

A Model of Implementation of the Rights to Education and Teaching of Child Prisoners during the COVID-19 Pandemic

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Abstract—Every child is attached to the dignity, rights and rights as human beings that must be upheld. Children's rights are human rights that have been contained in the State Constitution, the Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. Getting the right to education and teaching is one of the basic rights that children must get at school age. For this reason, the state must seek maximum guarantees for granting this right. During the COVID-19 pandemic, there were technical changes in education and teaching in general. The education and teaching system is carried out by Distance Teaching using supporting facilities and infrastructure such as Android and the internet. Meanwhile, child prisoners have not been facilitated with supporting tools and facilities to implement the education system and distance teaching. This study aims to determine the model of implementing the rights of teaching and education to children who are serving a criminal period in a juvenile correctional institute. Therefore, the author conducts an analysis of the implementation of Law Number 23 of 2002 concerning Child Protection and the Decree of the Minister of Law and Human Rights Number M.HH -03.OT.02.02 Year 2014 concerning Guidelines For The Treatment Of Children In Juvenile Correctional Institution, Temporary Children Placement Institutions And Child Special Development Institutions In The Ministry Of Law And Human Right. The research method used is the sociological research method. This research finding that during the COVID-19 pandemic, the correctional children were returned to their families. So that, government obligation to provide education for correctional children's was transferred to the parents and families of these correctional children's.

Keywords—right, education, children

I. INTRODUCTION

Laws in the form of regulations or legislation are drawn up and made with the aim of providing protection and a sense of security for the general public. The life and development of law in the spirit of community life provides answers and certainty for the protection of the rights and obligations of each individual, group, and state [1].

Getting a sense of security, enjoying serenity, and seizing opportunities for happiness are the right of every person, family including him to a child. No one can make a child's life miserable, neglected, and moreover it must always be accompanied by violence, cruelty both physically and spiritually. Children are a gift as well as a mandate entrusted by God Almighty to their parents, who should be protected, loved and always given the best love [2].

Love for children, one of which is manifested in the form of fulfilling children's rights. Fulfilment of children's rights is the obligation of parents and the state. In Indonesia, the obligations of parents to children are regulated in Law Number 35 of 2014. This law is an amendment to Law Number 23 of 2002 concerning Child Protection. Article 26 of the Law states that the obligations of parents to children include four things, namely [3]:

- Nurturing, nurturing, protecting, and educating children.
- Develop children according to their abilities, interests, and talents.
- Preventing children from marrying at an early age.
- Provide character education and inculcate character values in children.

Every child is inherent in dignity, dignity and rights as human beings that must be upheld. Children's rights are human rights that have been contained in the State Constitution, the Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of the ideals of nation building.

Legal protection for children can be interpreted as an effort to protect the law against various freedoms and rights of children (fundamental rights and freedom of children) as well as various interests related to the welfare of children. So the issue of legal protection for children covers a very broad scope [4].

In the process of growth and the search for a child's identity, people we often encounter forms of behavioural deviations among children which can be caused by various factors, including the influence of values in society, their unstable mindset, the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents have brought social changes in people's lives that greatly affect the values and behaviour of children. Children are trapped in a pattern of consumerism and a-socialism which can lead to criminal acts such as narcotics, extortion, theft, molestation, rape, obscenity and violations of order [5].

In 2000, it was recorded in the criminal statistics of the Indonesian police that there were more than 11,344 children suspected of being perpetrators of criminal acts. In early 2002, 4,325 juvenile detainees were found in detention centres and correctional institutions throughout Indonesia. There were also 9,645 children recorded in all detention houses and correctional institutions at the same time. Data found on the website of the Directorate General of Corrections, it was found that from the total number of regional offices, the number of children in conflict with the law in December 2012 was 3,657 children, in December 2013 there were 3,466 children, in December 2014 there were 2,643 children, and in December 2015 there were 1,824 children.

Children who based on court decisions are sentenced to imprisonment are placed in the Special Child Development Institution to serve a criminal period as well as provide guidance. Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a child in conflict with the law hereinafter referred to as a child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of having commit a crime.

Children who are undergoing a period of coaching at the Child Special Guidance Institute do not necessarily abolish their inherent rights but must be protected and fulfilled properly. Protection of the rights of Correctional Students is important, because they are still intact human beings, who therefore have human rights.

In Law No. 12 of 1995 concerning Correctional Institutions, there are several articles that indicate the protection of children, namely children who are prisoners. Criminal children have the right to: a. Perform worship according to religion and belief; b. Get treatment, both spiritual care and physical care; c. Getting education and teaching; d. Get health services and proper food; e. Submit a complaint; f. Obtain reading materials and follow other media broadcasts that are not prohibited; g. receive visits from family, legal counsel or certain other persons; h. get a reduction in the criminal period/remission; i. Gaining assimilation opportunities including time off to visit family; j. Get parole; and obtain other rights in accordance with applicable laws and regulations.[6]

Among the rights of criminal children as mentioned above, getting the right to education and teaching is one of the basic rights that must be obtained by children at school age. The right to education and teaching is necessary for the provision of the child's future. For this reason, the state must strive to guarantee the granting of this right to the fullest.

Fulfilment of the right to education and teaching for correctional students is the state's obligation. Based on the constitution of the republic of Indonesia article 31 paragraph (1) states that every citizen has the right to get education. Furthermore, paragraph (3) emphasizes that the government seeks and organizes a national education system that increases faith and piety and fosters noble character in the context of the intellectual life of the nation.

The implementation of the granting of the right to education and teaching is carried out in accordance with the principles in the implementation of general government and development tasks and based on the principles of protection, equality of treatment and service, education, guidance, respect for human dignity and dignity. In more detail, the rights for Correctional Students are contained in Government Regulation number 32 of 1999 concerning the requirements and procedures for the implementation of the rights of the Correctional Inmates. Article 9 states that every Correctional Institution is obliged to carry out educational and teaching activities for prisoners and correctional students. Each correctional institution is obliged to provide education and teaching officers and facilitate teaching and learning activities for prisoners and correctional students. Furthermore, Article 10 paragraph (2) explains that the Head of Correctional Institutions in carrying out education and teaching for Prisoners and Correctional Students may cooperate with government agencies whose scope of duties includes the fields of education and culture or community agencies engaged in education and teaching.

Through the correctional system, it is hoped that it will be able to re-socialize prisoners and correctional students who are undergoing coaching at the Correctional Institution and the Child Special Guidance Institution. The existence of an education model for prisoners and correctional students in prisons and Child Special Guidance Institute is inseparable from a dynamic, which aims to provide more provisions for prisoners and correctional students in living life after completing their sentence or being released. As a child with a long future, of course, education is an important right and must be fulfilled for correctional students. Education is the provision and the first step in realizing their dreams and aspirations, as well as developing their talents. Education is a positive cause for reducing crime rates. The more people receive education, the less unemployment and crime rates. For this reason, the authors are interested in conducting research on Implementation of Education and Teaching of Child Prisoners During the Covid-19 Pandemic in the Special Child Correctional Institution.

II. RESEARCH METHODS

This type of research conducted is a type of empirical research (sociological juridical). Sociological or empirical law research is a research method conducted to obtain primary data. Data that will be used in this study are primary data, secondary data and tertiary data. Data collection techniques are observation, interview and literature review. The author makes observations on educational and teaching activities in special children's correctional institutions. The author conducted interviews with staff and employees of a special child correctional institution. Furthermore, the authors also obtained information from the families of correctional students. From the results of these interviews, the authors get primary data. The author also obtained secondary data from books, journals, and reports.

The data that has been collected will be analysed qualitatively by using sentence description to explain the relationship between the existing theory and the reality in the field. Qualitative analysis is carried out by examining the data obtained in order to see their relevance to the research topic, in the form of ideas, suggestions, and arguments for the legal provisions being studied. The legal materials that have been reviewed will be presented together with the results of the analysis.

III. RESULTS AND DISCUSSION

A. *Implementation of the Right to Education and Teaching Carried Out the Child Special Penitentiary for Children Who Are in Conflict with the Law During The COVID 19 Pandemic*

Philosophically, correctional is a criminal system that has moved far away from the philosophy of retributive (retaliation), deterrence and re-socialization. It can be said that nowadays punishment is no longer aimed at making prisoners suffer or revenge is aimed at deterring suffering. [7] Even though prisoners are people who have committed mistakes or crimes, they still have human rights as ordinary people. Human rights are moral rights that come from the humanity of every human being to guarantee the dignity of every human being which cannot be separated and revoked. The prisoners' rights that can be deprived are only physical freedom and restrictions on the right to gather with their families and the right to participate in government.

In principle, the treatment and development system for children based on the correctional system is an integrated, continuous and continuous treatment process from pre-adjudication, adjudication and post-adjudication even to the stage of mentoring after serving a sentence. Every change and development that occurs in the criminal justice process, the Community Counsellor (PK) is required to provide assistance, follow developments and record every event that occurs, to determine the coaching and mentoring program.

Therefore, the treatment and coaching program in the Special Child Correctional Institution must be based on the

process and stages of the incarceration coaching precisely. The Development Process at Child Special Guidance Institute is carried out until the child is 18 (eighteen) years old. Every child is obliged to follow and carry out the process and the stages of development precisely, what is important is how the pupil follows the process. [8]

The rights for Correctional Students are stated in Government Regulation number 32 of 1999 concerning the requirements and procedures for the implementation of the rights of Correctional Inmates. Article 9 states that every Correctional Institution is obliged to carry out educational and teaching activities for prisoners and correctional children's. Each prison is obliged to provide education and teaching officers and facilitate teaching and learning activities for prisoners and correctional students. Furthermore, Article 10 paragraph (2) explains that the Head of Prisons in carrying out education and teaching for prisoners and correctional children can cooperate with government agencies whose scope of duties includes the fields of education and culture or community bodies engaged in education and teaching.

The Child Special Penitentiary is obliged to provide education, coaching, skills training, and other rights for correctional children's in accordance with the provisions of the legislation. This education and coaching program is expected to be able to educate those who are already "wrong way". Education and teaching can be carried out inside or outside the Child Special Penitentiary. Education and teaching in prisons is carried out according to the curriculum applicable to equivalent educational institutions. Every convict and correctional children's who successfully completes education and teaching are entitled to a letter of completion of study from the competent authority.

Based on data from the Directorate General of Corrections, children's education in Child Special Penitentiary mostly comes from non-formal education, which includes Package a activities for elementary schools, Package B for junior high schools, and Package C for senior high schools. In addition to receiving guidance to be integrated with the community again, correctional children's who are serving a criminal period at Child Special Penitentiary are also given various kinds of skills training, such as; plantations, agriculture, fisheries, sewing, computers, mechanics, music, screen printing and so on. With this program, it can be a way to increase knowledge, skills and attitudes for correctional children's as a provision to return to the community after undergoing a period of coaching at the Special Child Development Institute.

The Covid-19 outbreak in Indonesia has not shown any signs of being under control. The public space feels increasingly crowded with news reports, which are feared to weaken the collective resilience in the face of this pandemic. One community that seems to have escaped public discussion is children in conflict with the law who are currently undergoing a period of education in a child correctional institution or the Special Child Development Institution.

The isolated environment minimizes the possibility of children's exposure to the corona virus that is transmitted by the community outside the Child Special Penitentiary. However, at the same time, it is feared that the isolated environment can make all of these children a group that is very at risk of contracting the Covid-19 outbreak when only one person who is positive for Covid-19 enters and transmits the virus into Child Special Penitentiary.

The protection of fostered children from the Covid-19 disease is an urgent issue that must be of wide concern. This is a constitutional consequence. Because, Law Number 35 of 2014 concerning Child Protection emphasizes that children are in conflict with the law as one of the categories of children who receive special protection. Who is obliged and responsible for providing this special protection, is none other than the (sequentially) government (central), local government, and other state institutions.

The realization of special protection for children assisted by Child Special Guidance Institute is also the implementation of restorative justice as a punishment philosophy adopted by Indonesia. This philosophy guides the framework of thinking and the framework of all stakeholders so that they always strive to restore and--in the future--re-integrate the fostered children into the community. The two agendas of course can only be achieved if the government (central), regional government, and other state institutions also do not neglect the protection of the physical and psychological health of the fostered children from the Covid-19 pandemic.

Concern about this issue has been shown by legal authorities in many countries that have also implemented juvenile justice systems. In fact, not a few parties have urged the government to release all inmates from prison, and immediately return them to their respective families.

The Indonesian government through the Ministry of Law and Human Rights has also issued a policy to provide assimilation, parole, leave before release and conditional leave for prisoners and children in the context of preventing and overcoming the spread of COVID-19.

The Riau Province Child Special Penitentiary has assimilated 58 correctional students during the COVID-19 pandemic. The children were returned to their families. LPKA's obligation to provide education for correctional students was transferred to the parents and families of these correctional students.

At first glance, the idea of emptying (temporarily) such a children's prison is a positive thought. However, if you look closely, you will see that there are many problems that arise. First, foster children must bitterly be recognized as a group of individuals who have committed crimes or violated the law. The decision to release them from prison prematurely still has to consider their potential recidivism. This means that the correctional authority must objectively measure the institutional capacity of how effective the rehabilitation program that has been carried out so far.

The temporary release of inmates from prisons, if they ignore the risk assessment, will be tantamount to reactivate the seeds of repeating wrongdoing themselves, as well as pose a threat to the wider community. The government certainly risks having to pay a very high price if it is ignored.

Second, from a health point of view, it is important to ask questions: whether keeping the fostered children at home will make them more protected or even more vulnerable to contracting and infecting Covid-19. Common sense says that the mobility of fostered children from prisons to their respective areas is contrary to the government's own recommendation which wants to implement social distancing more effectively. So, counting on paper, the repatriation of the fostered children will increase -- not reduce -- the risk of Covid-19 transmission.

Previously, Child Special Guidance Institute held its own education and teaching program for correctional students. Child Special Guidance Institute is obliged to provide education, coaching, skills training, and other rights for correctional students in accordance with the provisions of the legislation. This education and coaching program is expected to educate those who have gone "wrong way". Education and teaching can be carried out inside or outside the LPKA. Education and teaching in prisons is carried out according to the curriculum applicable to equivalent educational institutions. Every prisoner and correctional student who successfully completes education and teaching has the right to obtain a letter of completion of study from the competent authority.

B. Obstacles and Efforts Made by the Special Child Correctional Institution during the COVID 19 Pandemic in Implementing the Right to Education and Teaching of Children Facing the Law

Based on Regulation of Minister of Law and Human right Number 10 of 2020 concerning the conditions for granting assimilation and integration rights for prisoners and children in the context of preventing and controlling the spread of COVID-19, correctional students who have met the provisions of Article 3 paragraph (2) of this regulation may be granted assimilation. These conditions include:

- Good behaviour that is proven by not serving a disciplinary sentence in the last 6 (six) months;
- Actively follow the coaching program well; and
- Has served ½ (half) of the criminal term.

During this pandemic, when correctional students are assimilated and returned to their families, the education and teaching programs they receive at Child Special Guidance Institute are cut off. The teaching program cannot be continued because the correctional students have been returned to their families.

The family also admitted that it was difficult to continue the teaching program for their children because it was impossible to register their children's continuing education in public

schools. Children often get negative responses from their environment. This situation is considered to worsen the mental and psychological condition of the child.

The fostered children must bitterly be recognized as a group of individuals who have committed crimes or violations of the law. The decision to release them from prison prematurely still has to consider their potential recidivism. This means that the correctional authorities must objectively measure the institutional capacity of how effective the rehabilitation and education programs that have been carried out so far are.

The temporary release of inmates from prisons, if they ignore the risk assessment, will be tantamount to re-activating the seeds of repeating wrongdoing themselves, as well as posing a threat to the wider community. The government certainly risks having to pay a very high price if it is ignored.

IV. CONCLUSION

Rights for Correctional Students are stated in Government Regulation no. 32 of 1999 concerning The requirements and procedures for the implementation of the rights of the Correctional Inmates. Article 9 states that every Correctional Institution is obliged to carry out educational and teaching activities for prisoners and correctional students. Each correctional institution is obliged to provide education and teaching officers and facilitate teaching and learning activities for prisoners and correctional students. Furthermore, Article 10 paragraph (2) explains that the Head of Correctional Institutions in carrying out education and teaching for Prisoners and Correctional Students may cooperate with government

agencies whose scope of duties includes the fields of education and culture or community agencies engaged in education and teaching. . The Riau Province Child Special Penitentiary has assimilated 58 correctional students during the COVID-19 pandemic. The children were returned to their families. Child Special Guidance Institute's obligation to provide education for correctional students was transferred to the parents and families of these correctional students.

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