

THE FUNCTION OF CHILDREN SOCIAL RESEARCH AS A RECOMMENDATION TO JUDGES IN DECIDING JUVENILE CRIMINAL JUSTICE CASES

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ABSTRACT

Children who commit crimes need to get special treatment that is different from the process of adults. This is because the situations and conditions in the legal process make children who are dealing with the law take up a lot of their time to interact normally with other people, so that it will have an impact on their psychological disorders. Bapas plays an important role in accompanying Children in Conflict with the Law through Social Advisor who carry out Social Research, guidance, supervision, and assistance to Children inside and outside the criminal justice process. This study aims to analyze one of these functions, namely Social Research as one of the Judge's recommendations in deciding juvenile justice cases. The results of the study conclude that the Social Research Report is of great benefit to judges in making a decision on a case appropriately and fairly. Even if the judge's decision does not take into account the judge's decision, it can be stated that the decision is null and void.

Keywords: Social Research, Judge, Juvenile Crime

INTRODUCTION

In essence, children are a mandate bestowed by God the Kholik on their parents so that they are educated to be good individuals. Children need special attention in order to form good character from an early age. The basic needs of children must be met by parents as much as possible, one of which is in the form of maximum protection for children from various acts of violence, crime and discrimination. This action can be carried out by any party who is close to the child's social environment, therefore optimal protection must be given to the child (Saraswati, 2015).

The problems facing the Indonesian people are so complex and form a chain that is interconnected and cannot be solvedseparated, leaving negative stories, especially about the fate of this nation. Sharing issues

ranging from educational, economic, social and cultural impacts on the wider community, especially regarding the future of the Indonesian nation's children. Various pressures in life make them affected to do various actions that are not commendable, even to the extent that violates the legal norms that apply in society. Children's antisocial behavior is influenced by various factors, including not getting attention physically, mentally or socially so that it can harm themselves, their families and the wider community (Soemitro, 1990). In the end, not a few children are in conflict with the law.

Criminal law has the nature of *ultimum remedium* (last drug), which means that criminal punishment is sought as a last resort in law enforcement. The existence of the nature of *ultimum remedium* in criminal law does not mean that the punishment of perpetrators of crimes is abolished. Criminals are not only committed by adults but also by minors (Fatonah, 2021). The definition of a child in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". In principle, applying the concept of punishment to children is an act that is not wise and prudent. It is said to be less wise and prudent, considering that the child still has the opportunity to improve his integrity in the future (Purwanto, 2021).

The term crime against children is known as delinquency. Various deviant child behaviors are categorized as delinquency. The mindset of children who are still unstable, emotions that are often out of control, and a bad living environment will affect the child's delinquency. Therefore, the presence of the role of parents in supervising and educating children is very urgent. Child delinquency can have implications for punishment in the form of criminal sanctions if proven during the trial to have committed an offense as stipulated in Law Number 11 of 2012 concerning the Juvenile Justice System. Whereas children conflicted with the law faced with a situation of stress and fear.

Children who commit crimes need to get special treatment that is different from the process of adults. This is because the circumstances and conditions in the legal process make the child face to face with the law has taken up a lot of their time for normal interactions with other people, so that it will have an impact on their psychological disorders (Krisna, 2015).

Therefore, the role of legal advisor who fully accompany them is needed to neutralize the situation so that children's rights during the judicial process can be fulfilled.

Based on data from the Indonesian Child Protection Commission (KPAI), the number of drug users in 2021 will reach 3.36 million people, of which 57% are teenagers. Also according to KPAI records, 17.8% of the total occupants of the Special Child Development Institution (LPKA) are teenagers who are caught in the crime of drug abuse. According to survey results, 65% of teenage drug users said that they got these illicit goods from the environment around their home. So it can be underlined that the role of parents and family is very important in protecting children from drug abuse. And based on data from the Palembang Branch of the Indonesian Child Protection Commission (KPAI) during the celebration of National Children's Day, they received 1,885 complaints of child protection cases. 75% of these complaints are children in conflict with the law. In Palembang City itself, the process of assisting children who are in conflict with the law is still not optimal, this can be seen when children are interrogated by police officers. The absence of assistance from legal counsel means that the apparatus does not pay much attention to the child's condition, the police environment is not suitable for the child's psychology, there is not even any assistance from the school for children who are dealing with these legal problems.

Bapas plays an important role in accompanying Children in Conflict with the Law (ABH) based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 point 13 it is explained that Social Advisor are functional law enforcement officials who carry out social research, guidance, supervision, and assistance to children inside and outside the criminal justice process (Firmansyah, 2021).

In the case of placing a child in conflict with the law in a Special Child Development Institution (LPKA) according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is the last resort given to a child with several judges' considerations in resolving juvenile criminal cases. One thing that can be taken into consideration is the existence of a Bapas recommendation through the Social Research function made by the Social Advisor. Some of these considerations are related to the

personal safety of children in conflict with the law. The child's condition will have an impact on the inner state or ideology of the judge to give a decision on the basis of justice.

Judges who handle juvenile criminal cases must be able to understand the background of the child comprehensively so that the driving factors for the crime committed by the child can be seen. The goal is for the judge to decide the child's case as fairly as possible in line with the purpose of sentencing. Therefore, this study aims to find out how big the function of social research on children is on the judge's decisions in juvenile criminal cases.

RESEARCH METHODS

This study uses normative legal research, which is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Marzuki, 2013). This research also uses the library study method, this is done because literature sources are obtained from various reference books, scientific journals, and other written works. The approach used is the statutory approach (statute approach) which is carried out by examining all laws and regulations related to the legal issues handled (Kadir, 1998), in this case related to the Children's Litmas Function as one of the Judge's recommendations in deciding Juvenile Criminal Justice Cases.

RESULTS AND DISCUSSION

Provisions for Criminal Sanctions for Children in the Juvenile Criminal Justice System

According to Article 1 of Law Number 23 of 2002 concerning Child Protection, a child is defined as someone who is not yet 18 (eighteen) years old including children who are still in the womb. The provisions regarding children are not explained in detail in the Criminal Code (hereinafter referred to as the Criminal Code) regarding the limitations. The Criminal Code only states in Articles 45 and 72 paragraph (1) that the minimum age for a minor is not yet 16 (sixteen) years of age.

In Article 2 of the SPPA Law it is explained that the Juvenile Criminal Justice System is implemented based on the principles of protection, justice, non-discrimination, the best interests of the child, respect

for the child's opinion, the survival and development of the child, the guidance and guidance of the child, proportionate, deprivation of liberty and punishment as last resort, and avoidance of reprisal. In Article 5 of the SPPA Law, it is again explained that the Juvenile Criminal Justice System must prioritize the Restorative Justice approach and carry out diversion efforts, namely transferring the settlement of child cases from the criminal justice process to processes outside of criminal justice. The derivative of the SPPA Law related to Diversion of Child Actors is Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 Years Old.

In Article 23 paragraph (1) of Law Number 3 of 1994 concerning Juvenile Court, it is explained that a naughty child can be subject to principal and additional punishment. It is explained again in paragraph (2) that the main punishment that can be imposed on a naughty child is imprisonment, imprisonment, fines, or supervision. As for paragraph (3) it is explained that naughty children can also be subject to additional punishment in the form of confiscation of certain goods and or payment of compensation.

In Article 24 paragraph (1) it is also explained about the actions that can be imposed on naughty children, namely:

- 1) Return to parents, guardians, foster parents;
- 2) Handing over to the state to participate in education, coaching, and job training; or
- 3) Submit to the Ministry of Social Affairs, or Social Organizations engaged in education, development, and job training.

As for conditional punishment, it is also regulated for naughty children in Article 29, namely:

- 1) Conditional punishment can be imposed by a judge, if the prison sentence imposed is a maximum of 2 (two) years.
- 2) In the court decision regarding the conditional sentence referred to in paragraph (1) the general conditions and special conditions are determined
- 3) The general condition is that a delinquent will not commit a crime again while serving a conditional sentence.
- 4) The special requirement is to do or not do certain things that are

determined in the judge's decision while still paying attention to the freedom of the child

- 5) The conditional criminal period for special conditions is shorter than the conditional criminal period for general conditions
- 6) The term of the conditional criminal term as referred to in paragraph (1) is a maximum of 3 (three) years
- 7) While carrying out a conditional sentence, the Prosecutor will supervise and the Social Advisor will provide guidance so that the delinquent fulfills the specified requirements.
- 8) Juveniles who are serving conditional sentences are supervised by the Correctional Center and have the status of Correctional Clients.
- 9) As long as a delinquent has the status of a Correctional Client, he can attend school education.

The Role of Children's Social Research as a Recommender for Judges in Deciding Junevile Criminal Cases

In essence, the judges impose criminal sanctions on children in accordance with the recommendations of the Correctional Center (hereinafter abbreviated as BAPAS). This is because it is influenced by the inner state or ideology of the judge to give a decision on the basis of justice. Children who already have a permanent decision in matters of law violations, will be given guidance at the Children's Correctional Institution. The next coaching is carried out by BAPAS, as set forth in Article 1 paragraph 4 of Law Number 12 of 1995 concerning Corrections which states that BAPAS is an institution to carry out the guidance of Correctional Clients.

Guidance referred to in the Bapas function are activities organized by Social Advisor including social research, assistance, guidance, and supervision of clients both inside and outside the criminal justice process in the framework of social reintegration as set forth in Article 1 Number 10 of the Minister of Law and Human Rights Number 35 of 2018 concerning Revitalization of Correctional Administration. These four domains are the main functions of Bapas (Asmawati, 2022).

As for related the function of Social Research for Children carried out by the Bapas Social Advisor is regulated more technically in the Decree of

the Director General of Corrections Number: PAS-122 PK.01.05.02 of 2016 including Litmas for Diversion, Litmas for District Court Sessions, Litmas for Children under 12 years old, Litmas for Witnesses and/or Victims, Litmas for Treatment in Correctional Institutions and Detention Centers, Litmas for Early Development, Litmas for Independent Assimilation and Third Parties, Litmas for Integration to return child clients to the community, Litmas for Transfers from LPKA to Youth Correctional Institutions or others, and Litmas for Guidance (Rahardjo & Muhammad, 2022).

Social research is an important part of the criminal justice process as well as the correctional process. It takes the role of Social Advisor to achieve the objectives and functions of the social research. However, what needs to be understood is that Social Advisor have different duties and functions from the functional position of a researcher as their main task. Research is only one of the tasks of the Social Advisor, so that it becomes something of positive value if the task is carried out properly following the principles of community-related scientific research.

There are several stages carried out by a Social Advisor in carrying out the Social Research function, namely:(Fatonah, 2021)

- 1) Planning Stages; starting from problem identification, problem formulation, preliminary study, hypothesis formulation, determination of research sample, and preparation of research plan.
- 2) Implementation Stages; namely data collection and data analysis.
- 3) Research Report; is the final stage of research activities that must be published to interested parties.

The Social Research Report is of great benefit to the Judge in making a decision on a case appropriately and fairly. In Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System it is explained that "Judges are required to consider social research reports from Social Advisor before making a decision on a case". In paragraph (4) it is reiterated that "in the event that the social research report as referred to in paragraph (3) is not considered in the judge's decision, the decision is null and void".

From this article it can be understood how big is the role and function of the social research report made by the Social Advisor. In addition, every

delinquent child who is in court must accompany the child's personal report which is made by a person or entity authorized to do so, so that the judge can decide the case properly and is not based on arguments whose truth is still limited to assumptions.(Sudarto, 1989). Social Research Reports can also function to determine coaching therapy, so the substance of the report must be able to provide an overview of the background of the child's life both in the past and in the present when he became a correctional client.

Before being used as a recommendation for Juvenile Court Judges, the results of Child Social Research by Social Advisor first function at several stages in the juvenile justice process, namely:

1. Investigation Stage

For children who commit crimes for the first time, the case handling process requires research according to the actual situation so that the Police can consider whether the case file needs to be continued to trial or not. The Police can ask Social Advisor to process data at the scene of the incident related to the identification of the child, family and environmental information, as well as other information deemed relevant and important. So that it can be concluded whether the crime committed by the child was due to forced situations and conditions or vice versa.

2. Containment Stage

The results of the research explored during the investigation process can assist police officers in deciding whether a child who commits a crime should be put in detention or returned to the parents and is a consideration for how long the child's detention will be. Social Advisor use techniques of observation, interviews, psychological tests, and deepening of information obtained from related documents. After that, the Social Advisor analyzes and concludes and gives consideration in relation to the child's case to then be included in the Social Research Report.

3. Trial Stage

As for the Trial Stage, it is hoped that the research report that has been used by Investigators and Investigators will also be useful for the process of prosecuting and giving verdicts for judges to children in conflict with the law so that the research actually becomes a recommendation and consideration for deciding a case as fairly as possible. .

Obstacles in Carrying out Social Research for Social Advisor

Social Advisor have a very vital role in determining the best decisions for children who are in conflict with the law through the recommendations of the Social Research they conduct. The Social Research he conducts is useful for the purposes of investigation, prosecution, and trial in juvenile criminal cases. However, in practice there are several obstacles that are often faced by Social Advisor, especially internal obstacles, namely:(Pande, 2018)

1. Determination of time in submitting research results is too short

In Article 28 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System it is explained that "the results of social research must be submitted to investigators within a maximum of 3x24 hours after the investigator's request is received", so that this becomes a major obstacle for Social Advisor in preparing the process by a period of only 3 days. Whereas the expected process in social research must be truly measurable and independent in terms of both the object and the subject. In addition, the settlement of cases accompanied by Social Advisor is very complex and situational. Every child case has different characteristics because what is examined are all components related to the goals, duties and functions of the Social Advisor.

2. Human Resource Competency Limitations

To carry out the criminal justice process for children from the arrest process to the examination process in juvenile court, ideally it is indeed carried out or accompanied by a Social Advisor with a background in legal education, while in the final stage, it is ideal to be accompanied by a psychologist or psychiatrist according to guidance needs. However, the problem is that not all Social Advisor who focus on Social Research have the appropriate qualifications. As for the quantity, it can also be said that the ratio of Social Advisor is still not comparable to the area of work and the workload of Guidance.

3. Lack of Availability of Facilities and Infrastructure

In carrying out their functions, Social Advisor should be provided with adequate facilities and infrastructure to support their performance, such as the provision of special means of transportation for Social Advisor. This resulted in the performance of Social Advisor not being optimal and forced

to use private vehicles to cover a fairly wide area.

4. Limited Funding Sources

Lack of funding sources resulted in Social Advisor not being optimal in carrying out their duties in the field of Social Research. This is because in the process of implementing Social Research reports, there are certain times when visiting clients' homes, transportation and accommodation for attending meetings, and related surveys of other objects that do require data support so that the existence of Social Advisor can be improved.

CONCLUSION

From the explanation above, it can be concluded that one of the functions of Social Advisor, namely Social Research, occupies an important position in the implementation of the juvenile justice process. Social Advisor. Several stages are carried out by Social Advisor in carrying out the Social Research function including planning, implementation, and research reports that must be published to interested parties. This research report plays a major role in providing recommendations for judges in deciding a case in the fairest way. The judge must consider the social research report from the Social Advisor before making a decision on the case. If in the event that the social research report is not considered in the Judge's decision, the decision is null and void.

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