

The Role of Correction Center (Bapas) Accepting Children In Conflict With The Law
(Study on Class II Penitentiary Office in Bojonegoro)

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ABSTRAK

Children are an integral part of human survival and the survival of a nation and state. In the Indonesian Constitution, children have a strategic role which is expressly stated that the state guarantees the right of every child to save life, grow and develop as well as protection from violence and violence. Therefore, the best interests for children should be internalized as the best interests for sustaining human life. Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime. Of course the handling of children who are perpetrators of criminal acts must receive special treatment and handling from related institutions, in this case the Correctional Institutions (BAPAS) as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old In the case of children who are not yet 12 (twelve) years old, along with technical regulations from the relevant ministries.

Keywords: Role, Correctional Center, Children in Legal Conflict

INTRODUCTION

Children are an integral part of human survival and the survival of a nation and state. In the Indonesian Constitution, children have a strategic role which is expressly stated that the state guarantees the right of every child to survival, growth and development as well as to protection from violence and discrimination. Therefore, the best interests of children should be internalized as the best interests for the survival of mankind.

With all the potential they have, it is not impossible that today's children will play a role in increasing the nation's development rate in the future. For the continuity of the child's growth, both mental and physical as well as interaction in society, the child must really receive special attention. In addition, the treatment of children must be really considered and treated carefully and conceptually so that the potential inherent in children can grow and develop properly and in balance.¹

¹ Susilowati, *Upaya Meminimalisasi Penggunaan Pidana Penjara Bagi Anak*, Universitas Diponegoro, Semarang, 2008, hal. 9



Children need to receive protection from the negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents which have brought about fundamental social changes in people's lives which greatly affect the values and child behavior. Deviations in behavior or unlawful acts committed by children, among others, are caused by factors outside of the child. Data on children in conflict with the law from the Directorate General (Dirjen) of Corrections at the Ministry of Law and Human Rights shows that the level of crime and the negative effects of narcotics, psychotropic and addictive substance abuse are increasing.

In Indonesia, the problem of children in conflict with the law has a tendency to increase. The record of criminality related to children in Indonesia as disclosed by the Director of Social Guidance and Child Alleviation at the Directorate General of Corrections shows that there are 3,812 children living in detention centers and prisons. There were 5,229 children who were diverted, and a total of around 10 thousand children including those who were undergoing assimilation, parole and leave.

before free. Children's ironic behavior is mostly caused by the social environment, family and the failure of the state's responsibility to fulfill their rights. The position of children in national and international human rights instruments is placed as a vulnerable group that must be given special treatment, and the state has the responsibility to ensure the fulfillment of these privileges. One of the privileges of children when dealing with the law is that in handling legal cases it must be treated differently from adults. Institutionally, this special privilege is concretized by the existence of a Correctional Center, hereinafter referred to as Bapas, which is a correctional technical implementation unit that carries out the duties and functions of community research, guidance, supervision, and assistance, in juvenile criminal justice cases.

For children who are in conflict with the law, both children aged 12 to 18 years and those who are not yet 12 years old, of course in practice the juvenile criminal justice system really needs the presence of a supervisor from a Correctional Center officer so that the settlement of cases of children in conflict with the law is as impartial as possible and protecting children's rights, because after all children are valuable assets of a nation that must be maintained and need to be maintained as well as possible.

FORMULATION OF THE PROBLEM

1. What are the main tasks and functions of the Correctional Institution?
2. What is the role of the Correctional Institution in assisting children in conflict with the law?

RESEARCH METHODOLOGY

Types of research

The type of research used by researchers in this study is Empirical Research or what is called Non-Doctrinal Research, which is defined as a research that aims to find theories



regarding the working process of law, legal identification and the effectiveness of law in society.

Research focus

This research is focused on identifying and analyzing the main duties and functions of the Correctional Center and the role of the Correctional Center in assisting children in conflict with the law.

APPROACH METHOD

The approach method used in this research is:²

1. The statute approach, namely the statute approach, is carried out by examining all laws and regulations that are related to the legal issues being handled.
2. Conceptual Approach The concept of this approach is an approach that departs from the views and doctrines that have developed in the science of law. These views and doctrines will give rise to ideas that give rise to legal notions, legal concepts and legal principles that are relevant to the issue at hand. Understanding of these views and doctrines is a basis for researchers in building a legal argument in solving the issues at hand.

SOURCES OF LEGAL MATERIALS

Sources of legal materials used in this study are:

a. Primary Legal Materials

Legal material that is carried out directly in society because law is part of human social life, which is manifested in human behavior and in a set of rules which are actually also an abstraction of human behavior. In this study, the primary legal materials used by researchers were a series of legal materials obtained from informants, namely: Supervising Officers at Bali Class II Penitentiary in Bojonegoro.

b. Secondary Legal Materials

Secondary legal materials are legal materials that can provide an explanation of primary legal materials, which can be in the form of draft laws, research results, text books, scientific journals, newspapers (newspapers), pamphlets, leaflets, brochures and internet news.³

² Peter Mahmud Marzuki, *Penelitian Hukum*. Kencana Prenada Media Group: Jakarta, 2009, hal. 135

³ *Ibid.* hal. 157-158

LEGAL MATERIAL COLLECTION TECHNIQUES

Data collection techniques in normative legal research are carried out by means of literature study on legal materials, either in the form of primary legal materials, secondary legal materials or tertiary legal materials and/or non-legal materials.

DISCUSSION

A. Main Duties and Functions of Correctional Institutions

As stated in the provisions of Article 1 number (22) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), that: Correctional Centers, hereinafter referred to as BAPAS, are correctional technical implementing units that carry out the tasks and functions of community research, mentoring, supervision, and assistance. Article 65 of the SPPA Law confirms that Community Advisors are in charge of:

1. Make social research reports for the benefit of diversion, provide assistance, guidance and supervision of children during the diversion process and implementation of the agreement, including reporting it to the court if diversion is not implemented. carried out by children and children as victims, after which BAPAS appointed a Community Advisory Officer (PK BAPAS) to carry out diversion efforts by considering the applicable legal aspects. One of these efforts is to create community research documents that contain at least a chronology of criminal incidents, the parties, both children as perpetrators and children as victims, parents of perpetrators and parents of victims to community/religious leaders from perpetrators and children in legal conflict (ABH). Community Research is very important in nature because it is part of the mandate of laws and regulations which is used as the basis for the flow of settlement of cases by diversion or by trial. In addition, BAPAS through PK BAPAS also has the task of accompanying, guiding and supervising ABH perpetrators during the process until they are sentenced to a decision, whether diversion or trial.
2. Make community research reports for the purposes of investigation, prosecution and trial in child cases, both inside and outside the courtroom, including in LPAS and LPKA. Community BAPAS also has duties related to conducting community research if the diversion process cannot be carried out due to criminal threats against ABH over 7 (seven) years and is an act of repeating a crime (recidivist), the results are given to various levels of examination starting from investigation, prosecution to trial court so that it becomes a guide and direction whether ABH is guided to enter the Special Child Development Institute (LPKA) or educational institutions.
3. Determine the child care program at the Penitentiary and Child development at the LPKA together with other correctional officers. Of course, child care programs both at Temporary Child Placement Institutions (LPAS) and guidance at Special Child Development Institutions (LPKA) must adhere to the principles of fostering children as follows:



1. Children are a mandate from God Almighty, the next generation of the nation must get the widest possible opportunity to grow and develop optimally.
 2. Detention and imprisonment for children is a last resort and is carried out in the shortest possible time by taking into account the best interests of the child.
 3. The aim of the child coaching and mentoring system is moral-based restorative justice.
 4. Imprisonment is not a form of revenge from the state.
 5. While carrying out coaching and mentoring, one should not be alienated from family and society.
 6. In the process of coaching and mentoring children are entitled to protection from violence and all other forms of discrimination in accordance with human dignity.
 7. Education is the essence of coaching and mentoring for children in the context of increasing intellectual, emotional and spiritual intelligence, developing self-potential and skills training in an effort to develop interests and talents.
 8. Guidance and guidance of children must be directed to be returned to their families and communities as soon as possible in the form of assimilation and reintegration programs.
 9. The state guarantees the protection and fulfillment of children's rights through the provision of child-friendly resources and infrastructure. 10. Guidance and guidance for children is carried out in synergy between caregivers, Community Advisors, families and communities.
4. Provide assistance, guidance, and supervision of children who are based on a court decision sentenced to a crime or subject to action; and Not only limited to assisting, coaching and supervising the duties of the BAPAS institution, but to the implementation process of court decisions regarding crimes or actions against Children in Legal Conflict. Like the Public Prosecutor in general criminal cases, he has the task of executing the decision.
5. Provide assistance, guidance, and supervision of children who receive assimilation, parole, pre-release leave, and parole. A person who has served a prison sentence for 2/3 of the total criminal time committed by both a child and an adult must receive an assessment in the form of a decision from the BAPAS. With the following provisions:
1. Have served at least 2/3 (two thirds) of the criminal period, provided that 2/3 (two thirds) of the criminal period is not less than 9 (nine) months.
 2. Have good behavior while serving the criminal period for at least the last 9 (nine) months counted before 2/3 (two-thirds) of the criminal period.
 3. Have followed the coaching program properly, diligently and enthusiastically.
 4. Communities may accept convict coaching activity programs.
 5. For State Children: Conditional Release can be granted after undergoing coaching for at least 1 (one) year.
 6. Attach complete documents:
 - a. Photocopy of the excerpt of the judge's decision and the minutes of the implementation of the court's decision.



- b. Development progress reports made by correctional guardians or the results of risk assessments and needs assessments carried out by assessors.
- c. Community research report made by the Community Advisor known to the Head of Correctional Institution.
- d. Letter of notification to the District Prosecutor's Office regarding the plan to grant parole to the convict and criminal child concerned.
- e. Copy (List of Letters F) from the Head of Penitentiary (Head of LAPAS).
- f. Copy of list of changes from the Head of LAPAS.
- g. A statement letter from convicts and criminals that they will not commit acts that violate the law.
- h. A letter of guarantee of ability from the family that is known by the Lurah or Village Head or another name that states.
- i. Prisoners and Criminal Children will not run away and/or commit acts that violate the law.
- j. Assist in guiding and supervising convicts and criminal children while participating in the parole program.

B. The Role of Correctional Institutions in Assisting Children in Conflict with the Law

In line with the philosophy of penitentiary, the penal system is essentially a system of treatment/guidance for lawbreakers with the aim of restoring the unity of life, life and livelihood. As a treatment system, the correctional function is very vital and strategic in the juvenile justice process. The strategic role of correctional begins to move from the investigation process to the guidance stage after serving a sentence, from pre-adjudication, adjudication and post-adjudication. The following is the role of the BAPAS Community Advisor (PK) in handling cases of Children with Legal Conflicts (ABH), as follows:⁴

- a. BAPAS Handling Process Before Court, which contains activities to assist children in conflict with the law, which include:
 1. The process of providing information and advice to the court regarding children by reading out the results of Community Research.
 2. Facilitate the needs and information needed by children in conflict with the law.
 3. Facilitating needs and information for families of children in conflict with the law.
 4. Coordination with the Court
 5. Fulfillment of Children's Rights at Court
- b. The Process of Handling BAPAS At Court, which contains activities for compiling community research (PPM) on children in conflict with the law, which includes:
 1. BAPAS conducts interviews with children in conflict with the law
 2. Interviews with parties related to the child, such as friends, family or teachers
 3. Examine the environment where children live and school environment
 4. Coordination with the Police
 5. Fulfillment of Children's Rights Before Court

⁴ Wawancara dengan Bapak Purbaradix Saunan selaku Kasub Si Klien Anak Lembaga Pemasyarakatan Kelas II Kabupaten Bojonegoro pada tanggal 28 Maret 2022 pukul 09.00 Wib



c. BAPAS Handling Process After Court, which consists of a guidance process and a supervisory process. The Pembinaan process includes:

1. Doing Group Guidance
2. Conducting Skills Guidance
3. Doing Individual Guidance
4. Fulfillment of Children's Rights after Court

In the three stages above, the handling of cases of children with legal conflicts strictly adheres to the normative aspects of laws and regulations and cannot be contested.⁵ In dealing with cases of children in conflict with law (ABH), of course the Social Counselor is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and other technical regulations such as Government Regulations to Regulations of the Director General of Corrections Ministry of Law and Human Rights of the Republic of Indonesia. The principle that PK BAPAS upholds is that the ABH problem can be carried out by means of diversion:

1. Threats of not more than 7 (seven) years imprisonment;
2. Not a repetition of a crime (*residivise*).

In handling ABH cases, PK BAPAS officers always use the provisions regarding the application of age limits for children both under 12 years and over 12 years, a maximum of 18 years according to laws and regulations. Article 71 (1) of the SPPA Law concerning child criminal sanctions that:

- Principal crimes for children consist of:

- a. Warning sentence;
- b. Punishment with the following conditions:
 - 1) Coaching outside the institution;
 - 2) Community service; or
 - 3) Supervision.
- c. Work training;
- d. Institutional coaching; and
- e. Jail.

- Additional punishment consists of:

- a. Deprivation of profits derived from criminal acts; or
- b. Fulfillment of customary obligations.

While the possibility of sanctions against children under the age of 12 years there are special sanctions provisions as stipulated in Article 67 Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old In the case of Children who are not yet 12 (twelve) years of committing or suspected of committing a crime, Investigators, Community Advisors, and Professional Social Workers make a decision to:

- a. Give it back to the parents/guardians; or
- b. Include them in educational, coaching and mentoring programs in government agencies or LPKS in agencies dealing with the social welfare sector, both at the central and regional levels, for a maximum period of 6 (six) months.

⁵ **Ibid.**

Correctional Centers through Community Advisors in handling every case of children in conflict with the law at each stage of examination always seek a process or mechanism in a diversionary manner and of course it must be based on a document of consideration in the form of a Community Research Report.⁶ The Community Research Report is a report containing the results of observations made by the Correctional Center (BAPAS), which is an institution that plays an important role in the process of resolving juvenile criminal cases as a companion for children in conflict with the law, supervising development programs.

Community research reports (LITMAS) will be prepared by Community Officers (PK) carefully and thoroughly, with the basic systematics of preparation including the following:⁷

1. Introduction

This provision describes objective data and information about the background and development of child clients from various aspects: sociological, psychological, economic and so on. This introduction applies methods through interviews, observations and observations, literature studies, documentation and to relevant information sources. By disclosing the background and development of Child Clients it will be easier to find accurate recommendations which are the goals of the community research. Because accurate recommendations are supported by valid and relevant data and information, it is hoped that they can be used as material for consideration for trial enforcement as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and other laws and regulations.

2. Identity

a. Child Client Identity

The identity of the Child Client/as an element in conflict with the law must be included including items: name, place/date of birth, gender, religion, ethnicity/nation/national race, last education, marital status, address, and special characteristics.

b. Biological Parent Identity

The identity of the biological parents of the Child Client must also be included, starting from the father, mother, or guardian of the Child Client, to the husband/wife if the child client is married.

a. Family tree

This family structure is a component that must also be listed in the LITMAS which contains clarity of order in the family, for example the child as a client is a married child, then as the head of the family.

3. Life History and Development of Child Clients

This aspect includes several components including: birth history, growth and development of child clients. This can identify if the social and/or medical process at the time the client was born experienced a disturbance that might be used as a factor in breaking the law by a child client. Likewise with the growth of the physical condition

⁶ Ibid.

⁷ Ibid.



of child clients who are experiencing disturbances, it might also be used as a factor in breaking the law. The history of Psychosocial development of Child Clients also plays a role because of developments related to emotion, motivation and human personal development as well as changes in how individuals relate to other people. This curriculum vitae includes the following components:

- a. Birth History, Growth and Development of Child Clients
- b. Child Client Educational History
- c. Child Client Behavior History

4. Conditions of Child Clients

This description explains the child client by describing the various talents/potentials they have in various matters such as whether the child client has an attitude that tends to be independent, talent/potential in the arts, sports, automotive and so on. At the same time, this condition describes the figure of a good child shown by his daily attitude at home, which often helps with homework and so on. In addition, the description of this condition also includes aspects of the Child Client's association with his friends including who the child client is friends with, what is the character of his friends, how is the client's relationship with his friends whether harmonious or disharmonious, good or bad is also described as the basis for the child client's condition . Likewise regarding the religious condition of the child client whether in the field of religion and worship he is diligent or if he is not diligent, accompanied by reasons and causes.

5. Condition of Parent/Guardian

This aspect is no less important in LITMAS because the condition of the parent/guardian in the family will more or less affect the condition of a child client. This description includes several aspects, namely:

- a. Parents' marital history
- b. Social relations in the family
- c. Social relations in society
- d. Occupation and economic conditions

All of the above aspects are described in detail by the Community Advisor in the LITMAS document as well as the conditions of the parents' marital history because the conditions of the parents' relationship including the history of divorce will greatly affect the condition of the child client in acting. Including relationships with family and community relations also have an important contribution. The economic conditions of the family to the circumstances where the child client lives will also affect the psychological condition of the child and the child's personality.

6. Social Conditions of the Child Client's Residence

This condition also plays a role in the development of child clients in their environment, whether the community has good interaction and communication, for example the pattern of mutual cooperation community relations. It is also supported by economic conditions related to work, housing conditions, education, culture, and other environmental aspects of the client's child community.

7. History of Criminal Acts

This brief description includes the things that encourage/why the child client commits a crime, due to intention, opportunity, influence of friends, influence of the victim, coercion, hurt, revenge, threats from other parties or so on, and at least the client's



background can be identified children to be involved in a crime. At least this aspect includes the following items:

- a. Background
- b. Chronological
- c. Victim's Condition
- d. Consequences of criminal acts against child clients and parents of child clients and society.

8. Responses of Various Parties to the Diversion Plan

This response is also an important part because it reveals the motive for the crime according to the confession of the child client. Does the child client admit or if he does not admit what he is accused of, he must disclose his reasons/alibis, also disclose the child client's wish to apologize to the victim as well as the child client's plans and hopes when the problem has been resolved, such as wanting to improve himself, wanting to apologize to all those who feel that they have been harmed and other expectations. This response includes several parties as follows:

- a. Child Client Responses
- b. Responses of parents/family of child clients
- c. The victim's response to the crime committed
- d. Local community response
- e. Local government response
- f. Consequences of criminal acts on victims and society
- g. Consequences of criminal acts against child clients and parents of child clients

9. Assessment results/recommendations

The results/recommendations are a component of the assessment that has been carried out, so the results of the recommendations for a good assessment will be described including risks and needs, psychological/physical/health/social/etc that have been carried out on child clients.

10. Analysis

This analysis is a breakdown of a subject from its various parts and a study of the parts themselves and the relationships between parts to obtain a precise understanding and understanding of the overall meaning, which includes: the development of the child client from birth to the occurrence of a crime, chronology of the crime, factors causing the occurrence of the crime, the views of families, victims and society, as well as other things that lighten or aggravate child clients.

11. Conclusions and Recommendations

This conclusion is not a summary of the description previously presented in the research report, but a brief and clear study of the child client's problems based on the analysis that has been carried out. This analysis includes the causes of children committing crimes, the acceptance of various parties to the implementation of diversion and the needs of child clients for solving their problems by prioritizing the best interests of the child. At the same time, this conclusion is complemented by a recommendation that the results of the diversion decision will be carried out based on the provisions of Article 10 paragraph (2) of the SPPA Law, namely:

- a. Refund of loss in the event of a victim
- b. Media and psychosocial rehabilitation



- c. Return to parents/guardians
 - d. Participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months; or
 - e. Community service for a maximum of 3 (three) months.
12. Cover
This community research report ends with a closing section which legally must be signed by a Community Advisor who knows the Head of the Correctional Center.
13. Supporting Documents:
- a. Birth certificate/proof of birth/raport.ijazah/other valid evidence
 - b. Family Card (KK)
 - c. Identity Card (KTP) of parents/guardians
 - d. Domicile certificate from the neighborhood (RT/RW)
 - e. Certificate from school (if any)
 - f. Assessment results (if any)
 - g. Victim's statement (if any)
 - h. The statement letter does not repeat the crime
 - i. Letter of affidavit of parent/guardian able to educate

CLOSING

A. Conclusion

1. Whereas the main duties and functions of the Correctional Institution through the Community Advisor in dealing with cases of children with legal conflicts (ABH) are assigned:
 - a. Make community research reports for the benefit of Diversion, provide assistance, guidance and supervision of Children during the Diversion process and implementation of the agreement, including reporting it to the court if Diversion is not carried out.
 - b. Make social research reports for the purposes of investigation, prosecution and trial in child cases, both inside and outside the courtroom, including in LPAS and LPKA.
 - c. Determine child care programs in Penitentiary and Child development in LPKA together with other correctional officers.
 - d. Provide assistance, guidance, and supervision of children who are based on a court decision sentenced to a crime or subject to action; and
 - e. Assisting, guiding and supervising children who get assimilation, parole, pre-release leave, and conditional leave.
2. Whereas the role of Correctional Centers in handling cases of Children in Conflict with the Law includes several stages of the process, namely from the investigation process to the guidance stage after serving a sentence, or if the process is simplified into stages: pre-judgment, adjudication and post-adjudication.

B. Suggestions

1. It is expected that Correctional Institutions that have been given their authority based on laws and regulations will continue to carry out their duties properly in accordance with the TUPOKSI so that they play an optimal role for the community.

2. It is hoped that in handling cases of children in conflict with the law, the Community Advisors will continue to prioritize humane methods and try to put forward the best aspects for children.

REFERENCE

- Bambang Sanggono, 2016, *Metodologi Penelitian Hukum*, PT. RajaGrafindo Persada, Jakarta
- Mahmud Peter Marzuki, 2009. *Penelitian Hukum*. Kencana Prenada Media Group: Jakarta
- Mukti Fajar dan Yulianto Achmad, 2017, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta
- Susilowati, 2008. *Upaya Meminimalisasi Penggunaan Pidana Penjara Bagi Anak*, Universitas Diponegoro, Semarang
- Wawancara dengan Bapak Purbaradix Saunan selaku Kasub Si Klien Anak Lembaga Pemasyarakatan Kelas II Kabupaten Bojonegoro pada tanggal 28 Maret 2022 pukul 09.00 Wib
- Undang No.12 Tahun 1995 tentang pemasyarakatan
- Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak
- Peraturan Pemerintah Republik Indonesia Nomor 65 Tahun 2015 tentang Pedoman Pelaksanaan Diversi dan Penanganan Anak Yang Belum Berumur 12 (Dua Belas) Tahun
- Dalam hal Anak yang belum berumur 12 (dua belas) tahun
- <http://www.pikiran-rakyat.com/bandungraya/2015/08/04/337054/sepuluh-ribu-anak-kiniberhadapan-dengan-hukum>, diakses pada tanggal 28 April 2022