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## The Assistance of Community Counselor towards Children in Conflict with the Law in Surakarta

Shinta Rukmi Budiastuti, Bambang Hermoyo

Fakultas Hukum Universitas Slamet Riyadi  
Email: Shinta.rukmi.budiastuti@unisri.ac.id

### ABSTRACT

Children as perpetrators of criminal acts who are in juvenile criminal justice must receive protection for their rights. Social facts concerning children that have occurred in social life lately have led to problems or problems other than what causes a child to commit a crime and how to handle it, or settlement of criminal acts committed by children. The purpose of this research is to examine the Assistance of Community Counselor towards children in conflict in Surakarta. The method used is normative juridical with comparative juridical research approach and analytical descriptive, data collection techniques are carried out through library research so as to obtain secondary data. The interview technique was carried out to obtain supporting data in order to complete the information needed in answering research problems, by holding questions and answers (interviews) to various parties who understand the problem of child criminalization.

### Abstrak

Anak sebagai pelaku tindak pidana yang berada dalam peradilan pidana anak harus mendapat perlindungan terhadap hak-haknya. Fakta-fakta sosial yang menyangkut anak yang terjadi dalam kehidupan bermasyarakat belakangan ini mengarah kepada persoalan atau permasalahan selain apa yang menyebabkan seorang anak dapat melakukan tindak pidana serta bagaimana penanganan atau penyelesaian terhadap tindak pidana yang dilakukan oleh anak. Tujuan penelitian untuk meneliti Pendampingan Pembimbing Kemasyarakatan Terhadap anak yang berkonflik dengan di Surakarta. Metode yang dipakai adalah yuridis normatif dengan pendekatan penelian yuridis komparatif dan bersifat deskriptif analitis, teknik pengumpulan data dilakukan melalui studi kepustakaan sehingga memperoleh data sekunder. Teknik wawancara dilakukan untuk memperoleh data pendukung guna melengkapi informasi yang diperlukan didalam menjawab permasalahan penelitian, dengan mengadakan tanya jawab (wawancara) terhadap berbagai pihak yang memahami permasalahan tentang pemidanaan terhadap anak.

### Introduction

Children as one of the human resources and are the next generation of the nation deserve special attention, both from parents, society and government. This is aimed at fostering to realize strong and quality human resources. In connection with the development and development of children's lives, legal facilities and infrastructure are also needed that anticipate problems that arise.

The facilities and infrastructure in question concern the interests of the child as well as those concerning deviations in attitudes and manners that made the child had to face the law or be brought before the court. In addition, this legal facility aims to anticipate the stigma or label of evil and naughty that used when children commit criminal acts or deal with the law, as well as rehabilitate and re-socialize these children.

According to the law the Criminal Justice System Children there are some new things as a breakthrough policy, so that the best interests into a single goal in the Beijing Rules can be realized by applying the law of settling disputes outside of the court process through the diversion.

The government also issued a new rule that is specifically which lies in Law no. 11-2012 which pays great attention to the protection of children. In the consideration of Law no. 11-2012 it is stated that children are a mandate from God, where in children there is dignity as well as human dignity, and parents have the right to be responsible for the child. So that the dignity of children is always guaranteed, special protection is needed, and what is important is legal protection for children when faced with the justice system. Various efforts have been made, are fully aware that in society there are still many children who need special protection efforts. The reality in society is that there are still many children who are victims of physical violence.

Cooperatives of Children in Conflict with the Law, need to get protection by individuals, groups, social organizations and the government in particular, most importantly by Community Counselors who have an important role in the welfare of children and the maintenance period from various errors in

<sup>1</sup>Randy Pradityo, Restorative Justice dalam Sistem Peradilan Pidana Anak, Jurnal Hukum dan Peradilan, Vol. 48, no. 3, November 2016, Pp. 320-321.

<sup>2</sup>Putri Salsabila Sutardja, Dewinta Adea Rohma, Lisa Oktavianti, Efektivitas Perlindungan Anak terhadap Anak sebagai Korban Prostitusi Online Dalam Kasus Di Madiun, DiH: Jurnal Ilmu Hukum, Volume 17, Nomor 2, August 2021, Pp. 255

<sup>3</sup>Sholeh Soeaidy, S.H dan Zulkhair, Drs., 2001. Dasar Hukum Perlindungan Anak, CV. Novianto Pustaka Mandiri, Jakarta, hlm. 1, dalam Skripsi Reza Pahlevi, perlindungan hukum terhadap anak yang menjadi korban tindak pidana. Fakultas Hukum, Universitas Atma Jaya Yogyakarta

5 applying the law to children who face problems with the law more - more in the process of resolving child criminal cases. For that we must pay attention and serve them, because they are very sensitive to various threats of mental, physical and social disorders. Children who are in conflict with the law are often unable to protect themselves due to situations and conditions. In the case of children in Indonesia, the assistance of Community Counselors has not fully implemented in accordance with Article 23 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which explains that children must be given legal assistance and accompanied by a Community Counselor or other assistance in accordance with the provisions of the legislation. Law and Article 64 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which stipulates that Community Research, mentoring, mentoring, and supervision of children are carried out by Community Counselors.

The Assistance of Community Advisors is carried out by suspected children undergoing examination by investigators (making a child's BAP), following the diversion process that has been determined by the police by providing assistance to children during the diversion process, the diversion report file that has been made, as well as examination in court if indeed the legal process must reach the stage of the Court. Furthermore, the guidance carried out by the Community Counselor is to provide social guidance, strengthen positive personality and understanding to the suspect during the legal process. The supervision carried out by the Community Advisor is to monitor whether the diversion agreement is fulfilled or not. If the diversion agreement has been fulfilled, the Community Counselor will make a report addressed to the party conducting the diversion. In the event that diversion agreement is not implemented within the stipulated time, the Community Counselor immediately reports it to the responsible official as referred to in Article 14 paragraph (1) of the Child Tuition Law.

In Chapter IV Section in Article 64 paragraph (1) of the Child Tuition Fee Law, it reads: "Community research, assistance, guidance, and supervision children is carried out by Community Counselors". In line with the main duties and functions of the Correctional Center, one of which is to carry out Community Research (Litmas) for the implementation of child diversion, and to provide assistance to children at the Police, Attorney and Court levels. The Correctional Center through its Community Counseling officer is not only an agency that gives the task of conducting Community Research relating to children involved in criminal cases as regulated in the Juvenile Court Law. However, through the Juvenile Criminal Justice System Act, the Correctional Center (BAPAS) has become one of the unimportant ones in the process of resolving criminal acts committed or involving children.

The method used is normative juridical with comparative juridical approach and descriptive analytical, data collection techniques are carried out through library research so as to obtain secondary data. The interview technique was carried out to obtain supporting data to complete the information needed in answering research problems, by holding questions and answers (interviews) to various parties who understand the problem of criminalizing children.

## Research Methods

The method used is normative juridical<sup>4</sup> with a comparative juridical approach and descriptive analytical, data collection techniques are carried out through library research so as to obtain secondary data. The interview technique was carried out to obtain supporting data in order to complete the information needed in answering research problems, by holding questions and answers (interviews) to various parties who understand the problem of criminalizing children.

## Results and Discussion

3 Children are an inseparable part of the survival of human life and the sustainability of a nation and state. In the Indonesian constitution, children have a strategic role which is explicitly stated that guarantees the right of every child to live, grow and develop as well as protection from violence and discrimination. Before, the best interests of children should be understood as the best interests of human life. This is a consequence of the provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia which needs to be followed up with government policies aimed at protecting children.<sup>5</sup>

45 Violations of children's law are caused by various factors, including the negative impact of rapid development, globalization in the field of communication and information, advances in science and technology as well as changes in style and way of life that have brought about fundamental social changes in people's lives that have an impact on the community, on children's values and behavior. Children less get the love, care guidance and coaching in the development of attitudes, behavior, adjustment, as well as the supervision of a parent / guardian or foster parent will facilitate dragged the current social and environmental unhealthy and detrimental to personal development.<sup>6</sup>

Children need to be protected 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 the majority of older people who have brought about fundamental social changes in people's lives that greatly affect the value of society, and behavior of children. Deviations in behavior or violations of the law committed by the Child, among others, are caused by factors outside of the Child.

Darwan Prinst said that child protection is a joint activity that ensures the security, provision and fulfillment of children's spiritual and welfare in accordance with their interests and human rights. On the other hand, Arief Gosita said that providing protection to children or adolescents is something that is natural and is our shared responsibility. Protection for children is nothing but so that the welfare of the child is guaranteed and the protection of the interests of the child can be achieved. All this must be done by all members of the community and become a shared responsibility.<sup>7</sup>

The Crimes committed by children as perpetrators of criminal acts are certainly not a new thing. Today there are many criminal incidents such as theft, mugging or extortion by a child. Limitations on child delinquency are emphasized against child perpetrators who are acts that violate the norm, but if

<sup>4</sup>Soerjono S. 40 to dan Sri Mamudji. 2005. *Penelitian Hukum*. Jakarta: Pustaka Sinar Harapan, Pp. 12

<sup>5</sup>Penjelasan Umum Undang-Undang Nomor 11 tahun 2012 tentang "Sistem Peradilan Pidana Anak", Lembaran Negara Republik Indonesia Tahun 2012 No. 153

<sup>6</sup>Maidi. 60 tom, *Perlindungan Terhadap Anak dan Perempuan*. Refika Aditama, Bandung, 2012, Pp. 193

<sup>7</sup>Arief, Gosita, *Masalah Korban Kejahatan*, Akademika Pressindo, Jakarta, 1985, Pp. 226.

done by adults with crimes, because it is unethical. Child's actions are called "criminals" considering that children who commit these crimes still need supervision or action coaching rights. children regulated in Law no. 11 of 2012 concerning the Juvenile Justice System, Article 3 mentions the rights of children<sup>18</sup> the judicial process:

1. Treated humanely by taking into account the needs according to their age
2. Separated from adults
3. Obtain legal aid and other assistance effectively
4. perform recreational activities
5. <sup>18</sup> from punishment, punishment or other treatment, inhuman, and cruel in degree and dignity
6. Not sentenced to death or life imprisonment
7. Not arrested, detained, detained in prison, except as a last resort and in the shortest time
8. Obtaining justice before the court and in closed hearings for public
9. Unpublished identity
10. Obtaining assistance from parents / guardians and orangutans trusted by children
11. Obtaining social advocacy
12. Obtaining a private life
13. Gaining accessibility, especially for disabled children
14. Obtaining education
15. Obtaining health<sup>10</sup> vice
16. Obtaining other rights in accordance with the provisions of legislative regulations<sup>8</sup>

<sup>46</sup>  
In addition to the legal basis above, there are three international instruments that are important in protecting the rights of children in conflict with the law. These international instruments are:

- a) <sup>26</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)<sup>9</sup>
- b) Prevention of child delinquency is an important part of crime prevention in general in society. Utilization of the means of giving laws, useful social activities, taking a human approach to all aspects of life and paying attention to the lives of children, will be beneficial in developing non-criminogenic traits. The principle that needs to be remembered in this case is that children who commit violations do not need to react by criminalizing or punishing them for their actions.
- c) In the context of preventing and overcoming this child delinquency, the government shall formulate laws and implement special laws and regulations, special procedures in the context of protecting children's rights and child welfare. This special law is directed at efforts to prevent victimization, besides that it regulates the provisions for placing children in prison, house punishment, school punishment or others.
- d) Law enforcement and other relevant officers to be responsive and familiar with all the needs<sup>9</sup> of children and must use special skills to the maximum extent possible for the arrangement and handling of programs and other possibilities so that children are avoided from interference by the justice system.

<sup>38</sup>  
2. United Nation Standard Minimum Rules For The Administration Of Juvenile Justice (Beijing Rules)<sup>10</sup>  
Beijing Rules generally contain the need for comprehensive social policies aimed at achieving child welfare, which support will reduce interference with this system, harm - Loss to the child due to interference with this system is acceptable. With the intervention of this system, the losses to the child<sup>22</sup> result of the intervention system can be obtained.

Juvenile Criminal Justice as part of efforts to realize children's welfare is carried out based on the principle of proportionality, which is emphasized as a means to curb punitive sanctions, but also pays attention to the child's environment, such as social status, family circumstances and other factors that cause of anti-social acts.

The purpose of juvenile justice, which are operationally played by law enforcement officers, in this context law enforcement officers are given the widest discretion, possible and at all levels to exercise discretion. The placement of children in correctional institutions is placed as a last resort and only for the short term. Child detention solely for reasons of the trial has been delayed inevitable.

<sup>43</sup>  
3. United Nation Rules For The Protection Of Juvenile Deprived Of Their Liberty<sup>11</sup>  
Deprivation of liberty upon a child who might as a last resort, even just in the short term (for certain cases). <sup>66</sup> authorities must regularly and consistently make efforts to increase public awareness that paying attention to children and preparing children to return to society is a form of social service and is very important, so it is necessary to take <sup>3</sup> steps to open relationships between children and the surrounding community.

Based on the <sup>36</sup> es that have been stated above, it is clear that the state is very concerned about and protects the rights of children. However, in its application, law enforcement problems often experience obstacles and obstacles both caused by internal and external factors, both from the community and among children with deviant behavior, as well as from law enforcement circles and the existing justice<sup>5</sup> system. In dealing with juvenile justice processes involved in criminal acts, the first thing that should not be forgotten is to look at his position as a child with all his special characteristics and characteristics, thus the orientation is based on the concept of child protection in the handling process so that this will be based on the concept of child

<sup>24</sup>  
<sup>49</sup> no. 11 tahun 2012 tentang Sistem Peradilan Anak

<sup>9</sup> Paulus Hadisuprpto, 1997, *Juvenile Deliquency, Pemahaman dan Penanggulangannya*, Citra Aditya Bakti, Bandung.

<sup>10</sup> Ibid Paulus Hadisuprpto,

<sup>11</sup> Ibid Paulus Hadisuprpto,



5 protection, the welfare of the child and the interests of the child. 5 Handling children in the legal process requires a special approach, service, treatment, care and protection for children in an effort to provide legal protection for children in conflict with the law.

Supriyanta<sup>12</sup> stated that there are several models for handling this crime, namely: First, the "informal mediation model. This model is carried out by the criminal court in its normal duties, namely: the Public Prosecutor invites the parties to an informal settlement with the aim of not continuing preparations if an agreement is reached. Social workers or supervisory officials (probation officers) argue that contact with victims will have a major impact on criminals; Police officials appeal to families who may be able to enjoy the situation without making criminal decisions out of court and leaving the case. This type of informal intervention is already common in the legal system. The second model, is the traditional village model or tribal conflict. According to this model, the whole community meets to solve criminal conflicts among its citizens. This model exists in some less developed countries and in rural/inland areas. This model is more choose benefits for the wider community . This model is western law and has provided the inspiration for most modern mediation programs. Modern mediation programs often try to introduce the benefits of tribal moots in a form adapted to modern societal structures and legally recognized individual rights. Third, the victim model of mediation with the characteristics that this model involves various parties who meet in the presence of the appointed mediator. There are many variations of this model. The mediator can come from a formal official, an independent mediator, or a combination. This mediation can be held at every stage of the process, either at the camera refraction stage, the police examination stage, the sentencing stage or after the sentencing. This model is applied to all types of criminals; there are special ones for children; some are for certain types of crime (eg shoplifting, robbery and acts of violence). Some are primarily aimed at child offenders and novice offenders, but some are aimed at serious offenses and even for recidivists.

Currently, the paradigm of social reintegration with the best spirit of children has been accommodated with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This law states that in order to maintain their dignity, children are entitled to special protection, especially legal protection in the judicial system. Law Number 11 of 2012 cannot be denied by affirming that the handling of children's cases is a new beginning in the settlement of children's cases whose settlement is fair by involving the perpetrators, victims, families of victims/perpetrators and other parties related to returning to their original state, and not retaliation. . The second new round is the obligation to settle the settlement of children's cases outside the formal process to the non-formal process.

This fundamental change in the handling of children's cases in the SPPA Law then strengthens the role of correctional facilities that must be in the overall handling of children in conflict with the law. The SPPA Law mandates Correctional Centers (Bapas) through the role of Community Counselors (CS) to carry out the duties and functions as stated in Article 1 number 24, Law No. 11 of 2012, concerning the Juvenile Criminal Justice System, namely: Community Research, Mentoring, Guidance and Supervision. Fathers are a work unit at the Directorate General of Corrections that is involved in the process of fostering all Correctional Inmates. Its existence is expressly regulated in Law No. 12 of 1995 concerning Corrections, that the prisons are in every district/municipality capital or (if deemed necessary) at the sub-district or administrative city level, a branch of the pas- sion can be established. Likewise, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System also emphasizes the obligation for the government to establish prisons in districts/cities, but in fact the prisons, the promulgation of correctional facilities have not been able to become a unit that influences the law enforcement process. Whereas conceptually in the correctional system, the Fathers are expected to be able to provide recommendations to someone who has problems with the law so that law enforcement officers do not impose punishment. By providing assistance, guidance and supervision of the process of coaching, self-improvement and reintegration into the community, Fathers are expected to provide protection for the community so that perpetrators do not repeat it again.

The Community Research (Litmas) is a series of activities at the Pre-adjudication, Adjudication, Post-adjudication and after-care stages in the form of data collection, needs analysis and assessment as well as assessments and solutions for the benefit of children and correctional clients whose results are in the form of documents. In Law No. 11 of 2012, the results of the litmas are documents that must be considered before the judge gives a case decision, on the other hand if the judge does not consider the results of the litmas then the decision is null and void. Meanwhile, Community Counselors are law enforcement officials who carry out research, guidance, supervision, and assistance to children inside and outside the criminal justice process (Article 1 number 13 of Law No. 11 of 2012).

Apart from the BAPAS, there is also a mandate to establish a Temporary Child Placement Institution (TCPI) which works as a place for children in conflict with the law. In carrying out this function, TCPI is obliged to provide services, training, education and training, mentoring and mentoring for children. TCPI is obliged to ensure that children in conflict with the law are not interrupted and TCPI is also the foundation for the guiding principles for children who will still have to undergo punishment at the Child Special Guidance Institution (CSGI). Father's role as one of the Correctional Technical Implementing Units is very important in encouraging the handling of children's cases through a restorative and diversion approach.

#### B. Implementation of the Assistance of the Surakarta Penitentiary's Community Counsel for Children in Conflict with the Law

In Litmas (Community Research), Children's Special (ABH), BAPAS's duties have been regulated since the child is dealing with the law, CS (Social Counselor) who is a certain functional official in BAPAS is involved since the examination examination where they accompanying the child in question during the examination conducted by the investigator, then the CS who will later be considered as a judge if the case enters the realm of a court trial or when diversion<sup>19</sup>.

Guidance for children is mostly carried out when the process of undergoing imprisonment then undergoes half a period of coaching and behaves well during the coaching, the child is given the right<sup>19</sup> social reintegration, namely conditional or conditional leave. Furthermore, Supervision is carried out if there is a Diversion agreement between the Child in Conflict with the Law and the<sup>27</sup> victim, where in the agreement there are obligations that must be fulfilled. If there is a Diversion agreement, then the agreement is requested for a Court Decision so that it has permanent legal force.

<sup>12</sup>Supriyanta. 2012. *Perkembangan Sistem Peradilan Pidana Anak Dalam Perspektif Perbandingan*. E-Journal Universitas Slamet Riyadi Surakarta. Volume XXIV No.1, August The year 2012, Pp. 12

Supervision of ABH after the trial commences is carried out if there is a judge's decision that requires the Community Counselor to supervise for 3 or 6 months while undergoing actions either to parents or treatment at SWOI/CWI.

In Community Research, Community Counselors are obliged to maintain and maintain good relations with clients, understand and uphold the dignity of clients, and may not corner or give awards. In connection with that matter.

After the required data, the Community Counselor then analyzes, provides 16 considerations, and suggestions in relation to the client's problems, then the data obtained is obtained in the Community Research report. Meanwhile, based on the provisions of Article 57 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Community Research report as referred to above contains:

- a. Personal data of children, family, education, and social life.
- b. The background of the crime.
- c. The condition of the victim in the event that there is a victim in a crime against the body or life.
- d. Anything else deemed necessary.
- e. News of diversion.
- f. Conclusions and recommendations from the Community Advisor.

The Community Research Report that has been prepared by the Community Counselor is needed by law enforcement officials to assist in the 12 settlement of children's cases either through diversion efforts or through the criminal justice process.

In the process of diversion, the Community Research report is used by law enforcement officers, community 42 advisors and parties involved in diversion as a consideration whether the ABH will be detained in a special state detention house for children or handed over to the state for education, coaching and job training, or returned to their parents. The Community Research Report as 54 in determining the type of crime or appropriate action to be given to the child, whether the child will be subject to a warning, criminal conditional (coaching outside the inst 8 tion, community service, supervision), job training in lieu of fines, coaching in institutions or imprisonment or will only be subject to actions such as returning to parents/guardians, handing over to someone, treatment in a mental hospital, treatment at SWOI, the obligation to attend formal education and/or training held by the government or private bodies, revocation of driving license or repairs due to crime.

The type of decision handed down to the child must be carried out with great care because the decision affects the future of the child, the decision given is expected to be able to make the child a better person in the future by not returning to acts that violate legal norms and social norms. Furthermore, after the 31 community Counselor conducts Community Research and compiles the results of the Community Research in the Community Research report, in accordance with the provisions of Article 57 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Community Counselor is obliged to read out the results of the Community Research report regarding the child concerned without the presence of children, unless the judge thinks otherwise. 4

One of the special protections 4 for children in conflict with the law is the imposition of appropriate 7 sanctions for the best interests of the child. The imposition of appropriate sanctions in the best interests of children is the goal of the juvenile criminal justice system in the Law of the Republic of Indonesia Number 35 51 14 concerning Amendments to Law Number 23 of 200 3 concerning Child Protection. This means that in every decision making in the handling of Children in Conflict with the Law, it must be based on the principle of the best interests of the child, namely that all decisions must consider the survival and development of the child. The imposition of appropriate sanctions for the best interests of children, namely 32 sanctions that can support the development and protection of children. By considering the Community Research report, it is hoped that the imposition of appropriate sanctions in the best interests of the child can be realized so that the needs and rights of the child can be properly fulfilled.

For child clients, the guidance carried out by the Community Counselor at the Class I Correctional Center in Surakarta City for child clients can be done in two ways. First, the child client comes to the Correctional Center office to get the guidance provided by the Community Counselor. Second, the Community Counselor goes directly to the residence of the child client to provide guidance. The guidance program provided by the Community Counselor to child clients includes personality guidance and independence guidance.

In the event that the child's guidance is carried out by foster parents or a social agency, the foster parents or social agency must follow the guidance guidelines in an orderly manner as stipulated by a Ministerial Decree. This is in accordance with the results of interviews that have been conducted with Ridlo Pambudi as CS stating that: "Similar to the guidance of children carried out by their parents or guardians, the parents or guardians are required to follow in an orderly manner the guidance guidelines stipulated by the Ministerial Decree. Furthermore, in the event that the guidance of the child is handed over to the foster parents or social agency and the child is handed over to the parent or guardian, then it is the duty of the Correctional Center to carry out supervision of the foster parent or social agency and the parent or guardian so that the obligations as a caregiver can be fulfilled and monitoring the development of children in conflict with the law who are being cared for".

In addition to providing assistance to child clients as referred 15 above, the Surakarta City Class I Correctional Center also provides recommendations so that cases will be resolved through a diversion process. According to PERMA 4 of 2014 Diversion is a deliberation between parties involving children and their parents/guardians, victims and/or their parents/guardians, Community Advisors, Professional Social Workers, re 12 ntatives and other involved parties to reach an agreement on diversion through a restorative justice approach. . Meanwhile, the facilitator is a judge appointed by the head of the court to handle the case of the child in question. Diversion is the transfer of the process to a long and very rigid child case settlement system. Mediation or dialogue or deliberation as an integral part of diversion to achieve restorative justice.

Punishment for perpetrators of child crimes does not then achieve justice for the victims, considering that from the other side it still leaves its 58 problems that are not resolved even though the per 12 ators have been punished. Seeing the principles regarding child protection, especially the principle of prioritizing 12 best interests of the child, a process for resolving child cases is needed outside the criminal mechanism or commonly called diversion. Punishment institutions are not a way to solve children's problems because they are prone to violations of children's rights.

Therefore we need an event and procedure in the system that can accommodate the settlement of cases, one of which is to use a restorative justice approach, through a legal reform that does not merely change the law but also modifies the existing criminal justice system, so that all objectives what

the law wants is achieved. One of the mechanism restorative justice is a dialogue among the Indonesian people, better known as "deliberation for consensus". Diversion, especially through the concept of restorative justice, is a very important consideration in resolving criminal cases committed by children.

The Community Counselor provides recommendations regarding the results of the diversion agreement in the form of peace with or without compensation, refund of losses in the event of a victim medical and psychosocial rehabilitation, handover to parents/guardians, participation in education or training in educational institutions or SWOI for a maximum of 3 (three) days, three months, or community service for a maximum of 3 (three) months.

The recommendation of the Community Advisor that the child be handed back to the parent or guardian is based on the consideration that the child is still in school status and that the parent or guardian is still able to better educate and supervise the child. Meanwhile, if it is felt that parents or guardians cannot educate and supervise children, the Community Counselor provides recommendations so that children are given guidance in SWOI.

In addition to these recommendations, Community Counselor also provides recommendations for children to undergo community service crimes. The community service crime can be in the form of social work carried out in nursing homes, assisting the village administration or light sanctions such as cleaning places of worship. The recommendation of the Community Advisor above is carried out for minor crimes, crimes without victims or the value of the victim's loss is not more than the value of the local provincial minimum wage.

The Correctional Center participates in providing assistance to Children in Conflict with the Law, but the implementation of the diversion process and the implementation of the resulting agreement rests with the direct supervisor of the official responsible for each level of examination. In the event that the diversion agreement is not implemented within the specified time period, Community Counselor immediately reports it to the responsible official according to the level of inspection for later follow-up on the report. Based on the provisions of Article 87 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Correctional Center is also obliged to organize and evaluate the implementation of guidance, supervision, and assistance, as well as the fulfillment of other rights as referred to above.

In practice, diversion assisted by the Penitentiary has experienced many successes, this was conveyed by Mr. Margiyoto Artanufedi stating that: "The success factor depends on the understanding of the victims and perpetrators. The Correctional Center provides an understanding of the steps for diversion to both parties. People only know that the settlement of cases must be carried out through imprisonment, but imprisonment is actually a last resort".

In addition, the implementation of diversion is still not appropriate, an interview with Mr. Aquari Sikka Perwira as CS stated that: "More diversion has been successful, but its implementation has not been as required by the rules and laws because the police have a full role in this process and it seems as if the everything was arranged by them. Diversion is just a formality. In addition, ordinary people do not understand and understand about diversion and only focus that the perpetrator should be sentenced to prison. Diversion is a way that leads to kinship, but usually the victim, perpetrator, and the police previously had their own agreement to resolve the problem so that diversion was no longer effective. Police often make their own rules about solving a problem through an agreement in the form of money rather than having to be resolved by diversion, this has become a common thing. Diversion is indeed more successful, but almost 90% of the pre-diversion consultations have been carried out so that diversion is only carried out as a formality to obtain a diversion agreement document".

In addition to the Correctional Center, the Surakarta Police is a party that also participates in efforts to resolve children in conflict with criminal law through approach restorative justice. The mechanism for handling child cases at the Surakarta Police begins with reporting, where the parent as the child's companion or guardian is the reported party.

After the report was made, an examination of the reported party was carried out by looking at the victim and the perpetrator's child, as well as the situation in the case. The next action is to determine the settlement of the crime, which is resolved by using restorative justice, diversion, or the applicable law.

If there is a report, the Surakarta City Police Investigator coordinates with the Correctional Center to provide assistance, guidance, and supervision of Children in Conflict with the Law and child victims. The coordination is carried out as soon as possible by the Surakarta City Police with the Correctional Center because the handling of Children in Conflict with the Law only has 7 (seven) days of investigation, plus an extension of 8 (eight) days if detention is carried out.

This is in line with the interview conducted by the author with one of the informants from the Surakarta Police who stated that: "When it is examined and it is known that the victim or perpetrator is a child, it is obligatory to be accompanied by parents or legal counsel. In addition, if the perpetrator is a child, it will be immediately coordinated with BAPAS as soon as possible because the handling of a child suspect only has 25 days of investigation, plus an extension of 8 days if detained". In addition to the Correctional Center, the Surakarta Police as a party also participates in the resolution of Children in Conflict with the Criminal Law, because this institution has the authority to conduct examinations on children suspected of being perpetrators of criminal acts. Before the examination was carried out, the investigator conducted an examination of the victim.

Investigators are responsible for contacting the parents or guardians of Children in Conflict with the Law, witnesses, and victims involved in the case in order to provide assistance to them during the examination, both inside and outside the trial. Investigations are carried out by investigators within a period of 15 days. In the investigation process, the investigator coordinates with the Correctional Center and this is a form of cooperation between the Surakarta Police investigator and the Correctional Center regarding efforts to handle children in conflict with the law.

This statement is in line with the results of an interview with Ridlo Pambudi as CS who stated that: "The investigator asked the Correctional Center to conduct research up to the person's house, while the investigator conducted an investigation with a period of 15 days. After an investigation has been carried out and it is a case cannot be handled with restorative justice or diversion, the case will proceed to the next stage, namely the prosecutor's office for prosecution." In conducting an investigation of a child's case, investigators at the Surakarta Police are required to ask for consideration or advice from the Community Advisor after a crime has been reported or reported. The Community Counselor is required to submit a Community Research report to investigators as a guide in making policies to determine the form of action that is deemed appropriate to be imposed on children.



In the event that a child under 12 years of age commits or is suspected of committing a criminal act, the investigator at the Surakarta Police takes a decision to hand him over to parents/guardians or to include him in the education, coaching, and mentoring program at the Social Welfare Organizing Institution (SWOI) at the relevant agency, handle the field of social welfare, both at the central level and at the regional level, for a maximum of 6 months. Furthermore, for a child who is proven guilty because he has committed a crime, the status of the child in question is upgraded to a suspect".

Basically all people who become suspect can be detained for the purpose of examination, with the intention that the suspect does not escape, destroys evidence or does not repeat his actions. In order to protect the rights of Children in Conflict with the Law for the sake of the physical and mental well-being of children, investigators at the Surakarta Police do not detain children.

The policy not to detain children carried out by investigators at the Surakarta Police Station as referred to above is based on the provisions in Article 32 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that detention of children may not be carried out in the event that the child has guarantees from parents/guardians and/or institutions that the child will not run away, will not lose evidence, and/or will not repeat the crime.

In accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, that law enforcement officers are obliged to seek diversion in every process of examining children's cases both at the level of investigation, prosecution, and examination in court. The policy not to make detentions as above is due to several things.

Basically, the provisions of restorative justice aim to provide protection for the rights of children in conflict with the law in the juvenile criminal justice system based on the principles of protection, justice, non-discrimination, the best interests of children, respect for children's opinions and guidance of children, proportionality, deprivation of liberty and punishment as a last resort. Deprivation of liberty and punishment in the juvenile criminal justice system must be used as a last resort (ultimum remedium), the ultimum remedium requires that other sanctions be given (non-penal) in the form of compensation, fines, warnings or other things before being used as criminal means in the form of imprisonment. Avoidance of children from deprivation of liberty and sentencing as a last resort is intended to avoid any negative effects that may arise on the child during the case examination process until the child has finished serving his criminal period.

Basically the policies carried out by investigators at the Surakarta Police by not detaining children in the event that the child receives guarantees from parents/guardians and/or institutions, involve parties and/or agencies needed by the child to provide assistance to the child during children undergoing the process of investigation and diversion, as well as asking for advice and recommendations from the Community Counselor as a guide in making policies for children is a form of the application of restorative justice in handling children in conflict with the law.

Basically, the provisions of restorative justice aim to provide protection for the rights of children in conflict with the law in the juvenile criminal justice system based on the principles of protection, justice, non-discrimination, the best interests of children, respect for children's opinions, guidance and guidance of children, proportionality, deprivation of liberty and punishment as a last resort.

Deprivation of liberty and punishment in the juvenile criminal justice system must be used as a last resort (ultimum remedium), ultimum remedium requires first to give other sanctions (non-penal) in the form of compensation, fines, warnings or other things before using criminal means in the form of imprisonment (body). Avoidance of children from deprivation of liberty and sentencing as a last resort is intended to avoid any negative effects that may arise on the child during the case examination process until the child has finished serving his criminal period.

Based on what has been stated above, in examining children in conflict with the law, the participation of the Social Advisor at the Surakarta Penitentiary, after conducting a Community Research, has the task of providing recommendations to law enforcement officials regarding decisions that will later be given to children. These recommendations will form the basis for the examination and resolution of any cases involving children. This is in line with the results of interviews conducted by the author with Mr. Margiyoto Artanufedi as CS, namely: "Recommendations for Community Advisors are given for every stage of examination of children's cases from the stage of investigation, prosecution, and examination in court as well as in the diversion process. These recommendations include recommendations that children's cases be given diversion, punishment, or action".

The implementation of a progressive legal approach in the juvenile court examination stage is manifested in juvenile judge decisions that can reflect child protection. Therefore, to check to what extent the decisions of juvenile judges can reflect this progressive legal approach, by looking at the forms of decisions handed down on children. Juridically, the provisions in Article 71 Paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System divide the basic penalties for Children in Conflict with the Law into: a. Criminal warning; b. Criminal conditions with the following conditions: 1) Guidance outside the institution; 2) Community service and 3) Supervision. c. Work training; d. Institutional coaching; and e. Jail.

District Court judges in the Surakarta BAPAS area in imposing criminal sanctions, especially imprisonment in general with the following considerations:

- 1) The child is more than 12 years old;
- 2) The child defendant has also repeatedly committed criminal acts and imposed imprisonment with the aim of providing a deterrent effect on child defendants, so that child defendants can improve their behavior in the future, the child's behavior.
- 3) The child has been detained and the detention is continued when the case is transferred to the Prosecutor's Office, as well as when the case is transferred to the Court, the judge who hears the case also makes detention, so that criminal sanctions are imposed, especially imprisonment,
- 4) Action sanctions according to the judge, the rules are not clear, who will supervise and how they will be implemented.
- 5) If the child really has a naughty and criminal nature and has repeatedly committed criminal acts, then the child does not need to be subject to action sanctions but what is appropriate is criminal sanctions, especially imprisonment,
- 6) Because the type of crime is a criminal act, which carries a sentence of more than 5 years.



#### D. Obstacles that occur in the Implementation of the Assistance of the Surakarta Penitentiary Community Counsel for Children in Conflict with the Law

##### 1. Internal constraints, namely obstacles originating from within the Surakarta City Penitentiary.

Internal constraints of the Surakarta City Penitentiary in conducting Community Research consist of:

- a. The Community Research conducted by the Community Counselor is not matched by the availability of funds because the allocation of costs from the Budget Executor's List (DIPA) is not given regularly.
- b. The Community Research conducted by the Community Counselor is not balanced with the availability of transportation facilities. The means of transportation used by Community Counselors in conducting research so far are still using privately owned transportation facilities due to the lack of transportation facilities provided by the Government.
- c. The lack of availability of computers in the Correctional Center office thus hampers the duties of Correctional Center employees in making documents for the benefit of Community Research.

##### 2. External constraints, namely obstacles originating from outside the Surakarta City Penitentiary.

External constraints of the Surakarta City Penitentiary in conducting Community Research consist of:

- a. Children who commit crimes in the jurisdiction of Surakarta City often do not have a clear identity due to various factors, the most common of which is because the child is a street child who comes from outside the city of Surakarta.
- b. In conducting visits for Community Research, the Community Counselor often does not meet with the parents/guardians of the children.
- c. Children often lie about their identity when the Community Counselor conducts interviews by falsifying home addresses so that when Community Research is carried out by visiting the address given by the child, the intended address is not found or does not match because it is someone else's address.
- d. The absence of an active role from both the perpetrator and the victim when the Community Counselor conducts interviews for the Community Research report.
- e. The Community Research conducted by the Community Counselor takes a long time due to various factors including the distance from the Community Research location and Community Research which takes more than 1 visit because the Community Counselor does not meet with the parents or guardians of the children.

From what has been stated above, in practice, when conducting mentoring and supervision programs, Community Counselors at the Surakarta City Correctional Center often experience financial constraints where the allocation of funds from DIPA given to the Correctional Center is inadequate, thus hampering the mentoring process for child clients. In addition, there are other external obstacles faced by BAPAS in providing legal protection to child clients.

The constraints referred to above, of course, are not in accordance with the provisions of Article 73 paragraph (7) of the Juvenile Criminal Justice System Law that for a child who receives a criminal sentence on the condition that as long as he is serving a criminal period with these conditions, the public prosecutor is obliged to carry out supervision and the Community Counselor to carry out guidance so that children comply with the requirements that have been determined.

Another obstacle that is often experienced in the implementation of restorative justice is usually clashed with regulations in the law, where the rules are that the police must invite the public, but when invited they are often not present. In addition, there is no agreement on the amount of 'cost' of compensation where victims often ask for compensation that is quite a lot and the perpetrators cannot fulfill it also becomes an obstacle in the implementation of restorative justice.

The role of the government is needed in helping to overcome the obstacles experienced by Community Counselors in conducting Community Research as referred to above. The government can assist in providing the facilities and infrastructure needed by the Correctional Center which so far are still considered minimal, for example by providing computers, providing shared transportation tools, both cars or motorbikes that can be used to conduct Community Research.

## Conclusion

The implementation of the guidance of the Surakarta Penitentiary's Community Counsel for Children in Conflict with the Law is to provide assistance, guidance, supervision, and Community Research to children in conflict with the law. Assistance at each level of examination is carried out during the implementation of diversion and execution of court decisions/decision. The Correctional Center also carries out the duties and functions of Community Research. In the diversion process, the recommendation for the Community Research report is used as a material consideration for whether the child who has committed a crime will be detained in a state detention house in a special block for children or handed over to other institutions for education, coaching and job training or returned to his parents. The Community Research Report helps determine the type of crime as well as the appropriate action to be given to the child. Furthermore, the Correctional Center carries out mentoring including personality guidance and independence guidance. When the criminal process is carried out and the child behaves well during the training, the child is given the right to social reintegration, namely parole or conditional leave. If the case is resolved through the diversion process, BAPAS will then supervise the Diversion agreement that has been determined by the Court between the Child in Conflict with the Law and the child victim, where in the agreement there are obligations that must be fulfilled in order to fulfill the principles of restorative justice. Supervision of ABH is carried out if after the trial process is complete, there is a judge's decision that requires the Community Counselor to supervise the child while undergoing actions either in the form of returning to parents or treatment at the Social Welfare Organizing Institution (SWOI) or Child Welfare Institution (CWI).

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