

RIGHT TO EDUCATION OF CHILDREN IN CONFLICT WITH THE LAW AT LEMBAGA PEMBINAAN KHUSUS ANAK (LPKA) CLASS II JAKARTA, INDONESIA

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ABSTRACT

The protection of the right to education for Children in Conflict with the Law in Indonesia in relation to International Human Rights Law is questionable. This paper explores the fulfillment of the right to education in LPKA Jakarta towards Children in Conflict with the Law from January 2018 to March 2020. This shows that the education rights for minor offenders are in line with International Human Rights Law; however, minor offenders at LPKA Jakarta have not been able to receive Formal as well Non-Formal Education. The Indonesian legislator needs to revise the National Education System to accommodate a provision regarding the formal education for children in minor offenders; and full supports to fulfill the right to education at the LPKA Jakarta is required.

Keywords: Right to Education, Children in Conflict with the Law, LPKA Jakarta.

INTRODUCTION

Article 1 of the United Nations Convention on Rights of the Child (UNCRC) mentions that 'children are under eighteen years, with exceptions provided for by law applicable to children, an earlier majority is granted. Education is part of a child's right to self-development, as stated in Article 9 paragraph 1 Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.¹ A child is the one who has all right to get an education for the justice process. Article 84 Law No. 11 of 2012 on Juvenile Justice System mentioned that minor offenders would be placed in LPAS. However, the child's right to coaching, guidance, supervision, accompaniment, education, and tutoring remains unaffected. Coaching in LPKA must be based on the minor offenders' willingness to positively change their attitudes toward themselves. (Ernis, 2016) A criminal conviction is more than just retaliation. The provision of guidance and protection is the most important. (Waluyo, 2004)

Children in Conflict with the Law are children in the 12 (twelve) years to 18 (eighteen) years age group on the condition that they are suspected of or have committed a crime. According to UNICEF, Children in Conflict with the Law are under eighteen and

¹ Article 9 Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection stated "*Setiap Anak berhak memperoleh pendidikan dan pengajaran dalam rangka pengembangan pribadinya dan tingkat kecerdasannya sesuai dengan minat dan bakat.*"

involved in the justice system because of a crime they have committed or are accused of engaging in the past (UNICEF, 2006). According to the Minister of Law and Human Rights Republic of Indonesia Decree Number M.HH-03.OT.02.02 year 2014 on Guidelines for the Treatment of Children in *Balai Pemasyarakatan (BAPAS)*, *Lembaga Penempatan Anak Sementara (LPAS)*, and *Lembaga Pembinaan Khusus Anak (LPKA)* in under the Ministry of Law and Human Rights, formal education and non-formal education are the standards of education for children in conflict with the law.

LPKA Class II Jakarta is a place for Children in Conflict with the Law (if the site where the crime was committed is Jakarta) to serve their detention period. *LPKA* Class II Jakarta has 13 Employees and only 1 Head of the Education and Guidance Sub-Section for the training section (*Lembaga Pembinaan Khusus Anak Kelas II Jakarta*, 2017). The budget for education is not yet available to carry out Children in Conflict with the Law's education activities that serve their detention period in *LPKA* Jakarta (Jiwantari, 2017). There is no publicly known information about the development of the fulfillment of the education rights of Children in Conflict with the Law in *LPKA* Class II Jakarta since the latest report in 2017 that showed on their website (Kemenkumham RI, 2020). Children unequipped with the necessary education receive many kinds of difficulties as a domino effect in the future. The main side effects are the inability to speak out in social life, minimal health quality, short life, exploitation of children, unemployment, and gender inequality. Those effects may limit their quality of life (Drew, 2019).

According to International Human Rights Law and the Indonesian legal system, some problems discussed here are how minor offenders get an education and its application for minor offenders at *Lembaga Pembinaan Khusus Anak (LPKA)* Class II Jakarta from January 2018 until March 2020.

RESEARCH METHOD

This paper uses normative-empirical research, which applies the provisions in normative legal provisions (laws) to take action in events suitable to be brought by law stipulated in particular community groups (Muhammad, 2004). This research method will describe the legal rules related to the right to education of minor offenders in Indonesia under International and National law. Data is expected to be collected from interview with the

informant in *Lembaga Pembinaan Khusus Anak (LPKA) Class II Jakarta*. However, since the widespread of COVID-19, the LPKA Class II Jakarta has released Children in Conflict with the Law to prevent the spread of COVID-19 (Dewi, 2020).

FINDINGS AND ANALYSIS

1. Right to education for Children in Conflict with the Law under International Human Rights Law and Indonesian System

Rights are actions based on protected desires which refer to the individual's willingness to do something or not do something and be in a state or not (Stanford Encyclopedia of Philosophy, 2020). Human rights are guidelines for life owned in the form of rights (United Nations Human Rights Office of the Commissioner). The ownership of fundamental rights is not due to the provisions of laws and regulations but humans' dignity. Therefore, physical differences, skin color, culture, language, gender do not distinguish humans from ownership of rights. Rights are universal and cannot be taken from individuals as humans. It can be concluded that even if someone becomes out of control or commits an offense, he is still a human with dignity and rights. That way, the rights are attached to humans and will not be lost and released (Jan Berting, 1990). Education is one of those rights that humans possess.

Education is a process where teaching and learning activities occur; in some cases, education and training are intended to provide or receive knowledge about the final results of the process. In a broader sense, education is a place to exchange information in theory and practice, which can then be implemented in the field of life in general (Muhammad Y., 2019). Education requires theories, approaches, and teaching methods (Cambridge Dictionary). Education in Indonesia is demanded to be equal, and it belongs to the entire Indonesian society without exception (Ferdiawan, 2020).

States express their agreement regarding the right to education as fundamental rights and freedoms that each individual should have and believe that education is required to achieve a quality personality and individual dignity. Thus, the States approve education recipients to express their freedom of opinion, conveying ideology, establishing tolerance and peace between religious communities, races, and nations to achieve peace as emphasized by

the United Nations. States express their consent based on terms and conditions to acquire the rights mentioned below:

- a. Primary education that is equitable and provided free of charge to all;
- b. Secondary education which is required to be open to anyone who wants to register or undertake it, for all secondary education, including technical and vocational education, with ease and without being complicated, by prioritizing progressive introduction of free education;
- c. Higher education is required to be open to anyone who wants to register and has the appropriate capacity and can be accessed quickly and without being complicated, by prioritizing progressive introduction of free education;
- d. Primary education is required to be targeted at individuals who have not or never received primary education, with due observance of the intensity for enforcement to achieve just primary education for all individuals who deserve it;
- e. The systems provided by education and institutions are required to provide readiness and be well integrated, adequate, and continuously developed, taking into account human resources, such as teaching staff and educational staff who are obliged to continue to be provided with training with the provision of appropriate knowledge.

Children in Conflict with the Law should get treatment in accordance with human rights, ensuring that their dignity is respected and freed. It is known that many minor offenders are given no freedom and receive discrimination on their rights, such as access to get an education or enter the world of work. No matter how wrong and terrible a person's actions, either for good or evil purposes, he is still an individual under the law and is entitled to education (Syafei, 2020). In other words, the right to education is inherent in him as a human being. To prepare themselves before returning to society, every child needs education that they deserve according to their needs, interests, and abilities, including those related to examinations. In addition, every child is entitled to receive vocational training in various fields of work to prepare them for future employment.

Various forms of care, recovery, guidance, disposition, counseling, medication, probation and various programs and training based on medical, physical, and mental needs

have also been done to support the handling of minor offenders to ensure the children's maximum potential.

States highlighted the educational needs and aspects that must be present in children's education, as follows:

- a. Developing the personality, interests, talents, and developing mental and physical needs of children in the intensity required;
- b. Respect all forms of human rights and dignity possessed by children, and give freedom to every child by taking into account the principles set out by the Charter of the United Nations;
- c. Respect all forms of belief, race, religion, nation, ideology, parental rights to children's education, language and values held, nationality, social conditions in which the child lives, social situations where the child comes from, and all kinds of differences they;
- d. Basing education as a provision for children to reach maturity that respects differences, promotes peace, has broad understanding and views, tolerance between differences, gender equality, and makes peace and friends with other individuals who are different by respecting ethnicity, religion, and the indigenous tribe of the area where the child is located;
- e. Appreciate and develop an understanding of love for the environment and nature.

Nothing in this regulation disturbs or is interpreted in contrast and is misapplied, interfering with the rights of freedom owned by each individual based on state laws or private institutions. Any relevant institution should consider the standards set by the State and adhere to them.

In Indonesia, the right to education is defined and embodied in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia Preamble, which educates the Indonesian nation.² Article 28C paragraph (1) and Article 31 of the 1945 Constitution further explain the

²The Preamble of the Constitution of the Republic of Indonesia of 1945, in fourth paragraph stated “*Kemudian daripada itu untuk membentuk suatu pemerintah negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial, maka disusunlah kemerdekaan kebangsaan Indonesia itu dalam suatu Undang-Undang Dasar Negara Indonesia, yang terbentuk dalam suatu susunan Negara Republik Indonesia yang berkedaulatan rakyat dengan berdasar kepada : ketuhanan yang maha esa, kemanusiaan yang adil dan beradab, persatuan Indonesia, dan keberagaman bangsa Indonesia*”.

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importance of the right to education. Law Number 20 of 2003 concerning the National Education System was stipulated as *lex specialis* and interpretation of the Articles in the Indonesian Constitution about the Right to Education.

In the juvenile justice process, starting from the moment of arrest, during the trial process, and throughout determination in sentences, there are many opportunities to implement educational and social measures to make sure that the juvenile justice system adheres to the principle of justice, non-discrimination, respect, survival, and development of minor offenders (Sikki, 2018). Children in Conflict with the Law have the right to get assistance from the Community Advisor (*Pembimbing Kemasyarakatan*) to determine their development program while in LPKA. Each of the minor offenders is obliged to follow the processes and stages of the coaching with certainty, which is essential (Priyadi, 2015).

The coaching program provided to each Child in Conflict with the Law is tailored to their specific needs. The coaching program consists of Personality Development, Skills Development, and Education. Personality Development consists of spiritual, legal, physical awareness, national and State awareness, and other activities. Skills Development consists of fostering agriculture, animal husbandry, carpentry, arts and Information Technology (IT), and other activities. The education program held at LPKA consists of Formal and Non-Formal Education. Formal education is education with nine years of compulsory education, which are divided into elementary school, middle school, and high school, while non-formal education includes elementary level in the pursuit of Package A, middle school level in the pursuit of Package B, and high school level in the pursuit of Package. (Priyadi, 2015)

The coaching program is implemented with third parties. LPKA officers need to list the third parties, both government and private, which can be invited to organize a coaching program for children at LPKA. The determination of cooperation partners must consider the principles of the children's best interests. (Priyadi, 2015)

Cooperation agreements with third parties must regulate the following: (a) Cooperation relations; (b) the term of cooperation; (c) Procedures for cooperation; (d) The role of each party in the implementation of the cooperation. (Priyadi, 2015)

dan kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam permusyawaratan perwakilan, serta dengan mewujudkan suatu keadilan sosial bagi seluruh rakyat Indonesia”

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Especially for formal and non-formal education programs, the task of LPKA is more facilitative, particularly preparing infrastructure and students (Children in Conflict with the Law). Thus, LPKA officers do not provide lessons in the teaching and learning process unless the officer is a functional teacher/tutor. (Priyadi, 2015)

The Personality Development, Skills Development, and Education organized by LPKA aims to make children able to carry out their social functions properly. Those include carrying out their roles, solving the problems they face, fulfilling their obligations, and actualizing themselves so that it is hoped that children will be able to become dignified human beings (Maisun, 2020).

The Committee of UNCRC appreciates and supports the Riyadh Guidelines that provide regulations and policies related to child psychology facilities in terms of integrated socialization to all children. Such facilities are provided through families, communities, peer groups, schools, training programs, education, the work world, and various voluntary organizations run by children. That way, it can be ensured that the programs provided will show support to families who have the potential to experience problems, and such activities are carried out in school education. Such action should provide knowledge of fundamental values (including introducing the rights of parents and children and the obligations that have been determined by law) and focus on young people who have high vulnerability in its application.

Furthermore, the application of special attention should be addressed to children who fail to continue schooling or who have not had the opportunity to resume education. The attention can be conveyed through family or close friends of the child to provide immediate support to the child. The States must offer programs that can gather children to form a community dealing with special needs or problems by targeting children who repeatedly experience problems with the law and providing appropriate counseling and programs to related families.

2. The Fulfillment of Right to Education for Children in Conflict with the Law at Lembaga Pembinaan Khusus Anak (LPKA) Class II Jakarta from January 2018 until March 2020.

LPKA Jakarta began operating on January 30, 2017, with ten employees. At first, LPKA Jakarta used the former building of Salemba detention center with the absence of

facilities and infrastructure to support LPKA's duties and functions appropriately. However, since the end of 2019, the LPKA Jakarta has had 105 employees and adequate infrastructure (Kantor Wilayah DKI Jakarta Kementerian Hukum dan HAM Republik Indonesia, 2017).

The coaching and other activities at LPKA Class 2 Jakarta are publicized on the LPKA website, LPKA Class 2 Jakarta's *Instagram* account, LPKA Class 2 Jakarta's *Facebook* account, and LPKA Class 2 Jakarta's *Twitter* account. All the platforms are managed by the official LPKA Class 2 Jakarta team of Public Relations. (Kantor Wilayah DKI Jakarta Kementerian Hukum dan HAM Republik Indonesia, 2017)

Children in LPKA are placed based on their last education to participate in learning activities. Those who are still in elementary school and have not graduated will be placed in the A category package, for those who are in junior high school and have not graduated will be placed in the B category package, and those who are in high school will be placed in the C category package. It is rare to find children who are placed in the A category package because the minimum age for a juvenile that can be placed in LPKA is 12 years, but if there are children who are over 12 years old but have not graduated from elementary school, they will be placed in A category. (Kantor Wilayah DKI Jakarta Kementerian Hukum dan HAM Republik Indonesia, 2017)

Children in Conflict with the Law are expected to receive guidance from Monday to Friday in a week. On Saturday and Sunday, there are no lessons, because they got free time on those days. The elementary level subjects separate the study groups of Children in Conflict with the Law from Package A, middle school subjects from Package B, and high school subjects for Package C. There are 5 to 6 children in one study group. Even though the schedule for the Child in Conflict with the Law has been established according to their Package, the LPKA has yet to hold package education because the program has not been thoroughly prepared. Therefore, the learning schedule is only for forming study groups daily.

Based on Nuraini Lianing's statement, education has not been implemented due to the recent relocation of the LPKA Jakarta, so the infrastructure is still incomplete (Lianing, 2021). LPKA Jakarta employees in the coaching division are 10. Nonetheless, they still provide personality development and skills development.

The Children in Conflict with the Law at LPKA Jakarta also receive training on coffee roasting and brewing provided by the Manusaya association on Tuesday, Wednesday,

Thursday, and Friday. Apart from that, HIMA PUBLIK UNAS also volunteered to teach at LPKA; the association taught how to make comics, key chains, or create products using *Mote-Mote*. HIMA PUBLIK UNAS also provides entertainment such as learning through games and providing teaching on social matters. (Lianing, 2021)

To improve children's creativity, LPKA also provides lessons related to skills on how to create calligraphy, masks, and hotel sandals. This activity was provided by a third party, namely LPK Puspa Antariksa (Lianing, 2021). Through this activity, children are expected to have practical and applicable skills for their future. Tokopedia also provides other skills training activities in collaboration with LPKA, such as painting canvas shoes to increase students' creativity and education on using the internet for online business (IndoTelko, 2018).

Children also receive counseling every Friday afternoon. This activity aims to provide character guidance for children so that later children become good people, that is, by no longer committing criminal acts in the future. During this counseling activity, children were also allowed to share their feelings so as not to be too depressed while living in LPKA (Lianing, 2021). This counseling guidance activity is also provided by Manusaya Counseling, with one of the activities entitled "Changing a person's habits from small changes to good habits." There is also a child's character photo activity in the counseling guidance, which is carried out every Tuesday from morning to evening, aiming to get to know the child's character so that the child's personality becomes even better. (Lianing, 2021)

LPKA Jakarta also provides English lessons taught by LPKA officers in collaboration with the Yayasan Tangan Pengharapan (Hermanto, 2018). The staff of LPKA also guides the children on how to make a biography using the Microsoft Word application in one of the training classes. Children also regularly participate in literacy activities given every Tuesday by the Literacy community. This activity is expected to increase students' interest in learning and reading. In addition, the CPNS LPKA also taught children how to read and held children's library activities every Friday from 14.00 to 15.30.

LPKA Jakarta also provides religious learning that is held every Thursday. Muslims will learn how to read Qur'an, memorize short verses, and how to write Arabic letters. This training is provided by the Ministry of Religion, *Koordinasi Dakwah Islam* (KODI), and others. The Ministry of Religion also helps provide instruction to non-muslim children in LPKA Jakarta. Syarif Hidayatullah State Islamic University Jakarta students provide

socialization and training on the procedures for *Wudhu* and prayer on Monday, 24 June 2019, (Tim Humas Lembaga Pembinaan Khusus Anak Kelas II Jakarta, 2019). There are many more Personality Development and Skill Development activities. However, those activities are not part of the Education.

CONCLUSION

The existing regulations in Indonesia regarding minor offenders getting the education they deserve are in accordance with international human rights law. The Indonesian Ministry of Law and Human Rights provides criteria for how minor offenders should get formal and non-formal education in their detention period. However, minor offenders' education at Lembaga Pembinaan Khusus Anak (LPKA) Class II, Jakarta, has not yet been completed due to a lack of infrastructure to establish Formal and Non-Formal education. It is suggested that the Indonesian legislature stipulate a provision regarding education towards minor offenders of children conflict with the law in the National Education Standard. The LPKA Jakarta should also increase the efforts to fulfill the teaching that the minor offenders deserve per the education standards, namely formal and non-formal education, by ensuring the establishment of all infrastructure and superstructure in LPKA.

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