

The Role of Correctional Bureau in Child Criminal Case Settlement through Diversion



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ABSTRACT: Correctional Bureau (BAPAS) plays a very important and strategic role in child criminal case settlement. One form of the settlement is made through diversion, for child to avoid the bad impact of formal child criminal judicature. The research employed a juridical normative research method and statute approach and conceptual approach. The role of Bapas in child criminal case settlement through diversion is quite important and strategic as set forth in Law Number 11 of 2012 concerning Child Criminal Judiciary System, Government Regulation Number 65 of 2015 concerning the Guidelines on the Implementation of Diversion and Dealing with Under 12 (Twelve) Years Old Child, Regulation of Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning the Guidelines on Diversion Implementation in Child Criminal Judiciary System. The constraints found in the diversion implementation are related to remedy for victim and non-optimal post-diversion supervision by the Correctional Advisor of Correctional Bureau (PK Bapas).

KEYWORDS: diversion, juvenile justice system, child protection.

I. INTRODUCTION

Child indeed must be looked after well since they are the one who will carry on indonesia's future. In the indonesian constitution, child has a strategic role as expressly stated that the state guarantees each child's right to survival, growth and development as well as protection from violence and discrimination [1]. child is a mandate and gift from god almighty, that we must take care of, since in them dignity, honor and rights are inherent as human that must be upheld. As god's creature, child has their right since they are born, thus no human or any other party has the right to violate it.

The state upholds human rights, including child's right, as marked with guarantee of protection and fulfillment of the rights of susceptible groups [2] including child's right in the 1945 Constitution of the Republic of Indonesia and some provisions of laws and regulations, both at national and international levels. The guarantee is confirmed through the International Convention on the Rights of the Child [3].

In preliminary investigation, full investigation, prosecution, and court hearing, a child must be treated humanely as per his human rights and the extent of punishment based on the level of personal mistake and act quality [4]. The change in the paradigm of dealing with a child in the face of the law requires people, government and other state agencies' participation [5]. Dealing with child in the face of and in conflict with the law must become our mutual concern.

Settlement of legal issue with a child in conflict with the law is to use a restorative approach, commonly known as restorative justice. In the development of criminal law, there is a shift in paradigm of the philosophy of child criminal judicature, in which the child criminal judicature is initially in the form of Retributive Justice, which shifts to rehabilitation, and lastly to restorative justice [6]. In the restorative justice, the correction made may be in the form of justice which involves victim, criminal, and the society to find a solution for correction, reconciliation and guarantee" [7].

In the manifestation of restorative justice, negotiation attempt between the criminal and the victim serves as the center of moral and the most important part in this justice implementation [8]. Therefore, for whatever reason and any act committed by a child, any conviction processes, especially imprisonment, may only be made against an adult [9]. Child is a subject of the society whose good and bad deeds are influenced by sociological factor, that anything arising in the society serves as their experience and teaching [10]. Therefore, it is incorrect for juvenile delinquency, a child is to be placed in a child judiciary system which leads to imprisonment, which has bad impact.

The application of criminal judiciary system for criminal case settlement may have bad impact on child, particularly evil stigmatization (or labeling) of child and habituation of bad habits at Correctional Institution (LAPAS) which are then re-practiced by child outside Child LAPAS (prisonization), even repetition of crimes with more serious consequence [11].

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The sociological condition at Child LAPAS “forces children” to accept criminal values and habituate bad behaviors, of which process is called prisonization by criminologists [13]. In the criminal judiciary system there is a concept of diversion. Diversion also aims at protect and heal child criminal to prevent him from becoming criminal when he reaches adulthood [13]. BAPAS (Correctional Bureau) also plays a very important role in diversion implementation.

Coping with child in conflict with the law must be based on the child’s best interest, in relation to child’s characteristics, including physical, psychological and social characteristics, thus a child does not have to have the same interest with another [14]. Direct contact with law enforcing officers may frustrate child. If the case has been decided by the court, the child may be stigmatized as a criminal. Therefore, experts in psychology, law, criminal etiology, criminology, education and penology always seek for the best way for child, victim and society’s interest. Finally, experts bring the restorative justice approach as an alternative consideration to reduce the weaknesses of retributive justice theory, prevention theory and combined theory.

Correctional Bureau (BAPAS) plays a very important and strategic role in child criminal case settlement. One form of the settlement is through diversion, for child to avoid the bad impact of formal child criminal judicature. Each stage of diversion, including investigation, diversion at prosecution stage and diversion at court level, requires the role and optimal accompaniment of Correctional Bureau (BAPAS). One of the BAPASs serving as the research object is BAPAS Serang. In diversion implementation, the role of BAPAS Serang greatly determines the success in diversion in the jurisdiction of BAPAS Serang.

Based on the background above, the research’s problems are: What is the role of BAPAS in settlement of child’s conflict with the law at investigation, prosecution and court examination stages? And What are the constraints in settlement of child case in conflict with the law through diversion at investigation, prosecution and court examination stages?

II. RESEARCH METHOD

Writing method is basically a way of searching, instead of merely careful observation of an object [15]. In a research activity, research method is greatly necessary for a more directed research with data collected through searching of data connected with the research problems. The research method employed in this research was juridical normative research method.

It was to review prevailing law provisions and what occurred actually in the society [16]. It was a research conducted in actual or real condition in the society, intending to examining or finding out the facts and data needed. After the data were collected, the next steps were problem identification and problem solving.

The problem approaches employed were statute approach and conceptual approach. The statute approach was conducted by reviewing all laws and regulations associated with the legal issue to be reviewed [17].

III. RESULT AND DISCUSSION

A. Role of BAPAS in child criminal case settlement

The role of BAPAS as set forth in Law Number 11 of 2012 concerning Child Criminal Judiciary System is stated in article 14. Throughout diversion process until diversion agreement is implemented, Correctional Advisor is required to do accompaniment, guidance and supervision [18]. This shows that the role of Correctional Advisor Correctional Bureau (PK Bapas) has very important function in diversion process, from diversion process to the implementation of diversion agreement.

This is also confirmed through Article 87 paragraph 1 and paragraph 3 Law a quo, child with client status will be under Bapas’s responsibility [19]. Bapas is required to perform guidance, supervision and accompaniment, as well as fulfillment of other rights pursuant to the provisions of law [20]. From this norm, it is apparent that Bapas’s role is quite important, not only during diversion process, but also until implementation and supervision of child who is in conflict with the law.

Bapas’s role is also confirmed in Government Regulation Number 65 of 2015 concerning the Guidelines on the Implementation of Diversion and Dealing with Under 12 (Twelve) Years Old Child (PP 65 of 2015). PP 65 of 2015 expressly sets that Bapas’s role is always present and serving in diversion process from investigation stage [21], diversion at prosecution stage [22], and diversion in court stage [23]. Through PP 65 of 2015, Bapas’s role is technically set forth clear and express. It is apparent that Bapas’s role exists in every stages of diversion, including investigation, prosecution and court proceedings.

Bapas’s role is greatly needed for successful diversion. Diversion is a constructive effort to rebuild child’s social relationship with victim and the society that is once damaged and disturbed by crime. In addition, diversion also aims at taking child out of adult judiciary process [24]. Therefore, Bapas’s optimal and strategic role is greatly expected for successful diversion implementation. In case diversion fails, it is certain that the child criminal will return to formal criminal judiciary process, with its bad impact on the child’s growth and future.

Diversion program is conducted by diverting formal judiciary examination to building programs outside court process in prevention of child’s evil labeling [25]. Thus, Bapas’s role is urgently needed in the diversion implementation. For the best interest of the child, Bapas’s role in successful diversion is to be optimized.

Diversion implementation is also set forth through Regulation of Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning the Guidelines on Diversion Implementation in Child Criminal Judiciary System. In this Regulation of Supreme Court of the Republic of Indonesia, it is clear that Bapas’s role is greatly needed in diversion implementation. This is shown with

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the fact that during diversion implementation at the court, the public prosecutor is instructed to present Correctional Advisor Correctional Bureau (PK Bapas) [26]. In this case, it is apparent that Bapas's role is very important in diversion implementation at court stage.

It is mandatory for Correctional Advisor of Correctional Bureau (PK Bapas) to be present at child proceeding and before the proceeding starts, the judge instructs PK Bapas to submit its report on society research regarding the concerned child [27]. This confirms that Bapas's role in court proceeding is important, and that in diversion implementation it is mandatory for PK Bapas to be present in order to give its view related to the situation and reality faced by the child that he commits the crime.

B. Constraints in Diversion Implementation

In diversion implementation, there are many constraints faced by law enforcers as the facilitator. In case settlement through diversion process, the position of victim and actor is unbalanced. As commonly known, diversion is conducted through negotiation by involving child (one who commits crime) and parent/guardian, victim and parent/guardian, correctional advisor and professional social worker [28].

Negotiation is made by listening to the certification, confession, explanation of actor and further an agreement is achieved with victim's approval. Victim's approval is a strong determinant of the success of diversion process. It is this victim's approval that makes the parties' position in diversion unbalanced. Diversion agreement is often not reached because of victim's non-approval.

There are some cause factors that victim does not agree on diversion agreement, one of which is incompatibility of remedy received. When victim does not agree, it is certain that diversion agreement is not reached. If diversion is not reached, child criminal case settlement is continued to settlement process through formal criminal judicature. Although Law Number 11 of 2012 [29] allows diversion agreement not to require victim's approval, but it is set forth in a limited way.

The victim's approval requirement holds an important role for diversion agreement to be reached. This makes victim is at a strongly determining position in reaching a diversion agreement, making unbalance. If diversion agreement is not reached, child criminal case settlement must be settled through formal criminal judicature. This often serves as the constraint for Bapas in child criminal case settlement through diversion process.

The other constraint often faced by Bapas in diversion implementation is lack of monitoring of child's daily activity after diversion. After diversion, under Law of Child Criminal Judiciary System, correctional advisor is required to supervise diversion agreement. Correctional Advisor (PK) of Correctional Bureau (Bapas) serves to do accompaniment, guidance and supervision during diversion process until diversion agreement is reached [30].

After successful negotiation and diversion agreement is reached, correctional advisor serves to accompany, guide and supervise child who commits crime. Correctional advisor is assigned to accompany, guide and supervise the child as a follow-up of diversion agreement that is successfully reached. In its application, however, accompaniment, guidance and supervision by correctional advisor have come limitations in supervising child, thus it is not optimal.

The factor making correctional advisor's non-optimal role is monitoring child's daily activities after diversion. The factor may be from limited personnel, distance (geographic location) between child's home and Correctional Bureau office, to limited budget, making child monitoring not maximal after diversion. This potentially opens chances for the child to repeat (recidivist) the crime after diversion.

CONCLUSIONS

Correctional Bureau (BAPAS) plays a very important and strategic role in child criminal case settlement. One form of the settlement is made through diversion, for child to avoid the bad impact of formal child criminal judicature. The role of Bapas in child criminal case settlement through diversion is quite important and strategic as set forth through Law Number 11 of 2012 concerning Child Criminal Judiciary System, Government Regulation Number 65 of 2015 concerning the Guidelines on the Implementation of Diversion and Dealing with Under 12 (Twelve) Years Old Child, Regulation of Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning the Guidelines on Diversion Implementation in Child Criminal Judiciary System. The constraints found in the diversion implementation are related to remedy for victim and non-optimal post-diversion supervision by the Correctional Advisor Correctional Bureau (PK Bapas).

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