

The Fulfillment Of Convicted Children's Educational Rights In Special Institution For Guiding Children (LPKA) In Banda Aceh

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ABSTRACT: Constitutionally, children's rights are protected by the state as stated in Article 28B paragraph (2) of the 1945 Indonesian Constitution namely "Every child has the right to live, grow and develop as well as the right for protection from violence and discrimination". Under Indonesian Penal law and Child Criminal Justice System Law (called UUSPPA), it is stated that the convicted child who is serving a criminal term is entitled to receive the right to education and training. Implementation of education for child convicted in Special Institution for Guiding Children (called LPKA), is the responsibility of the State as regulated in Article 9 of Government Regulation Number 32 of 1999 stated that "Every LPKA is obliged to carry out educational and teaching activities for the convicted person. However, the implementation of formal and non-formal education for child convicts has not been realized due to constraints and lack of support from the local government, especially the Education Office and the Aceh Government Working Unit which always said the guidance of children convicted in LPKA responsibility of the Ministry of Justice and Human Rights, the fund not allocated from Aceh Government Working Unit.

KEYWORDS: Children, Educational Rights, and Special Institution for Guiding Children (LPKA)

Date of Submission: 24-06-2018

Date of acceptance: 09-07-2018

I. INTRODUCTION

Constitutionally, the child's rights are protected by the state as stated in Article 28B paragraph (2) of the 1945 Indonesian Constitution of the Republic of Indonesia (the 1945 Constitution) namely "Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination". Child rights protection is also given to Children in Conflict with the Law (called ABH) even though he has committed a crime.

Arrangements on the rights of the child are then manifested in various laws and regulations such as; Indonesian Law Number 23 of 2002 Juncto Law Number 35 of 2014 on Child Protection and Law Number 11 of 2012 on Child Criminal Justice System (UUSPPA).¹

The Convention on the Rights of the Child states "children should not be treated the same as adults, deprivation of liberty, is the last resort. Deprivation of independence as a last resort is the realization of the right of the child to be separated from his parents.

According to Muladi and Barda Nawawi Arief, there are several specific approaches that can be done in handling ABH, that is:

1. The child who commits a crime (juvenile offender) should not be viewed as a criminal, but must be seen as a person who needs help, understanding and affection.
2. The juridical approach to the child should prefer the persuasive-educative approach and psychological approach which means as far as possible to avoid judgmental punishment, which is mental degradation and discouragement and avoid the stigmatization process which can inhibit the process of development, maturity and independence of children in a natural sense.²

In reality, the offenses committed by ABH such as; theft, abuse of narcotics which processed through criminal justice always ends with imprisonment. Generally, they get less attention from law enforcement officers, parents, lawyers, and social services so that the fulfillment of their rights is neglected, even children are considered criminals who deserve to be deprived of their independence. The child's world should be a place

¹UUSPPA (Indonesian Child Criminal Justice System Law) is the Law that set off children's rights, this law is also the ratification of UNCRC under the UN.

²Muladi and Arief, B.N.Potpourri of Criminal LAW, Alumni, Bandung, 1992, p. 115.

where children enjoy their days with joy, play, and school. The imprisonment imposed is not a solution in solving the problem of a criminal offense committed by a child, if the crime committed can still be restored so that the "damaged" condition can be restored to its original state through restorative justice.³

Child in conflict with the law processed through the courts, 90% were sentenced to imprisonment and placed in the Penitentiary (LAPAS) or the Special Institution for Guiding Children (LPKA).⁴ As a result, the child loses to obtain the right to receive education and health services as well as the rights of other children because they are detained.⁵ Child in conflict with the law is treated no different than adults who are suspected of committing a crime. Properly, in the criminal justice process, law enforcement officers not only prove juridical errors, but not least to consider the interests of children according to principles that apply to children.⁶

Based on the type of sanction contained in the Criminal Code (Penal Code), imprisonment is the most popular sanction imposed by the judge. More than 9.8 million people are in prison around the world. The number of inmates has increased by 73% in total worldwide, but some countries in Europe such as the Dutch prison have begun to be short of their inhabitants so that they are imported from other countries.

Detention and imprisonment are the choice of law enforcement officer to punish the child "imprisonment should be the last resort, but the fact remains the belle of most frequently applied by law enforcement". Prison sentence is still the main choice (favorites) for Indonesian judges in imposing criminal sanctions. If traced by the Criminal Code "imprisonment is the type of criminal sanction most widely regulated in criminal legislation so far".⁷

Children who underwent imprisonment placed in LAPAS/LPKA experience various problems, especially in the fulfillment of their rights, such as:⁸

- a. There is no chance to go to school because they have to be arrested.
- b. Inadequate access to health services and living conditions.
- c. Children held together with adults are particularly vulnerable to violence.
- d. Child detention often causes the child to experience severe stress.

Data from the Directorate General of Corrections shows that the number of child convicted in Law Territory of Law and Human Rights office of Aceh in December 2012 amounted to 50 people including 3 convicted girls, in 2013 totaling 61 people including 1 convicted girl, 2014 amounted to 78 people including one female convicted, 2015 amounting to 67 people including 2 convicted girls, in 2016 amounted to 61 people and in 2017 amounted to 60 including 1 convicted girl.⁹ Based on the data above, the criminal acts committed by the child in conflict with the law in Aceh Province that has a prison sentence for coaching varies, the dominant is the theft, narcotics abuse, decency and the amount does not decrease.

In various laws and regulations it is mentioned that the legal process of children such as; arrest, detention or imprisonment shall be the last resort and in the shortest possible time as provided in Article 37 (b) of the Convention on the Rights of the Child, Item 13 (1) of the United Nations Minimum Rules on the Beijing Rules Administration, Item 17 of the United Nations Guidelines for the Prevention of the Crime of the Criminal Case (The Riyadh Guidelines), point 6 (1) of the UN Minimum Standards Regulations for Non-Detention Rules (The Tokyo Rules), item 1 of the UN Rules for the Protection of Juvenile Deprivation Liberty / Havana Rules. Article 66 Paragraph (4) of the Human Rights Law.

The current criminal justice system still focuses on the imposition of imprisonment in return, indicating that the dimensions of crime are only seen from one side, that is the side of the perpetrator, while from the other side is not getting enough attention. Should also be considered also the best aspects and interests for children, given the legal juridical Indonesia has a special law for children. It would be wrong if the treatment was based solely on formal legal mechanisms without the involvement of social mechanisms, because it was not only a question of law, but also a social issue.

If the criminal justice system aims to defame the perpetrator, "then this model is said to have failed, because the fact shows that 50% to 70% of children worldwide who have been processed in the criminal justice system, especially those who have experienced the process of detention and imprisonment. . But to this day, law enforcement officers and the public always seem to link any form of criminal offense to imprisonment.

³Susetyo, H, *Prisoners' Development System Based on Restorative Justice Principles*, National Legal Development Board, Jakarta, 2013, p.1.

⁴LPKA is the substitution of Correctional Law, it is Special Institution for Guiding Children who are in conflict with the law.

⁵Gumelar, L.A.S, *Speech at the Legal Handling Workshop with Restorative Justice Approach*, Bogor, 5-6 April 2010, hlm.3.

⁶Manan, B, *Restorative Justice in child's case*, Article presented in Workshop of Handling children in conflict with the law with Restorative Justice Approach, Bogor, Hotel Salak, 5 April 2010, p. 3.

⁷Arief, B.N, *Legislative Policy on Crime Prevention with Imprisonment*, Ananta, Semarang, 1994, p.74.

⁸Gumelar, L.A.S, *Op. Cit.* p.3.

⁹<http://smslap.ditjenpas.go.id/public/arl/curent/monthly/year/2011/month/1> accessed on 6th of March 2018.

As a consequence of the ratification of the Convention on the Rights of the Child, the Government of Indonesia is legally and politically bound to take strategic steps in respecting, protecting, and fulfilling the rights of children without discrimination.

Regarding to Steven Allen, "Child Criminal Justice System made based on 4 principles of the convention, that is: non-discrimination, the best principle for children, the right to live, survive and develop, and the right to participate".¹⁰ However, "the implementation of this law is still many obstacles, it due to the lack of knowledge and understanding of law enforcement officers and the public about the Act itself".¹¹

Based on Article 71 of UUSPPA, if the child should be sentenced to imprisonment, it should be considered to be developed outside the institution. According to Article 85 UUSPPA, children convicted of imprisonment placed in LPKA are entitled to coaching, mentoring, supervision, education and training, and other rights and LPKA shall provide education, skills training, coaching and other rights fulfillment.

The imprisonment in the UUSPPA is still placed as a principal penalty but as the last resort, this has been a fundamental change when compared to Law No. 3 of 1997 on Juvenile Court which puts it first. The types of criminal sanctions that may be imposed on child in conflict with the law as regulated in Article 71 of UUSPPA, namely; The principal punishment for children consists of: a. Criminal warning, b. Criminal terms with the condition include 1) coaching outside the institution, 2) community service; or, 3) supervision, c. criminal work, d. coaching within the institution; and e. imprisonment.

Based on the results of research conducted by the Center for Study and Child Protection Faculty of Social and Political Science, University of Indonesia in 2011 said that "Most prisons and detention centers who become research are in the condition of overcrowding. Overcrowding conditions are understood as a factor that worsens the situation of people in prisons and detention centers. Not only in the exacerbation of physical facilities but also the impact of treatment services and practices".¹²

A thorough description of the concept of "Penal", requires completeness of facilities, infrastructure, and human resources. Constraints faced in the translation of the concept of Penal not only with regard to internal conditions, but also external conditions that significantly increase the burden of LPKA as a guidance counseling.

Children who are imprisoned placed in LPKA are entitled to coaching, guidance, supervision, assistance, education and training, and other rights in accordance with the provisions of legislation. But to get education has not been done properly.

II. LITERATURE REVIEW

Principles and Requirements of Inheritance

Legal protection against child in conflict with the law is still lack, but the Government has been paying attention to the rights of children by enacting legislation regulating child protection and participating in the signing of the Convention on the Rights of the Child.

In the UNCRC mentioned all children without exception have the same rights as contained in the Declaration, without distinction or discrimination on the basis of race, color, sex, language, religion, political or understand the other, national origin or social origin, property, birth or other status, and himself or from his family.

Based on the provisions of the UNCRC mentioned above, what should be considered in the implementation of guidance of convict children in LPKA is Article 26 Beijing Rules, that is:

1. The purpose of training and treatment of children whose placed in Penal institutions is to provide care, protection, education and special skills with the aim of helping them play socially constructive, productive roles in society.
2. Children in the penitentiary will receive the necessary care, all necessary protection, social, educational, physical, psychological, medical and physical assistance that they may need, because of their age, gender and personality and for the benefit of their overall growth.
3. Cooperation between ministers and interdepartments will be fostered for the purpose of providing academic training or where appropriate, the skills for children held in prisons, with the aim of ensuring that they do not leave the penitentiary in a lagging state.

LPKA as one of the places for guidance of child convicts must be able to actively educate the convict in order to become a qualified human being in the whole human development. Article 2 of Law Number 12 of 1995 on Penal Law mention "Penitentiary System is organized in order to form Penal Citizens to become whole human beings, realize mistakes, improve themselves, and not repeat the crime so that it can be accepted back by

¹⁰Susilowati, I, et.al, *The Meaning of Convention on the Rights of the Child*, Unicef, Jakarta, 2003, p. iii.

¹¹*Ibid.*, p. iii-iv.

¹²Supatmi, M.S, *Women's Needs Assessment in Indonesian Penitentiary System*, Child Protection Research Center, Faculty of Social and Political Science, University of Indonesia, Depok, 2012, p. 110.

the community, and they can actively play a role in development, and live fairly as a good and responsible citizen”.

LPKA as a coaching institution, should be able to increase the added value for the convicted child by implementing various programs such as; skill training, self-reliance training, and spiritual guidance that all for self-briefing of the convicted child both mentally, spiritually so that when returning to the society, they able to live in harmony.

Arrangements on the rights of child convicts can be found in various international, national and local human rights instruments. The rights of the child administered in an international instrument constitute a general and universal standard which shall apply in juridical and political jurisdiction in each country with the consequence that the State has ratified it.¹³

The juridical attachment is characterized by the obligation of States to take legislative steps to make the national law appropriate to the issue or substance in the ratified convention. Political attachment is characterized by the commitment of the State concerned to make policies, strategies, programs to implement the content or substance or mandate contained in the Convention.¹⁴

The government's juridical and political commitment has been made, one of them is enacting UUSPPA which regulates the rights of children convicted as mentioned in Article 85 of UUSPPA, namely: children sentenced to prison placed in LPKA are entitled to coaching, guidance, supervision, mentoring, education and training and LPKA must provide education, skills training, coaching and other rights fulfillment. The Counselor conducting community research to determine the implementation of education and coaching programs and must supervise the implementation of the program. Article 85 above emphasizes that the convicted child placed in LPKA is entitled to receive education and LPKA are required to provide education.

In essence, a child's right is a human right which is owned by all children wherever he/she is guaranteed, protected, and must be fulfilled by parents, family, community, government and State. These rights are in accordance with the principles of UNCRC namely; non-discrimination, the best interests of the child, the right to life, survival and growth, and respect for children's views.

Children's rights in general have been regulated from Articles 4 to 18 of Law Number 23 of 2003 on Child Protection as amended by Law Number 35 of 2014, Article 2 of the Child Welfare Law, Article 66 of the Human Rights Law and Article 22 paragraph (1) Juncto Article 14 paragraph (1) of the Penal Law. In the context of child in conflict with the law, Indonesia already has UUSPPA which becomes the juridical basis in the process of handling child in conflict with the law cases. UUSPPA also regulates the rights of children to be respected, fulfilled and protected in all processes undertaken by the child, respect, fulfillment and protection.

Article 5 paragraph (1) of Law Number 20 of 2003 on National Education System also states that citizens have the same right to obtain quality education. The right to education is still given even if a convicted child is a criminal. The provision is explained in Article 22 Jo of Article 14 letter (c) of Law Number 12 of 1995 on Penal Law which states that the convicted child is entitled to receive education and teaching.

Government Regulation No. 32 of 1999 on the Terms and Procedures for the Implementation of Penitentiary Residents in Article 1 paragraph (3) states that "Education and teaching are conscious efforts to prepare prisoners through guidance or training for their role in the future". The Government Regulation is the basis for LPKA to be obliged to implement educational programs which are the rights of child convicts even though they are restricted to their freedom, but they are still entitled to education.

Child convicted in LPKA Class II of Banda Aceh who is still in school is given the opportunity to go to school as long as the parents or their family are responsible for delivering the shuttle by reporting to the officer and then filling out the report book in accordance with the established procedure. The time to attend an outside education with the responsibility of the parent / guardian is given a chance every day from 7.30 a.m. to 2.00.p.m., but there is tolerance up to 4.00 p.m. Child convicts residing in LPKA can attend non-formal education, although the right to education has not been granted. However, LPKA has planned and prepared a program to pursue the package that will be provided in LPKA.

The fulfillment of the right to education in LPKA is still constrained, because the Education Office and the Aceh Government Working Unit (SKPA) always say that LPKA is a vertical institution, so the funds are not allocated from SKPA. This is a wrong opinion by the Aceh government, but it still happening.

Government Regulation No. 32 of 1999 has provided a relatively ideal arrangement in the education of children. The place for the implementation of education and teaching for children is in LPKA, but if children need further education and teaching that are not available in LPKA, it can be implemented outside LPKA.

Partnerships with various parties is needed by LPKA to support or facilitate the teaching process, especially the Education Office should play an active role in facilitating the needs required by the convicted child. This will make it easier for all parties and the educational rights of the child can be met well. Therefore,

¹³Utomo, H and Buana, F. C., *Advocacy on Childcare Based on Convention on the Rights of the Child and Other Related Instruments, Ministry of Women Empowerment and Child Protection of the Republic of Indonesia*, Jakarta, 2015, p. 1.

¹⁴*Ibid.*, p. 1.

the fulfillment of educational rights must be obtained by children even in conflict with the law. The right to education will help the child to change behavior with his own consciousness.

Child's right to education is also provided in Article 28 of the UNCRC which explicitly states that every child without exception shall be entitled to education, then Article 29 of the UNCRC requires States to set educational goals that can develop the child's personal, talent, mental and physical.

To achieve these objectives, the State shall ensure that the educational process is not accompanied by violence in upholding the discipline. This means that the process of implement the disciplinary is based on the dignity of the children according to Article 28 paragraph (2) stating: "... the enforcement of discipline on the child must pay attention to the dignity and self-esteem of the child ...". That is the process of education can not be separated from the planting of discipline attitude, but need to consider and pay attention to the dignity and self-esteem of children, so that children can learn discipline based on his consciousness without coercion.

Implementation of education for child convicted in LPKA, is the responsibility of the State as stipulated in Government Regulation Number 32 of 1999 which amended by Government Regulation No. 99 of 2012 on Terms and Procedures for the Implementation of Rights of Residents Correctional Penitentiary. In Article 9 of Government Regulation Number 32 of 1999 stated that "Every LPKA is obliged to carry out education and teaching activities for convicted and correctional students."¹⁵

The purpose of guidance in LPKA is for the child not to repeat his actions and can rediscover the confidence and acceptable of some members of society. Coaching is also done to the child convicted person to be able to know himself and have a level of self-awareness. According to Article 1 point 1 of Government Regulation No. 31 of 1999, coaching is an activity to improve the quality of devotion to God Almighty, intellectual, attitudes and behavior, professional, physical and spiritual health of inmates and prisoners.

Education is a means that has an important role in improving the quality and ability of child convicted. Through the education of children is prepared to gain intelligence in solving problems that it faces and can broaden the horizons of thought and improvement of personal qualities. Intellectual coaching can be done both through formal and non-formal education. However, formal education is given to tiered schools (elementary, junior and senior high schools) and Equal education has not yet materialized.

The right to education for child convicted is clearly set out in Article 14 paragraph (1) Sub-Paragraph c of Penal Law, Article 3 Sub-Article and Article 85 Paragraph (2) UUSPPA, and Article 9 of Government Regulation Number 32 of 1999.

Educational programs provided at LPKA Class II Banda Aceh include formal and non-formal education.

Formal education is a structured and tiered education consisting of primary and secondary education. The implementation of formal education for children in LPKA Class II of Banda Aceh is not yet realized with several reasons, namely:

- a) Limited number of children who meet the requirements of education due to a short criminal.
- b) Children who are in LPKA are children who drop out of school.
- c) Child's low interest in education.
- d) The facilities and supporting facilities are minimal and almost non-existent;
- e) Low support from previous children's school.¹⁶

Currently the implementation of formal education is not going well, because only a few convicted children who can continue formal education in schools around LPKA and even this at the request of the family.

Non-formal education includes life skill education, youth programme, literacy, skills and job training, equivalent education, and other education aimed at developing learners' abilities. Non-formal education is also constrained because there is no interest to go to school on the grounds of work, family economy, dropping out of school so that child in conflict with the law is placed in LPKA. A short sentence resulted in the child not being eligible for the equivalence package program. However, this condition should not be an obstacle to getting education as long as the convicted child is in LPKA, because if not fulfilled the right to get education and without having activity, will negatively affect the child psychologically. Because the goal of criminalizing and placing children in LPKA is not for guarding, it is more to rehabilitate, nurture and educate the purpose for which children can return to society with better behavior.¹⁷

Children who are in LPKA come from weak economies families and have a low learning interest, because they are accustomed to life and environment that is free and does not prioritize education. Therefore, it takes hard work of LPKA officers to foster the spirit and willingness to go to school and make fun activities for the convicted child.

¹⁵Budiman, M, Head of Correctional Division of Aceh Regional Office for Justice and Human Rights, Interviewed on 14th of July 2017.

¹⁶Ansari, R, Head of LPKA Class II Banda Aceh, Interviewed on 10th of Augusts of 2017.

¹⁷Atmatasari, I, UNICEF Consultant, Interviewed on 10th of April 2017.

Based on its duties and functions, LPKA in the context of intellectual coaching must provide education. UUSPPA even asserted that this right to education has been implemented since the child is still in court process and after they have been placed in LPKA even after they have done the training in LPKA, they are entitled to be given an education programme. Formal and non-formal education should be implemented in a structured and tiered manner, but not implemented in LPKA Class II Banda Aceh. One of the obstacles in the implementation of education-based child convicted, is the quality of human resources that have not met the professional quality. Although there are some employees who have the ability to become educators and have been educated to become tutors. But the percentage is very small and the integrity and lack of willingness in implementing children's education, on the grounds do not have basic skills of teaching. Teachers should be those who work as educators and work together in the Education Office as a solution to the limited quality and quantity of teachers.

For these activities, it is necessary to provide understanding to the local government, especially to the Governor, Regent / Mayor and his staff, that the responsibility of guiding the convicted child in LPKA is not only the responsibility of LPKA and the Ministry of Justice and Human Rights. Therefore, it takes hard work and strong willingness of stakeholders to jointly support the educational program implemented by LPKA. Classical obstacles such as the lack of budget should not create barriers, but opportunities and challenges to develop ideas and ideas by maximizing existing budgets and also coordinating among relevant Ministries such as Ministry of Basic Education, Ministry of Social Affairs, Ministry of Women's and Children's Empowerment and cooperation with Non-Governmental Organizations.

This is a good thing, because there will be a sense of responsibility for carry out the task in a coordination that is interconnected and leave the sectoral ego. The program of modeling an intervention model on the development of children's education will be successful if there is awareness of local governments to be able to support the central government program although without large funding even tend to come from non-governmental organizations.

LPKA Class II Banda Aceh will grow if involving various elements such as; social worker, psychologist, cleric, teacher, medical and local government elements. Cooperation among agencies needs to be improved as in the provision of formal and non-formal education, education standards, curriculum, provision of infrastructure, cost and human resources, including to issues the certificates that the child has certain capabilities that become the responsibility of the Ministry of Primary and Secondary Education.

In accordance with the guidance of child convicted in the perspective of child criminal justice, LPKA as an institution implementing child development program needs to develop coaching based on child-friendly education. The guidance model for child convicted is still referring to the same regulation that is Government Regulation Number 31 of 1999 needs to be changed, because the child's condition is different from the convicted adult. The child is still in the process of growing flowers and thus requires more specific and fundamental handling. Currently the implementation of education coaching program has not been standardized in every LPKA, so the coaching is in accordance with the condition and ability of.

Implementation of educational programs in LPKA Class II Banda Aceh, should consider the potential of the region in accordance with its characteristics. The Ministry of Education may issue a policy so that educational institutions are not allowed to reject children for education in their institutions even if the convicted child because education is a basic right for every citizen and the State is responsible without exception as mandated by the 1945 Indonesian Constitution.

III. CONCLUSIONS

Education is a constitutional right that must be obtained by all citizens including child in conflict with the law, who are placed in LPKA. Children who are in LPKA Class II of Banda Aceh who are still in school are given the opportunity to go to school, as long as the parents or family are willing to send their own child by following the predetermined procedure.

The implementation of formal and non-formal education for children in LPKA Class II Banda Aceh has not been realized. LPKA can not provide formal education, for several reasons, such as: the limited number of children who meet the requirement to follow the education, because the crime in short relative time. Children who drop out of school, low interest in education, support facilities and facilities are minimal and almost non-existent; low support from parents and government, coming from a weak family of economies. The fulfillment of the right to education in LPKA is still constrained, because the Education Office and the Aceh Government Working Unit (SKPA) always say that LPKA is a vertical institution, the funds are not allocated from SKPA and this continues to happen.

Cooperation with government agencies, especially the Education Office is important because the Education Office are responsible for the fulfillment of children's rights in the field of education even though he is placed in LPKA. For such activities, it is necessary to provide understanding to the local government,

especially to the Governor, Regent/Mayor and his staff, that the responsibility for the fulfillment of child convicted education rights is not only the responsibility of LPKA and the Ministry of Justice and Human Rights

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Rizanzarli "The Fulfillment Of Convicted Children's Educational Rights In Special Institution For Guiding Children (LPKA) In Banda Aceh" IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 07, 2018, pp. 19-25