

The Implementation of Education and Instruction Rights for Children with Criminal Law Issues who are Being Detained in Correctional Facilities and State Detention Centers

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The Implementation of Education and Instruction Rights for Children with Criminal Law Issues who are Being Detained in Correctional Facilities and State Detention Centers

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ORCID:S. Suyoto: <http://orcid.org/0000-0002-4825-0928>**Abstract**

Children are a gift from God and also the future generation to continue the nation's ideals. Therefore, they have the rights to survive, grow, and develop. For this reason, it is necessary to give them protection, both physical and spiritual, including children with criminal law issues. The juvenile criminal justice system is of particular concern for law enforcement officials, considering that children are described in national and international human rights as a vulnerable and specially-treated group. All countries are obliged and have the responsibility to ensure the fulfillment of these special rights for every child. The education and instruction rights for every child, including children with criminal law issues who are being detained in correctional facilities and state detention centers, are directed at activities such as skills training and knowledge enrichment.

Keywords: education and instruction rights, child prisoners, correctional facility, state detention center

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1. Introduction

Children are valuable assets for a nation, not to mention for Indonesia. They hold sustainable development which is expected to be implemented in order to create a just and prosperous Indonesian society. However, during the child's development, undesirable things occur, such as violations of religious norms, decency, politeness, or legal norms. These violations are often referred to as juvenile delinquency which can arise due to internal or external factors. Internal factors as the cause of children's delinquency are defined as factors originating from within that motivate them to commit violations, such as gender, intelligence, and the child's position in their family. While

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external factors that trigger children to commit delinquency are factors that come from outside, such as environmental factors or social environment. The rapid development era brings positive and negative impacts on the child's development. If the family gives sincere love and attention to the child, the risk of the child doing delinquency is getting smaller

Violations of various norms that exist in society, especially violations of legal norms, also bring legal consequences. They must take responsibility for their actions following the provisions of the applicable laws. The regulation regarding children has been explicitly regulated in the State Constitution of the Indonesian Republic (1945), Article 28 B section (2). This is under the mandate of the *Convention on the Children's Rights*, which has been ratified by the Indonesian government through Presidential Decree Number 36 of 1990 about the Ratification of the *Convention on the Children Rights*. As a consequence, the Indonesian government has issued several laws and regulations to protect children, including Act No.39 year 1999 concerning Human Rights, Act No. 4 year 1979 concerning Child Welfare, Act No.35 year 2014 concerning Child Protection, Act No. 13 year 2006 concerning Protection of Witnesses and Victims, Act No. 21 year 2007 concerning the Eradication of Human Trafficking, Act No.44 year 2008 concerning Pornography, Act Number 11 year 2012 as replacement of Act No.3 year 1997 concerning the Juvenile Court System, which is recently known as the SPPA Act which is aimed to create a trial that truly guarantees the protection for children with criminal law issues.

Based on the reality of the current situation in society, criminal acts are performed not only by adults but also by children. Consequently, they often have to receive court sentences and be put in a Correctional facility (*Lapas*) or a State Detention Center (*Rutan*). In Article 86 section (1) of the SPPA Act, children who have not finished serving a sentence at the Special Development Institution for Children (LPKA) and have reached the age of 18 (eighteen) are transferred to a Youth Prison. Placement of children in correctional institutions is carried out by providing certain blocks for those who have reached 18 (eighteen) years to 21 (twenty-one) years (Explanation of Article 86 section (2) of the SPPA Act and Explanation of Article 61 section (2) of the Juvenile Court Law). Ideally, child prisoners are placed in juvenile prisons. However, if an area does not have a juvenile prison, they will be placed in a correctional facility where they will be placed separately with adult prisoners. This is because most areas in Indonesia do not have a children correctional facility yet.

The placement of child prisoners in the correctional facility is very concerning because it puts them in a vulnerable situation in which they may become victims of violence conducted by the adult prisoners. Besides, the stigma or bad impression

that they might face as child prisoners will certainly have an impact on their psychological state. They will not easily let go of it without any help and support from their surroundings, especially after they leave prison. The scorn and one-sided view of being a former child prisoner will harm his/her future. This is inseparable from the condition of our society, some of them are antipathy for an ex-con. We cannot deny that a correctional facility may become a place to increase "ability" to commit crimes in various actions which of course taught by their fellow criminal seniors.

Even though they are child prisoners, they still have rights as regulated in Article 22 section (1) of Act no.12 year 1995 about Corrections. It is stated that "*Child prisoner receives the rights referred to in Article 14 except for letter g*".

With the children in correctional facility or detention center, the fulfillment of their needs is obstructed. One of the most basic rights that must be given to children is education and instruction rights. Through these rights, it is hoped that children will be able to grow up to be smart and qualified human beings.

The education and instruction rights for prisoners is normatively regulated in Act No. 12 year 1995 about Corrections. In Article 14 section (1) letter "c" of the act, it is strictly regulated that prisoners have the education and instruction rights. This arrangement is general, meaning that it does not differentiate whether the prisoner is an adult or a child

Regarding the importance of education and instruction rights for children, the author is interested in examining how the education and instruction rights as stipulated in Act No. 12 year 1995 for children who are being detained in Correctional facility or State Detention Center is implemented.

2. Result and Discussion

2.1. Children's Position in the Criminal Justice Process

A person who commits a criminal act in the criminal justice process can be regarded as a suspect, defendant, or convict. These positions or statuses are based on the inspection conducted by the competent official. A suspect is a person who due to his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act and becomes the authority of the police to investigate him. A defendant is a suspect who is prosecuted, examined, and tried in a court session. In this case, the authority to examine the defendant rests with the prosecutor and the court. Meanwhile, the convict is a person who is convicted based on a court decision

that has obtained permanent legal force. Meanwhile, the guidance for the convict is the authority of the Correctional facility.

The position/status of children in the criminal justice process is not different from those of adult perpetrators. In this case, the child who has committed a criminal act can also be a suspect, defendant, or convict. Only in the process of case examination is it that distinguishes it from adults. There are also special provisions as regulated in Law no. 11 of 2012 concerning the *Juvenile Court System*.

According to Act no. 12 Article 1 section 8 of year 1995 in conjunction with the Government Regulation Article 13 No.31 year 1999, there are 2 (two) groups of inmate, they are:

2.1.1. Child prisoner

A child prisoner is a child who, based on a court decision, is serving a sentence in the Juvenile Prison for a maximum of 18 (eighteen) years.

2.1.2. Civil Lawbreaker

They are children whose delinquency is in the scope of his/her own family. Their parents give up to guide them, so the parents submit a request to the local District Court so that the child is fostered in a Child Correctional facility with care costs borne by the parents. According to the provisions of Article 1 section 8 letter c of the Penal Law "Civil lawbreaker, are children who at the request of their parents or guardians obtain a court order to be educated at the Child Prison, no later than 18 (eighteen) years of age".

The longest period for a child to be placed in a Child Correctional facility is until he/she reaches 18 years of age. A maximum of 6 (six) months for those who haven't reach 14 (fourteen) years old and a maximum of 1 (one) year for those who are 14 (fourteen) years old at the time of court decision and each time can be extended for one year with the provision that is 18 (eighteen) years old at the latest (Article 32 section 3 Act No.12 year 1995). Civil lawbreaker as regulated in Act No.12 year 1995 is not recognized in the SPPA Act nor Act No.8 year 1981 (KUHAP). This is known only in civil court proceedings. Since a civil lawbreaker is related to a Child Correctional facility, the child's position is related to the scope of the criminal law. A petition for the determination of a civil child can't be submitted to a civil court, while on the other hand, a criminal case does not recognize the trial procedure for determining a civil lawbreaker.

The importance of classifying the position of children as mentioned above is related to the differences in the guidance carried out by prisons for children. Quoting [2] opinion, coaching as a form of punishment is more directed at efforts to make the prisoner or child prisoner feel sorry for his/her actions and guide him/her to be a good citizen, obey the law, uphold moral, social and religious values to establish a safe, orderly and peaceful community life.

Furthermore, in this study, the object of research is child prisoners, that are children who have received a court verdict and are serving a sentence in the correctional facility and state detention centers.

2.2. Child Protection

Child protection is some efforts made to create conditions so that each child can perform his/her rights and obligations for their proper development and growth, physically, mentally, and socially. Protection for children is not only given to children who are victims of criminal acts, but also to children who are perpetrators of criminal acts. Act Number 35 year 2014 concerning Child Protection is highlighting that child protection is an effort to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally under human dignity and protection from violence and discrimination. In protecting children, we must also pay attention and relied on the principles and objectives of child protection. Act Number 35 year 2014 states that the ¹implementation of child protection is relied on Pancasila and the State Constitution and also under the basic principles of the Children's Rights Convention. They are:

1. Non-discrimination, which means that treating children should be fair, and should not differentiate between one another, for any reason.
2. The best interests of children. The best interests of children must be the main consideration for all acts involving children which are carried out by the government, society, legislative, and the judiciary,
3. The right to live, survive, and develop. These are the most basic human rights for children who are protected by the state/government, society, family, and parents.
4. Respect children's opinions. Means that we must respect and give children opportunities to participate and express their opinions in decision-making, especially when it comes to the matters affecting their life.

[1] argues that child protection is an effort to protect children so that they can perform their rights and obligations. Several things that should be noticed related to child's protection are:

1. The scope of protection
 - a. Basic protection includes clothing, food, housing, education, health, law.
 - b. Includes things that are related to physical and spiritual needs.
 - c. Classification of primary and secondary needs which results in priority fulfillment.
2. Protection implementation guarantee
 - a. Accordingly, there should be a guarantee for this child's protection so that it can be noticed by all who are involved so that the maximum results will be achieved.
 - b. It is better if this guarantee is stated in a written regulation either in the form of a Law or Regional Regulation, which is simple in formulation but can be accounted for and is distributed evenly in the community.
 - c. Regulations must be adapted to the conditions and situation in Indonesia without neglecting the means of protection undertaken in other countries, which should be considered and emulated (critical stance).

The basis for implementing child protection are:

1. *Philosophical Basis*; Pancasila is the basis of activities in various fields of family, community, state, and national life as well as the philosophical basis for implementing child protection.
2. *Ethical Basis*; the implementation of child protection must be in line with the relevant professional ethics, to prevent deviant behavior in the establishment of authority, power and strength in the implementation of child protection.
3. *Juridical basis*; the implementation of child protection must be based on the 1945 State Constitution and various other applicable laws and regulations. The application of this juridical basis must be integrative, that is the integrated application of laws and regulations from various related fields of law.

The state and government obligations and responsibilities in child protection efforts are regulated in Act Number 35 year 2014 about Child Protection. They are:

1. To ensure the human rights of every child regardless of ethnicity, religion, race, class, gender, culture and language, the legal status of the child, the order of birth, and physical and/or mental condition.
2. Providing supporting facilities and infrastructure in establishing child protection.
3. Guarantee the protection, maintenance, and welfare of children with regard to the rights and obligations of parents, guardians, or other people who are legally responsible for children and supervise the implementation of child protection.
4. Ensure children to conduct their rights in expressing opinions according to the child's age and level of intelligence.

The child's protection issue cannot be separated from the child's protection Act. [1] stated that the Child's Protection Act is both written and unwritten law that guarantees children can truly carry out their rights and obligations. Besides that Prof. Mr. J. E. Doek and Mr. H. MA. Drewes also provides an understanding of Child Protection Law in a broad and narrow sense. In a broad sense, child protection law is defined as all rules of life that protect those who are not yet mature and allow them to develop. Meanwhile, in a narrow sense, child protection law includes legal protection contained in civil law, criminal law, and procedural law regulations.

Act No.35 year 2014 about Child Protection, explains that special protection for children with law issue is implemented through:

1. Humane treatment of children according to their dignity and rights;
2. Providing an escort officer for children since early age;
3. Providing special facilities and infrastructure;
4. Imposing appropriate sanctions for children's best interests;
5. Continuous monitoring and recording of the children's development with law issues;
6. Providing guarantees to maintain relationships with parents or family; and
7. Protection from identity report through the mass media and to avoid labeling.

2.3. Child Prisoners' Rights in Correctional Facility

The article 22 verse (1) Act No. 12 Year 1995 on Corrections states that "Child Prisoners have the rights as stated in Article 14 except point g": receive visit from family, lawyer, or others. From the above thirteen child prisoners' rights which become the writer's object of study is the right to obtain education and instructions. The writer argues that this right is fundamental concerning that education is the right which everyone must have. This is emphasized in article 31 verse (1) 1945 Constitutions which states that "Every citizen has the right to education".

A more specific stipulation concerning the importance of education and instruction right is stated in act no.35 year 2014 on Child Protection: "State, government, family and parents are obliged to give the child wide opportunity to education". From the two regulations above, it is obvious that education for children is both the right and the need that must be fulfilled. This includes children who are in prison. Children who are in prison still have the right to education and instruction.

LAPAS or correctional facility is a place to undergo rehabilitation on inmates and prisoners. Everyone's skill and ability are in accordance to his education. The higher the

education a person has, the broader the knowledge, the better the skill and ability he exhibits. Correctional facility for children has duty and responsibility to fulfill the child prisoners' right to education. In Act No. 11 Year 2012 on Juvenile Criminal Justice System states that child prisoners in the juvenile correctional facility have the right to education and training which suit their skill and ability and the other rights based on the effective regulations.

Act no 4 year 1979 on Child Welfare article 2 verse (2) states: "Children deserve services to develop their skills and social life according to national culture and identity to become good and valuable citizens," where in the explanation about the right for services are the opportunity to access education and health.

In article 1 item 7 Government Regulation No.31 Year 1999 on Requirements and Procedures for the Implementation of the Rights of Inmates states that education is an effort to prepare the inmates and prisoners through schooling or outside of schooling. Moreover, in Article 1 item 3 Government Regulation No.32 Year 1999 on Requirements and Procedures for the Implementation of the Rights of Inmates states that education and instruction is a conscious effort to prepare the inmates through guidance or training for their role in the future.

The clearer regulation for education and instruction right for inmates and prisoners is stated in The Third Section of Government Regulation No. 32 Year 1999 on Requirements and Procedures for the Implementation of the Rights of Inmates under the title Education and Instruction specifically Article 9, Article 10, Article 11, Article 12 and Article 13.

2.4. The Implementation of the Education and Instruction Rights for Children with Criminal Issues who Are Serving Their Jail Term in Correctional facilities or State Detention Houses

In Indonesian regulation system, the detainment of someone's freedoms in undergone in a facility that is Correctional Facility or LAPAS. Regarding to its institutional nature, in its practice, both prison term and jail term, it confines and denies freedoms of the people in it. It also goes to the child lawbreakers. Those children will be losing some of their basic rights, for example the right to education and instructions. Education and Instruction rights of those children with criminal issues have been arranged in the Act No 12 Year 1995 which explains about rights for inmates. One of them is the right to education and instruction, Act No 11 Year 2012 on Juvenile Criminal Justice System, Act

No 35 Year 2014 which explains that every child is guaranteed to obtain education and instruction for self-development of the child and also his interests and talents.

Technically, the implementation of the right to education and instruction for children serving their jail term in correctional facilities and state detention centers has been carried out, but the implementation has not been optimum (see in the next discussion on the problems tackled). The implementation of the right to education and instructions in principle is more directed at activities of mentoring or training to provide provisions for the children when they are set free later. Activities carried out by correctional facilities and state detention centers are generally realized in the form of providing skills and enriching knowledge. Those activities are in the form of knowledge about the skills to do something as well as learning activities such as High School Equivalency, training in writing and reciting the Alquran and providing learning facilities such as a library.

Based on the above explanation, it shows that there is conformity with what is stated in Article 1 Item 3 of Government Regulation No. 32 Year 1999 on Requirements and Procedures for the Implementation of the Rights of Inmates which states that education and instruction is a conscious effort to prepare prisoners of prison through *guidance or training* activities for their role in the future.

The implementation of the right to education and instruction in correctional institutions and state detention centers is not the same. The differences arise based on the different functions of each institution. Obviously, the LPAK is an institution that provides special guidance for inmates who have the status of child prisoners. With this special condition brings the consequence that training can be carried out better than common correctional facilities and state detention centers. This is of course due to the support of the availability of facilities and infrastructure that are relatively more complete and the development program which basically is child-oriented.

In addition, the implementation of skill-training activities at LPAK is based on the talents and interests of each child inmate. The child's interest or hobby determines the type of skill-training to join. So the function of the LPAK here is only to facilitate (as a facilitator as well as a tutor). Therefore, the types of skill-trainings provided often change. This condition is of course not found in ordinary correctional facilities, especially detention centers, because the functions of correctional facilities and detention centers generally only accept child lawbreakers with a short sentence.

¹ Based on the results of the study, the means and infrastructures are mostly the problems related to their number and availability to support the implementation of education and instruction activities. In LPAK, the number of facilities that support educational

activities, such as computers, is still limited, as well as the availability of textbooks and library books. Meanwhile, efforts to organize it are constrained by budget problems.

Meanwhile, there are also problems with human resources. The problems faced are related to the number of staff or officers who become tutors. In LPAK, the tutors for skill-training are required to be versatile because they are limited in number and they must be adaptive to the types of trainings provided which become the child inmates' interest.

Correctional facilities and detention centers especially face external factors related to the type of short-term deprivation of freedom that is sentenced to the juvenile delinquents who are serving jail term in ordinary correctional facilities and detention centers. With the short period of imprisonment served by those child inmates, the correctional facilities and detention centers do not freely carry out the education and instruction rights for them.

3. Conclusion

Based on the legal basis stated in Act No. 12 Year 1995 on Corrections, Act No. 11 Year 2012 concerning the Child Criminal Justice System, Act No. 35 Year 2014 Concerning Child Protection, they guarantee the access of fulfillment of children's rights in terms of education rights and the society or the state is obliged to ensure that every child gets the right to proper education without discrimination in any way, whether it is race, gender, economic conditions, physical or mental disability, even when a child is conflicting with the law and must live in a correctional facility, the child still has his right to education. The implementation of the education and instruction rights for children who are serving a sentence in correctional facilities and detention centers is basically aimed at activities that are realized in the form of providing skill-trainings and improving knowledge.

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