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## Procedure For Giving Remissions To Criminal Children At The Ternate Class II Children Special Development Institution

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### ABSTRACT

This study aims to find out the procedure for granting remissions to criminal children in the special fostering institutions for class II children in Ternate. To find out the constraints that can affect the granting of remissions to criminal children in Ternate class II special fostering institutions. This research was conducted in the Legal Territory of Ternate Class II Child Development Institute. The type of research used is empirical legal type or field research, namely research conducted in the field or at a research location, a place chosen as a location to investigate objective phenomena as occurring at that location, which is also carried out to compile scientific reports while data analysis techniques are using the approximation method. Qualitative descriptive analysis, namely data stated by respondents in writing or orally as well as real behavior that is researched and studied as a whole. The results of the study can be seen that as a whole LPKA Ternate has carried out the process of granting remissions to criminal children properly or in accordance with applicable laws but there are obstacles faced by the Ternate Children's Special Development Institute which affect the implementation of remissions, namely 1). Infrastructure or facilities, namely an unstable internet network at LPKA which affects the sending of files regarding the requirements for granting remission to children. 2). The behavior of criminal children in carrying out the coaching process at LPKA Ternate which does not comply with existing rules, and commits violations in the coaching process so that they do not get remissions.

**Keywords:** Procedural, Remission, Children, LPKA

### INTRODUCTION

Indonesia as a country that recognizes children's rights in its constitution. This recognition is contained in the 1945 Constitution Article 28B paragraph (2) which stipulates that every child has the right to survival, growth and development and is entitled to protection and discrimination.(1) This article is one of the tools that can be used by the state to assist in handling problems related to children's rights and is grouped as an article that discusses human rights. As legal subjects and assets of the nation, children have a strategic position and are the continuation of a nation. Based on this, every child needs to get optimal guidance and protection and opportunities to develop(2).

Children as the younger generation are one of the human resources that have a strategic role for the development and future of the nation. For this reason, the State guarantees the protection of children's rights which are human rights(3). This is confirmed in the Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection which states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. It is said that children have special characteristics and characteristics that must be protected besides that

children have the right to survive, grow and develop and are entitled to protection from violence and discrimination. For this reason, children need legal protection for themselves and their rights, child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and protect children from their rights optimally in accordance with human dignity, and receive protection from violence and discrimination(4).

There are several laws and regulations in order to realize legal protection for children, especially children who have problems with the law(5), including the Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections Amendments to Law No. 22 of 2002 concerning Corrections, Law of the Republic of Indonesia Number 3 Years 1997 concerning Juvenile Court as amended by Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, Government Regulation of the Republic of Indonesia Number 31 of 1999 concerning Guidance and Guidance of Correctional Families and several other provisions in the form of Ministerial Decrees, Decrees of the Director General of Corrections(6).

Based on the above laws and regulations, for the development of children who have problems with the law, hereinafter referred to as LPKA Protégé Children, they are placed specifically to be fostered in the Children's Correctional Institution which is now a Special Children's Development Institution (LPKA) which is under the auspices of the Penitentiary. The coaching aims to improve the quality of devotion to God Almighty, intellectual, professional attitude and behavior, physical and spiritual health so that the child is aware of mistakes, improves himself and does not repeat criminal acts so that they can be accepted again by the community environment(7), can play an active role in development and can live normally as good and responsible citizens. Therefore, provisions regarding the implementation of child development, especially those with legal problems, need to be implemented specifically by involving all parties(4).

Correctional is an activity to carry out coaching for prisoners based on systems, institutions and ways of coaching which are the final part of the punishment system in the criminal justice system. From this understanding it can be seen that the core of correctional is coaching for convicts so that later they can return to society properly(8).

## GOAL

Academically, the results of this research are expected to contribute ideas both theoretically and practically, namely;

### 1. Theoretical Benefits

- a. It is hoped that this research can contribute ideas to law enforcement in general and in particular to Ternate Class II Children's Special Development Prison in terms of procedural matters of granting remissions for criminal children
- b. Can be used as a guide for interested parties in studying, exploring, reviewing the procedural granting of remissions to criminal children

### 2. Practical Benefits

The results of this study are expected to provide motivation, input and also increase the insight of positive thinking for employees of the Ternate Class II Children's Special Prison.

## THEORY

### Overview of Juvenile Correctional Institutions, Criminal Children, Requirements and Procedures for Obtaining Remission

Correctional is an activity to carry out the development of inmates penitentiary based on the system, institutions and ways of coaching which is the final part of the punishment system in the criminal justice system.(9) From this understanding it can be seen that the essence of correctional is coaching against convicts so that later they can return to society properly(10)

Definition of Children according to Law No. 12 of 1995 concerning Correctional Amendments to Law No. 22 of 2022 Article 1 number (5) provides an understanding of Children with Legal Problems (ABH) are children who are 12 (twelve) years old , but not yet 18 (eighteen) years old who is suspected of committing a crime. Whereas in Article 1 number (7) gives the meaning of Fostered Children, namely children who are 14 (fourteen) years old, but not yet 18 (eighteen) years old who are undergoing training at a special child development institution.(8)

Remission means a reduction in the period of serving a sentence given to convicts and criminal children who are in conflict with the law who fulfill the conditions specified in the laws and regulations. Invitation(11). According to the Big Indonesian Dictionary, remission is a reduction in the sentence given to a convicted person, while remission according to experts and laws and regulations in Indonesia

## METHODS

The type of research that the author will use is empirical legal research or research conducted in the field or at a research location, a place chosen as a location to investigate objective phenomena as occurring at that location, which is also carried out to compile a scientific report.(12)

## RESULTS

### Procedural Remission for Criminal Children in Class II Ternate LPKA

Penitentiary is a place where people carry out their sentences based on the verdict handed down by the judge. Penitentiary aims to do training for convicts and criminal children. The coaching in question is to make the inmates aware of the mistakes they have made, improve themselves and not repeat criminal acts so that they can return to living in harmony and side by side with the community, and play an active role in development, and can live normally as good and responsible citizens.

In accordance with Laws and Regulations No. 22 of 2022 concerning Correctional Article 1 point (19) states "Special Development Institutions for Children, hereinafter abbreviated as LPKA, are institutions or places where fostered children serve their criminal terms.(13)

Children who have problems with the law (ABH) based on a court decision are sentenced to imprisonment and placed in LPKA. In accordance with Law No. 11 of 2012 concerning the Child Protection System Article 1 Number 20 Special Child Development Institutions, hereinafter abbreviated as LPKA, are institutions or places where children serve their criminal terms.(14)

The Ternate Class II Child Special Development Institution is a Technical Implementation Unit which is located under and is responsible to the Director General of Corrections which is under direct responsibility to the Regional Office of the Ministry of Law and Human Rights of North Maluku and the Correctional Division of the Regional Office of the Ministry of Law and Human Rights of Maluku Utara, which has the duty and function of carrying out the guidance of correctional students.(15)

Duties and functions of LPKA Class II Ternate As a unit that plays a role in providing technical and administrative services to Correctional Students in the North Maluku Regional Office of Law and Human Rights, LPKA Ternate has the task of carrying out the Guidance of Correctional Students and the function of managing staffing, administration, preparation of budget plans, management of financial affairs, and household equipment.(16)

In addition, LPKA is also obliged to transfer children who have not finished serving their sentence at LPKA and have reached the age of 18 (eighteen years) to a youth correctional facility. Meanwhile, for children who have reached the age of 21 (twenty-one years) but have not yet completed serving their sentence, they are transferred to an adult correctional facility.

Children who have problems with the law (ABH) based on a court decision are sentenced to imprisonment and placed in LPKA who will then carry out the process of coaching stages by carrying out the following stages of the process;

1. Administration, Orientation and Observation Stages, which consist of:
  - a. acceptance,
  - b. registration,
  - c. self-introduction and environment.
2. Initial Development Stage, namely activities to improve quality, piety to God Almighty, intellectual, attitude and behavior, skills training, professional as well as physical and mental health spiritual child both inside and outside the criminal justice process.
3. The advanced coaching stage includes the planning of the advanced coaching program, the implementation of the advanced program, the evaluation of the implementation of the advanced coaching program, the planning and implementation of the assimilation program.
4. Development Stage  
End integration program planning, integration program implementation, ending the implementation of the final stage of coaching.

In the process of granting remissions to criminal children, there is an advanced coaching stage, namely the evaluation stage of the implementation of the criminal children's advanced coaching program which is observed by the Observer Team Penitentiary (TPP)(17). In accordance with the laws and regulations and the conditions for implementing child remissions, as well as the flow of implementation and the amount of remissions received by criminal children as follows;

1. Terms of granting remission for children.  
The main requirements for granting remission to children are:
  - a. Well behaved;
  - b. Has served a criminal term of more than 3 (three) months; And
  - c. Not yet 18 (eighteen) years old. Terms of good behavior are proven by:
    - 1) Not undergoing disciplinary action within the last 3 (three) months, starting from the date of granting Remission; And
    - 2) Have participated in the Coaching program organized by LPKA with a good predicate.

Remission is not given to children who:

- a. currently undergoing leave before release; And
- b. is undergoing on the job training as a substitute fine penalty
2. Administrative requirements for granting Remission for Children are proven by attaching the following documents(18):
  - a. photocopy of the excerpt of the judge's decision and the minutes of the implementation of the court's decision;
  - b. photocopy of birth certificate or statement letter from the Head of LPKA explaining that the Child is not yet 18 (eighteen) years old.
  - c. a certificate of not undergoing work training as a substitute for fines from the Head of LPKA;
  - d. a statement letter that the Head of LPKA is not undergoing Leave before Release;
  - e. copy of register F from the Head of LPKA;
  - f. copy of the list of changes from the Head of LPKA; And
  - g. development report of the development signed by the Head of LPKA.
3. The flow of implementation of remission of criminal children
  - a. The Ternate Class II LPKA correctional observation team recommends a proposal to grant Remission for Criminal Children to the Head of LPKA based on data on Criminal Children who have met the requirements.
  - b. In the event that the Head of Ternate Class II LPKA approves the proposal for granting Remission, the Head of LPKA Ternate submits the proposal for granting Remission to the Director General with a copy to the Head of the North Maluku Legal and Human Rights Regional Office.
  - c. The Head of the Regional Office verifies the copy of the proposal for granting Legal and Human Rights Remissions no later than 2 (two) Days from the date the Remission proposal was received from the Head of LPKA
  - d. The results of the verification are conveyed by the Head of the Legal and Human Rights Regional Office to the Director General
  - e. The Director General verifies the proposal for granting Remission no later than 3 (three) Days from the date the proposal for granting Remission is received from the Head of LPKA. After verifying if there is a need for improvement, the Director General returns the proposal for granting remissions to the Head of LPKA for corrections with a copy to the Head of the Regional Office. However, if there is no improvement and the Director General approves the proposal to grant Remission, then the Director General on behalf of the Minister determines decision to grant Remission, to a Criminal Child
  - f. The decision to grant remission is submitted to the Head of LPKA to be notified to the Offender with a copy to the Head of the Malut Law and Human Rights Regional Office
4. Amount of remission in Criminal Children

The amount of remission received by criminal children is in accordance with Permenkumham No 3 of 2018 concerning terms and procedures for granting remission, assimilation, leave to visit family, parole, leave before release, and leave on parole, as follows:

  - a. General Remission

The calculation of the length of serving the detention period as the basis for determining the amount of general remission is calculated up to 17 August. The amount of general follow-up remission is:

    - 1) 1 (one) month for a child who on August 17 has undergone a detention period of at least 3 (three) months up to 12 (twelve) months;

- 2) 2 (two) months for a child who has served a criminal term who has served a detention period of more than 12 (twelve) months;

b. Special Remission

Calculation of the length of serving the detention period, most of the determination of the amount of special remission is calculated from the date of detention until the religious holidays in accordance with the religion he adheres to. The amount of special follow-up remission is 1) 15 (fifteen) days for a child who has undergone a period of minimum detention of 3 (three) months up to 12 (twelve) months; 2) 1 (one) month for a child who has served a detention period of more than 12 (twelve) months; And. the amount of the remission in the following year is in accordance with the provisions of the laws and regulations.

From the procedural description above and also corroborated by the results of the researcher's interview with Mr. Muhammad Nur Usman who stated that "The procedure for granting remissions that we carry out is in accordance with applicable laws, in which criminal children before getting remissions have carried out the coaching stages organized by LPKA and supervised by a team of correctional observers who will then be given remission. Every criminal child who gets remission at the Ternate LPKA has fulfilled the requirements and provisions of these regulations. Criminal children who do not get remission are criminal children who do not meet the requirements of existing regulations. Mr. Muhammad Usman further explained that during the trial process, the period of child detention was counted as a period of carrying out a sentence which would subsequently become one of the conditions for fulfilling children's remission rights.

However, starting from this, from the interviews of researchers with criminal children and according to the research data obtained they stated that they had carried out all the coaching programs held at LPKA, had never committed any violations which as a result could receive disciplinary action from the coaching staff and had undergone 1/3 criminal past but has not received remission.

## DISCUSSION

### **Constraints In Granting Remission at LPKA Class II Ternate Implementation of Granting Remissions To Criminal Children In**

Child Development Institutions are inseparable from law enforcement factors in LPKA Ternate. In the organizational structure, LPKA Class II Ternate is led by a Head of Work Unit for Class II Child Special Development Institution who supervises 82 staff and guards totaling 75, each of which is led by;(19)

- a. General Sub-Section, Has the task of carrying out staffing management, administration, preparation of budget plans, management of financial affairs as well as equipment and household
- b. Registration and Classification Section, Has the task of carrying out assessment and registration classification and planning of coaching programs.
- c. Development Section, Has the task of carrying out education, community development, alleviation, skills training, food and beverage services, distribution of equipment and health services
- d. Supervision and Discipline Enforcement Section,

Has the task of conducting education, community development, alleviation, skills training, food and beverage services, distribution of equipment and health services in carrying out the granting of remissions, the organizational sub-section within the LPKA whose job is the Registration and Classification Section. Registration and Classification Section, which has the task of carrying out registration, assessment and classification and development program planning. The Registration and Classification Section consists of 2 Sub-Sections namely:

- a. Registration Sub-Section Has the task of carrying out registration and data management
- b. Assessment and Classification Sub-Section Has the task of conducting an assessment of children for the purposes of planning training and classification programs.

In order to effectively implement remissions for criminal children in LPKA Ternate, the Registration and Classification Section in terms of granting remissions is also supported by infrastructure or facilities that assist the performance of staff and officers of the Ternate LPKA Registration and Classification Section, in fulfilling remission rights and the rights of juvenile offenders. other.

Effectiveness comes from the word effective which implies the achievement of success in achieving the goals that have been set.(20) Effectiveness is always related to the relationship between the expected results and the actual results achieved. Effectiveness is the ability to carry out tasks, functions, (operational activities, programs or missions) of an organization or the like without pressure or tension between its implementation. So effectiveness according to the meaning above states that an indicator of effectiveness in the sense of achieving predetermined goals or objectives is a measure where there is a target achieved in accordance with what has been planned.(21)

In the theory of legal effectiveness according to Soerjono Soekanto which states whether a law is effective or not is determined by 5 factors namely(22);

- a. the legal factor
- b. law enforcement factors,
- c. factors of facilities or facilities that support law enforcement,
- d. societal factor,
- e. cultural factors.

#### 1. Infrastructure

Certain infrastructure or facilities are very influential in law enforcement, so it is impossible for law enforcement to take place smoothly without the existence of certain infrastructure or facilities. Facilities or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, adequate finances, and so on. Facilities or facilities have a very important role in law enforcement, without these facilities or facilities, it will not be possible for law enforcement to adjust their supposed role to their actual role(22).

One of the legal factors according to Soerjono Soekanto from the theory of legal effectiveness which is one of the obstacles in granting remissions at the Ternate Child Development Institute is the factor of facilities or facilities that support law enforcement, which explains that without certain facilities or facilities it is impossible for law enforcement to work fluent.

From the results of interviews conducted by researchers with Mr. Muhammad Nur Usman. S.H. as the Head of the Ternate Class II LPKA Registration and Classification Section, explained that in terms of fulfilling child remissions there were 2 obstacles faced by Ternate child development officers, especially in the Registration and Classification

Section, namely facilities or facilities at LPKA Ternate, and also the behavior of the criminal child himself in LPKA. Giving remissions that are carried out in an online system or connected to the internet is one of the important factors in giving children remissions. An unstable internet network connection resulted in the sending of administrative files for remission requirements which should be on time becomes late so that it affects the granting of remissions to criminal children. In addition to network constraints at LPKA Ternate, problems at the Central Directorate General are also one of the obstacles in granting child remissions at LPKA Ternate, remission proposals proposed as a whole by UPTs throughout Indonesia cause delays in the results of remission proposals, remission proposals from various UPTs such as Adult Prisons, Women's Prisons and Children's Prisons from all over Indonesia to the Central Directorate General so that there was a delay in the results of the decision to grant remissions for criminal children in Ternate Class II LPKA.

## 2. Behavior of Criminal Children

The behavior of criminal children in carrying out crimes is one of the main requirements in getting remission is good behavior. Well behaved ones meant the Son pending punishment serving a prison sentence is not currently serving a disciplinary sentence and has participated in a coaching program organized by Correctional Institutions with good predicate.

From the interview results of Mr. Muhammad Nur Usman. S.H. The Head of the Ternate Class II LPKA Registration and Classification Section, also explained that in granting remissions, the main obstacle affecting the granting of remissions is the Criminal Child himself, if the Criminal Child has good behavior and does not commit any violations in carrying out the coaching program then remission can be given on time, or in accordance with the applicable provisions. Vice versa if the criminal child does not behave well and disobeys existing regulations then the child will not get remission.

However, if you look at the data on active criminal children at LPKA Ternate and the results of interviews with criminal children, there are several criminal children who have fulfilled the requirements for granting remissions in accordance with the provisions of the applicable law, namely good behavior, having served prison sentences of more than 3 months and not yet aged 18 years old, but did not get remission. Besides that, there are juvenile offenders who admit that they do not know exactly what things could be an obstacle for them to receive remission.

The granting of remissions carried out by LPKA Ternate is also notified to parents/guardians and families of criminal children, via telephone/group connections whatsapp correctional officers and families of criminal children who are in LPKA. In addition to information on granting the families of criminal children, they are also informed about the progress of criminal children while they are in LPKA so that parents of criminal children know about the activities carried out by their children.

## CONCLUSION

Based on the results of research by researchers at the Ternate Class II Child Special Development Institute, the researchers can conclude as follows:

1. Granting remissions to criminal children at the Ternate City Class II Child Special Development Institution which is carried out by correctional officers to criminal children who have fulfilled all the requirements from regulations the applicable laws and regulations, but in practice there are some criminal children who do not meet the requirements or only



fulfill some of the requirements of the provisions of the applicable laws and regulations, namely Law No. 22 of 2022 concerning Corrections, Decree of the President of the Republic of Indonesia Number 174 of 1999 concerning Remissions, as well as 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, Parole, Leave Before Release, and Leave on Conditional Leave. so that the criminal child does not get remission.

2. Overall LPKA Ternate has implement the process of granting remissions to criminal children properly or in accordance with applicable laws but there are obstacles faced by the Ternate Children's Special Development Institute which affect the implementation of remissions, namely 1). Infrastructure or facilities, namely an unstable internet network in LPKA which affects the sending of files regarding the requirements for granting remission to children. 2). The behavior of criminal children in carrying out the coaching process at LPKA Ternate which does not comply with existing rules, and commits violations in the coaching process so that they are not get remission.

Based on research conducted by researchers concerning matters related to the results of this thesis, the researchers try to provide suggestions for related parties, namely:

1. The Ternate Child Special Development Institute, In the process of collecting data, the researcher experienced a few difficulties which had to obtain permits that were gradual and took time long enough to get permission to conduct research at LPKA Ternate.
2. The Registration and Classification Section which plays a role in the process of granting remissions to criminal children should improve matters that may affect the implementation of granting remissions to criminal children so that the tasks and functions of LPKA Class II Ternate are achieved, namely as a unit that plays a role in providing technical services and administration to Correctional Students so that in fulfilling the rights of criminal children carried out in accordance with the mandate of the law. conducting research at LPKA Ternate.

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