

Community Guidance in the Era of COVID-19 on Children in Conflict with the Law

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ABSTRACT : The purpose of this study was to examine and analyze the obstacles that occur in the implementation of the assistance of the Surakarta Penitentiary Community Counselor for Children in Conflict with the Law. The approach method in this writing is sociological juridical. Data collection techniques using interview studies, and observation. To analyze the data, the researcher used a qualitative descriptive analysis method. Based on the results of the study, it was concluded that the Surakarta Penitentiary's Social Advisor for Children in Conflict with the Law was carrying out assistance, guidance, supervision, and Community Research on children in conflict with the law. Assistance at every level of examination is carried out during the implementation of diversion and execution of court decisions or decisions.

Keywords : Community Counselor, Children, COVID-19, Law

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INTRODUCTION

At the beginning of 2020, the whole world was shocked by the outbreak of the corona virus or which in scientific language is the Covid-19 virus. The incident began in China, Wuhan (Hasudungan et al., 2022). Initially, this virus was thought to have been caused by exposure to the Huanan seafood wholesale market which sells many species of live animals. The disease is rapidly spreading domestically to other parts of China.

Coronavirus Disease 2019 (COVID-19) is a new type of disease that has never been previously identified in humans. The virus that causes COVID-19 is called Sars-CoV-2. The corona virus is zoonotic (transmitted between animals and humans). Meanwhile, the animal that is the source of COVID-19 transmission is still unknown (Aspachs et al., 2021). Based on scientific evidence, COVID-19 can be transmitted from human to human through coughing/sneezing droplets (droplets). The people most at risk of contracting this disease are people who are in close contact with COVID-19 patients, including those caring for COVID-19 patients (Fikri & Hasudungan, 2021). Common signs and symptoms of COVID-19 infection include symptoms of acute respiratory distress such as fever, cough, and shortness of breath. The average incubation period is 5 - 6 days with an incubation period of fever, cough, and shortness of breath. In severe cases, COVID-19 can cause pneumonia, acute respiratory syndrome, kidney failure, and even death (Singhal, 2020). Indonesia is a developing and most populous country.

The impact of the COVID-19 pandemic has been felt by humans all over the world, including Indonesia. Not only in terms of the economy, public health, the global crisis, but the impact on all human activities in the world is greatly disrupted as a result of the pandemic (Nababan et al., 2022).

Balai Pemasyarakatan (Bapas/Correctional Center) is one of the parties involved during the judicial process for children in conflict with the law from the time the child is arrested until the child finishes his sentence (Putri et al., 2021). This makes Bapas have an important role in the judicial process for children in conflict with the law. In general, the role of Bapas in the judicial process for children in conflict with the law is divided into 3 stages, namely the pre-trial stage (pre-adjudication), namely the investigation, the stage during the trial (adjudication), namely mentoring in the trial and the post-adjudication stage, namely supervision, and mentoring.

The existence of children in conflict with the law needs attention and protection, because in essence children cannot protect themselves from various kinds of actions that cause mental, physical, social losses in various fields of life (Darwis, 2015). Children must 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 their future from various errors in applying the law to children who face problems with the law, especially in the process of resolving cases child crime (Bulahari et al., 2021). 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, especially the assistance of community mentors has not been fully implemented in accordance with Article 23 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (Listyarini, 2017; Nugroho, 2017; Arifin, 2018), 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 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 (Noor et al., 2016; Utami, 2021).

The purpose of this study was to examine and analyze the implementation of Community Guidance assistance for children in conflict with the law in the COVID-19 Era. Assessing and analyzing the obstacles that occur in the implementation of the assistance of the Surakarta Penitentiary Community Counselor for children in conflict with the law.

THEORETICAL REVIEW

Child in Correctional Institution

Correctional Institutions (Lapas) as places to carry out crimes for convicts who have been sentenced and *Rumah Tahanan Negara* (Rutan/the State Detention Center) as places where suspects or defendants are detained during the process of investigation, prosecution, and examination in court are currently experiencing overcrowded from existing capacities (Saputra & Isnawati, 2022; Sianturi & Wibowo, 2022). Currently, prisoners and children in prisons, detention centers and Special Child Development Institutions (LPKA) throughout Indonesia total 239,340 people with an occupant capacity of 135,704 people, meaning that there are excess occupants of the existing capacity as much as 76% (Fauzi, 2021).

With this excess capacity, it is not impossible to maintain a minimum distance of 1 (one) meter. Although detainees, convicts, and children are in Rutan, Lapas, and *Lembaga Pembinaan Khusus Anak* (LPKA/Children's Special Guidance Institute), the entry and exit of employees and the acceptance of new detainees is a risk in itself. One of the Preambles of the 1945 Constitution of the Republic of Indonesia states that the goal of the Government of the Republic of

Indonesia is to protect the entire Indonesian nation and all of Indonesia's bloodshed (Irawan, 2020), therefore the state also protects prisoners and children from the COVID-19 pandemic which can threaten life and health due to Health facilities and personal protective equipment in detention centers, prisons, and LPKAs are not adequate in handling COVID-19 (Melinda, 2020; Elbek, 2020).

Referring to this, the Government of the Republic of Indonesia through the Ministry of Law and Human Rights on March 30, 2020 issued a policy in the form of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2020 concerning Conditions for Granting Assimilation and Integration Rights for Prisoners and Children in the context of Prevention and Combating the Spread of COVID-19 and Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-19.PK.01.04.04 of 2020 concerning the Release and Release of Prisoners and Children Through Assimilation and Integration in the context of Prevention and Control of the Spread of COVID-19 (Widodo, 2022).

Then, on December 22, 2020, the Minister of Law and Human Rights Regulation Number 32 of 2020 has been promulgated regarding the Terms and Procedures for Granting Assimilation, Conditional Release, Leave Before Release, and Conditional Leave for Convicts and Children in the context of Prevention and Control of the further spread of COVID-19 changed to Minister of Law and Human Rights Regulation Number 24 of 2021 concerning Amendments to Regulation of the Minister of Law and Human Rights Number 32 of 2020 concerning Conditions and Procedures for Granting Assimilation, Conditional Release, Leave Before Release, and Conditional Leave for Prisoners and Children in the context of Prevention and Management Spread of COVID-19 (Erdianti & Al-Fatih, 2021). This policy is also an effort by the government to make efforts to save prisoners and children in prisons, detention centers and LPKA from the Covid-19 outbreak.

Assimilation in the Fulfillment of Human Rights during the Covid-19 Pandemic

Overcrowded convicts and detainees in prisons, LPKA, and Rutan during the COVID-19 pandemic it is not possible to carry out a coaching program within the institution due to non-fulfillment of physical distancing or maintaining a distance of approximately 1 (one) meter and coaching and mentoring is needed outside the institution, one of which is assimilation program. If you look at the data on positive cases of COVID-19 on March 31, 2020 reaching 1,528 people, of course this is a concern for correctional officers, prisoners and children at that time who interact with each other daily.

The assimilation policy for prisoners and children during the COVID-19 pandemic is an effort to save prisoners and children who are in prisons, LPKA,

and Rutan in the context of preventing and spreading COVID-19 (Latifah & Zulfa Eva Achjani, 2022). The release and release through assimilation also aims to protect the human rights of prisoners and children in order to obtain the right to live, meaning that the government is trying to save prisoners and children in prisons, detention centers, and LPKA from the COVID-19 outbreak.

METHODOLOGY

The approach method in this writing is sociological juridical. Sociological juridical approach, which is a research approach that examines the perception and legal behavior of people (humans and legal entities) and the community as well as the effectiveness of the application of positive law in society (Somers, 1994; Tamanaha, 2022). The approach that the author uses in this study is a sociological juridical approach. The Sociological Juridical Approach is emphasizing research that aims to obtain legal knowledge empirically by going directly to the object (Clayton-Helm, 2014).

Sociological Juridical Research is legal research using secondary data as initial data, which is then followed by primary data in the field or on the community, examining the effectiveness of a Ministerial Regulation and research that wants to find a relationship (correlation) between various symptoms or variables. The data source uses primary data and secondary data. Data collection techniques using interview studies, and observation (Nuha et al., 2017). To analyze the data, the researcher used a qualitative descriptive analysis method.

Qualitative descriptive data analysis technique is one of the techniques or methods used in qualitative research (Lukitaningsih et al., 2022). Qualitative research is research that emphasizes more on observing phenomena and requires sharp instincts from researchers. Qualitative research usually studies the relationship or interaction between several research variables with the aim of understanding the event being studied and usually examines case studies with a particular theoretical basis.

RESULTS

Implementation of the community counseling assistance of the surakarta penitentiary for children in conflict with the law. Correctional Center is an institution to carry out community guidance which has a function as a community advisor and has the duty to guide correctional clients in accordance with applicable institutional regulations and legislation. The goal is to guide correctional clients to be aware and improve themselves and not to repeat criminal acts again. Meanwhile, based on the main duties and responsibilities, the participation carried out by the Correctional Center is carrying out assistance, guidance, supervision and Community Research on Children in Conflict with the

Law. The assistance as referred to above is carried out at the level of examination at the police, at the prosecutor's office and at the trial. The assistance is carried out during the implementation of the examination from the level of investigation to the trial and the process of carrying out deliberation in the context of diversion.

The duties and forms of participation of the Correctional Center are to carry out Community Research, guidance, mentoring, and supervision. In *Penelitian Kemasyarakatan* (Litmas/Social Research) specifically for children (ABH), the duties of the Fathers have been regulated since the child is in conflict with the law, the PK (Social Counselor) who is a certain functional official in the Fathers is involved since the investigation level examination is carried out where they accompany the child concerned during the examination carried out. by investigators, then the PK makes Litmas which will be taken into consideration by the judge if the case enters the realm of a court trial or when it is diverted".

After obtaining the required data, the Community Counselor then analyzes, provides considerations, and suggestions in relation to the client's problems, then the data obtained is stated 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: 1) Personal data of children, family, education, and social life; 2) The background of the crime; 3) The condition of the victim in the event that there is a victim in a crime against the body or life; 4) Anything else deemed necessary; 5) News of diversion; 6) Conclusions and recommendations from the Community Counselor.

In addition to providing assistance to child clients as referred to 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, representatives 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.

The Community Counselor provides recommendations regarding the results of the diversion agreement in the form of peace with or without compensation, compensation for losses in the event of a victim, medical and psychosocial rehabilitation, handover to parents/guardians, participation in education or training at an educational institution or *Lembaga Penyelenggaraan*

Kesejahteraan Sosial (LPKS/Social Welfare Organization) for a maximum of 3 (three) months, or community service for a maximum of 3 (three) months.

If the court's decision is that the perpetrator is placed in LPKS, then the Correctional Center will also still carry out supervisory actions or commonly referred to as supervision of court decisions. This is in accordance with the results of interviews that have been conducted with Mr. Ridlo Pambudi as PK stated that: "The forms of participation from the Correctional Center are in the form of mentoring, making litmas (Social Research), examination assistance, and mentoring during trial. If the court's decision is that the perpetrator is admitted to LPKS (treatment), then the Correctional Center will also carry out supervisory actions, or commonly called court decision supervision."

The recommendation of the Community Counselor 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 LPKS.

In addition to these recommendations, the Community Counselor also provides recommendations for children to undergo community service crimes. The community service crime can take the form of social work carried out in orphanages, 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, the 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.

DISCUSSION

In practice, diversion assisted by the Penitentiary has many successes. The success factor depends on the understanding of the victims and perpetrators. Where the Penitentiary provides an understanding of the steps for diversion to

both parties, the community only knows that the settlement of cases must be carried out through imprisonment, but imprisonment is actually a last resort. On the other hand, the implementation of this diversion still has many shortcomings because more Diversion has succeeded, but its implementation has not been in accordance with what the rules and laws want because the police have a full role in this process and it seems that everything has been arranged by them. Diversion is just a formality. In addition, the general public does not understand and understand about diversion and only focuses that the perpetrator should be sentenced to prison (Fachrizal, 2020).

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 (Friyandi & Witasari, 2019). The police often make their own rules about resolving 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 more pre-diversion deliberation is carried out so that diversion is only carried out as a formality in obtaining diversion agreement documents.

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 a restorative justice approach. The mechanism for handling cases of children at the Surakarta Police begins with reporting, where the parents as companions or guardians of the children are the reported parties. After the report is made, an examination of the reported party is 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 (Themar et al., 2021).

In the event of 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 and 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.

In accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, 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. According to Mr. Ridlo Pambudi as PK, these things are: "Basically the policies carried out by investigators at the Surakarta Police are not to detain children in the event that the child receives guarantees from parents/guardians and/or institutions, involves parties and/or

agencies needed by children to provide assistance to children during 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, coaching and mentoring 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 (non-penal) in the form of compensation, fines, warnings or other matters be used before using criminal means in the form of imprisonment (body) (Anwar, 2021). 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.

The implementation of the assistance of Community Counselors at the Surakarta Penitentiary for Children in Conflict with the Law in terms of progressive legal theory, namely progressive law places the human factor more important and is above the regulations. Therefore, progressive law agrees with the phrase that states "give me good prosecutors and judges so that even with bad regulations I can make good decisions" (Smith, 2001; Martin, 2008). The view of progressive law which places the human factor more important and is above the rules, is in line with Roscoe Pound's view of justice as described in the previous description which views that justice can be carried out by law or without law. Justice without law is carried out in accordance with the wishes or intuition of a person who in making decisions has a broad scope of discretion and there is no attachment to certain sets of rules (Zygmunt, 2022).

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 the extent to which the decisions of juvenile judges can reflect this progressive legal approach, by looking at the forms of decisions handed down to children. Juridically, the provisions in Article 71 Paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System divides the main penalties for Children in Conflict with the Law into (Ansori, 2014): 1). Criminal warning; 2) Criminal conditions; a) Coaching outside the institution; b) Community service and c) Supervision; 3) Work training; 4) Institutional coaching; and; 5) Prison.

Judges of the District Courts in the Surakarta Fathers Region in imposing criminal sanctions, especially imprisonment in general with the following considerations: 1) The child is more than 12 years old; 2) Child defendants have 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 behaviour; 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) 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 offense that carries a penalty of more than 5 years.

Obstacles that occur in the Implementation of the Assistance of the Surakarta Penitentiary Society 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 budget allocation from the Budget Executor's List (DIPA) is not adequate.
- 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. There is no 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 the parents or guardians of the children.

CONCLUSIONS

The implementation of the assistance 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/decisions. 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 obstacles that occur in the implementation of the assistance of the Surakarta Penitentiary Community Counsel for Children in Conflict with the Law are distinguished by external and internal obstacles. External barriers include children who commit crimes often do not have a clear identity, do not meet the parents/guardians of the child and there is no active role from both the perpetrator and the victim. Internal obstacles include the limited budget, limited means of transportation, and the lack of computers.

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