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Fulfilment of Formal Education for Children with Criminal Sentences: Analysis of Law Number 11 of 2012 concerning the Juvenile Justice System

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Abstract

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Crimes committed by children are currently experiencing a very significant increase. In Indonesia, the settlement of criminal cases against children is included in vulnerable children who need more attention in fulfilling their rights. However, there are still many violations of children's rights during their status as perpetrators of crimes and afterwards. This study aims to analyze the fulfillment of the formal education of criminal children by Law Number 11 of 2012 concerning the Juvenile Justice System. This study uses a qualitative approach with a literature study. The results of the study explain that Indonesia as a country that has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 dated August 25, 1990, has further integrated children's rights into national law, namely into Law Number 23 of 2002 concerning Child Protection. Protection of children was created as an effort to educate and build quality and affluent children in education. These forms of protection include providing comfort, security, health, and adequate education. The existence of The Child Special Guidance Institute plays a vital role in fulfilling the educational needs of formal and non-formal children.

Abstrak

Kejahatan yang dilakukan oleh anak saat ini mengalami peningkatan yang sangat signifikan. Di Indonesia, penyelesaian perkara pidana terhadap anak termasuk dalam anak rentan yang perlu mendapat perhatian lebih dalam pemenuhan haknya. Namun, masih banyak pelanggaran hak anak selama statusnya sebagai pelaku kejahatan dan sesudahnya. Penelitian ini bertujuan untuk menganalisis pemenuhan pendidikan formal anak pidana menurut Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak. Penelitian ini menggunakan pendekatan kualitatif dengan studi kepustakaan. Hasil penelitian menjelaskan bahwa Indonesia sebagai negara yang telah meratifikasi Konvensi Hak Anak melalui Keputusan Presiden Nomor 36 Tahun 1990 tanggal 25 Agustus 1990, semakin mengintegrasikan hak-hak anak ke dalam hukum nasional, yaitu ke dalam Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak. Perlindungan anak diciptakan sebagai upaya untuk mendidik dan membina anak agar tetap memperoleh hak dalam pendidikan. Bentuk perlindungan tersebut antara lain memberikan kenyamanan, keamanan, kesehatan, dan pendidikan yang memadai. Keberadaan lembaga pembinaan khusus anak memegang peranan penting dalam pemenuhan kebutuhan pendidikan formal dan nonformal bagi anak.

Kata kunci:

Pendidikan Formal;
Hukum;
Peradilan anak

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INTRODUCTION

In today's era of globalization, the increase in crimes committed by children has always experienced very significant growth. More than 4,000 children in Indonesia are brought to court every year on various criminal charges. Principles of Child Protection, especially regarding the principle of non-discrimination, which prioritizes the best interests of children and the right to life, survival, and future development for children, so that it is necessary to respect the opinion of children, and one of them is through the idea that the perpetrators of criminal acts committed by children should be avoided as far as possible from the criminal justice process. Based on this thought, a concept called diversion was born, which in Indonesian terms is called diversion or the transfer process (Yulianti, 2017; Ferdousi, 2013).

Various cases of children who are in conflict with the law and become the subject of public discussion show that so far, children who have committed crimes are considered to have violated the laws and norms that exist in society. Besides that, most of these cases are always dealing directly with law enforcement officials until they end up with criminal penalties. In the Indonesian constitution, children have a strategic role which is expressly stated that the state guarantees the right of every child to survival, growth, and development and protection from violence and discrimination. Therefore, it is in the best interests of the child. It should be appropriately lived, even for children dealing with legal cases (Medina, 2019; Aripin, 2020). Legal protection for children can be done to protect the law against various freedoms and human rights of children. However, the safety of children also includes interests related to the welfare of children in the future. So protecting children who are dealing with legal cases is the joint responsibility of law enforcement officers, not only the responsibility of the child as the perpetrator but also the child as the victim and witness.

Children are one of the human resources and are the nation's valuable next-generation, which deserves special attention from the government in fostering children to realize strong and quality human resources. Anticipating all the problems that arise, of course, the facilities and infrastructure in question concern the interests of the child and behavioural attitudes that make the child forced to deal with legal cases. Finally, face a trial offence, even though the child must be brought before the court. However, by providing facilities and infrastructure appropriate and by the requirements of the criminal law on children, then at least the child's presence in the courtroom will be more comfortable and far from feeling traumatized (fear) by the events that he feels. By the provisions of Article 22 of the Law of the Republic of Indonesia Number 35 of 2014 (from now on abbreviated as Law No. 35 of 2014), Government Regulation instead of Law Number 1 of 2016 concerning Child Protection (Shova, 2017; Elrod & Ryder, 2020).

Law enforcement officers handling child crimes refer to Law Number 11 of 2012 concerning Juvenile Criminal Justice systems. It prioritizes peace rather than the formal legal process, which came into force two years after the SPPA Law was enacted on July 31, 2014 (Article 108 of Law No. 11 of 2012). The purpose of the transfer of the juvenile criminal justice process is solely to keep away the various bad things that will arise from the criminal justice system that can hurt the child's growth and development. However, the real purpose of implementing this diversion is to reduce cases of children being arrested, detained and even imprisoned, and to eliminate the bad stigma and return children to the real community environment.

This diversion effort or idea is the best step that can be used as a formula in resolving various cases involving children as perpetrators of criminal acts. With this policy step, the handling of the juvenile criminal justice system can be taken through a short-term coaching mechanism or other civil ways to administrative (Niswa, 2016). The government which has the power to make and apply the law as well as the legislator where in terms of the juvenile criminal justice system, so that the DPR, one of its functions as a legislative body, has issued Law No. 11 of 2012 concerning

the Juvenile Criminal Justice System or called (SPPA) in lieu of law number 3 of 1997 concerning juvenile court, which was legally ratified on July 3, 2012.

The product of the legislation is about the juvenile criminal justice system as a forward because the rights of children in conflict with the law are more secure. Where the law on the juvenile criminal justice system upholds restorative justice, then this law also requires law enforcement officers at all stages of the investigation. Article 7 paragraph (1) states that at the level of investigation, prosecution and examination of children's cases in a district court, it is obligatory to seek diversion measures (Yusuf, 2018; Hermawan et al., 2020).

In Indonesia, the settlement of child criminal cases is included in vulnerable children who need more attention in fulfilling their rights. However, there are still many violations of children's rights during their status as perpetrators of crimes and afterwards. There are several forms of neglect of children's rights that are undergoing legal cases in Indonesia, including the issue of fulfilling education. Based on data from monitoring and assistance carried out by the ATMA Foundation, almost 70% of children in conflict with the law are still students forced not to resolve the issue. Education (drop out) the school tends to get out of hand and feel no longer able to educate students involved in legal cases to take steps to return children to their parents.

The 1945 Constitution in article 31 (1) explains that every Indonesian citizen has the same rights and opportunities to obtain an education as long as they are still of educational age. It is described again in paragraph (3) that the existing education system must be endeavored by the government to fulfil educational opportunities for students so that there is no difference between students in obtaining their education. Likewise, it is explained in Article 5 paragraph 1 of Law Number 20 of 2003 that every Indonesian citizen has the same rights in obtaining or receiving a quality education. There is no difference between them. It is explained again that children who are completing legal processes in correctional institutions should get their rights as their status as a child, including the right to obtain the same education (Kapojos, 2017).

Studies about developments in the field of education, of course, cannot be separated from the participation of education actors, in this case, children as the nation's youth. However, the development of children's lives also experiences actions that threaten the identity and country of Indonesia. Naughty children are currently increasing in people's lives. The bad boy threatens their future. Parents of children are also worried about their children's actions because they cannot educate their children. Parents and the surrounding community will feel disturbed by their safety and comfort in social life. Naughty children, in the end, not only harm the child itself, but parents and social society also bear it. It is also the responsibility of the nation and the state to pay attention to naughty children because children are the assets of the state and as the next generation of the Indonesian country.

This research analyzed the fulfilment of the formal education of criminal children by Law Number 11 of 2012 concerning the Juvenile Justice System. This is important so that children with criminal cases still get their right to education. In this case, non-formal education functions as a substitute for education carried out in schools. Formal education carried out in the correctional environment is certainly not a new thing. Implementing education for disciplinary students is encouraged to improve further the quality of educators' role in producing outputs that are no less important than non-formal education.

METHODS

This research uses a qualitative approach with a literature study. Data is obtained by tracing statutory documents, books, accredited journals, expert opinions to explain the problem in this study. This study aims to determine the fulfilment of Formal Education for Criminals by reviewing, recording and managing journals relevant to this research that show the effect of formal education on children related to law. The journals were selected based on specific criteria to obtain data that

is relevant. These criteria include: (1) there is the name of the author and year of publication, (2) there is the title of the relevant research, and (3) the accreditation and reputation of the journal.

FINDINGS AND DISCUSSION

Forms of Education Accessible to Children in Conflict with the Law

As a country that has ratified the Convention on the Rights of the Child through Presidential Decree No. 36/1990 dated August 11, 1990, Indonesia has further integrated children's rights into national law, namely into Law No. 23/2002 on Child Protection. The Convention on the Rights of the Child regulates the rights of the child in detail. Convention on Rights of Child is intended to protect the principles of child protection, particularly in Article 40, that the Convention on the Child's Rights does not explicitly provide for diversion. Still, Article 40 emphasizes the possibility of settling children outside the trial path regulated in article 40 paragraph 3 letter b (Bantani, 2021).

Factors that cause children to commit crimes and eventually have to deal with the law include family, economic, and environmental factors. In contrast, the meaning of family factors usually arises from within the family itself, such as frequent fights in the household. This results in the child's lack of affection from the family, while the economic factor is where the economy in a family is not fulfilled, which causes the child's needs to be neglected. As a result, children seek or do various ways to meet their needs, even in ways that are not good, and which last is the environment. This factor significantly influences the child's character because the surrounding environment will very quickly affect the child. If the surrounding environment is good, the child will be good, and vice versa (Hafrida et al., 2015; Drinan, 2017).

In Indonesia, there are many cases where children who conflict with the law receive treatment, not by applicable regulations or laws. They are being expelled from school without any defence from the child concerned when they are in trouble with the law. This action violates the principle of the presumption of innocence. This happens because the school does not understand the legal regulation. Cases like this are very concerning where the school should be a means to educate the nation's children and carry out education launched by the government, in fact doing an act that arbitrarily expels children from school because they are dealing with a legal case. As a state of law and having a 1945 Constitution, Indonesia is obliged to protect every citizen, including children, as the nation's next generation. Protection of children was created as an effort to educate and build quality and affluent children in education. These forms of protection include providing comfort, security, health, and adequate education (Arliman, 2015; Walker et al., 2015).

When dealing with the law, children can access forms of education include informal education, formal education, and non-formal education. Although the informal education received is very dependent on the family's condition and the social environment around the child, a family that is not harmonious causes the child's closeness to his parents to decrease so that it can trigger imperfect socialization. As a result, children are vulnerable to being influenced by violating norms, both due to the influence of friends. Near him and the people around him.

The formal education that can be received is classified into four stages, including (1) Children in Conflict with the law who are undergoing a criminal process of examination, investigation, and trial, whether detained or not, can access formal education if the legal case is not known to the school or the school has had the perspective of children's rights (2) Children in Conflict with the law which based on the judge's decision undergo a criminal sentence (criminal child) or are handed over to the state to be educated (state child) or who at the request of their parents or guardians obtain a court order to be educated (civilian children) in the detention centre receive twice formal education in the form of the implementation of the National Examination (UN), (3) Children in Conflict with the law as criminal children and state children who receive parole or conditional leave can access formal education by moving to schools that already have a child rights perspective, and (4) Children in Conflict with the law as state children whose guidance

is returned to their parents or guardians or handed over to foster parents or social agencies can access formal education if the legal case is not known to the school or the school already has a child rights perspective (Drumbl, 2012; Winarno, 2019).

Education is given to students with social backgrounds and who are facing legal cases or children in conflict with the law tend to be more difficult to implement, if this continues and does not find an appropriate solution it will bring destruction to the younger generation, for that education is a very important key and should not be left alone by the younger generation even those who are in trouble and dealing with legal cases. On the one hand, questions arise about the effectiveness of providing formal education in criminal institutions. Educationally carried out in prisons is education when children undergo actions and criminal acts oriented to children aged 12-18 years. On the other hand, in conditional punishment, children must follow nine years of compulsory education because implementing formal education held in prisons with all its equipment requires competitive and innovative attention from the prison environment. The forms of non-formal education received by children while undergoing detention in the detention centre include spiritual education. In contrast, prison officials receive skills education and job training from children who have obtained parole or conditional leave from the institution.

Based on the various cases experienced by Children in Conflict with the law when the claims surfaced, the majority of these children will get rejected by their social environment, including from the school, they are considered a bad example for their friends and are considered to have defamed the school. As a result, the child has to move to another school with lower quality. However, in reality, they also still have to face unpleasant treatment from the people around them, until in the end, they cannot undergo formal education because they face various challenges and discrimination and choose to attend non-formal education. Formal education is equality education in the form of pursuing packages (Simanjuntak, 2021).

Talking about the current coaching program for criminal children, the role of the Child Special Guidance institution is only the duty and responsibility of the coach in the institution so that the application of restorative justice is not fully achieved. Responding to the problems of children in conflict with the law must reach the stage of fostering children. However, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes the realization of diversion, which aims to achieve restorative justice, can only be carried out at the stage of the juvenile trial process. Article 1 point 7 meant by diversion is the transfer of settlement of children's cases from the criminal justice process to a circle outside the criminal justice system, according to Article 1 point 6, which is related to jointly seeking a just settlement by emphasizing restoration to its original state and not retaliation.

Guidance of Criminal Children in Special Child Development Institutions

The Child Special Guidance Institute is one of the largest institutions for fostering criminal children in Indonesia. The function of the Child Special Guidance Institution is intended as an educational and coaching institution. As a technical unit in the correctional sector, the Child Special Guidance Institution carries out a specific function and needs to be sharpened on its development orientation. This understanding also places criminal children as part of the complete Indonesian human (child) who is expected to have potential and be responsible for his future. The Child Special Guidance Institute has the following coaching and training programs (1) Formal education in the Child Special Guidance Institute starts from the Elementary School (Package A), Junior High School (Package B), and Senior High School (Package C). Non-formal education is aimed at criminal children to hone their talents and skills to have provisions after returning to society. The non-formal programs contained in the Special Child Development Institute are workshop training, automotive, haircut training and of course, there are many other various pieces of training available in the coaching institution (Azhari et al., 2021)

Then there is counselling and religious guidance. Basically, this coaching program aims to improve themselves, especially the morals of these criminal children. The study results show that the Child Special Guidance Institute provides a space used for counselling programs. This room is always open to criminals who need more guidance or attention so that the relevant parties must accommodate this. In addition to counselling, coaching is also filled with religious activities which are mandatory coaching at the Child Special Guidance Institute. In its implementation, the coaching program for criminal children encountered many obstacles. These obstacles include the lack of support for coaching by coaches who do not fully understand the problems of children, then other problems, namely the lack of availability of adequate facilities and infrastructure due to the structure of the building, which is still not ideal and the lack of participation and assistance from outside parties, including family, friends, and community around the prison (Ahmad, 2019).

In general, ordinary people do not know that there is education for Correctional Students in Correctional Institutions. They assume that everyone who enters Correctional Institutions is the wrong person who has problems with the law and does not have sufficient insight and education. Likewise, children who have been released from Correctional Institutions will receive arbitrary treatment by the wider community. Most of them are even ostracized by their own families, of course, this must be immediately observed by the surrounding community that the government has presented the implementation of education programs in the correctional environment with such a system, and it is hoped that when the child has returned to their social environment, they can be well received, and able to interact with other children as children who have never dealt with legal cases.

Article 61 paragraph 2 of Law No. 3 of 1997 concerning Juvenile Justice states that children who are placed in correctional institutions, as referred to in paragraph (1), have the right to receive education and training according to their talents and abilities as well as other rights based on applicable laws and regulations. Historically, after the change in the Indonesian government's policy law regarding formal education for criminal children, it was regulated through Law No. 11 of 2012 concerning the Child Criminal Justice System Article 82 (1); actions that can be imposed on Children include (1) Return to parents /Guardian, (2) Handing over to someone who has been mandated (3) Treatment in a mental hospital (4) Treatment at LPKS (5) the obligation to attend formal education and training held by the government or private bodies until the revocation of the licensed driving.

Because actually, every child who is serving their criminal period has the right to education and training. Children have the right to attend formal education and training held by the government or other private bodies. This step is one of the actions that can be imposed on children as mandated in the law. No. 12 of 1995 concerning Corrections Article 14 paragraph (1) point 3 (three) which reads that prisoners have the right to education and teaching then in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System that every child in the criminal justice process is entitled to proper education and the role of the government is emphasized in this case because children are the next generation of the nation and must receive special attention (Widiarta et al., 2016).

Thus, the state's obligation through the Child Special Guidance Institute is to provide an education without exception and for any reason. It is an activity given to inmates and students to improve the quality of holiness, intellectuality, attitude and behaviour, and provide skills training. Coaching is also a process carried out to direct the inmates and foster children to good things and prevent them from various actions that can harm themselves. Implementing multiple programs within the coaching institution can correct the actions that have been done and not committed. The actions are against the law. Starting from this, the development of criminal children must be oriented to the values of humanity, society and divinity.

The fostering of criminal children must be oriented to religious values because it is a form of devotion to God Almighty. Children must be considered as a mandate that must be guarded and is the responsibility of parents, family, community, and government. Fostering criminal children must be oriented to human values and must be by the protection of criminal children. The fostering of criminal children must have programs that must humanize children, such as nurturing, fostering, educating and guiding to a better direction. The parties directly involved in this activity, namely the state, coaches, officers, families, and the community, must seek various changes for the sake of the implementation of a program for the protection and fulfilment of the rights of criminal children by the rules of the State Law, this is a manifestation of the value of the unity of the Indonesian nation, especially in democratic values, namely the development of criminal children must be by the values and principles of deliberation in reaching consensus, as well as prioritizing the best interests of the community. The future of Indonesian children is the next generation of the nation (Irmayani, 2019).

The renewal of the development of criminal children with restorative justice in the Child Special Guidance Institution can also provide opportunities for criminal children to actively build interactions between victims, victims' families, the community in resolving conflicts that arise, for that the need for awareness for the parties to forgive each other and looking for the best alternative is not just considering punishment as the only way out.

The provision of formal and non-formal education held by the prison environment is a step taken by the government to give the rights that must be given to Indonesian children without the slightest exception. Non-formal education is given in stages and structured according to the talents and interests of the child. Non-formal education is given to children, aiming to provide both skills and talents according to the child's interests. Formal education includes skills education, skills education, job training education, social education, equality education, and some education that can support students' ability in and when the child is free from detention (Mariana et al., 2016; Angkoso., 2021).

CONCLUSION

Based on the various cases experienced by Children in Conflict with the law, when these demands arise, most of these children will be rejected by their social environment, including school. They are considered a bad example to their peers and are deemed to have defamed the school. In the Implementation of Law No. 11 of 2012 concerning the Criminal Justice System. The child mandates a process of changing the paradigm of thinking that prioritizes the best interests of the child and the protection of the child's rights. So in implementation, this law tries to implement the juvenile justice process through a diversion approach. When dealing with the law, children can access forms of education include informal education, formal education, and non-formal education. Besides, The Child Special Guidance Institute is one of the largest institutions for fostering criminal children in Indonesia. The function of the Child Special Guidance Institution is intended as an educational and coaching institution. This study is expected to understand the right to education for children even though the child is in legal trouble. For further research, the researcher recommends conducting field research related to the implementation of this law.

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