

## Juridical Overview of the Parole Process For 1/2 (Half) Period of Imprisonment in the Fulfillment of the Rights of Students

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### Abstract

*One of the rights of children who are undergoing a criminal period is to obtain parole 1/2 (half) of the criminal period. The implementation process at the Bandung Class II Special Child Development Institute is still relatively new (in 2017). Therefore, various problems are encountered in its implementation. The purpose of this study is to find out (1) what are the obstacles in the process of implementing parole 1/2 (half) of the criminal period for students in LPKA Class II Bandung. (2) To find out how to overcome the obstacles that arise in the implementation of parole 1/2 (half) of the criminal period in LPKA Class II Bandung. The method used in this research is descriptive analytical with a normative juridical approach. Data collection techniques through literature review are complemented by field studies through interviews with certain parties. The data analysis was carried out qualitatively and the results of the study concluded that the obstacles faced in the implementation of the granting of parole related to various things (1) the students had never been visited by their families, as a result the background of the child was unknown, and the students did not want to take part in the release program. In addition, the community does not want to accept children back into their midst because they are worried about the repetition of crimes, also the process of applying for parole is rather complicated and takes a long time because it involves various parties. (2) To overcome the obstacles that arise, a "Whatsapp group" is created as a means of communication for parents of students with LPKA Class II Bandung officers. Then activate the Correctional Guardian so that students are better monitored. Besides that, information boards are installed in strategic places, so that visiting students and parents can read the stages of the criminal period at LPKA Class II Bandung, it is recommended that socialization to parents and students about parole be simplified. In addition, the role of the correctional guardian is further enhanced.*

### Keywords

Fulfillment of children's rights; parole; juvenile criminal justice



### I. Introduction

Children are the main asset as the nation's next generation, who have the dignity and worth as a whole human being who needs special protection and attention. Child development from an early age is the responsibility of the family, society and the state. However, in the process of children's growth and development, they are influenced by various factors, both biological, psychological, social, economic and cultural, which can lead to non-fulfillment of children's rights, so that not a few children commit acts that violate the law. Talks about children and their protection will not stop throughout the history of life, because children are the next generation of the nation and the successor of sustainable development and the holder of control over the future of a country, Indonesia is no exception. Protection of Indonesian children means protecting the potential of human

resources and building Indonesia as a whole, towards a just and prosperous society, materially and spiritually based on Pancasila and the 1945 Constitution (Akbar, 2013).

The fulfillment of the rights of children begins with the United Nations Convention on the Rights of the Child, which is an international convention that regulates the civil, political, economic, social and cultural rights of children. child. Countries that ratify this international convention are bound to implement it in accordance with international law. The implementation of this convention is supervised by the United Nations children's rights committee whose members consist of various countries around the world. Each year, this Committee reports to the Third Committee of the United Nations General Assembly which will also hear the statements of the chair of the Committee on the Rights of the Child and adopt a resolution on the Rights of the Child. Governments of countries that have ratified this convention are required to report and appear before the Committee on the Rights of the Child periodically to evaluate the progress made in implementing this Convention and the status of children's rights in that country. The country-by-country reports along with the written views of the committee can be accessed on the committee's website.

Indonesia ratified the Convention on the Rights of the Child (CRC) with Presidential Decree No.36/1990 dated August 25, 1990. However, CRC came into force in Indonesia from October 5, 1990, in accordance with Article 49 paragraph 2, "For each country that ratifies or declares participation to the Convention (Rights of the Child) after the receipt of the 20th instrument of ratification or accession, this Convention shall enter into force on the 30th day after the date on which the State concerned has received its instrument of ratification or accession. Although actually since 1979 our country has had a Law on Child Welfare (Law Number 4 of 1979), but after we ratified the Convention on the Rights of the Child, protection of children has been perfected starting with the establishment of Law Number 3 of 1997 concerning Juvenile Courts. in 1997, Law Number 23 of 2002 concerning Child Protection, then Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and the enactment of Law Number 11 of 2012 concerning the Judicial System Child crime (Dentina, 2016).

Today there are many criminal acts that involve children, both as perpetrators and children as victims. Law Number 11 of 2012 concerning the Child Criminal System explains that children who are in conflict with the law are called (ABH), and have a different handler from the process experienced by adults, and the process for handling ABH is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that several case resolution efforts are given to children who are in conflict with the law with the intention of preventing children from being given criminal penalties such as the implementation of restorative justice and diversion. Meanwhile, for children who do not meet the terms and conditions of the settlement, children who are in conflict with the law as perpetrators will be placed in the Child Special Guidance Institute.

Child Special Guidance Institution is an institution or place where a child is serving his or her criminal period. LPKA is obliged to provide education, skills training, coaching, and other fulfillment of children in accordance with the provisions of the legislation. This is because children who have been sentenced to a crime have the right to receive guidance, guidance, supervision, assistance, education, in accordance with the provisions of the legislation. In addition, LPKA is also obliged to transfer children who have reached the age of 18 (eighteen) years to a youth correctional institution. Meanwhile, for children who have reached the age of 21 (twenty-one) years, but have not finished serving their criminal period, the child is transferred to an adult correctional institution by taking into account the

continuity of child development. However, if there is no youth correctional institution, the head of the LPKA can transfer a child aged 18 (eighteen) years to an adult correctional institution based on the recommendation of the community advisor (Eleanora & Masri, 2018).

Children who are placed in LPKA have the right to obtain guidance, supervision, assistance, education and other rights in accordance with the provisions of the applicable legislation. According to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, children who are serving a criminal period are entitled to a reduced sentence, to obtain assimilation, to take leave to visit family and to obtain parole. One of the rights of children who are serving their criminal period is the right to obtain parole. Especially for children, the fulfillment of parole rights is different as for adults. Children are entitled to parole half 1/2 of the criminal period they are serving, while adults must serve 2/3 (two thirds) of their criminal period.

Conditional release of 1/2 (half) of the criminal period is one of the rights that can be obtained by children with applicable provisions and is a new thing that has been carried out by involving various parties. Because it is a new thing and involves many parties, there are often various kinds of problems in the implementation process, such as the implementation of parole for students at LPKA, not all students get parole 1/2 (half) of their criminal period. The process of implementing parole for 1/2 (half) of the criminal period at the Bandung Class II Children's Special Guidance Institute only started in 2017, with the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2016 concerning Amendments to the Regulation of the Minister of Law and Human Rights Man No. 21 of 2013 concerning the terms and procedures for granting remission, assimilation, leave to visit family, parole, leave before being released, and conditional leave (Muhammad, 2016).

The discussion on parole is essentially related to the government's program on the protection and fulfillment of children's human rights. With the current conditions, namely with the emergence of several problems in the process of granting parole to children, it is necessary to conduct research to determine the process of granting parole 1/2 (half) of the criminal period to children at the Class II Child Special Guidance Institute Bandung.

## **II. Research Method**

This research is analytical descriptive, meaning that this research aims to accurately describe the characteristics of an individual, symptom state, or certain group. Or to determine whether there is a relationship between a symptom. Or to determine the spread of a symptom with other symptoms in the community. As for the approach, this research was carried out in a normative juridical manner, namely an approach that prioritized secondary data (library studies), which consisted of primary legal materials, secondary legal materials, and tertiary legal materials. Meanwhile, the data collection technique was carried out by researchers through a literature review to collect secondary data and through field studies to support secondary data, including through interviews with certain parties. Furthermore, the researchers conducted a qualitative data analysis through various interpretations known in the science of law, including grammatically (grammatical), historically, sociologically, and so on. Then a systematic logical discussion is carried out without using statistical formulas (Purwaningsih & Bhudiman, 2022).

### III. Result and Discussion

#### 3.1 Obstacles Encountered in the Process of Implementing Parole 1/2 (Half) Sentence at LPKA Class II Bandung

Conditional release is an effort to conditionally foster children of prisoners or students outside the Correctional Institution or LPKA so that the last part of the criminal sentence is not served. The last part is dependent on a condition that must be met during the probationary period and for this purpose supervision is carried out. Conditional release which is part of national law is more prominent in terms of education and during his probationary period. For prisoners or students who get parole, the probationary period is a transitional period and during that time prisoners or students are burdened with the responsibility to strive towards goodness. Thus, prisoners or students are expected to get used to doing good, which habits can later be continued after being in the midst of society in a state of full independence (Rahayu & Wahyuningsih, 2022). Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Guidance efforts are an important factor in the process of the correctional system which is basically aimed at the personal development of prisoners so that they do not repeat criminal acts and obey applicable legal regulations. Besides that, it also fosters relationships between prisoners and the community so that later they can be independent and accepted as members of the community. Likewise with the Bandung Special Child Development Institute (LPKA) as a forum for coaching in order to prepare students to return to society, with the correctional process. Viewed from the prisoner's point of view, parole will be an education for him to do good and which strongly encourages towards goodness. This method is expected to become a habit in society. Viewed from the community's point of view, the community feels protected against prisoners or students, because prisoners or students are still under supervision from the authorities, so there is no fear of interference from them. The objectives of the parole include, among others, generating motivation or encouragement in prisoners and correctional students towards achieving the goals of coaching and providing opportunities for prisoners and correctional students for education and skills to prepare themselves to live independently in the community after being released from prison.

The purpose of fostering prisoners is closely related to the objectives of the criminal justice system. The criminal justice system is a system in society to deal with crime. The aim is to resocialize and rehabilitate criminals, control and prevent crime as well as realize community welfare, while parole aims to generate motivation or encouragement in prisoners and correctional students towards achieving the goals of coaching, providing opportunities for prisoners and correctional students. for education and skills in order to prepare themselves to live independently in the community after being free to serve a sentence and encourage the community to participate actively in the administration of prisons (RAMADANI et al., 2022).

During 2018 the process of submitting and granting parole 1/2 (half) of the criminal period has reached 5 (five) students while students who get parole 2/3 of the criminal period have reached 19 students. The number of students who received parole was 2/3 more, this was because many of the students had reached 18 years of age, so when an application for parole was submitted using the calculation of the adult parole formula in

accordance with the provisions of Permenkumham Number 3 of 2018 concerning leave, assimilation, Conditional Leave (CB), Parole (PB). To see the details, it is attached in table 4.1 in the appendix page.

Conditional release is a right for every convict or student, it's just that this right does not absolutely have to be fulfilled, considering that the granting of parole must reflect a sense of justice in society, especially for the victim. In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Before Release and Conditional Leave, it is stated that correctional students can be given parole if they have met the substantive and administrative requirements. . Article 89 reads: parole can be granted to a child who is serving a prison sentence at the Child Special Guidance Institution who has met the requirements (1) has served a criminal period of at least 1/2 (one half) of the criminal period (2) has good behavior while serving the minimum criminal period of the last 3 (three) months is calculated before the date of 1/2 (one half) of the criminal period (Saifullah et al., 2019).

The implementation of the application for parole at the Bandung Children's Special Guidance Institute starts from an application by the parent or guardian for the student to be able to participate in the parole proposal, as for the conditions that must be met by the parent or guardian of the student, namely a statement and guarantee that they will follow the proposal. parole program which contains that parents or guardians are willing to be guarantors for students who will participate in the proposed parole, and guarantees that after being granted parole they will not run away or commit other violations of law and their families and communities are willing to accept and help these students to be able to return to social life as well as a statement that in the process of proposing for parole there is no charge. In addition, parents / guarantor provide documents such as family cards, guarantor ID cards and Birth Certificates / Birth Certificates of the students concerned.

After all the completeness of the file is fulfilled, the TPP trial can be carried out. The TPP session must be attended by at least 2/3 of the TPP members. In the TPP session, each member of the trial can provide suggestions and opinions regarding the parole program for correctional students. In addition, the TPP session must also be entered into the Correctional Database System (SDP) or known as the TPP Online Session. After the TPP trial, the officer made an introduction to the parole proposal and uploaded it in the SDP. The officer controls and verifies the TPP trial at SDP, then the proposed andik data will automatically become the data ownership of the West Java Ministry of Law and Human Rights Regional Office (Saputro, 2018).

The sanctions for andik who undergo parole and commit violations are sanctions in the form of warnings to the revocation of the release that has been obtained. In accordance with Article 16 paragraph (1) and paragraph (2) of the Criminal Code which states that the granting and revocation of parole is the authority of the Minister of Justice or currently called the Minister of Law and Human Rights after going through the considerations of the Director General of Corrections, so that neither BAPAS nor the Prosecutor's Office has the authority. to revocation of parole directly against the convict in question even though he has violated the prohibition that has been determined.

### **3.2 Actions taken by LPKA Class II Bandung in overcoming the obstacles that arise**

The very long process of implementing parole at the Bandung Class II Children's Special Guidance Institute does cause obstacles in its implementation, often simple things that make the process run slowly due to the length of procedures that must be passed and also involving several related parties in its implementation. . The parole program for half

(1/2) criminal period for students is a new thing that has just been implemented, which is one of the factors that causes obstacles to occur in its implementation. The minimal number of officers is also one of the factors that makes this an obstacle in the implementation process. The process of applying for parole at LPKA Class II Bandung is only carried out by 1 (one) officer who has to take care of each file. The large number of students who apply for parole at LPKA Class II Bandung (Sasmita et al., 2021).

The proposal for the parole program went through a long process because in fulfilling the completeness of the documents it was related to the relevant agencies, namely the Fathers and the District Attorney. The obstacles to the implementation of the provision of parole, especially at the Bandung Children's Special Guidance Institute, are, these correctional students are rarely visited by their families and there are no guarantors from their families. One of the administrative requirements in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Terms and Procedures for Granting Remissions, Assimilation, Leave to Visit Family, Conditional Release, Leave Before Release and Conditional Leave, Article 93 paragraph 1 point f says a guarantee letter from family, guardian, social institution, government agency, private agency, or foundation known to the lurah or village head. In addition, in making community research by the Correctional Center, data and information from the guarantor are needed to find out the background of the life of the student and his family. So that a letter of guarantee and a statement from the guarantor is very much needed as one of the conditions that must be met to propose a parole program.

Then the student does not want to be proposed / rejects the proposal for parole, which means that the student will serve until the end of his sentence. The reason why the students refused the parole proposal was because they didn't want to bother their families to take care of the parole program. People who do not want to accept these students because they feel insecure / restless about the students' past actions, so the guarantor must find another place to live where the community where the students live after being released will be willing to accept and allow these students to live. return to society (Susanti, & Azis, 2019).

The factors that hinder the process of granting parole apart from the minimal staff are also the students themselves who do not want to participate in the program and also the parents of students who are indifferent so they do not want to take care of all the required documents to apply for parole. The countermeasures carried out by the Bandung Children's Special Guidance Institute are to provide information and socialization to correctional students and their families who come to visit. The formation of the WA Parents Group and LPKA Bandung officers also became a means of information for parents of students. In addition, LPKA Bandung also activates and activates Caregivers / Guardians as a place of consultation to submit complaints related to coaching and socialize about parole through the primary data report of the child. The information board on the parole process has been installed in a strategic place to make it easier for families and students at the Bandung Special Child Development Institute to find out 1/2 the criminal period and where the parole proposal process has arrived.

Activating caregivers/guardians for students at LPKA Class II Bandung is one of the actions taken by the leadership, because the minimal number of officers at LPKA Class II Bandung makes every officer in the technical field of LPKA Class II Bandung given the responsibility as a correctional guardian. The number of comparisons is 1 (one) officer accompanying 7-8 students. So that every student can be monitored both in their daily life and their rights and obligations can be monitored, especially as a means for students to find

out the progress of the parole process that is being proposed as well as advice on clearer information for students (Widari, 2012).

Efforts to overcome obstacles for families and communities who do not want to accept students because they feel insecure / restless about the past actions of these students are by providing information by the PK (Society Counselor) Fathers and Institutions that care about children about the importance of family participation and community in child care. Family and society have an important role in the formation of children. Families and communities must be willing to accept and participate in providing guidance for students who are given parole so that each student feels truly considered and beneficial for the family and society in order to become a complete human being who turns into a good human being, realizes mistakes, improves himself and do not repeat the crime so that it can be accepted again by the community and play an active role in development and naturally as a good and responsible citizen. The parole program is a program whose goal is to make students good human beings and correct their mistakes so that they become useful humans for the state and society and in its implementation, BAPAS supervises as long as students undergo parole (ZEBUA, 2021).

The parole process takes quite a long time. A faster administrative process needs to be carried out so that it does not take too long to wait for the parole process and improve coordination between relevant agencies so that a harmonious and cooperative relationship occurs so as to facilitate the bureaucratic and administrative process which leads to the speedy process of granting parole. To overcome delays, in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 concerning Conditions and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Before Release and Conditional Leave, Article 95 paragraph 3 which reads: Completeness of documents as intended in paragraph (2) must be requested after 7 (seven) Days of Prisoners and Children in Lapas/LPKA and paragraph 4 which reads: (4) Completeness of documents as referred to in paragraph (2) must be fulfilled no later than: (a) 1/2 (one-half) of the criminal period inmates are in prison; and (b) 1/3 (one third) of the criminal period of the Child is in LPKA. With this regulation, it becomes the basis for implementation for LPKA and BAPAS to be able to fulfill the completeness of the documents so that there are no delays.

#### IV. Conclusion

The obstacles faced in the process of granting parole 1/2 (half) of the criminal period at the Class II Bandung Special Children's Development Institute are the students have never been visited by the family so that the background of the students cannot be known, the students themselves do not want It is possible to participate in the parole program because they do not understand it, besides that the process of applying for parole is rather complicated so that it takes a long time because it involves various parties, then the community is not willing to accept the child back because of fears that they will repeat the violation of the law which results in harming the community. As for how to overcome obstacles that arise in the implementation of granting parole 1/2 (half) of the criminal period for students at the Class II Bandung Special Children's Development Institute by creating a "Whatsapp group" as a means of communication between parents of students and the Class LPKA officers. II Bandung, besides activating the Correctional Guardian so that students are more closely monitored, besides that, information boards about the stages of criminal period for students are also installed in strategic places so that visiting students and parents can see the stages of the criminal period in LPKA Class II Bandung.

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