

PalArch's Journal of Archaeology of Egypt / Egyptology

CHILD FRIENDLY PRINCIPLES BASED ON JUSTICE IN CHILD DEVELOPMENT INSTITUTION TANGERANG-INDONESIA

Fransiska Novita Eleanora¹, Irmanjaya Taher², Dwi Seno Wijanarko³, Edy Supriyanto⁴

¹ University of Bhayangkara Jakarta Raya Indonesia

² Painan College of Law, Tangerang, Banten, Indonesia

³ University of Bhayangkara Jakarta Raya Indonesia

⁴ MPU Tantular University Jakarta, Indonesia

*Corresponding author: e-mail: 1fransiska.novita@dsn.ubharajaya.ac.id

**Fransiska Novita Eleanora, Irmanjaya Taher, Dwi Seno Wijanarko, Edy Supriyanto.
Child Friendly Principles Based on Justice in Child Development Institution
Tangerang-Indonesia -- PalArch's Journal of Archaeology of Egypt/Egyptology 18(18),
608-617. ISSN 1567-214x**

Keywords: Child-Friendly, Protection, Law, Justice.

ABSTRACT

Children as offenders of criminal acts are often untreated humanely or even lack sufficient attention to their rights as human beings and as the next generation of a nation. Since all people are equal before the law, acts of discrimination, violence, and intimidation should be prohibited. During their development in the institution, they must obtain justice and fulfill their rights, especially the right to life. This paper discusses the application of children's rights before and after the formation or establishment of Lembaga Pidana Khusus Anak (LKPA) or Child Development Institution in Tangerang. On the LKPA, the law enforcement officials prioritize children's rights and seek the best interests of children by implementing child-friendly principles. Children should be untried as adults. The law system should not perceive the child as an object but rather as a subject and conducting the self-development to them. It can help them realize the wrongdoing of their action and also produces a deterrent effect. This is since the instability of a child, mentally and psychologically, could trigger them to perform the criminal act. Sanctions do not mean they must be treated inhumanely, rather their rights must be protected legally. This includes their rights on education, health, law protection, as well as skills development, and other rights. If doing so, it can benefit not only for themselves but also for the community or other people. The research method used is through field observations by conducting direct interviews to the respondents involved to explain the remaining problems.

INTRODUCTION

As a state of law, Indonesia has a guideline or principle called the principle of legality. It means a punishment without discrimination or equality before the law. (Contreras & Cano, 2016) This provision implies after someone committed a crime and has been proven guilty, the judge will impose how long the sentence is, thus fulfilling justice for victims in the prosecution of their rights. On this matter, boys as crime offenders are no different than girls. However, boys tend to use their physicality in carrying out attacks on anyone due to masculinity and gender stereotypes. It precedes them to fulfill an increasingly aggressive role in fighting both their peers and older ones. (Struthers, 2016).

According to Indonesian regulations, if a child between 8-18 years and never married committing a crime, they will certainly distinguish from adults since we assumed the child was unaware of their action. The parent education system is considered as the main factor causing juvenile criminal behavior. Therefore, the threat of punishment is reduced by 1/3 of an adult. (Sutedjo & Melani, 2013)

Although Indonesia is a law-based state, exceptions are made for children. This doesn't indicate those child offenders are free from punishment, but the sentence is reduced. This reduction is made considering their physical, mental and psychological are still underdeveloped. In such conditions, they still have to be imprisoned. Thus, self development has to be carried out to grow awareness and produce a deterrent effect. (Sutedjo and Melani 2013) A child who has been considered as a person who committed a crime and has been sentenced by a judge with permanent legal force will undoubtedly affect their psychological and development. At least by punishing and imprisoning them in an isolated place will produce unpleasant feelings by causing drastic changes in the lives of the children. (Sutedjo & Melani, 2013).

In addition to mental and psychological effects, imprisoning a child also causes a negative stigma or label. The child will recognize as a crime actor and consequently held in Lembaga Pidana Khusus Anak (LPKA) or Child Development Institution, per the justice system. The terms Child Development Institution implies a frightening factor for children as if it will provide torture and cruelty. On the contrary, according to Indonesian regulation, the sentence will be reduced by a third of the adult sentence. (Liebel, 2018)

Crime can occur due to several causes or factors, namely due to internal factors originating in the child. Parental divorce and domestic violence, for example, can cause deep scars and takes a long time to recover. For the children who witness it, the experiences will continuously follow them throughout life. Very often, the child will become a criminal and treat others as he sees and experiences. (Grover, 2014) On the contrary, external causes originating from an adverse environment affect children as well. The crime started with their peer's invitations and could lead to habits and addictions. When they reach adulthood, the behavior turns into serious criminals due to their childhood habits. (Sambas, 2010)

Lack of attention and care from the family frequently results in the children's criminal offenders. (Child Rights International Network, 2015) Punishment for child offenders is different from adults in general, where the child is serving his sentence on Juvenile Correctional Institution. However, along with its

development, the Juvenile Correctional Institution turns into a special development institution for children, since it's considered constructs a stigma to the child offenders. The community will consider them as a 'bad child' or an 'evil child', and forever the child will be called the culprit of a crime. (Pribadi, 2018).

This change is considered to present a positive impression on children and is more focused on the protection of children's rights based on justice. Justice here prioritizes the best interests of a child. This justice also focuses on the growth and development of a child as a future generation of a nation. Thus, the law must give them full protection of their rights existence. (Pribadi, 2018) Based on justice intended to eliminate discrimination and violence, as well as intimidation while they stay in a development institution. However, the rights must be granted following their human rights and must be unselective and without any particular reduction. (Freeman, 2007)

Regarding this condition, the child penitentiary has changed to Child Development Institution, with an assumption it will provide specific protection to the offenders' rights. (Hartono, 2019) From the previous explanation, this study will examine how to implement the principle of child-friendly at children offenders in Lembaga Pidana Khusus Anak (LPKA) or Child Development Institution Tangerang related to the existence of their rights to life.

DISCUSSION

Definition of Child

Indonesian law states children are the person under 18 years, including unborn fetuses. While in the womb the child hitherto has inherent rights granted to him, including the right to life, where a mother or pregnant woman consumes nutritious, clean food and provides growth and improvement in the child's development. All of the means before are for the child's labor health and safety. (Hartono, 2019)

In other words, children as legal subjects require the existence of internal and external elements. The internal elements are the classification of children as human rights stakeholders which indeed related to the existence of laws and regulations. This provision applies to children in certain conditions or groups; such as minors, a child under legal guardianship, and people who are unable to perform legal action. Another element is the equality of rights and obligations of the children. Children are also considered as equal rights and obligations holders similar to an adult mandated or provisioned under the present laws and regulations. The law should position and place children at the same level or as an adult as a legal subject.

The external element here is the principle of equality before the law. It can provide formal legality towards the child as a person who is unable to carry out or act under the law which has been determined by various provisions from present laws. (Lynch, 2018)

Juvenile Delinquency

Juvenile delinquency means a mischievous child or a child who has committed a crime in the form of a crime or violation and disturbed the community. The child should be sanctioned or punished to prevent them from repeating the actions. The causes of juvenile delinquency consist of several things like visible physical and mental growth. This can cause the child in his existence, carrying out deviate actions or actions considered as disturbing the community. (Chusniatun, 2018)

In most cases, juvenile or adolescent delinquency triggered by their environment and the existence of parenting that is instilled by parents to their children. Children living environment should provide peace. This condition ideally comes first from the family of fathers, mothers, and children and then followed by the neighbourhood. If the children rose in the hoodlum, delinquent and drunkard environment, it will automatically affect the level of the children's social relationship. Therefore, good family relationships will produce good children. Otherwise, a negative society will result in disorderly children. They show a tendency to talk in indecency and improper words and indeed their behaviour has been deemed to violate applicable rules and norms. (Chusniatun, 2018)

At first, criminologists presumed children's delinquency occurred since negative intention and opportunity exists. This is enormously influential for the emergence of children's crime or delinquency, where the intention is related to endogenous and exogenous factors. (Méndez, 2015) The endogenous and exogenous factors are: Endogenous factors are factors that indeed originate in the child concerned, and equally affect his behavior, among others; biological and psychological defects hampered by personality and intelligence that cause difficulties in following the rules and norms and while exogenous factors are factors originating from outside the child that can affect his behavior. (Wadong, 2000)

Moreover several reasons for the occurrence of juvenile delinquency, i.e.: A relatively massive wave of urbanization from villages to cities. This wave is incredibly complex and hard to prevent, conflicts between norms and customs within traditional rural areas and current norms have grown in the process of rapid social shifts, especially in large cities. The fading of individual personality patterns. It strongly linked to traditional and social patterns and result in the community and its members. This primarily happened when adolescents experiencing vague patterns to behave in a certain manner. The development of juvenile delinquency caused by the negative impact of rapid global change. This includes science and technology changes resulted in the child acts out of their consciousness. (Wadong, 2000)

In addition, the most primary cause of delinquency is family factors. Parenting style portrays a significant role in children's education. Abusive, authoritarian, and intimidating parenting behavior will result in similar actions by children for themselves and others. Parents' violent habits will also cause a traumatized and disrupted psychology child even when they grow into adulthood. Children will

reflect the negative parenting from their families into their actions. (Moses, 2008).

The solution of adolescents or juvenile delinquency is still challenging. It all starts with the education of the family. Family development should always supervise and build intensive communication with children. Therefore, supervision from parents must start as early as possible. Parents must supervise and prevent children from acts of violence both physically and psychologically. They should continue to monitor the development and activities of children, both at school, outside and in the community. (Moses, 2008)

Juvenile Delinquency Prevention

The problem of juvenile delinquency remained fundamental. It leads to many rules are regulated in this regard. Some prevention efforts are: Preventive, carried out as an effort to prevent child delinquency. This measure does not merely come from families but also demands the participation of the broader community, government officials and law enforcement. Activities or programs that support children's integration need to consider. It requires the construction of playgrounds, recreation, and schools for underprivileged children intended for children's needs. This preventive action can perform by conducting socialization or counseling to remote villages or schools. It is necessary to introduce the meaning of the children's delinquency, the impact, and the consequences if a child commits it and the sanctions imposed. (Moses, 2008)

Repressive, sometimes preventive fails. Consequently, the child eventually commits a series of crimes that are considered disturbing and interfering with public order. They ultimately sentenced or sanctioned to cause a deterrent effect. However, the sanctions or punishment given is carried out neither by acts of violence or torture because they consider the child as the offenders of a crime. On the contrary, it carried out with the guidance of the penal system and continues to give priority to the child. Their rights are granted based on equality before the law and justice (Gultom, 2010)

Curative, carried out as an attempt to cure children's delinquency. The goal is the child offenders do not repeat it, fully aware that no benefit arises by committing the crime, both for himself and others. Moreover, by doing so, his freedom is also restricted. This action includes rehabilitation efforts through medical and social measures including children in drug abuse, alcohol, and other addictive substances. Persuasive, by conveying subtle actions to persuade or direct and teach they are not determined and unwilling to commit the crime and following social norms. (Djamil, 2013)

The purpose of child criminal sanctions is to provide suffering by the State for the actor of such prohibited acts. In its development there are 3 (three) theories of criminal objectives, i.e.: Absolute Theory, based on retaliation, and guilt are the sole conditions for the imposed sanctions. The sanctions imposed are following the proportion of the act or action committed by the offender. However, the provision of this retribution is unintended to correct, educate and socialize the offender. Relative Theory, this theory states that criminal law aims to reduce and prevent crime. The application of this theory meant to change the

behavior of criminals and other people who tend to commit acts of crime.(Djamil, 2013).

Reformation/Rehabilitation Theory, of this theory is to and change all behavior or personality of the inmates to exit unlawful habits and to tend to comply with the norms prevailing in the society. In other words, this theory directed more at improving the behavior of prisoners, not on acts or criminal acts that have been committed and have occurred. Consequently, the offenders do not repeat their actions to be accepted in the community.(Djamil, 2013)

Legal Protection of Children's Rights

The protection referred is the protection given to a child from the moment he is arrested, from the investigation to detained and court prosecution based on a final and binding decision. This also follows the mandate of the Convention on the Rights of The Child. The convention stated every child possessed the right to an adequate standard of living and state should ensure the protection of the law to achieve this right. (Anne Bentley, 2005). This provision interprets as the children placed in LPKA still enjoy their rights. The most crucial right is the right to education as to be appropriate for children in general. No education and teaching discrimination perform to children offenders in LPKA. (Miller et al. 2017)

Protection of children can be divide into 2 (two) parts: Juridical child protection, including protection of public and private law and Nonjuridical children protection, including protection in the social field, health, and education. (Saraswati, 2009). The protection of children allows a diversion embodiment that results in restorative justice. This should be resolved outside the court to establish an agreement between the offender and the victim regarding the amount of compensation by the personal encounter and eliminating the negative impression attached to the child. Unfortunately, this diversion only occurs in certain conditions: the sentence imposed on children does not exceed 7 years and is not a repeated crime or recidivist act.

However, if a settlement with diversion cannot perform, it will be resolved through the court. This is the duty of law enforcement officers to work on the diversion at the investigation level. Child cases should handle with special attention to the child's condition. Imprisoning a child does not mean providing the most effective solution for the child but instead worsens the situation, and creates new problems both for the child himself or his environment. (Saraswati, 2009)

Children Rights on LPKA

The Right to Education, Knowledge or education must nevertheless provide for children, despite their position as offenders. Teaching and education are not supposed to end on LPKA since by persuading it the children's offenders education is not left behind. The granting of this right also aims to ensure children's offenders continue to have broad insights and knowledge if they have left the LPKA and continue their schooling. Therefore, LPKA provides schools

like other children, such as formal and non-formal education to make sure they receive equal opportunities for education and teaching.(Saraswati, 2009)

The Right to the Highest Attainable Standard of Health and The Right to Adequate Food, the highest attainable standard of health for the children on LPKA is granted when they are sick or even contract a disease. This right requires a doctor or medical professional to cure their illness. This right also includes maintenance and rehabilitation or the act of recovery and medicines administering. These special medical and social rehabilitation measures are intended to substance abuse children to allow them to heal and be as active as ever. (Saraswati, 2009)

Right to Access Religious Worship Place and Right to Freedom of Religion, freedom of religion is the most fundamental and individual right since it is a part of the right to live and in dealing with the Creator. A child equally obtains the freedom to embrace and believe in respective religion and beliefs, without coercion from others. In addition, the teachings of his religion are provided with facilities or places of worship to carry out his religious teachings in accordance with their beliefs. (Saraswati, 2009)

Right to Development in Vocational Training, aims to prepare children to be able to do a useful skill for themselves and the community and improving the quality of their human resources. If the child demonstrates talent and hobbies already, they can continue to develop it, for example by sewing or working in a garage as a mechanic. When they are free from LPKA, they can utilize their skills in the community (Qayyum, 2018). Divorce does not only have an impact on those concerned, namely husband and wife but can also have an impact on children who have entered the age of teenagers, and sometimes can cause deep wounds and even prolonged trauma and are difficult to heal.(Ramadhani & Krisnani, 2019).

Right to Information, children possess the right to get information obtained through magazines, newspapers or other reading, and through other media like television, radio or other electronic media, for the development of themselves and the education process.(Shader, 2000). Right to Sentence Deduction, according to the Indonesian Regulation, the sentence for children's offenders is reduce by one-third of adults. The purpose of this clause is to maintain the psychology and mentality of the child and eliminate the bad stigma, primarily regarding the future of the child. The aim is after undergoing their sentence they can adapt and return to society.(Nashriana, 2011). Right to Family and Attorney Visitation, children may receive visits from their families. LPKA should not prevent a family visit as well as receiving a visit from his legal counsel to be accompanied in a court hearing.(Denov, 2003)

Child-Friendly Principle

When proclaiming justice, each person expresses a distinct perception. Justice comes from the word "just", which means getting their respective parts following their rights or achievements. Someone obtains his share because it is his right and should be unreduced or usurped. Justice here is also interpreted as relative, not everyone, sees that justice in a similar perception.(Redding,

Goldstein, and Heilbrun 2005). This also applies to children who have been found guilty. If the children found guilty by a court ruling and receive a court sentence, the trial system also needs to differ from the adult trial. This differentiation exists in the first place because a parenting system that neglects their action and carelessness of their parent. (Rattle, 2015)

Considering children are the nation's next-generation, to date prison been deemed inappropriate and not in favour of children offenders. Prison is not an excellent solution for children considering the negative conditions and the inappropriate environment for children. Mental and psychological conditions of children must take into account by law enforcement in deciding whether a child should be put in jail or not. Since the beginning of investigating the police as law enforcers should take the diversion as a first measure. (Tremblay and Craig, 1997)

Even if diversion is unattained by law enforcement officers, children's cases will resolve through the court institution and the child will place in a Lembaga Pidana Khusus Anak (LKPA) or Child Development Institution. The name changes from child penitentiary to Lembaga Pidana Khusus Anak (LPKA) or Child Development Institution focuses more on the protection provided, considering children represent the nation's future. Their dignity and status should acknowledge where justice is prioritized while continuing to provide education. This method is carried out by command children to participate in formal and child-friendly education, which also cautious, responsible and develops good character during their stay at LPKA.

LPKA must prioritize the principles or principles: protection, also justice, the absence of non-discriminatory actions, the best interests of a child, the appreciation of the opinion of children, the continuity of life, growth and development of children, the implementation of child development, proportionality, and deprivation of liberty and punishment as a last resort and measure, and avoidance of retaliation. (Naibaho, 2019) All of these principles aim to ensure justice for children's rights. (Braithwaite, 2002)

All stakeholders are obliged to protect children and are responsible for always being able to protect and improve children's welfare for the future of the nation. No children offender may detain together with an adult. Also, law enforcement officers tasked with handling children's offenders must always prioritize the best interests of the child and also at the same time instil a sense of responsibility. After left the LPKA Tangerang , children offender skill can be honed through owning and instilling a development and training program providing religious counselling.(KEMENPPPA, 2019). It is necessary to apply the application of child-friendly principles of religious guidance, awareness of the nation and state, intellectual and intelligence as well as skills, health and physical, reintegration with society and awareness of the law. (Maxwell and Morris, 1993)

CONCLUSION

The promotion of children in LKPA Tangerang based on justice and emphasizes the child-friendly principle and the obligation to attend formal education. Thus children offender do not lose their rights. In granting their rights the principle

of justice is treated because children are the future of the nation which must always be safeguarded and given full and comprehensive protection following the recognition and respect for their human rights.

SUGGESTION

Child offenders dispute settlement always involves not only law enforcement officials, but the wider community, and must coordinate with law enforcement officials. Since children are the nation's future, we must prioritize the best interests and their rights as a part of human rights.

REFERENCES

- Braithwaite, J. 2002. *Restorative Justice & Responsive Regulation*. London: Oxford University Press.
- Child Rights International Network. 2015. "Inhuman Sentencing: Life Imprisonment of Children."
- Chusniatun. 2018. Sistem Perlindungan Hukum Bagi Anak Di Lembaga Masyarakat Dalam Perspektif Konvensi Internasional Hak-Hak Anak 30 (01): 103–32.
- Contreras, L., & Cano-Lozano, M.C. 2016. Child-to-Parent Violence: The Role of Exposure to Violence and Its Relationship to Social-Cognitive Processing. *European Journal of Psychology Applied to Legal Context* 8 (2). Colegio Oficial de Psicólogos de Madrid: 43–50.
- Denov, M.S. 2003. The Myth of Innocence: Sexual Scripts and the Recognition of Child Sexual Abuse by Female Perpetrators. *Journal of Sex Research* 40 (3): 303–14.
- Djamil, M.N. 2013. *Anak Bukan Untuk Di Hukum: Catatan Pembahasan UU Sistem Peradilan Pidana Anak*. Edited by Mei Susanto. Jakarta: Sinar Grafika.
- Freeman, M. 2007. A Commentary on the United Nations Convention on the Rights of the Child, Article 3: The Best Interests of the Child. Edited by André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans, and Mieke Verheyde. *A Commentary on the United Nations Convention on the Rights of the Child, Article 3: The Best Interests of the Child*. Leiden: (Martinus Nijhoff Publishers).
- Grover, S. 2014. Introduction to the Special Issue on Children's and Women's Human Rights. *International Journal of Human Rights* 18 (6). Taylor & Francis: 579–81.
- Gultom, M. 2010. *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Edited by Aep Gunarsa. Bandung: Refika Aditama.
- Hartono, H. 2019. Konsep Pembinaan Anak Dalam Lembaga Pembinaan Khusus Anak (LPKA) Dalam Perspektif Hak Asasi Manusia. *Yuriska : Jurnal Ilmiah Hukum* 11 (1): 74.
- KEMENPPPA. 2019. *UU SPPA UPAYA LINDUNGI ANAK BERHADAPAN DENGAN HUKUM. PUBLIKASI DAN MEDIA KEMENTERIAN PEMBERDAYAAN PEREMPUAN DAN PERLINDUNGAN ANAK*.
- Kristina, A.B. 2005. Can There Be Any Universal Children's Rights?" *The International Journal of Human Rights* 9 (1): 107–23.
- Liebel, M. 2018. Welfare or Agency? Children's Interests as Foundation of

- Children's Rights. *International Journal of Children's Rights* 26 (4): 597–625.
- Lynch, N. 2018. *the Other Child' - The Rights of the Child Victim in the Youth Justice System*. *International Journal of Children's Rights* 26 (2): 228–50.
- Maxwell, G., & Morris. A. 1993. *Family, Victims and Culture: Youth Justice in New Zeland*. New Zealand.
- Méndez, J.E. 2015. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations General Assembly. Vol. A/HRC/28/6.
- Miller, Linda, Claire Cameron, Carmen Dalli, and Nancy Barbour. (2017). "The SAGE Handbook of Early Childhood Policy." *The SAGE Handbook of Early Childhood Policy*, 28–30.
- Moses, S. 2008. *Children and Participation in South Africa: An Overview*." *International Journal of Children's Rights* 16 (3): 327–42.
- Naibaho, N. 2019. *Problematika Anak Yang Berhadapan Dengan Hukum*. HukumOnline.Com.
<https://www.hukumonline.com/berita/baca/lt5cb3e93a1fc46/problematika-anak-yang-berhadapan-dengan-hukum-oleh--nathalina-naibaho/>.
- Nashriana. 2011. *Perlindungan Hukum Pidana Bagi Anak Di Indonesia*. Jakarta: Rajawali Pers.
- Pribadi, D. 2018. *Perlindungan Terhadap Anak Berhadapan Dengan Hukum*. *Jurnal Hukum Volkgeist* 3 (1): 15–28.
- Qayyum, H. 2018. *Media Coverage on Child Sexual Abuse in Developing Countries - IJSER Journal Publication*. *International Journal of Scientific & Engineering Research* 9 (11): 1223–29.
- Rattle, R. 2015. *Health Impact Assessment, Municipal Development Practices, and Children's Health*. *International Journal of Child, Youth and Family Studies* 6 (2): 308–27.
- Ramadhani, E.P., & Krisnani, H. *Analisis Dampak Perceraian Orang Tua Terhadap Anak Remaja*, *Jurnal Pekerjaan Sosial* 2 (1) : 109-119.
- Redding, R.E., Naomi E., Sevin, G., & Kirk, H. 2005. *Juvenile Delinquency: Prevention, Assessment, Intervention*. London: Oxford University Press.
- Sambas, N. 2010. *Pembaruan Sistem Pemidanaan Anak Di Indonesia W*. Yogyakarta: Grha Ilmu.
- Saraswati, Rika. 2009. *Hukum Perlindungan Anak Di Indonesia*. Bandung: Citra Aditya Bakti.
- Shader, M. 2000. *Risk Factors for Delinquency : An Overview What Is a Risk Factor ?* U.S. Department of Justice Office of Justice Programs Office of Juvenile Justice and Delinquency Prevention.
- Struthers, A.E.C. 2016. *Human Rights: A Topic Too Controversial for Mainstream Education?* *Human Rights Law Review* 16 (1): 131–62.
- Sutedjo, W., & Melani. 2013. *Hukum Pidana Anak*. Bandung: Refuka Aditama.
- Wadong, M.H. 2000. *Pengantar Advokasi Dan Hukum Perlindungan Anak*. Edited by R. Masri Sareb Putra. Jakarta: Grasindo.