

The Development of Doctrine Parens Patriae in Indonesia's Juvenile Justice System

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Abstract

The future of the child is the future of a country, including the future of juvenile, who being in incarceration. Mostly, juvenile who dealing with incarceration unable to continue his/her education. It is worse when the juvenile put in same institution with adult offender. As a consequence, the juvenile is getting further from restoration. In Indonesia right now, the existence of special juvenile detention center (called Lembaga Pembinaan Khusus Anak / LPKA) is still new and not in all part of Indonesia. It is worse when LPKA still has prison paradigm which accentuate rough treatment. As consequence, the juvenile being more violent and effect to community respond to ex-juvenile delinquents. This article is normative research, equipped with empirical research to compare what the law regulate to the reality of juvenile justice system in Indonesia. This article use secondary data, consisting of primary, secondary and tertiary legal material. Authors analyze the data qualitatively and make a conclusion from it. The result show that to ensure the future, a state must play as a parents (parens patriae) to the juvenile. The using of law must consider the best interest of the child. Specifically, in Indonesia's Juvenile Justice System, government through police officer, attorney or prosecutor, judge must put it first what juvenile needs than punish the juvenile in order to give a deterrent effect. Lastly, the role of LPKA as embodiment of state must prove advocacy, education, coaching, and protection to juvenile as a parent usually give to their children.

Keywords: Doctrine Parens Patriae, Juvenile, Juvenile Justice System, Lembaga Pembinaan Khusus Anak (LPKA).

Introduction

Juvenile delinquency is a frequently occurred social problem in Indonesia, especially when the total of population keep raising every year.¹ Juvenile crime usually involve one major crimes, namely burglary, but

¹ According to Badan Kependudukan dan Keluarga Berencana Nasional (BKKBN), a National Population and Family Planning Board, total population of Indonesia increase by 4 million every year.

as time progresses, the crime spread into murder, rape, and narcotics.² Some cases caused by spectacles in their daily life. It show that every time, some child imitate the crime which performed by adult or fellow. They got inspiration from television, movies and especially video games (for younger gamer)³ and tend hardly to select positive contribution for their life.

The United Nations Convention on the Rights of the Child, which ratified by Indonesia still demonstrates best concern of the international community with respect to children's rights.⁴ Including to Indonesia, totally, more than 190 members of the United Nations are parties to this convention giving it important to ensure the best interest of the child.

Before Law Number 11 of 2012 prevailed in Indonesia, if the child is 12 and not higher than 18, the child may be put into youth detention (Lembaga Pembinaan Khusus Anak (LPKA)). This change is the answer for the demands of society on child future. Notwithstanding, some community especially the government still give little attention to the consequences of incarceration to these child. It is worse in Indonesia, as for not all province has LPKA, so some child may join adult in jail (one building but different lockup). This problems still haunt all province in Indonesia.

State is originated from society and obtained the legitimacy of the authority over the individual citizen and territory for the needs of the state. This authority must be interpreted that state will do necessary policy to promote justice, happiness and protection. As parents protect their children, state should become father to all its citizen especially child. Provision of LPKA is one of concrete form of state's love for the child. New paradigm in LPKA open new hope for child. Child need not to feel being punished because they still can access education, amusement and some freedom there.

To identify how state deal with juvenile requires the role and responsibility of law enforcer and LPKA in their existence as representative of state in responding any child involved as perpetrators of crime. This study focus on the reviewing literature in all of these areas and implementation of the regulation and *parens patriae* doctrine to provide an objective view of the juvenile justice system in Indonesia.

Methodology

This research is using an analytic descriptive approach, focusing on the development of doctrine *parens patriae* in Indonesia's Juvenile Justice System. The aim of this research is objectively examine this doctrine

² Eric Lambue Tampubolon, "Efektivitas Pembinaan Narapidana Anak di Lembaga Pembinaan Khusus Anak (LPKA) Pekanbaru", *Jom VISIP*, Volume 2, No. 1, 2017, p. 3

³ Cheryl K. Olson, Lawrence A. Kutner and Dorothy E. Warner, "The Role of Violent Video Game Content in Adolescent Development: Boys' Perspectives", *Journal of Adolescent Research*, Volume 23 Number 1 January 2008, p. 70. Even if there is a regulation on censorship (Peraturan Pemerintah Nomor 18 Tahun 2014 tentang Lembaga Sensor Film, government regulation on Movies Censor Agent), child in Indonesia can access some of movies, television channel and games that logically hard to pass the censor. Some of it contains intense violence, pervasive language, drug use, and strong sexual content. See also, Heru Erwantoro, "Sensor Film di Indonesia dan Permasalahannya dalam Perspektif Sejarah (1945-2009)", *Patanjala* Vol. 3, No. 2, Juni 201, p. 365-383.

⁴ Indonesia ratified UN Convention on the Rights of the Child through Keputusan Presiden Nomor 36 tahun 1990 (President Decree Number 36 of 1990). By ratifying this convention, Indonesia show the world a strong commitment to ensure every child get their rights. On the top of that, to strengthen the commitment, Indonesia issue UU Nomor 23 Tahun 2002 (Law on the Protection of the Child). With the issuance of this regulation, the future of the child be assured. Right now, this regulation revised by issued UU Nomor 35 Tahun 2014 still concerning on protection of the child. All city in Indonesia driven to incarnate into Town-worthy of the child.

in the level of regulation, funding and resources and implementation. The author will complete the data through interviews and archival and library research and then analyze the data qualitatively.

Discussion

Changes in Juvenile Justice System of Indonesia

In the last 10 years, the juvenile justice system in Indonesia has changed positively and rapidly. Those progress come from changes of legislation, competency of the court for juvenile case, encouragement of child activist and child-care community and awareness of the importance of child's future. This progress then implemented by establishing youth detention separated from adult prison. However, this progress still unable to decrease total number of incarceration of the child in Indonesia. According to data in 2016, only 7% cases where child was not detained.⁵ It show that most of the child involved in crime still detained and placed in detention.

Understanding that existence of a child needs special protection, the state as a duty bearer have obligations to respect, protects, and fulfills the rights of the child. Therefore state has to create a special scheme of child protection. Especially the child in the position of conflicting with the law needs special attention. Children conflicting with the law have vulnerabilities to violence, whether is from police and security forces, from adult detainees, from staff at detention centers and from their own peers. UNICEF refers to children in this group as children in especially difficult circumstances (CED). Basically the condition of the child in the judicial system is determined by the State, start from the arrest until when they serving the punishment, the child will be dealing with an institution which has the authority to exclusively monopoly power for violence, namely the state. In addition, the state legitimately establishes instruments of repression and utilizes these instruments legally and legitimately. The instrument is manifested in the penal law. So it can be said that the picture of the protection of a State on the child in general can be seen from how the State protects children in conflict with the law in a judicial system, nevertheless "Juvenile justice is a core dimension of the rights of the child and a pivotal area where States 'commitment to children's rights can be best expressed'.

In carrying out its responsibilities, Indonesian government has stated the commitment to children's rights by ratified the Children's Rights Convention in Presidential Decree No. 36 year 1990. Further improvement On 23 September 2002 the House of Representatives passed the National Child Protection Act, and specifically for children in conflict with law government also issued Law no. 3 year 1997 on Juvenile Court Act and the more comprehensive Law No. 11/2012 on the Child Criminal Justice System (Juvenile Justice Act). Nevertheless the journey of child protection in juvenile justice system in Indonesia is quite bumpy. It is not until the issuance of the juvenile Justice act which recognizes the alternative of settling cases of children, before that almost all children in conflict with the law must face trial.

Law No. 3/1997 on the Juvenile Court, regulating the mechanism for children in contact with the law, there was no separate criminal justice system for juveniles. Children going through the system are for the most part treated the same way as adults. Under the current mechanism, a child as young as 8 years old can be prosecuted, brought before the court and detained for up to 200 days during the process and juveniles often were imprisoned with adult offenders, leaving them vulnerable to violence and sexual abuse. Existing regulations also do not accommodate the needs of children going through the criminal justice system as victims or witnesses. According to the National Commission for Child Protection, in 2009, nine out of 10 children sent to court were sentenced to prison.

⁵ Anggara, Erasmus A.T. Napitupulu, Alex Argo Hernowo, *Studi Implementasi Penanganan Anak di Pengadilan Berdasarkan UU SPPA*, Jakarta: Institute for Criminal Justice Reform, 2016, p. 10-11.

The above condition makes hope for renewal of Law no. 3/1997 on the Juvenile Court was very high. Issued Law No. 11/2012 on the Child Criminal Justice System brings a positive change by introducing the concept of diversion and restorative justice. Under this law, the protection of children's rights against the law is quite well accommodated. One of the changes is the term "anak nakal" (*juvenile*) in to "anak berhadapan dengan hukum/ABH (child in conflict with law)", which is fundamental to affect the overall paradigm of the concept of child protection in the judicial system.

The reason is because the term "bad boy" is a form of stigmatization or labeling that violates the right of the child to be preserved in dignity and humanity, and violates the principle of "perception of innocent" from the child in conflict with the law. Furthermore, by this law the protection of children is more emphasis on the welfare of children and the best interest for children. ABH protection is not only for perpetrators but also for witnesses and victims. In settling the cases of child, the priority is reconciliation rather than the formal legal settlement, where the court as last resort that can be applied. Not only in the judiciary, the law also puts a focus on the rights of children within the prison, the law specifies the separate children's facilities of adult facilities, and should be as child-friendly as possible. That means meeting children's facilities with education and recreational opportunities.

The well-being of the Juvenile is always the main focus of the juvenile justice system. Therefore in the forming of regulation and the judicial system of children should apply the "welfare approach". With this approach, young law offenders should be kept away from punishment by the criminal justice system, as well as any action to be taken by the State in relation to the offense committed by the child to the extent possible always put forward the principle of "the best interest of the child".

At all stages the interest of the child must be put forward, for that each related party must understand the needs of the child and what is most important for the child. The problem that exists in Indonesia is the lack of human resources that are really professional in the sector of children. Law enforcer if its "not child friendly" will lead to further violations of the rights of children in the judicial system.

There are cases where the child is prosecuted without regard to the provisions of the juvenile justice law, so that there is a violation of the rights of the child. For example, children are proceed without being accompanied by legal counsel, without going through diversions, being tried not in juvenile justice court, put together in adult prisons, and place in the child institutions that are not child friendly. This can happen because of the inability of law enforcer to recognize the needs and the rights of the child.

In Article 92 of Law Number 11 Year 2012 on the Child Criminal Justice System, it is stated that the Government is obliged to provide education and training for law enforcers because of the large number of law enforcers who still lack understanding of child cases and how to give appropriate sanctions to children in conflict with the law and how to deal with the condition of children who have unique characteristics. Education and training as practiced at least 120 (one hundred and twenty) hours.

Implementation of education and training is coordinated by ministries of justice and human rights. To fulfill the implementation of education and training in Law Number 11 Year 2012 on the Child Criminal Justice System, issued the Presidential Regulation No. 175 of 2014 on Integrated Education and Training for law enforcer and related parties regarding the criminal justice system of children.

The education of Law enforcer on children will affects the whole paradigm of the importance of child protection, also affects the level of law enforcer ability to produce policies implemented in the framework of child protection, even when legislation does not regulate certain matters. The education of Law enforcer also affects the ability to approaches children in order to improve their mental and behavior through coaching and counseling by law enforcer.

Implementation of Doctrine of Parens Patriae in Juvenile Justice System in Indonesia

Analyze on Role of Judge / Prosecutor / Police / Advocate as Parents

Police as Parents

The juvenile justice system in Indonesia transform their desire to rehabilitate rather than of punish juvenile offenders. Intentionally or not, this changes were based on the legal **doctrine of parens patriae** (means "parent of the country")⁶. Actually, this doctrine develop in states with common law legal system. This doctrine gives the state the power to serve as the guardian (or parent) of those with legal disabilities, including juveniles.

Previously, under the common law, no distinction was made between young people and adults so far as criminal offences were concerned. It similar to what happened in Indonesia civil law legal system. The main goal in criminal jurisprudence was not restoration or rehabilitation but punishment, punishment as retribution for the perpetrators, punishment as a warning and deterrent to others.⁷

Indonesia spent about 300 years as colony of Netherlands. As consequence, Indonesia legal system influence by Netherland, especially its civil law legal system. In fact, until now, criminal law in Indonesia majorly influence by criminal law of Netherlands. Indonesia still use Criminal Code (Kitab Undang-Undang Hukum Pidana) which inherited by *Wetboek van Strafrecht vor Nederlandsch Indie* (W.v.S.v.NI) of Netherlands at that time. It is possible that criminal law afterward have roots in.

Though *parens patriae* doctrine originated from English common law, Netherland adopt this doctrine into their Children's Act of 1905.⁸ So, Indonesia may adopt this doctrine into its juvenile law as a result of some of its constitution originated from Netherlands. By reviewing all regulation related to child especially juvenile, we can find that whether Indonesia has adopt and develop this doctrine.

Legal structure of criminal justice system in general and juvenile justice system in specific consist of four law enforcer. One of those four are police force as constituted bodies of persons authorized by law to maintain security and public order, enforce law, and provide protection; safeguard; and services to community.⁹ Second is, public prosecutor as functional officer who shall be authorized by the Law to act as public prosecutor and to execute the judgments of law courts which have the final force of law and other

⁶ The doctrine of Parens Patriae firstly use in English law then spread into American Law. Follower of this doctrine belief that children are the hope of a country. In normal condition, the follower leave children to their own family but in different condition especially when family unable to help children then a state may intervene in place of the parent. See, David F. Labaree, "Parens Patriae: The Privates roots of Public Policy toward Children", *History of Education Quarterly*, Volume 26, Issue 1 (spring, 1986), p. 111-116.

⁷ Kechin Wang, "The Continuing Turbulence Surrounding the Parens Patriae Concept in American Juvenile Courts (Part I)", *McGILL Law Journal*, Vol. 18, No. 2, 1972, p. 220.

⁸ The Children's Act allowed state intervention where parents neglected their educational duties. The relinquishment of parental authority to the state is a practice of the doctrine of parens patriae, which is, in essence, a welfare approach to childcare. The Children's Act laid the foundation for future child justice initiatives in The Netherlands. See, R. Songca, M Karels, "A comparative study of child justice systems: Any lessons for South Africa from The Netherlands?", *Journal for Juridical Science*, Vol. 41, No. 2, 2016, p. 49.

⁹ See, Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian (Law Number 2 of 2002 on Police Force).

authorities based on the law.¹⁰ Third is, judicial force as independent state authority in execute justice in frame of law and justice in Indonesia.¹¹ Lastly but not the least is advocate, a person who has a profession to provide legal services, both inside or outside the court in accordance with provisions of this Law. Those four are the pillars of law enforcement in Indonesia according to each regulation which directly related to juvenile justice system.

Police force becomes the main force in maintain peace and security in Indonesia since its separation from Military Force.¹² Since then, police force transform from military police into civilian police.¹³ With this new paradigm, police force works to solve civilian problems. One of those problem is the increasing of juvenile delinquency and crime.

Police has a role as investigator to find and collect any evidence in which the evidence will make the crime clear and make it easier for the police to find the suspect. This role also count for case allegedly committed by child. Still and all, the process should be done according to restorative justice as mandated by law. At the investigation level, an investigator shall strive diversion.¹⁴ The diversion must refers to guidelines.¹⁵

Diversion by investigator may result in an agreement. Those agreement must get approval from the victims or family, except for criminal offence, minor crime, non-victim crime, or any crime that result in loss for the victims not more than minimum wage in level of province in where the crime happened. This type of agreement can be made by only investigator, the perpetrator and family, social council and social figures.

Diversion agreement stated above may be in the form of compensation of damages, medic and psychology rehabilitation, submission back the child to his/her parent, education and training in education institution or Lembaga Penyelenggaraan Kesejahteraan Sosial (Institution of Social Welfare) for three (3) months, or community services for three (3) months. After the agreement made, superior of investigator must submit it to the court that competent according to its jurisdiction no more than 3 days since the agreement signed. 3 days after the court receive the agreement, the chairman must issue stipulation and relay it back to the

¹⁰ See, Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan (Law Number 16 of 2004 on Public Prosecution).

¹¹ See, Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (Law Number 48 of 2009 on Judicial Power).

¹² Historically, Police Force in Indonesia was a part of Military Force, called Angkatan Bersenjata Republik Indonesia (ABRI) according to Undang-Undang Nomor 13 Tahun 1961 (previous law on police force). It changed since April 1999 when People's Consultative Assembly issued Resolution Number VI of 2000 on Separation of Police Force from Military Force. Since then police transform from military police into civilian police. See, Andri Susanto, "Masuknya Kepolisian Indonesia dalam Struktur Angkatan Bersenjata Republik Indonesia Tahun 1961-2002", *AVATARA*, Volume 1, No. 3, Oktober 2013, p. 474-485.

¹³ Sukanto Satoto, "Membangun Kemandirian dan Profesionalisme Polisi Republik Indonesia sebagai Pelindung, Pengayom dan Penegak Hukum", *Jurnal Inovatif*, Volume VII Nomor III September 2014, p. 59.

¹⁴ Diversion in Indonesia aim to divert settlement of juvenile crime from the criminal court process into non-judicial process. Moreover, diversion may aim to attain reconciliation between child and victims, avoid from deprivation of child liberty, encourage participation of community and cultivate responsibility of the child. Harming individuals in detention also harms society. Child who got abused while in detention may lead them to be more dangerous to society when they come out of the jail. It may transform them into adult criminal. However, in Indonesia, there still limitation for diversion. It can applied only if the crimes threatened with not more than 7 years imprisonment and not a recidivist offender.

¹⁵ The guidelines refers to Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2014. This guidelines regulate on diversion.

investigator. Afterward, the investigator may issue stipulation of investigation discontinuation. With this, child need not to follow the process of criminal court and his/her future can be rebuild.

The police need certain skills to success diversion process. As father understand the needs of their child, police also must know the needs of juvenile. In general, all child is same. Adult must treat them equal with full of respect. The skill in communication is necessary to do that. For police, it may be hard to make a good investigation with child.¹⁶ They get used to use rude and vicious words to scrap information. It becomes worse if the investigator never get training in building communication with child and getting harder when the parties (child or victim) has mental illness. Not all police station in Indonesia provide special cell for child.¹⁷

Actually, police force has discretion to continue a case or not according to prevailed law. This authority may applied to case in which child become the suspect. By doing this, the police can release the child from the case and return them to their parent. Even so, the police must use discretion wisely. They should select the case according to certain assessment.¹⁸ For example, they may release child from sneaking case if the child sneak into a home or restaurant to steal foods for living.¹⁹

Discretion by police is one form of authority given by state as *parens patriae*.²⁰ Because of Indonesia regulation allow a police to make discretion for certain cases, it means that Indonesia as a state has perform its role as parent (*parens patriae*). This role also own by other law enforcer and become a real proof of that Indonesia develop *parens patriae* doctrine in its regulation.

Prosecutor as Parents

Today, international community ask different role of prosecutor, where prosecutor must not only serve to provide justice to the victim but also serve to negotiate and reflect the needs of juvenile. Of course, it is not going to be easy, while prosecutors should consider the best interest of a juvenile in handling of a case, the prosecutor should never forget their primary duty to seek justice and protect the public safety and welfare of the community. Therefore, the prosecutor must able to cooperate with school, working group, worship place and community to identify the potential crime by juvenile and prevent it happened.²¹ To do that, a state needs to assign an experienced and trained juvenile prosecutor, establish Standard of Procedure (SOP)

¹⁶ Headquarter of police understand that police need not only hard skill but also soft skill, one of it is communication. Most of police has certain condition that hamper their communication caused by their routine activity and accumulation of stress in works. This situation affect the police being more aggressive and less sympathetic. See, Agus Raharjo, Angkasa, "Profesionalisme Polisi dalam Penegakan Hukum", *Jurnal Dinamika Hukum*, Volume 11 No. 2 Tahun 2011, p. 398.

¹⁷ I Made Haribawa Setiawan, et.al, *Proses Penyidikan terhadap Tindak Pidana Anak di Bawah Umur*, Bali: Faculty of Law, Udayana, 2017, p.8

¹⁸ Iqbal Felisiano, Amira Paripurna, "Profesionalisme Polri dalam Penerapan Wewenang Diskresi dalam Kasus Tindak Pidana Pencurian (Studi Kasus Pencurian Kakao, Pencurian Biji Kapuk dan Pencurian Semangka)", *Yuridika*, Volume 25 No3, September-Desember 2010, p. 294.

¹⁹ Similar case happened in Alabama, United States of America, where an Officer, William Stacy release a woman, Helen Johnson for shoplifting. He do it because the woman steal some egg for living with her daughter and granddaughter.

²⁰ John S. Werner, *at. al*, "“INTERVENTION PACKAGE” An Analysis to Prepare Juvenile Delinquents for Encounters with Police Officer", *Criminal Justice and Behavior*, Vol. 2 No.1, March 1975, p. 55.

²¹ James C. Backstrom, Gary L. Walker, "the Role of the Prosecutor in Juvenile Justice: Advocacy in the Courtroom and Leadership in the Community", *William Mitchell Law Review*, Volume 32 | Issue 3 Article 6, 2006, p. 966.

for a quicker and more transparent process, and strong determination as the gatekeeper to the juvenile justice system.²²

In Indonesia, similar to police force, in the process of prosecution, regulation on juvenile justice system mandate prosecutor to any policy based on restorative justice. One of the policy is to activate diversion before hearing in the court. To activate diversion, the prosecutor must consider the category of the crime, age of the child, recommendation from LPKA and support from family and community. The use of diversion must refer to guidelines (Peraturan Jaksa Agung Republik Indonesia Nomor: PER-06 /A.J/04/2015 tentang Pedoman Pelaksanaan Diversi pada Tingkat Penuntutan. Through this guideline, attorney general promote restorative justice in the level of prosecution.

The guide consist of diversion means; forum of diversion; diversion agreement; implementation of agreement; supervision and reporting of the implementation; issuance of prosecution termination letter; and registration of diversion. In this process, appointed prosecutor act as facilitator. The result of forum must be written in an agreement and sign by facilitator, together with all parties. The facilitator then report the result to attorney general or branch head of prosecutor office. But in case the forum failed, the prosecutor must continue to process the case to the court for ordinary hearing or quick hearing.

Role of attorney to result diversion mostly depend on the agreement of both parties in a conflict. Hence, selected attorney for any case with child as offender must has enough experience in handling similar case, dedication to the child and having participate in any workshop on juvenile justice.²³

The result of diversion by prosecutor is not differ to police officer. The prosecutor encourage both parties in dispute to find solution and then formulate it into an agreement. This agreement then registered to the court so it has the power to force both parties in implementing.

Judge as Parents

The judges in the trial of the child must facilitate when requested by the parties, and if the prosecutor approve to apply diversion as a proof that prosecution process is the last option (*ultimum remedium*).²⁴ The judge must strive diversion for any crime which threaten for imprisonment below 7 years or more than seven years in form of subsidiary, alternative, cumulative or combination accusation. In diversion process, the judges have a role as facilitator of diversion. This role essentially show the use of *parens patriae* doctrine in which the judge invite the child (including his/her parent or guardian) and victim (including his/her parent or guardian) to discuss the possibility of reconciliation. As parent, the judge (hereinafter referred to facilitator) may suggest both parties for settlement.

Role as facilitator of diversion is different to judge's role in general. Facilitator's role similar to role of mediator which not in capacity to sentence or make final and binding decision but more to bridge the needs of both parties. This new role show that more the role as parents, reconcile both parties as father reconcile two brother in fight.

In the proses of diversion, the judge open the forum by introducing all parties, convey the purpose of forum and code of conduct which agreed by all parties during diversion process. The facilitator then explain summary of the accusation. Afterward, the facilitator give opportunities for all parties to talks, began from the child opinion about the accusation then followed by the respond from parent or guardian and victim.

²² *Ibid.* p. 967-968.

²³ Mizanul Kirom, et.al, "Implementasi Diversi dalam Penyelesaian Kasus Anak yang Berkonflik dengan Hukum berdasarkan Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak", *Diponegoro Law Journal*, Volume 5 Nomor 3 Tahun 2016, p.13.

²⁴ Loura Hardjaloka, "Criminal Justice System of Children: An Overview Restorative Justice Concept in Indonesia and others Countries", *Jurnal Dinamika Hukum*, Vol. 15 No. 1, January 2015, p. 76.

When deemed necessary, the facilitator may call other parties to provide any information for the settlement of the problems. Sometimes, the facilitator may also organize caucuses, a meeting that facilitator hold separately with each side of a dispute.

After diversion process finished, the facilitator record the result into Diversion Agreement. In constructing diversion agreement, the facilitator consider and supervise so that agreement according to prevailed law, religious teaching, local decency, morality and good faith. Diversion forum noted in minutes and signed by both facilitator and clerk of court or its replacement. Diversion agreement also must signed by both parties and registered to the court so the chairman of the court may issue stipulation of those agreement.

Lembaga Pembinaan Khusus Anak (LPKA) as parents

Juvenile detention interrupts young people's education, and once incarcerated, some youth have a hard time returning to school. To respond this problem, some countries, including Indonesia revise their juvenile law and establish new institution to protect juvenile.

In Indonesia, after the establishment of law number 11 of 2012, Ministry of Law and Human Right issued Regulation of Ministry of Law and Human Right Number 18 of 2015 on establishment of Youth Detention Centre (Lembaga Pembinaan Khusus Anak / LPKA). This regulation encourage 33 provinces in Indonesia to change nomenclature of juvenile prison into a more restorative institution. To optimize the function of LPKA, the ministry instruct transferring all child from adult prison or juvenile prison into new detention center, LPKA.

LPKA is in charge to coach juvenile. To do that, LPKA firstly must register and classify juvenile; carry out coaching program consisting of education, parenting, and problem solving. As a parent taking care their child, LPKA also funded by government to provide foods, clothes and accommodation including facility to develop character, knowledge and skills of the child. Lastly, in order to maintain order, LPKA obligated to supervise child. It becomes a proof that LPKA mandated by state to act as parent to juvenile.

Law number 11 of 2012 mandate all stake holder in handling juvenile to accentuate principle of protection; justice; the best interest of the child; respect for the children; and avoiding the use of penal to juvenile. Every stakeholder, law enforcer, child activist, academics, society and parents invited to establish cooperation in order to give best treatment for the child.

As for education, some of LPKA in Indonesia provide formal and non-formal education. Some of those LPKA also allocate counseling and spiritual facilities. To provide child with formal education, LPKA cooperate with public school in facilitating teacher. LPKA encourage teacher to adjust the subject so the child may participate in national exam held by Ministry of Education. This policy means a lot to the child. They can continue their study into higher level after complete their coaching period in LPKA.

For facility, LPKA is designed friendly to child. So there is no impression of a prison there. Except for night, the child cannot stay at their room because child must learn how to interact with others. Child eat for free in LPKA. If child got sick, LPKA will provide medical checkup there. Not only gaining formal education, child may also study in library.²⁵

LPKA in Indonesia facilitate the needs of the child. Even if the fund for it is limited, some community care about the child and help. Some community held useful activity there, such as training for music, computer

²⁵ Authors do research in some LPKA, in Bali, Palembang, and Bandung. From observation, authors see no scary condition in LPKA as prison used to be. Child-friendly situation can show from the architect of the building, child room, garden, pool and other facility. As for example LPKA Kelas I Pakjo in Palembang, we could see that all facilities and infrastructure are really child-friendly.

and entrepreneurship. Other community also held religious activity. In order to keep similar activity continue, sometimes LPKA make agreement with certain community so the activity in LPKA may continue.²⁶

Conclusion

Doctrine Parens Patriae encourage a state to role as a parents for all children including juvenile. This role promote regulation which concern to the child not to the crime. This means, every state must formulate its regulation from higher into lower level to accentuate the needs of the child than to punish. Indonesia as historically colonized by Netherland, has its criminal code influence by Netherland. It means that criminal code in Indonesia has its core, doctrine of parens patriae as Netherland has. Even though, the law on juvenile justice in Indonesia made after the colonization, its soul still similar because the criminal code (KUHP) came from Netherland idea. State role as parents in juvenile justice begin from the process of investigation by police, prosecution by attorney, adjudication by judges and coaching by LPKA (in case the judge decide to place the child in custody). Police, attorney and judge obliged to implement diversion to juvenile cases despite for certain cases. This role show that Indonesia put it first the best interest of the child. If it failed, then LPKA take the role as parents to protect child and provide their needs as other child has outside LPKA.

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²⁶ Based on research, different LPKA has different activity. The more active LPKA to establish cooperation with stake holder, the more activity may be held in LPKA. This activity aim to equip the child the ability to mingle with people so it become easier for them to reintegrate with community after finish their time in LPKA.

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