



Optimization of Social Report as a Consideration of Diversion in The Child Criminal System: Study at The Gorontalo Penitentiary Office

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ABSTRACT

There is one factor that becomes an obstacle if the child has received the coaching process at the Child Special Guidance Institute (hereinafter referred to as LPKA), namely the existence of "stigmatization" attached to the child so that it does not make it easier for children to socialize. The "Labeling" theory shows that labeling or in other words this stigmatization can damage the future of children where the future is still long. Therefore, the application of imprisonment for children must be an "ultimum remedium" or "the last resort", which means that imprisonment must be the last resort. This is where the diversion function lies as the concept of solving children's problems without going through a trial so that children are not burdened by negative stigma that will be attached to them, but in practice the diversion process often experiences obstacles, one of which is the lack of understanding of law enforcement towards the situation and condition of children, this is because not optimal community research or social reports on children in conflict with the law. The specific purpose of this research is to identify and analyze the factors that cause the non-optimal implementation of social reports on children's cases and to find out the efforts made in maximizing social reporting in an effort to implement diversion in children's cases. The method used in this research is empirical research, namely research with field data as the main data source, such as the results of interviews and observations

Keywords: Optimization; Social Reports; Diversion; Child

1. Introduction

In a good system there can be no contradiction between the parts. In addition, there should also be no duplication or overlap between the parts (Safrin Salam, Nurwita Ismail, Faharudin, Nuragifah, Erni Dwita Silambi, Shinta Nurhidayati Salam, Rosnida, 2020), in this case the intended is between criminal behavior in general and the child as a criminal. Children at their age are very vulnerable to being involved in crime, both as perpetrators and as victims. Even if children are involved in crimes, the thought of protecting children's rights is still important. (D. Wahyudi, 2015) Bartollas suggests that at least there are several factors that become the background of the personal characteristics of children who are at high risk of becoming perpetrators of delinquency, namely age factors, psychological variables, school performance and home adjustment (Santoso, Saprudin, & Darwis, 2017).

Criticism of the implementation of juvenile justice continues to flow. Many people state that the implementation of juvenile justice in its implementation is still far from the goals of child welfare and the best interests of the child. There have been many studies showing that juvenile justice still has many negative impacts on children. Criminal sanctions for children tend to be detrimental to the mental development of children in the future (S. Wahyudi, 2011)

The birth of the Law on the Juvenile Criminal Justice System (UU SPPA) accommodates many of the rights and interests of children, one of which is the implementation of diversion as an alternative that aims to achieve peace between victims and children to settle cases through non-litigation channels.

The shift in the paradigm of punishment for children in conflict with the law from a retributive justice approach to a restorative justice approach is a good start for protection efforts in the juvenile criminal justice system. (Salam, 2019) The form of Indonesian criminal law reform is legal regulation in the perspective and

achievements after the events and processes of criminal justice, known as restorative justice (Dipa Rudiana & Rai Setiabudhi, 2021).

Data on LPKA Gorontalo in 2018 were 10 children. Then in 2019 it rose to 16 child prisoners. This shows that the lack of social reports as important information for law enforcement in considering diversion. The social report itself is related to the track record of children suspected of committing criminal acts. Who are the masters; the environment in which they live, how the child behaves on a daily basis; Are there any problems with the parents' household, what about their education and many more questions that can show the real situation and condition of the child

This research is intended to restore the position of social research (social report) as an important information for law enforcers in taking a policy of doing diversion. So far, especially in Gorontalo Province, social reports have not run optimally, the evidence is that many child cases that are resolved do not pay attention to social reports, even though the law stipulates that social reports are imperative or in other words, social reports are mandatory for BAPAS to assist children in conflict with law in the criminal justice process

2. Methodology

The type of research used is empirical research, namely research with field data as the main data source, such as the results of interviews and observations. Empirical research is used to analyze the law which is seen as patterned community behavior in people's lives who always interact and relate to social aspects. So the approach in this study uses a qualitative approach, which is a way of analyzing research results that produces analytical descriptive data, namely data that is stated in writing or verbally as well as real behavior, which is researched and studied as something complete (Qamar, 2017).

The stages that the author did to analyze the accuracy of the data after it was obtained were:

- 1) Editing, the first stage is carried out by re-examining the data that has been obtained, especially from its completeness, clarity of meaning, suitability and relevance to other data groups so as to maximize research and data quality.
- 2) Classification, reducing existing data by compiling and classifying the data obtained into certain patterns or certain problems to facilitate reading and discussion according to research needs.
- 3) Verifying, namely data verification is proving the truth of the data to ensure the validity of the data that has been collected. This verification is done by meeting the data sources (informants, resource persons and respondents) and providing the results of interviews with them to respond to whether the data is appropriate or not.
- 4) Analysing, analyzing is the process of describing data that has been classified, then interpreted by linking existing data sources and then analyzed according to the items studied in this study

3. Result and Discussion

The following is the author describes the data in tabular form regarding Children in Conflict with the Law (ABH) in the jurisdiction of the Gorontalo City Police Station from 2019 to 2021:.

Table 1. Data on ABH Cases

No	Year	Number of cases	Information
1	2019	12	-
2	2020	9	-
3	April 2021	3	-
Amount		24	-

Data Source: Gorontalo City Policy

The table above shows that in a period of more than 2 years, from 2019 to April 2021, there were 24 cases of children in conflict with the law, where in 2019 there were 12 cases, then in 2020 there were 9 cases and in 2021 there were 3 cases. While the data relating to the implementation of diversion carried out by police investigators when conducting investigations against children, the authors describe in the form of the table below

Table 2. Data on ABH Cases with Diversion

No	Year	Diversi	Information
1	2019	7	-
2	2020	4	-
3	April 2021	2	-
Amount		13	-

The table above shows in 2019 where the number of cases of ABH cases was 12 cases but only 7 cases were diverted, in 2020 of the nine cases that entered 4 diversion efforts were carried out and in the following year, namely as of April 2021 where the number of cases entered was 3 cases. but only 2 cases can be diverted

3.1. Factors That Cause Not Optimal Implementation of Social Reports by Gorontalo Penitentiary Against Child Cases

Intended to protect and nurture children who are in conflict with the law so that later the child can return to meet his long future and provide opportunities for children so that through coaching they will regain their identity as independent, responsible, and useful human beings for themselves, their families and society, nation and state. but in practice children are still positioned as objects and treatment of children in conflict with the law tends to harm children.(Salam, 2019) So with the issuance of the law on the juvenile criminal justice system or abbreviated as UU SPPA, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. At least in the SPPA Law there are several new things that are regulated, including:

- 1) Detention period is 7 days
- 2) Placement of Children undergoing the judicial process can be placed in the Child Special Guidance Institution (LPKA) if there is no LPKA then they will be placed in a temporary child placement institution.
- 3) Establishment of police, prosecutors and juvenile judges, so that they are qualified in knowledge about the special conditions and characteristics of children;
- 4) The most important thing is strict regulation regarding Restorative Justice and Diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law.
- 5) Establishment of Community Officers consisting of: a) Community Advisors; b) Professional Social Worker; and c) Social Welfare Personnel.
- 6) Finally, in the case of Juvenile Criminal Justice, it is based on several principles, namely: a) protection; b) justice; c) non-discrimination; d) the best interests of the Child; e) respect for the opinion of the Child; f) survival and development of children; g) Child development and guidance; h) proportional; i) deprivation of liberty and punishment as a last resort; and j) avoidance of retaliation.

Departing from the results of the author's research when conducting research on 2 (two) institutions, namely the Police institution as the front line in handling children's cases, because the juvenile justice process is the position of the police as the first stage in examining children's cases. then the Fathers as a community supervisor who in this case is a companion for children who are dealing with the law as well as making reports on the results of community research (social reports) against children suspected of committing criminal acts.

After further observation, the authors found several factors that were the cause of the non-optimal results of community research as a material for consideration of diversion in cases of children suspected of committing criminal acts. There are at least two factors that cause it, namely: 1) Lack of understanding of Police

Investigators' functions of Community Research and diversion, 2) Slowness of Community Research Results from the Fathers. For more details, the author will describe these two factors as follows:

a. Lack of understanding of Police Investigators' functions of Community Research and diversion

In principle, the implementation of diversion by law enforcement officers is based on the authority of law enforcement officers which is called discretion or in Indonesian it is called discretion. Eleanor and Zainab state that there are several obstacles in the implementation of diversion because there are factors that are not supportive, such as articles 9 and 7 of Law No. 11 of 2012 which state that children who are entitled to diversion are ABH with a minimum penalty of imprisonment for under 7 years. and is not a repetition of a crime, so not all ABH get diversion. Lack of knowledge of law enforcement officials about diversion is also an obstacle because these officers are the main implementers of the judicial process

Lack of understanding of investigators related to the role of social research (social reporting) and diversion. For example, in the case of community research where data entered in 2019 were 12 cases, according to the Gorontalo Police PPA Unit Investigator Zuhra Moha, SH that among the 12 cases, not all of them considered the Community Research Report on the grounds that sometimes the results of research reports from the Balais took quite a long time. long while they are being urged to immediately settle the case brought to him

One of these conditions is caused by child investigators who do not comply with the standards stated in the SPPA Law Number 11 of 2012 where it is clearly stated that there are at least 3 (three) requirements to become a child investigator, namely:

- 1) has experience as an investigator;
- 2) have interest, attention, dedication, and understanding of the Child's problems;
- 3) has attended technical training on juvenile justice.

Departing from these 3 (three) conditions, the writer then conducted interviews with several child investigators, one of which was an investigator assigned to the PPA Unit of the Gorontalo Police, Zuhra Moha, SH which basically said that;

He was appointed an investigator in accordance with PP number 58 of 2010 concerning the implementation of the Criminal Procedure Code where the condition requires a minimum rank of Inspector Two Police and a minimum education of a bachelor's degree, has served in the field of investigative functions for a minimum of 2 (two) years.) years and follow and pass the specialization development education of criminal detective function. Meanwhile, regarding the conditions referred to in the SPPA Law, we do not know at all. He even further said that he had never attended any technical training on juvenile justice.

From the interview above, according to the author, the appointment of police investigators is indeed in accordance with statutory provisions, even the SPPA Law itself provides an exception to this requirement where it is stated that if there are no investigators as required in the SPPA Law, the investigation task is carried out by investigators who carry out their duties. criminal investigations carried out by adults. However, it should be remembered that the intended exception is if there is no investigator in the case of a child, then another investigator can be temporarily replaced. This is where the problem lies, because child investigators appointed to the Gorontalo City Police only refer to PP number 58 of 2010 concerning the implementation of the Criminal Procedure Code, the appointment of investigators does not pay attention to the SPPA Law regarding the requirements for the appointment of Child investigators.

Likewise with the understanding of diversion by the PPA Unit of the Gorontalo City Police which interprets diversion in a simple way that diversion is limited to bringing together the child of the perpetrator with the child of the victim or their respective families so that they can talk. This is clearly not in line with the purpose of the establishment of the Juvenile Criminal Justice System Law. Article 27 (1) and (2) states Article 27

- a) In conducting an investigation of a Child case, the Investigator is obligated to ask for consideration or advice from the Social Advisor after the criminal act is reported or reported.
- b) If deemed necessary, the Investigator may seek consideration or advice from educational experts, psychologists, psychiatrists, religious leaders, Professional Social Workers or Social Welfare Workers, and other experts.

It is clear that the article requires investigators from receiving a complaint that the alleged perpetrator is a child, then immediately submit it to the Community Counselor to ask for consideration or request a Community research report. The sole purpose is that the assistance provided by the Fathers and the results of the community research report can provide detailed information about the situation and condition of children suspected of committing criminal acts. So that in making decisions it does not harm either party of the perpetrator or the victim.

So in the author's opinion the lack of understanding of investigators related to community research is not limited to the level of understanding of child investigators on children's conditions but also some of them do not even understand the concept of diversion and the purpose of diversion. Whereas the examination process carried out by investigators on children is not carried out in the context of the criminal justice process, but is used as a basis for making decisions by investigators and community advisors.

b. The slowness of the results of the Community Research from the Fathers.

The second problem that causes community research is not optimal is the slowness of the results of community research by community counselors being submitted to investigators. In fact, the order in Article 28 of the SPPA Law states that the results of Community Research must be submitted by the Fathers to the Investigator within a maximum of 3 x 24 (three times twenty-four) hours after the investigator's request is received.

However, the reality is that the Community Research conducted by the Community Counselor is considered not optimal, according to the UPPA Gorontalo Police investigator, Zuhra Moha.SH, a letter requesting consideration or advice from a community advisor sent by a police investigator takes too long and the results are sometimes submitted after 1 month. Meanwhile, investigators are required to seek diversion within a maximum of 7 (seven) days after the investigation begins.

To obtain balanced information, the author then conducted research on the Gorontalo Fathers. departing from the statement of the child investigator, the Fathers' Office also stated the reasons and views related to the investigator's statement which considered that the Fathers were not optimal in conducting community research. One of the sources interviewed by the author, RM Dwi Arnanto as the Head of Gorontalo Fathers, said that:

Basically, the Fathers' Office always tries to optimize assistance and timely submission of community research reports to law enforcement, but indeed sometimes the submission of reports on community research results for some cases is not optimal but that does not mean that everything is not optimal or not on time, there are also some who we report on time.

Furthermore, he said that in fact some cases were relatively slow because when collecting information related to the child's track record, our officers often encountered problems in the field, for example it was difficult to get information from the family and the environment around the child's residence, another problem was that it took three days. What is given is very narrow for us with the condition of our resources being minimal, while the scope of the Gorontalo Fathers is not only Gorontalo City but the entire Gorontalo Province."

The above fact in the opinion of the author, Gorontalo Fathers, in principle, understands the function of community research very well, only when faced with a condition where they have a fairly small number of personnel, while the area coverage is quite wide, plus there are quite a lot of cases of children in the province. , not to mention the obstacles in the process of preparing research reports, this is what causes the report on the results of community research from the Fathers to be hampered

3.2 Efforts Taken In Maximizing Social Reports So That They Become Law Enforcement Considerations In Efforts to Implement Diversion in Child Cases.

One form of renewal that is interesting and important in the law, even in the history of Indonesian criminal law, is the inclusion of the concept of restorative justice and diversion which prioritizes the achievement of justice to the improvement and restoration of the original situation. This is clearly different from retributive justice which emphasizes justice in retaliation or restitutive justice which emphasizes justice in compensation.

The inclusion of diversion as an alternative crime that aims to achieve peace between victims and children, resolve cases outside the judicial process, so as not to cause trauma and stigma to children, prevent children from deprivation of independence, and provide sanctions that focus on the element of education. The application of diversion can be carried out at all levels of examination, namely the stage of investigation,

prosecution and examination at a court hearing (vide in article 7 paragraph 1). This is intended to reduce the negative impact of children's involvement in the judicial process.

The main principle of implementing the concept of diversion is approach action and providing opportunities for actors to change. Officers must demonstrate the importance of obeying the law by means of a persuasive approach and avoid arrest by using violence and coercion to carry out diversion.

In Article 65 of Law number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that:

Community Counselor Duty:

- a) make a community research report for the benefit of Diversion, provide assistance, guidance, and supervision of the Child during the Diversion process and the implementation of the agreement, including reporting it to the court if Diversion is not implemented;
- b) make community research reports for the purposes of investigation, prosecution, and trial in cases of children, both inside and outside the court, including in LPAS and LPKA;

This is where the role of community research (social report) becomes important, because the topic of social research is related to the track record of children suspected of committing criminal acts, who are the parents, occupation, social environment, how the child behaves in his daily life, whether the child lives without parents. , do the elderly have problems in the household, how are the children's interactions every day and many more questions that can show the real situation and condition of the child . At least there are some efforts taken in maximizing the role of social research (social report) for the sake of diversion for children who are in conflict with the law, namely:

a. Social Report Becomes The Main Reference At All Stages of Examination

The judicial process in child cases since being arrested, detained, and tried, must be carried out by special officials who understand the problem of children. However, before entering the judicial process, law enforcers, families, and the community are required to seek a settlement process outside the court, namely through Diversion based on a Restorative Justice approach.

This Law on the Juvenile Criminal Justice System regulates the entire process of resolving cases of children in conflict with the law from the investigation stage to the guidance stage after serving a crime.

- 1) In the investigation stage, the investigator before conducting an investigation into the case of a child, the investigator is obliged to ask for consideration or advice from the Community Counselor after the crime is reported or reported. The results of the Community Research must be submitted by the Fathers to the Investigator within a maximum of 3 x 24 (three times twenty-four) hours after the investigator's request is received. With the report on the results of the community research made by the BAPAS then it becomes a consideration for investigators to seek diversion, if the diversion process is successful, the investigator submits the diversion report to the head of the district court to make a determination and if the diversion process fails, the investigator is obliged to continue the investigation. and delegate the case to the public prosecutor by attaching the diversion report and the report on the results of the community research from the BAPAS.
- 2) Prosecution Stage, at this stage after the investigator submits the results of his investigation to the public prosecutor accompanied by a report on the results of the community research. Then the public prosecutor is still obliged to seek diversion by studying the investigation file and the community research report from the Fathers. Diversion efforts carried out by the public prosecutor are no later than 7 (seven) days after receiving the case file from the investigator. If the diversion process is successful, then the public prosecutor submits the diversion report along with the diversion agreement to the head of the district court for a determination. And if the diversion is not achieved or fails, the public prosecutor is still obliged to submit a diversion report and submit it to the court by attaching a report on the results of community research.
- 3) The last stage is the examination stage of the trial court, at this stage as the provisions contained in the SPPA Law which stipulates that the judge in examining and deciding cases of children in the first level with a single judge, but in the case of a criminal offense which the penalty is imprisonment of 7 (seven) years or more or in the case that the child's case is difficult to prove, the head of the district court may determine the examination of the child with the panel of judges.

After the head of the court has determined the judge or panel of judges who will examine the child's case, the examination is carried out no later than 3 (three) days after receiving the case file from the public prosecutor. Because the judge and the panel of judges are still obliged to seek diversion for every child case that is submitted to them, the diversion effort is carried out no later than 7 (seven) days after being determined by the district court as a judge or panel judge. In the event that the Diversion process succeeds in reaching an agreement, the Judge conveys the minutes of the Diversion along with the Diversion agreement to the head of the district court for a determination to be made. However, if the diversion process is not successful, the case will proceed to the trial stage.

From the three stages above, it is clear that social research has a very important role in the juvenile criminal justice process, at all levels of examination, community research is taken into consideration. By referring to the social report, at least it can prevent children from criminal sanctions. even when the community research report is not considered in the judge's decision, the decision is considered null and void.

b. Community Research for Diversion Interests

Diversion in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System as a substance intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law. The diversion arrangement in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System has been confirmed by the Supreme Court with the issuance of Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

This diversion is carried out as a transfer of the settlement of children's cases from the criminal justice process to processes outside of criminal justice. The implementation of diversion is carried out starting from the investigation to the trial. Diversion can be carried out for criminal acts punishable by imprisonment for under 7 (seven) years; and is not a repetition of a crime. The application of diversion is intended to reduce the negative impact of children's involvement in a judicial process

The relationship between diversion and Community Research, apart from Article 65 of the SPPA Law, as the author has previously stated, can also be found in Article 9 of the SPPA Law where it is clearly stated: Article 9 (1) Investigators, Public Prosecutors, and Judges in conducting Diversion must consider:

- 1) category of crime;
- 2) child's age;
- 3) results of community research from the Fathers' Council; and
- 4) family and community support.

The article clearly states that investigators, public prosecutors and judges when going to do diversion are obliged to consider the results of community research. This is reaffirmed in the SPPA Law in Article 60 paragraph (3) paragraph (4) which reads:

Article 60

(3) Judges are required to consider the community research report from the Community Advisor before making a case decision.

(4) In the event that the community research report as referred to in paragraph (3) is not considered in the Judge's decision, the decision is null and void.

It is clear that the role of Community Research is very important. Because basically the community research is related to several topics related to the track record of children suspected of committing criminal acts. Who were his parents and what were his parents' occupations; where does this child live and with whom; how the child's daily behavior; whether there are problems in the household of his parents; how is this child interacting every day, and there are still many questions that can show the real situation and condition of the child

4. Conclusion

Referring to the results of this study, the author concludes that in realizing a restorative juvenile criminal justice system, it should be accompanied by good implementation and legal processes by taking into account all forms of consideration before the child gets a court decision. An example is the implementation of social reports or community research whose functions are very useful for children at all levels of examination as a material

consideration in an effort to realize diversion for children. Fathers have an important role in knowing the background of children to the actions of children who violate the law, this is of course through social research or effective social reports.

The suggestion that the author can convey at the end of this paper is that the law on the juvenile criminal justice system should be imperative. And in every examination of children who violate the law, law enforcement officers cannot carry out legal processes before obtaining the results of community research from the BAPAS..

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