

THE IMPLEMENTATION OF THE FUNCTIONS OF SPECIAL DEVELOPMENT INSTITUTIONS FOR CHILDREN IN THE PROTECTION OF HUMAN RIGHTS FOR CHILDREN

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Abstract

The aim of this research is to find out the forms of fulfillment of human rights for children who commit crimes in the Special Guidance Institution of Children and the prospects for the implementation of the functions of the Special Guidance Institution of Children in protecting human rights for children. This research is empirical normative legal research. Based on normative jurisprudence and seeing the facts directly in the field relating to the form of coaching conducted in Special Child Development Institute Class II Parepare. The results of the study showed that basically the forms of education, skills training, and personality development that have been carried out in Special Child Development Institute Class II Parepare but are considered not yet optimal in fulfilling human rights for children and have not proceeded properly. The protection of human rights for children where in order to be able to realize the concept of child development in the Special Child Development Institute in accordance with the fulfillment of human rights for children needs to change the mindset or mindset of the goal of child punishment, shifting thinking from punishment to punishment coaching for children.

Keywords: Human Rights; Special Child Development Institute

INTRODUCTION

Human Rights (HAM) are rights inherent in humans that reflect their dignity, which must obtain legal guarantees. Law is no longer seen as a mere reflection of

power, but must also radiate protection for the rights of citizens.¹

The most important thing in child criminal law is the problem of crimes and actions that are educational for children

¹ Muladi, *Kap.ita Selekt Sistem P.eradilan P.idana*, Badan P.enerbitan Universitas Dip.onegoro, 1995, p. 45.

who have committed criminal acts.² Child protection is a manifestation of justice in a society, thus child protection is sought in various fields of state and social life.³

The purpose of child protection is to protect the child from a psychological perspective not to damage the child who commits a criminal act, to pay attention to the interests of the child as the nation's next generation, to make the community aware that children who commit criminal acts are not bad children but rather as children who are lost and need coaching. The protection of children's rights is important, because children are complete human beings, which is why they have rights. Child protection is thus part of the implementation of human rights.⁴

According to Article 1 number 2 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System for Children, the definition of a child is: Children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. . Children in conflict with

the law are part of society who are helpless physically, mentally and socially so that their handling needs special attention. Due to reasons of physical, mental and social immaturity, children need special attention and guidance, including legal protection both before and after birth. Procedures regulated in criminal justice are held to seek the truth or reveal the truth of a case or case to be resolved, then provide justice for justice seekers either directly involved with the case, or indirectly, such as people who yearn for law to provide justice and truth.⁵

Protection of children is carried out in all aspects of life and is carried out wherever the child is like in a Penitentiary. In essence, children cannot protect themselves from various actions that cause mental, physical and social harm in various fields of life and livelihood. Children must be assisted by others in protecting themselves, given their situation and condition.⁶

A child is still a child who needs education and teaching for his future. Basically, the correctional system is held in order to form prisoners to become fully human, aware of mistakes to improve themselves, and not repeat criminal acts

² P.A.F. Lamintang, dan Theo Lamintang, *Hukum P.enitensier Indonesia*, Sinar Grafika, Jakarta, 2012, p. 62.

³ Maidin Gultom, *P.erlindungan Hukum terhadap Anak dalam Sistem P.eradilan P.idana Anak di Indonesia*, P.T Refika Aditama, Bandung, 2014, p. 40.

⁴ Hadi Sup.eno, *Deskriminasi Anak: Transformasi P.erlindungan Anak Berkonflik dengan Hukum*, Komisi P.erlindungan Anak Indoneisa (KP.AI), Jakarta, 2010, p. 12.

⁵ Kadri Husin dan Budi Rizki, *Sistem P.eradilan P.idana di Indonesia*, Lembaga P.enelitian Universitas Lamp.ung, Bandar Lamp.ung, 2015, p. 3.

⁶ Maidin Gultom, *Op.Cit*, p. 3.

so that they can be accepted back in the community, can actively play a role in development and can live naturally as good and responsible citizens. answer. These things are interesting things, so that the authors are interested in conducting a research entitled "The Implementation of the Functions of Special Development Institutions for Children in the Protection of Human Rights for Children."

Problem Formulation

Based on the background above, the outline of the problem formulation is:

1. What is the form of fulfillment of human rights for children who commit crimes in the Special Child Development Institution?
2. What are the prospects for implementing the functions of the Special Guidance Institution for children in protecting human rights for children?

Purpose

The objectives to be achieved in this study and based on the formulation of the problem above are as follows:

1. To find out the form of fulfillment of human rights for children who commit crimes in the Special Development Institution for Children.
2. To find out the prospects for implementing the functions of the Special

Guidance Institution for Children in the protection of human rights for children.

RESEARCH METHODS

Types of Research

The type of research to be carried out in this research is empirical normative. The merger of the two types of research is based on normative legal science in law, comparative law, applicable principles and existing theories and seeing firsthand what happens in the field related to the guidance carried out by the Special Guidance Institute for Children (LPKA) Class II Parepare as an effort to achieve the goal of punishment.

Research Sites

This research was conducted at the Class II Institute for Special Development for Children (LPKA), Parepare City, the Ministry of Law and Human Rights, the Makassar Regional Office, South Sulawesi. The consideration in choosing the research location is because there is sufficient relevant data on the effectiveness of the implementation of guidance for children in conflict with the law, so that an analysis of the data can be carried out and the Special Child Development Institution (LPKA) as an institution that has been mandated by the Child SPP Law to pro-

vide guidance. to children in conflict with the law.

Types and Sources of Data

The type of data used in this study is qualitative data that is not numeric, while the data sources obtained in this study are:

1. Premier data, namely data obtained through interviews and this research directly with related parties to obtain information to complete the data.
2. Secondary data, namely data obtained through library research by reading scientific books, magazines, the internet, newspapers, and other readings related to research.

Data Collection Technique

The data collection techniques in writing this thesis are as follows:

1. Interview technique (interview), namely by conducting questions and answers to the parties involved who handle problems related to the effectiveness of criminalization against children, including officers of the Special Development Agency for Children (LPKA).
2. Documentation Study, which is a data collection technique that is carried out by collecting secondary materials at the Special Development Institution for Children (LPKA) and the Ministry of

Law and Human Rights Office concerned, then it will be reviewed, which comes from legislation, writing or archives and other materials related to and support in this research.

Data Analysis

The data obtained and collected through research are analyzed using an empirical normative approach, namely data that has been collected, inventoried, and then analyzed using a theoretical approach, the principles of criminal law, and referring to legislation. By taking a juridical approach with descriptive analysis techniques, the problems in this thesis can be drawn to the desired conclusion.

ANALYSIS AND DISCUSSION

Fulfillment of Human Rights for Children Who Commit Crime in LPKA

In order to impose a verdict on a child, a judge must consider the Community Research Report from the Community Advisor based on Article 60 Paragraph (3) of the Child SPP Law. Based on data obtained from LPKA Class II Parepare, cases with a criminal threat of less than 7 (seven) years are usually carried out by children, namely such as ordinary theft, maltreatment, traffic violations, and mor-

als, while for crimes with a threat of more than 7 (seven)) years namely murder and narcotics. It can be seen in the ABH table on LPKA Class II Parepare based on the classification of cases from 2015-2019 below:

Tabel 1. Data on ABH in LPKA Class II Parepare (2015-2019)

NO	CASE	ART	2015	2016	2017	2018	2019	TOTAL
1	Against Order	154-181			1	2	2	3
2	Desensy	281-297					1	1
3	Murder	338-350	1			1	1	3
4	Persecution	351-356			1	4	1	6
5	Theft	362-364	8	20	22	24	20	94
6	Narcotics	UU 35/2009	3	1	1	7	7	19
7	Child Protection	UU 23/2002	8	4	13	5	3	37
8	Etc		2			2		4
	Total		22	25	38	45	35	165

Source: LPKA Class II Parepare 2019

The background of a child committing a crime consists of internal and external factors, namely:⁷

1. Internal Factors

a. The Intelligence Factor

Adolescents who are naughty when viewed from their intelligence are mostly done by those with low intelligence, but this is not absolute because many teenagers with normal or high intelligence are still involved in juvenile delinquency.

b. Factor Age

Juvenile delinquency is mostly committed by adolescents aged 16-19 years (early adolescence entering late adolescence). Besides that, there are the effects of physical development, for example too big or too small for his age.

c. Gender Factor

In Indonesia, juvenile delinquency committed by girls is only a little compared to boys so that juvenile delinquency is mostly committed by teenage boys.

d. Factors of Position in the Family

The development of the soul and character of adolescents in terms

⁷ Adami Chazawi, *Op.Cit.* p. 72

of position (birth order) in the family, then what is more influential is parental guidance. For example, if an only child or youngest child acts very naughty, it is because they are very spoiled, which is related to their position as the youngest or only child.

e. Psychiatric Factors

There is a small proportion of children who suffer from a disease in the form of the desire to steal (Kleptomania).

2. External Factors

a. Environment

An unhealthy environment will affect the character development of a child in a bad direction and can lead to criminal acts.

b. Household circumstances

Many juvenile delinquencies are caused by broken home conditions that can lead to a child committing a criminal act. This was stated by B. Simanjuntak that a messy household can bring bad psychological impactors for children's mental development and education, because the child's personal basis is mainly formed in the household environment.

c. Economic factors

Abandoned children are closely related to the economic situation of underprivileged families and do not receive proper education from their parents, so there will be potential for juvenile delinquency or criminal acts that are usually committed by underprivileged children, namely theft.

d. Educational factor

Proper education for a child is very important in his development, with proper education it will prevent the child from committing a crime with an understanding that will be given to him at home or at school.

e. Social Factors

Most children commit a crime due to wrong associations which have a negative effect, as stated by Soedjono Dirdjosisworo that more than 95% of naughty children are those who have been in contact with bad friends and bad places.

f. Mass media factors

Mass media greatly affects teenagers who are very vulnerable to being influenced by the circumstances around them. Examples

of bad mass media are obscene magazines or obscene books and technological developments, the internet is getting easier to access so that it is easy to get obscene things.

Criminalization aims to socialize the convicted convict by providing guidance so that he becomes a good, useful person as stated in the RKUHP Concept for 2005 and 206 to February 2008.

Child Special Guidance Institution or abbreviated as LPKA is a place to provide guidance to correctional students in Indonesia. LPKA is a Technical Implementing Unit under the Directorate General of Corrections at the Ministry of Law and Human Rights. LPKA residents are prisoners or correctional protege and detainees. LPKA is part of several types of prisons, including women's prisons, children's prisons, narcotics prisons and general prisons or adult prisons.⁸

The construction of the LPKA is intended to accommodate children with criminal or legal problems considering that many children are still being accommodated in adult prisons. The rights and treatment of children are regulated in Law number 9 of 2012 concerning the Optional

Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict and Law Number 11 of 2012 concerning the Juvenile Justice System. Article 28B paragraph (2) B of the 1945 Republic of Indonesia Law also states that every child has the right to survive, grow and develop as well as the right to protection from violence and discrimination. This shows that the placement, treatment and activities of children are different from adults so that it is deemed necessary to develop LPKA.⁹

Regarding facilities and infrastructure, the Law on the Criminal Justice System for Children also allows for regulations regarding new supporting facilities in the form of a Special Child Service Room, which functions as a space to place children who are under arrest for 24 hours.¹⁰

The SPP Anak Law as the basis for handling cases of children in conflict with the law mandates that imprisonment for children up to the age of 18 years. LPKA is required to provide education, training, skills, guidance, and fulfillment of other

⁸ P.ermenkumham Nomor M.HH-05OT.01.01 Tahun 2010

⁹ P.ermenkumham Nomor M.HH-05OT.01.01 Tahun 2010

¹⁰ Lilik Mulyadi, 2005, *P.engadilan Anak di Indonesia: Teori, P.raktik, dan P.ermasalahannya*, Bandung, Mandar Maju, p. 230

rights in accordance with the Prevailing Laws.¹¹

The Institute for Special Guidance for Class II Parepare Children of South Sulawesi Province, commonly abbreviated as LPKA Class II Parepare, whose officials were inaugurated, namely Jayadi Kusumah, A.Md.I.P., S.H., M.H. as the Head of LPKA Class II Parepare on December 28, 2015. The organization of these institutions began running in 2016 as a place of guidance for children in conflict with the law. Previously, this institution was called the Parepare Class II Penitentiary, which means that in addition to adult male and female prisoners, there are also child prisoners.

At first glance, it can be seen from the top of the paper that the institution is intended only for children, but in its implementation there is almost no difference between the Parepare Class II Penitentiary and the Parepare Class II Child Special Development Institution which is still running until now.

In this case it can be said that the Child SPP Law does not provide significant changes to the fate of children who are sentenced to imprisonment. Prison institutions should have 4 (four) main functions, namely protecting (protective), pu-

nitive (punitive), improving (reformative), and rehabilitation (rehabilitative).¹²

Guidance for children in conflict with the law is basically carried out on the concept of prison in accordance with the human rights of children. However, after the Criminal Justice System Law in 2012, children should no longer be placed in prisons with adults but in LPKA because children need more special guidance. Coaching is focused on three main things, namely physical, mental and social development. There are four important components in the principles of guiding prisoners, including:¹³

1. Yourself
2. Family
3. Society
4. Officers

Based on Presidential Decree Number 36 of 1990, and the United Nations Standard Minimum Rules for Administration of Juvenile Justice, abbreviated as UNS-SMRJJ (UN Resolution 40/33) states that children as the nation's next generation have rights that must be protected, both children in general, as well as

¹² Abintoro P.rakoso, *Op.Cit.* p. 245

¹³ Yulianto dan Yul Ernis, *Lembaga P.embinaan Khusus Anak dala P.resp.ektif Sistem P.eraadlan P.idana Anak*, diakses dari http://sip.kumham.balitbangham.go.id/assets/img/doku menp.enelitian/P.TL_20171109015102016_A20.p.df, p.ada tanggal 10 Maret 2020 P.ukul 21:32 WITA

¹¹ *Ibid.* p. 231

children who have problems in their social behavior.¹⁴

In line with this, as for what has been stated in Article 85 Paragraph 3 of the Child SPP Law states that children in LPKA have rights, namely being given education, skills training, and skills development. Implementation in LPKA Parepare City on the implementation of human rights for children placed in LPKA based on interviews with several children who were given coaching at LPKA Class II Parepare and an employee at LPKA Class II Parepare named Abdi Lesmana who served as a Jfu Registration Staff, a WPB Status reviewer, that is:

Education

The government must seek education for children who are placed in LPKA. If a coaching program in terms of education can be implemented with collaborative partners. The determination of cooperative partners must consider the principles of the best interests of the child.¹⁵ In implementing the program, LPK officers are required to monitor and evaluate educational programs to determine the effec-

tiveness of program implementation on the development of children's behavior.¹⁶

1. Apocalyptic Training

That what is meant by skills training includes agriculture, plantation, animal husbandry, automotive, workshop / welding, computers, cellphone service, culinary, salon, fashion design, etc.

Personality Development

Based on the Guidelines for the Treatment of Children, the Special Development Agency for Children issued by Community Guidance states that personality development consists of spiritual development activities, legal awareness, physical awareness, national and state awareness, and other activities.

Prospects for the Implementation of Class II Parepare LPKA Functions in the Protection of Human Rights for Children

Protection of human rights for children in the implementation of the guidance process in the LPKA as referred to in Article 4b of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 18 of 2015 concerning the Organization and Work Procedures of Special Guidance Institutions

¹⁴ Syamsuddin Muchtar, *Op.Cit*, p. 170

¹⁵ Keputusan Menteri Hukum dan HAM, *P.edoman P.erlakuan Anak di Balai P.emasyarakatan (BAP.AS), Lembaga P.enemp.atan Anak Sementara (LP.KS), dan Lembaga P.embinaan Khusus Anak (LP.KA)* di Lingkungan Kementerian Hukum dan HAM, p. 22

¹⁶ *Ibid*, p. 22

for Children, namely "Guidance which includes education, nurturing, alleviation and training skills, as well as information services".

In looking for a solution to the obstacles in the implementation of ideal coaching at the Parepare Class II Special Guidance Institute described above, the author tries to make comparisons with countries such as Thailand, the Philippines and Malaysia. Where these countries can be used as a concept of effective guidance for children who are in the Special Guidance Institution for Children, especially in the fulfillment of human rights for children, so it is hoped that regulations or rules regarding the implementation of standards for effective money guidance can be formulated in fulfilling human rights for children in the institution Special Development for Children.

Same as in Thailand there is a special penitentiary for children called Ban Kanchanapisek. If the connotation of LAPAS for children is usually filled with a negative stigma as a prison for naughty children, it is different from Thailand. The concept of Ban Kanchanapisek is more of a house without a fence, detention room or prison uniform. The condition of LAPAS is more suitable to be called the house of children with problems. Here children

who are serving their sentence are trained and educated with various positive activities and training for their future provisions. In fact, there are watching activities together on certain days each week, training in food making skills, painting, salon skills, and the availability of classes for children to learn. Although the funds that the government has launched into this institution are very minimal, it does not become an obstacle for the institution to carry out this guidance program. The path taken in the context of implementing the child development program is by establishing a foundation to finance the activities carried out by this institution, namely by holding bazaar activities to generate funds for their operational activities.¹⁷

This can be emulated by Indonesia so that classic constraints such as low budget should not make it an obstacle, but opportunities and challenges to get ideas and ideas by maximizing the existing budget and also carrying out various innovations to generate income as operational costs.

The LPKA building affects the psychology of children, especially children who are forced to be in adult LPKA where

¹⁷ Nurini Ap.rilianda, *P.engkajian Hukum Tentang Model P.embinaan Anak Berbasis P.endidikan Layak Anak dalam Sistem P.emasyarakatan*, P.usat P.enelitian dan P.engembangan Sistem Hukum Nasional (Badan P.embinaan Hukum Nasional Kemenkumham) 2014, p. 96

the impression of punishment is more pronounced. This is because the main concept of LPKA is generally oriented towards security needs, preventing children in LPKA from running away. Bars, improper room layout, barbed wire, high walls, gloomy wall colors have a big effect on children's interest in participating in coaching, especially education. For this reason, Indonesia can emulate Thailand in this regard.

Human Resource (HR) problems in Indonesia can be emulated from Malaysia where formal education for children in conflict with the law is carried out by qualified teachers who are appointed by the ministry of education and follow the same curriculum as in public schools. These children also take the same final exams with children in the outside community with the same status, so that no education document in the form of a diploma shows that they are attending the Special Child Development Institute (LPKA). For this reason, the Ministry of Education can issue a policy so that educational institutions can cooperate with the Institute for Special Guidance for Children (LPKA) in providing education because education is a basic right for every citizen and the state is responsible for its citizens without exception according to

the mandate of the Constitution of the Republic of Indonesia Year 1945. For non-formal and informal education programs, it is necessary to develop a form of cooperation between ministries such as the Ministry of Cooperatives and SMEs to provide training and skills education, the ministries of industry and trade to provide training, skills education, and it is also necessary to increase cooperation with non-governmental organizations (NGOs) observers. children, the Indonesian Child Protection Commission which is responsible for supervising child prisons, and so on. The guidance system for children who are in conflict with the law while in the Special Child Development Institution (LPKA) can be carried out by providing rewards and punishments (gifts and punishments). As is done in Malaysia, namely with a ranking system. Which is if children behave well, they will get a reward in the form of leave with their family outside the institution, but if they behave badly, they will get punishments such as lining up, being placed in isolation rooms and so on. The provision of reward and punishment can also be used to foster the interest of children who are in conflict with the law in participating in educational pro-

grams, skills and expertise provided by correctional institutions.¹⁸

CONCLUSION

1. fulfillment of children's rights consists of the fulfillment of coaching in the form of education, skills training, and personality development that have been carried out in LPKA Class II Parepare but are still considered not optimal and have not run properly where there are several reasons, one of which is the fact that child prisoners are still being combined with adult prisoners who can potentially have a negative effect when interacting with children who are placed in LPKA so that children can learn a crime from these interactions.
2. The prospect of implementing the functions of the Special Guidance Agency for children in the protection of human rights for children, where the understanding that the state guarantees the right of every child to live, grow and develop includes the child's right to enjoy an adequate standard of living and the right to education. In the Juvenile Criminal Justice System, it is explained that the development of children in prisons prioritizes proper

education. And the special children's penitentiary, known as the Child Special Development Institution (LPKA), is obliged to provide education, skills training, coaching, and fulfillment of other rights.

Suggestion

1. The need for a set of rules governing the procedures for cooperation between LPKA and related agencies / institutions that can support the development of children for the fulfillment of children's human rights. In addition, survivors should also immediately establish a Special Guidance Agency for Children (LPKA) in each region or every district / city so that the guidance process can run optimally.
2. In order to realize the concept of fostering children in the Child Special Guidance Institution (LPKA) which is in accordance with the fulfillment of human rights for children, it is necessary to change the mindset or mindset of the purpose of child punishment, a shift in thinking from punishment to guidance for children, cannot be separated from the coordination between institutions, both the Ministry of Law and Human Rights, the Ministry of Social Affairs, the Ministry of Education, the Ministry of Women and

¹⁸ Nurini Ap.riliada, *Op.Cit.* p. 66

Children Empowerment, the Indonesian Child Protection Commission, Non-Governmental Organizations, Foundations and other institutions involved in implementing child development in accordance with Law Number 11 2012 concerning the Child Criminal Justice System

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