¹⁷ Second, a number of female inmates

¹⁵ Nurul Qamar and Farah Syah Rezah, *Metode Penelitian Hukum Doktrinal Dan Non-Doktrinal*, ed. Abd. Kahar Muzakir and Faisal Rahman (Makassar: CV. Social Politic Genius (SIGn), 2020), 47, <https://repository.umi.ac.id/2676/1/9786025522468.pdf>.

¹⁶ Muhamad Sofian, "Penegakan Hukum HAM Ditinjau dari Perspektif Hukum Maqashid Syariah," *Juris Humanity: Jurnal Riset dan Kajian Hukum Hak Asasi Manusia* 2, no. 1 (2023): 29-46, <https://jrkkm.org/index.php/humanity/article/view/16>.

¹⁷ Simanungkalit, Ningrum, and Aisyah, "Implementation of Reproductive Health Services for Female Prisoners at Class IIA Women's Penitentiary in Bandung," 99.

experience deep psychological trauma stemming from prior violence and the pressures associated with imprisonment. Forced separation of parents from their children has been shown to trigger anxiety, depression, and guilt, thereby significantly affecting their mental health.¹⁸ Third, as mothers, they face a dual responsibility of incarceration and caregiving. The lack of adequate infrastructure presents a significant barrier to maintaining family relationships, thereby causing complications in parent-child interactions.¹⁹ Fourth, female inmates face diverse social stigmas, which include moral judgment, discrimination by authorities, and societal marginalization. These stigmas hinder access to rehabilitation services and negatively impact their psychological well-being.²⁰ Finally, they are vulnerable to various forms of violence, including sexual, physical, and verbal abuse.²¹

A dynamic interpretation of *maslahah* emphasizes that the needs of women within the criminal justice system should not be simplistically classified as mere *hājiyyāt* (necessities) or *taḥsīnīyāt* (complementary improvements). On the contrary, these needs often escalate into *ḍharūrīyāt* (essential necessities). These aspects are not merely optional supports; rather, they constitute fundamental rights whose neglect undermines the principles of justice. Gender-responsive welfare provisions, including maternal healthcare services, child bonding programs, and trauma counseling, must be regarded as fundamental obligations grounded in human rights and Islamic jurisprudence.²² The vulnerability experienced by female prisoners can be attributed to two primary factors. Firstly, the legal system's emphasis on retributive rather than restorative justice contributes to an imbalance in law enforcement, which is particularly detrimental to female prisoners. Secondly, the absence of legal instruments that explicitly address the biological, social, and psychological needs of women further exacerbates the situation. The ethical theory of *maqāshid al-sharī'ah* functions not only as a moral compass, but also as a tool for substantive legal policy analysis. It serves as a guiding principle, directing correctional reform towards *maslahah*-based justice.

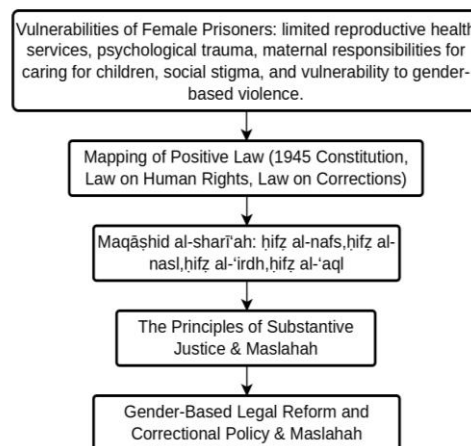


Figure 1. Prisoners' Vulnerability Flow Diagram

¹⁸ Umi Hani, Agus Setiawan, and Poppy Fitriyani, "Child-Rearing by Imprisoned Women: Sadness, Anxiety, and Feelings of Guilt," *Jurnal Keperawatan Indonesia* 24, no. 2 (2021): 69, <https://jki.ui.ac.id/index.php/jki/article/view/965>.

¹⁹ Hafriah Dwi Lestari and Meitisa Vanya Simanjuntak, "Analysis of Attachment in The Fulfillment of Rights for Breastsfeeding Female Inmates in Prison," *Journal of Management: Small and Medium Enterprises (SMEs)* 18, no. 1-May (2025): 899, <https://ejurnal.undana.ac.id/index.php/JEM/article/view/19116>.

²⁰ Mitro Subroto and Heruda Ortega Sinurat, "Fulfillment Of Women's Rights In Prisons," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 11, no. 1 (2025): 62, <https://yustisia.unmermadiun.ac.id/index.php/yustisia/article/view/295>.

²¹ Dewi Wattimena and Markus Marselinus Soge, "Personal Hygiene Behavior of Female Prisoners' Genitalia in Efforts to Fulfill Reproductive Health Rights at Class IIB Pacitan State Detention Center," *Journal of Management: Small and Medium Enterprises (SMEs)* 18, no. 1-May (2025): 773, <https://ejurnal.undana.ac.id/index.php/JEM/article/view/19049>.

²² Ahmad Agung Raharjo and Mitro Subroto, "Analisis Hak-Hak Khusus Narapidana Perempuan Yang Merupakan Tanggung Jawab Negara Dilembaga Pemasarakatan," *Widya Yuridika* 5, no. 1 (2022): 167, <http://publishing-widyagama.ac.id/ejournal-v2/index.php/yuridika/article/view/2905>.

The principle of *maslahah* is the core of *maqāshid al-sharī'ah* in Islamic law, aimed at safeguarding five fundamental needs: religion, life, intellect, lineage, and property, in order to ensure the welfare of the community. In the context of contemporary law, *maslahah* serves as an adaptive principle to adjust regulations so that they remain relevant, particularly in protecting vulnerable groups such as female inmates who face profound challenges related to their essential needs. The theory of *maqāshid* emphasizes the effort to derive benefits while averting harms (*dar'u al-mafasid wa jalb al-masalih*), thus providing a normative foundation for humane and gender-responsive policies. The application of the *maslahah* principle in the correctional system not only upholds the dignity and honor of female prisoners but also serves as a moral-legal instrument to ensure the adequate and equitable fulfillment of their basic needs.²³

Scholars assert that neglecting these essential protections has the potential to violate the objectives of *maqāshid al-sharī'ah*, which require safeguarding life, intellect, lineage, property, and faith, the fundamental pillars of Islam. Deficiencies in fulfilling the basic rights of female prisoners, constitute a direct assault on the core of *maqāshid al-sharī'ah*, which must be prevented and remedied immediately. This approach reinforces the moral and legal foundation for improving the correctional system in a manner that respects the dignity, rights, and essential needs of women, while also supporting the objectives of Sharia to safeguard the overall welfare of the community. Human rights, such as the right to practice religion, access to healthcare, education and guidance, the right to file complaints, access to information, family visits, salary or sentence reduction, assimilation, and leave, as well as other rights, must be protected and upheld even when inmates lose their freedom. However, due to natural characteristics such as the menstrual cycle, pregnancy, childbirth, and breastfeeding, female inmates have more specific needs and special rights.²⁴

There are four fundamental responsibilities related to *maqāshid al-sharī'ah*, among which the protection of life (*hifz al-nafs*) ensuring that female prisoners are safeguarded from dangers that threaten their physical safety and well-being. In many correctional facilities, this risk is heightened due to inadequate hygiene conditions, overcrowding, and insufficient healthcare services. Women in detention often experience a much higher prevalence of communicable and non-communicable diseases, frequently exacerbated by poor living conditions and limited access to sanitation facilities. These conditions reflect more than mere administrative oversight; they violate human rights standards and the principles of Islamic ethics, which regard life as sacred and frame health protection as an obligation. When corruption or negligence within the relevant institutional framework allows for violence, the spread of disease, or attacks on the dignity of female prisoners, the principle of *hifz al-nafs* is also neglected.²⁵

Secondly, from the perspective of *maqāshid al-sharī'ah*, the principle of *hifz an-nasl* (preservation of lineage) in Islamic ethics provides a solid foundation for assessing the condition of female prisoners, particularly concerning reproductive healthcare and avoiding disruption to the mother-child bond. The maternal bond, which is crucial for the psychological and social development of the child, is directly disrupted when a mother is separated from her children, whether due to legal obligations or inadequate facilities.²⁶ To ensure the continuity of proper caregiving practices, regardless of the potential

²³ Paryadi, "Maqashid Syariah: Definisi Dan Pendapat Para Ulama," *Cross-Border* 4, no. 2 (2021): 208, <https://journal.iaisambas.ac.id/index.php/Cross-Border/article/view/742>.

²⁴ Umi Hamidah Alfita, "Perlindungan HAM Terhadap Narapidana Di Lapas," *Gudang Jurnal Multidisiplin Ilmu* 1, no. 4 (2023): 14–15, <https://gudangjurnal.com/index.php/gjmi/article/download/95/93/387>.

²⁵ Kutbuddin Aibak, "Implementation of Maqāshid Shari'ah in Reform of Case Management of Violence against Women and Children," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023): 85, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/20666>.

²⁶ Cut Meuthia Sari, Jailani, and Faisal Yahya, "Pemenuhan Hak Istri Yang Dipenjara Dalam Konsepsi Hukum Islam (Studi Kasus Narapidana Hamil Di Lembaga Perasyarakatan Perempuan Kelas II B Sigli)," *Tadabbur: Jurnal Peradaban Islam* 5, no. 2 (2023): 296, <https://jim.ar-raniry.ac.id/index.php/tadabbur/article/view/366>.

development of secure attachments, the provision of adequate infrastructural support is essential, assistance tailored to the specific needs of children. Furthermore, women's reproductive health is often neglected, which is not in accordance with the objectives of *hifz an-nasl*. More comprehensive and gender-responsive policy interventions are required, as the discrepancies between Islamic ethical standards and societal practices indicate intergenerational marginalization that sustains a prison system neglecting the continuity of a healthy generation.²⁷

The third of the *maqāshid al-sharī'ah*, the protection of dignity and honor (*hifz al-'irdh*), is an essential component in the management of female prisoners. Female inmates often face double stigma, which not only encompasses stigma related to criminal involvement but also gender-based stigma, collectively exacerbating their psychological stress. The experience of deep guilt and shame among women who are also mothers often stems from their separation from their children. This separation may be associated with their inability to fulfill maternal roles, which can ultimately lead to a decline in self-esteem and personal dignity. This situation is further exacerbated by the risk of sexual harassment and exploitation in prisons, which increasingly undermines the dignity of inmates. From the perspective of Islamic law, the protection of personal honor is regarded as a fundamental principle that not only preserves individual integrity but also upholds the moral order of society as a whole.²⁸

Finally, the protection of intellect (*hifz al-'aql*) and cognitive well-being is a crucial concern for individuals currently in correctional facilities, particularly women, who often experience high levels of stress and depression, in addition to limited access to mental health resources. Without adequate psychosocial support, mental health issues can worsen, posing risks not only to personal well-being but also hindering rehabilitation initiatives and reintegration into society. Islamic principles place significant importance on the maintenance of mental health, viewing it as essential for moral accountability and sound decision-making. The prioritization of mental well-being for female inmates is vital for establishing a just and humane correctional system.²⁹

Reinterpretation of the Principle of Maslahah for Justice for Women

The fundamental objective within the criminal justice system is to ensure the protection of the dignity, safety, and specific vulnerabilities of female suspects or detainees from the very beginning of the investigative process. Investigators are obligated to assess the implications of all procedural decisions, prioritizing the well-being of women over considerations of procedural efficiency or convenience.³⁰ This methodology requires a comprehensive evaluation of potential harms (*mafsadah*) that could threaten the physical, psychological, and familial health of female suspects or detainees. The concept of *maslahah* functions not only as an additional consideration but also as a fundamental standard that guides and influences the actions of investigators throughout the investigative process. This approach aligns with the principles of adaptive Islamic jurisprudence, which emphasize the importance of modifying the application of law to prioritize public interest and prevent

²⁷ Aida Humaira et al., "Actualization of the Maqāsid Al-Sharī'ah in Indonesia: A Case Study of the Spiritual Counting of Prisoners in Judicial Institutions," *Jurnal Fuaduna: Jurnal Kajian Keagamaan dan Kemasyarakatan* 7, no. 2 (2023): 127, <https://ejournal.uinbukittinggi.ac.id/index.php/fuaduna/article/view/7366>.

²⁸ Deby Indah Aristasari and Ni Made Karinadevi Permata Jati, "Literature Review: Social Support for Female Inmates in Indonesian," *Jurnal Sejarah Pendidikan dan Humaniora* 9, no. 2 (2025): 580, <https://ejournal.unibabwi.ac.id/index.php/santhet/article/view/5202>.

²⁹ Nur Oktavia Hidayati et al., "Women Behind Bars: A Scoping Review of Mental Health Needs in Prison," *Iranian Journal of Public Health* 52, no. 2 (2023): 250, <https://3.122.53.12/index.php/ijph/article/view/11878>.

³⁰ Noercholis Rafid. A, Muhammad Fajri, and Khairun Nizam Mohd. Noor, "Maslahah Evaluation of Judges' Sentences for Domestic Violence Crimes at the Majene District Court," *Mazahibuna* 5, no. 1 (2023): 53, <https://journal.uin-alauddin.ac.id/index.php/mjpm/article/view/37034>.

harm (*mafsadah*) in certain circumstances. It ensures the protection of human rights and justice for women within the framework of criminal justice.³¹

As prosecutors enter the stage of indictment, the principle of *maslahah* becomes highly significant in guiding their discretion regarding the suitability of alternative justice measures, particularly in cases involving female offenders. Prosecutors are obligated to conduct a comprehensive evaluation of potential risks associated with the continuation of legal proceedings. These risks include threats to the physical safety of the defendant, the potential deterioration of family relationships, especially with children, and possible social stigma. This risk assessment must be balanced with considerations of public interest and the rights of victims. In cases where such mechanisms can facilitate more effective rehabilitation and social reintegration, the principle of *maslahah* can support the endorsement of choices that are more humane, constructive, and non-punitive. *Maslahah* serves not only as a formal justification but also as a normative guiding principle that ethically and pragmatically shapes prosecutors' judgments and decisions.³²

At the trial level, the judiciary is tasked with interpreting evidence, overseeing victim participation, and upholding procedural justice based on the principle of *maslahah* (benefit) for the welfare of female defendants. This necessitates the implementation of measures to ensure that the trial process, including mechanisms for confrontation and testimony delivery, does not cause female victims to experience repeated harm or undue psychological pressure. These measures are intended to protect the welfare of affected individuals and ensure substantive justice. The process of determining guilt, deciding on an appropriate sentence, and implementing mitigation measures must be explicitly guided by considerations that prioritize *maslahah* (benefit) and minimize *mafsadah* (harm). From an Islamic perspective, the court functions not only as an instrument of strict law enforcement but also as a protector of public interest and human dignity.³³

The principle of *maslahah* should serve as a fundamental criterion during the sentencing phase, determining the nature, intensity, and form of punishment. This approach emphasizes the importance of penalties that prioritize healing, restitution, and reintegration into society, rather than merely retributive measures. For women involved in criminal activities, alternative forms of punishment, such as community service, mediation, probation, or rehabilitative measures, may be more appropriate than imprisonment, especially when the harm caused can be adequately addressed through these options. In this assessment, it is important to consider the profound implications for the role of women as caregivers and their family responsibilities. This perspective aligns with the principles of Islamic law, which views punishment not merely as retribution but also as a method to restore societal balance (*ta'dil*).³⁴

The concept of *maslahah* requires a comprehensive assessment of correctional policies and practices in relation to their positive impact on the welfare of female inmates. To implement *maslahah*, correctional authorities must prioritize the provision of adequate nutrition, comprehensive mental health support, extensive reproductive healthcare, gender-responsive programs, family assistance, and effective reintegration services. It is imperative that all rules and practices governing correctional facilities, including those related to classification, transfer, or disciplinary measures, be adapted to ensure the protection of the dignity and welfare of female prisoners, except in situations of genuine urgency. The

³¹ Nur Lailatul Musyafa'ah et al., "Protection of Sexual Violence Victims from the Perspective of Maqāṣid Al-Sharī'Ah," *Islamica: Jurnal Studi Keislaman* 18, no. 1 (2023): 10.

³² Syah Awaluddin, "Keadilan Restoratif: Konsep Dan Pengaturannya Dalam Sistem Hukum Indonesia," *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia* 1, no. 1 (2024): 29.

³³ Yudhi Permana, Watni Marpaung, and Arifuddin Muda Harahap, "The Role of Restorative Justice in Juvenile Criminal Law Islamic Law Analysis," *Jurnal Akta* 12, no. 1 (2025): 88–89, <http://jurnal.unissula.ac.id/index.php/akta/article/view/43730>.

³⁴ Ade Daharis, "The Role and Position of Women in the Family According to Islamic Law: A Critical Study of Contemporary Practices," *Literatus* 5, no. 2 (2023): 385–386.

primary objective is to transform correctional facilities from merely punitive environments into rehabilitation centers that promote public welfare through personal recovery. Adapting the correctional system to align with Islamic principles is recommended as a viable approach to integrating justice and support in the development of inmates.³⁵

The political will of the Indonesian government needs to be utilized to establish more comprehensive and adaptive legislation. The need for more comprehensive protection for female prisoners serves as a normative basis for developing new regulations, and the drafting process of these regulations can be grounded in the principle of *maslahah mursalah* (general welfare not explicitly regulated). Correctional institutions are ethically obligated to provide basic necessities, such as sanitary pads and nutritious supplementary food for inmates who are pregnant or breastfeeding, even in the absence of clear technical limits, based on the principle of *maslahah* (public interest), which is one of the objectives of Islamic law (*maqāshid al-syarī'ah*).³⁶ Considering that women's roles are often closely associated with family responsibilities, childcare, and broader social networks, what is regarded as an “enhancement” for men may be deemed a “necessity” for women.³⁷ This requires the concept of *maslahah* to be interpreted with sensitivity to gender-specific life conditions, such as mother-child relationship maintenance or facilitating caregiving contact, which might be seen as discretionary benefits for men. However, for women, such provisions are considered indispensable to prevent secondary negative impacts on children and families. Gender-responsive justice in Indonesia supports this perspective while emphasizing that correctional policies must take into account women's reproductive health, family responsibilities, and vulnerability to gender-based violence.³⁸

The development of specific indicators reflecting the holistic well-being of female inmates is crucial for operationalizing gender-sensitive considerations (community welfare) within the context of women's correctional facilities. These indicators should encompass various domains, including physical health, reproductive health, mental health (trauma and depression), family relationships (particularly with children and custody status), as well as respect for dignity through privacy and protection from sexual violence to represent aspects of well-being particularly relevant to women's needs. Collaborating with gender experts and legal professionals, and implementing participatory strategies that directly involve female inmates, will ensure the validity and social relevance of the developed indicators. The implementation of these indicators is intended to serve as a monitoring tool, thereby facilitating the assessment of the effectiveness of the implementation of *maslahah* (public welfare) being targeted.³⁹

This reinterpretation underscores the necessity of social contextualization in the application of *maslahah*, emphasizing the role of women within family and community structures. Overall, the concept of *maslahah* will interpret the abstract discourse of Islamic jurisprudence into tangible and measurable guidelines that support justice within Indonesia's women's criminal justice system through a practical and gender-sensitive *maslahah* indicator framework. Universal principles must be applied with consideration for

³⁵ Rizky Fauzi, Watni Marpaung, and Nurul Huda Prasetya, “Restorative Justice Concept in Islam & Its Implementation in National Criminal Law from Islamic Legal Philosophy,” *Jurnal Akta* 12, no. 1 (2025): 56, <http://jurnal.unissula.ac.id/index.php/akta/article/view/43727>.

³⁶ Miswanto, Iis Hikmawati, and Agustina Nurhayati, “Analisis Maqashid Al-Syariah Terhadap Pemenuhan Hak Narapidana Perempuan Di Lembaga Pemasyarakatan Perempuan Kelas II A Bandar Lampung,” *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 4, no. 2 (2024): 154–156.

³⁷ Annie Bartlett and Sheila Hollins, “Challenges and Mental Health Needs of Women in Prison,” *The British Journal of Psychiatry* 212, no. 3 (2018): 135, https://www.cambridge.org/core/product/identifier/S0007125017000423/type/journal_article.

³⁸ Sanusi et al., “Judges’ Ijtihad on Women’s Rights after Divorce and Its Contribution to Family Law Reform in Indonesia,” *Smart Journal of Sharia, Tradition, and Modernity* 3, no. 1 (2023): 8, <http://ejournal.radenintan.ac.id/index.php/smart/article/view/16981>.

³⁹ Md. Imran Wahab, “Challenges Faced by Female Inmates and the Effects of Inadequate Women’s Prisons,” *International Journal For Multidisciplinary Research* 6, no. 5 (2024): 7–8, <https://www.ijfmr.com/research-paper.php?id=27379>.

structural differences in social experiences, moving beyond formal equality towards substantive justice that recognizes and responds to gender-specific vulnerabilities. In accordance with the evolution of the national legal and human rights paradigm, this strategy facilitates the implementation of more inclusive and responsive policy changes that address the unique needs of female prisoners. Furthermore, it provides practical tools for legal practitioners, policymakers, and correctional institutions to implement these principles in their daily practices.⁴⁰

The *Maslahah*-Based Principle Model in Substantive, Structural and Legal Culture Policy

Legal reform in Indonesia should emphasize the importance of community-based sanctions for mothers with infants or young children, except in cases involving very serious crimes.⁴¹ By taking this action, the law is no longer used solely as a tool of repression but will also represent social protection and justice for female inmates and their families. The law should place greater emphasis on procedures that prioritize rehabilitation over retributive punishment, especially in cases involving female inmates.⁴² Community-based options such as transitional homes or supervised housing are equally important, particularly for mothers with young children. By providing safe housing, child care assistance, trauma therapy, and continuing education, these facilities can mitigate the negative impacts of incarceration on children while maintaining family unity. In this context, *maslahah* functions as a principle that preserves the dignity of women within legal institutions, protects against intergenerational harm, and safeguards descendants.⁴³

The principle of *maslahah*, understood not merely as a basic moral-normative doctrine, is also a methodological instrument and legal policy oriented towards substantive justice and public welfare. It can be applied in the practice of the criminal justice system and correctional institutions in Indonesia. In its operationalization, the principle of *maslahah* mursalah forms the basis for the formulation of regulations that are adaptive to the vulnerabilities of female prisoners in the substantive realm. The application of principles, such as the formulation of legal norms that affirm the rights of female prisoners, namely reproductive rights, child care, protection from gender-based violence, and adjustments to articles in the Correctional Law that not only regulate detention procedures but also guarantee the welfare of mothers and children in correctional institutions, integrates the principle of *maslahah* into legal policy analysis.⁴⁴

⁴⁰ Andi B. Mutmainnah Sudarmin et al., "Restorative Justice in Islamic Law: Solutions to Improve Social Justice Towards a Golden Indonesia 2045," *El-Rusyd* 8, no. 2 (2023): 100, <https://ejournal.stitahlussunnah.ac.id/index.php/el-rusyd/article/view/203>.

⁴¹ Sumardi Efendi, "Analisis Sanksi Pidana Dalam Hukum Islam Pendekatan Teoritis Dan Pustaka," *Maqasidi: Jurnal Syariah dan Hukum* 3, no. 2 (2024): 155, <https://ejournal.staindirundeng.ac.id/index.php/maqasidi/article/view/3524>.

⁴² Mawar Nurhayati, "Perlindungan Hak Narapidana Perempuan Di Lembaga Pemasyarakatan Perempuan Kelas IIA Jakarta Ditinjau Dari Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan," *Bandung Conference Series: Law Studies* 4, no. 2 (2024): 1034.

⁴³ Rosmita, "Alternative Punishments (Supervision) in Law 22 of 2022 Concerning Corrections as a Solution to Overcrowding at Indonesian Correctional Institutions," in *Proceedings of the International Conference on Environmental Law and Mining Law, ICTA II-MIL 2023, 21st October 2023, Pangkalpinang, Bangka Belitung, Indonesia*, 2024, 4–5, <http://eudl.eu/doi/10.4108/eai.21-10-2023.2343503>.

⁴⁴ Endrik Safudin and Uswatul Khasanah, "Principle of *Maslahah* Mursalah on Women's Equality And Justice: An Analysis towards Supreme Court Regulation of Republic of Indonesia Number 3 2017 Concerning with Guidelines for Adjudicating Women's Cases Against the Law," *Kodifikasi: Jurnal Penelitian Islam* 16, no. 1 (2022): 1–18.

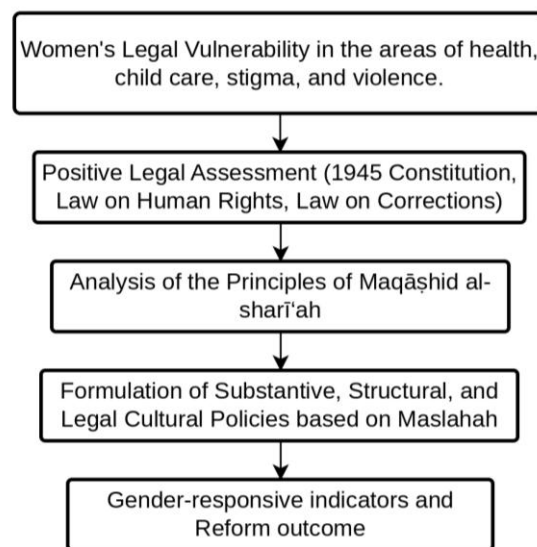


Figure 1. Diagram of the *maqāshid al-sharī'ah*-based Legal and Policy Model for Female Prisoners

To protect the physical health of female inmates, laws and regulations require correctional institutions to provide comprehensive reproductive health services, including prenatal, antenatal, and postnatal care, health examinations, family planning, and gynecological services. Therefore, it is crucial for the law to explicitly mandate correctional authorities to provide these reproductive health services, alongside establishing specific technical standards, monitoring systems, and administrative sanctions to ensure responsible implementation. This strategy is consistent with the principle of *maslahah* (beneficial welfare), which aims to safeguard mental and physical health (*hifzh al-nafs*) and minimize potential negative impacts on the health of mothers and children within the correctional environment.⁴⁵

Legislation requires correctional facilities to provide dedicated lactation rooms that meet standards of privacy, hygiene, and safety, which are essential for reproductive care services. These facilities are designed to support breastfeeding mothers, whether in directly nursing their infants or expressing breast milk in a manner that accommodates the biological needs of both mother and child. The presence of lactation rooms also reduces health risks associated with inadequate alternative feeding options, while promoting the overall growth and development of the infant. National policy should clearly define minimum standards for lactation rooms, taking into account criteria such as dimensions, privacy, ventilation, and accessibility, and incorporate these standards into comprehensive regulations governing health within correctional environments. This initiative will not only uphold the dignity (*karamah*) of incarcerated women but also make a positive contribution to the welfare of future generations by safeguarding the health of mothers and children amidst confinement.⁴⁶

In the structural realm, the principle of *maslahah* can be applied through the establishment of gender-responsive institutional mechanisms. These mechanisms include the formation of women's protection units in judicial, prosecutorial, and correctional institutions. They also include the establishment of *maqashid*-based standard operating procedures for dealing with pregnant women, nursing mothers, or children in detention.

⁴⁵ Yashinta Dwi Lestari and Dr. Dossy Iskandar Prasetyo, "Implementation of Granting Healthcare Facilities Rights for Pregnant Female Prisoners At Class IIA Surabaya Women's Penitentiary," *Journal of Court and Justice* (2023): 38, <https://journal.jfpubliher.com/index.php/jcj/article/view/362>.

⁴⁶ Duwita Aisy Trisna Prihananti, "Pemenuhan Hak Narapidana Hamil Dan Menyusui Di Lembaga Masyarakat Perempuan," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 2 (2022): 76, <https://journal.umy.ac.id/index.php/ijclc/article/view/15526>.

Furthermore, *maslahah 'āmmah*-based ethics and legal training should be provided to law enforcement officials. This training will help officials understand the relationship between positive law, humanist values, and *maqāshid al-sharī'ah*. This is particularly critical in cases involving incarcerated mothers, while maintaining the highest standards of justice. In the context of Indonesia, significant progress has been achieved through the enactment of the Supreme Court Regulation (Perma) No. 3 of 2017, which establishes comprehensive guidelines for handling cases involving women in legal conflicts.⁴⁷

Beyond mere "awareness," gender-sensitive training needs to be reconsidered based on the principle of public interest (*Maslahah*). In protecting the rights of female offenders, law enforcement officers must understand the interconnection between public welfare, human rights standards, and Islamic legal ethics. Such an integrated strategy will ensure that police officers recognize that protecting female inmates is not a special treatment, but a crucial part of substantive justice comprehensively within society. By linking written policies with the implementation of practices, a curriculum that integrates *Maslahah* will offer a strong ethical and legal foundation.⁴⁸

In the realm of legal culture, ensuring the continued application of the principle of *maslahah* plays an important role, including Islamic legal education at universities and legal training institutions that integrate the *maqāshid* perspective with gender equality and human rights, social campaigns through the media and public advocacy that emphasize the protection of female prisoners as part of *maslahah 'āmmah*, not a special policy, and cross-sector collaboration (government, academics, NGOs, and the community) to build awareness that fulfilling the rights of female prisoners contributes to social balance and substantive justice.⁴⁹ Although policy discussions have highlighted the need for a gender-responsive regulatory framework for female prisoners, the establishment of dedicated institutions remains inadequate, thereby hindering the effectiveness of efforts to protect rights and provide rehabilitation. Continuous advocacy on the notion that protection for female prisoners, especially mothers, breastfeeding women, and pregnant women is not a luxury but rather a manifestation of *maslahah 'āmmah* (public interest) and substantive justice is necessary to transform the legal culture.⁵⁰ By reducing negative intergenerational impacts, this strategy emphasizes how policies that protect women benefit both the individuals themselves and their descendants. An inclusive legal-cultural framework can serve to reduce the stigma associated with female offenders, thereby shifting perceptions from viewing them merely as lawbreakers to recognizing them as individuals with social roles, specific vulnerabilities, and human rights that must be protected.⁵¹

Higher education institutions in the field of law, particularly Islamic law, can systematically incorporate topics related to gender, child-rearing roles, the criminal justice system, and ethical principles rooted in Islamic law, namely *maslahah* (public interest), *hifzh an-nasl* (protection of lineage), and *hifzh al-nafs* (protection of life) into their

⁴⁷ Ida Melati Atasani, "Kajian Terhadap Pertimbangan Hakim Terhadap Hak-Hak Perempuan Berhadapan Dengan Hukum Berdasarkan Perma Nomor 3 Tahun 2017," *Juridica: Jurnal Fakultas Hukum Universitas Gunung Rinjani* 5, no. 2 (2024): 43, <https://juridica.ugr.ac.id/index.php/juridica/article/view/253>.

⁴⁸ Mohamad Mikroj and Adang Djumhur, "Restoratif Justice Sebagai Perwujudan Keadilan Dalam Perspektif Teori Kemaslahatan (Maqashid Al-Syari'ah)," *Tahkim* 19, no. 2 (2023): 246, <https://jurnal.iainambon.ac.id/index.php/THK/article/view/5164>.

⁴⁹ Kezia Adeline Suraninta Br Sinuhaji, John Pieris, and Manotar Tampubolon, "Perlindungan Hukum Terhadap Perempuan Dalam Masalah Penegakan Hak Asasi Manusia Pada Kasus Pidana," *Jurnal Darma Agung* 30, no. 3 (2022): 670.

⁵⁰ Yuniarta Lasriado Siahaan and Muh. Jufri Ahmad, "Analisis Perlindungan Hak Narapidana Perempuan Di Lembaga Pemasyarakatan Dari Perspektif HAM," *Court Review: Jurnal Penelitian Hukum* 5, no. 6 (2025): 151, <https://www.aksiologi.org/index.php/courtreview/article/view/2299>.

⁵¹ Hanida Martiyanto and Mitro Subroto, "Perlindungan Hukum Terhadap Anak Dari Narapidana Perempuan Di Lembaga Pemasyarakatan Indonesia," *Intelektualita* 12, no. 2 (2023): 161.

academic programs.⁵² This collective effort aims to raise public awareness regarding the protection of female prisoners, particularly mothers, as a means of promoting social justice by mitigating intergenerational impacts and encouraging rehabilitation rather than punitive measures.⁵³ News media and legal advocacy groups also play an important role in reshaping the narrative surrounding women in detention, by viewing their situation not solely through the lens of criminality, but also considering human rights, maternal health, family responsibilities, prospects for rehabilitation, and overall family well-being.⁵⁴ These narratives highlight the complex role of law in upholding dignity, preventing avoidable harm, and enhancing community well-being, thereby translating the concept of *maslahah* into actionable practice. This can encourage policymakers to establish protective regulations, prompt judges to lean towards non-custodial sentences, convince prosecutors to support alternative options, and encourage correctional staff to ensure adequate maternal healthcare. This cultural shift aims to reduce stigma and change perceptions of female prisoners from being viewed solely as lawbreakers to recognizing their social roles, specific vulnerabilities, and human rights that must be protected.⁵⁵ This model enables a multifaceted understanding of *maslahah*, transcending its conventional interpretation as an ideal principle and revealing it as an operational legal methodology. This methodology seamlessly integrates sharia values with the social fabric of law in Indonesia, offering a nuanced and contextualized approach to legal interpretation and implementation. The integration of the *maqāshid* framework into the substance, structure, and culture of law has the potential to direct the criminal justice system towards upholding formal justice as well as justice oriented towards the general welfare of humanity.

Conclusion

Protection of female prisoners within the Indonesian criminal justice system, particularly in the judicial process, remains partial and lacks adequate operational guidelines. This phenomenon is not merely attributable to individual factors; rather, it is deeply entrenched in the structural and normative limitations inherent within a legal framework that remains inadequately attuned to the biological, social, and psychological needs of women. Positive law has been shown to position women in a passive role, often regarded as objects of law enforcement rather than as subjects with rights that necessitate comprehensive protection. The application of *maslahah mursalah* enables *maqāshid al-sharī'ah* to function as a conceptual and operational framework for formulating gender-responsive legal policies. In essence, this principle serves as a guiding framework for legislators, ensuring that the legal framework extends beyond the confines of normative texts and incorporates *maslahah* values that safeguard the honor, life, and sustainability of the family unit. In terms of structure, this principle encourages the establishment of more inclusive institutional mechanisms with training and SOPs that ensure the effective rights and protection of female prisoners.

Political commitment and adequate resource allocation are necessary, as is the establishment of a cross-sectoral task force by the Ministry of Women's Empowerment and Child Protection together with the Ministry of Law and Human Rights to coordinate, monitor, and address structural barriers that arise. In the context of Islamic culture, *maslahah* assumes a pivotal role in the transformation of values that engender social

⁵² Windy Triana and Milah Karmilah, "Gender Awareness in Islamic Legal Education," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 201, <http://journal.uinjkt.ac.id/index.php/ahkam/article/view/12560>.

⁵³ Binahayati Rusidi and Agus Pratiwi, "Peningkatan Kapasitas Perempuan Warga Binaan Lembaga Pemasyarakatan Terhadap Isu Gender," *Kumawula: Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (2018): 6, <http://jurnal.unpad.ac.id/kumawula/article/view/16705>.

⁵⁴ Miftahus Surur Ramadhan, "Penggunaan Media Massa Untuk Mengedukasi Masyarakat Tentang Pemasyarakatan," *Law and Justice* 5, no. 1 (2020): 81–83.

⁵⁵ Alfjuneputra Vieto Tubu Tinenti, Jeffry A. Ch. Likadja, and Orpa G. Manuain, "Rekonstruksi Sistem Pemasyarakatan Perempuan Di Indonesia Dalam Analisis Legal Feminist Theory," *Comserva* 4, no. 9 (2025): 3006, <https://comserva.publikasiindonesia.id/index.php/comserva/article/view/2806/2278>.

awareness, underscoring the imperative of safeguarding female prisoners as an indispensable component of public welfare. The resulting model demonstrates the potential application of this methodology in integrating justice, humanity, and gender equality into the criminal justice system. The integration of Islamic legal values and human rights principles has the potential to effect a transformation of the correctional system from a repressive institution into a rehabilitative space that upholds the dignity and welfare of women.

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