

The Rule of Law and the Role of Correctional Centres (BAPAS) in Creating Restorative Justice

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Correctional Centres (BAPAS) play a role in realising Restorative Justice for the community to give consideration to law enforcement officers in. In creating research summaries, input from all parties including BAPAS must consider the wishes and peace of mind of all parties involved in criminal acts. Normative juridical research methods with library studies use secondary legal materials related to the recapitulation of the regulation of the role of Correctional Centres (BAPAS) in creating restorative justice in the criminal justice system. Rules about the governing the role of the Penitentiary are outlined in Law No. 12 1995, Law No. 11 2012, Law no. 35 2014, Government Regulation No. 65 2015, Supreme Court Regulation NO. 4 2014, Minister of Justice Decree No. M.02-PR.07.03 1987, Director General of Corrections of the Ministry of Law and Human Rights Republic of Indonesia Number. Pas-111.Pk.01.05.02 of 2012 Pas 1 Pk.05.02 2010.

Key words: *Role, Correctional Centre, Restorative Justice.*

Introduction

The cases of children who are conflict with the law must be processed appropriately so that they do not undertake further criminal acts (Iqbal, 2013) The problem of managing children who are in conflict is of concern both to the government and internationally as outlined in Birth of Law No. 11, 2012 concerning children.

The Criminal Justice System requires Law Enforcement Officials to create diversions at all levels from the stages of investigation and prosecution to the trial stage with the Restorative Justice approach (Supraptiningsih et al, 2012). Restorative justice involves a community component, the victim's family, the perpetrator's family, the perpetrator, the victim, the child observer, the social department, the community, and other related parties to jointly resolve the criminal act that occurred (Pradityo, 2016). Correctional Centers (BAPAS) have an obligation

to conduct community research about children who are in conflict with the law to make appropriate recommendations and conclusions.

The 2017 Application of Diversity in the Child Criminal Justice System in North Sumatra found that the diversion agreement resulted in the compensation of perpetrators for the victims, even though there are many other sanctions for carrying out a particular job, allow the restoration of community and the provision of services by the community. Furthermore, during 2018 restorative justice in the criminal justice system has been carried out by all components of the juvenile criminal justice system in North Sumatra.

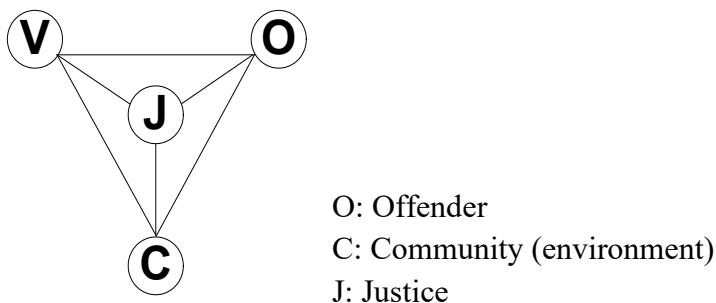
The Penitentiary Office creates restorative justice in the criminal justice system by conducting community research (litmas) of the children it examines. Correctional Centres (BAPAS) a institution that carries out community guidance as outlined Law No. 12, 1995 concerning Correctional Facilities. Article 1 number 4, that is the Penitentiary Office (BAPAS), is the institution which carries out Corrections Client guidance (Kellina, 1998). According to Article 6 paragraph (1) Guidance of Correctional Guidance Citizens is carried out at the Prison and Guidance of Correctional Guidance Residents is through BAPAS. (2) Coaching in prison is undertaken by prisoners and penitentiary students. Article 39 (1) Law No. 12, 1995 concerning Penitentiary states that each client must follow an orderly guidance program organised by BAPAS. Paragraph (2) of this Article outlines that each client guided by BAPAS must be registered. Correctional Centres (BAPAS) is an institution that has a very active role in the development of behaviour, as for example it is involved in the process of deciding about an inmate's parole period which is determined by Minister of Justice (Simbolon, 2018). Article 6 of Law No. 12, 1995 concerning Penitentiary maintains that the fostering of Penitentiary Guidance is carried out at Lapas Prison and the Guidance of Penitentiary Guidance Citizens is carried out by BAPAS (Miers, 2016).

This statement provides an overview regarding the fact no action exists other than criminal sanctions to punish someone. On the other hand, criminal law contains elements that include physical punishment which is imposed on a person who is guilty The sanctions provided in the criminal law are identical to the model of punishment which is the deprivation of personal freedom (jail) which deteriorates the convict's physical condition, and also has a psychological effect. (Simbolon, 2018). Extensive training (outside of prison) is also carried out by BAPAS, which is called integration, namely the process of guiding prisoners who have met certain requirements and are allowed back into the community with guidance and supervision from BAPAS (Kellina, 1998).

The Concept of Restorative Justice in the Juvenile Justice System

In his writing, British criminologist Tony F. Marshall suggests the following definition for restorative justice: “restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Miers and Miers, 2016).

Based on the above definition, the restorative justice triangle can be illustrated as follows:



Susan Sharpe (1998) proposes 5 key principles for Marshall's restorative justice: (Marlina, 2011)

1. Restorative justice invites full participation
2. It seeks to heal what is broken
3. It seeks full and direct accountability
4. It seeks to reconcile what has been divided
5. It looks to strengthen the community in order to prevent further harm

Restorative justice practice has developed in European countries amongst others including the United States, Canada, Australia and New Zealand can be grouped into four types pioneering types of practices : Victim Offender Mediation, Conferencing/Family Group Conferencing, Circles dan Restorative Board/Youth Panels.

a. Victim Offender Mediation

The first process of restorative justice is victim offender mediation. The victim offender mediation program was first implemented in 1970 in North America and Scandinavia including Norway and Finland. VOM in the state of Pennsylvania, runs the program in the office of the defence of victims under the Department of Prison. The program operates with a scope of violent crimes, including perpetrators who face the death penalty. The program provides an opportunity for victims to hear and provide perpetrators the opportunity to be responsible for their actions and express their feelings about crime and its consequences. (The Handbook).



The request for mediation must be initiated/proposed by the who must be 18 years or older. Perpetrators are assisted by a psychologist. Mediators or facilitators are voluntary groups that have undergone intensive training. Direct and indirect dialogue is also a possible option in the VOM program.

In the state of Texas, VOM is implemented at the Texas Victim Services. Participants are invited to take part voluntarily. The mediator and protocol prepare the process of guiding the meeting between the victim and the perpetrator to discuss and prepare a detailed list of the names of the parties involved to the meeting. This process can be carried out for cases that are diversified from the criminal justice system or are transferred by involving all parties involved in the criminal act who are involved voluntarily (Bazemore and Umbreit, 1998).

b. Family Group Conferencing

Conferencing was first developed in New Zealand in 1989 and Australia in 1991. At first it was a reflection of traditional processes of indigenous New Zealanders called Maoris. Maori society is traditionally known as *wagga wagga*. Conferencing consists of negotiating and deliberating. Conferencing does not only involve primary victims and offenders, but also secondary victims. Those who participate in the family group conferencing process are community members, perpetrators, victims, mediators, families or parties of victims and perpetrators as well as institutions that have an interest in children's problems. Meetings and discussions are arranged by a moderator.

c. Circles

The first Circle was held around 1992 in Yukon, Canada. A Circle is similar to conferencing, the implementation of which broadens participation in the mediation process outside the victims and main perpetrators, family and supporters and the community affected by the crime. Those who participate in the Circle are victims, perpetrators, institutions who pay attention to children's problems, the community and in case of serious cases also present judges and prosecutors. The presence of law enforcement officers ensures smooth implementation of the process in accordance with the principles of restorative justice without interfere in the process being carried out. Discussions and processes are assisted by mediators. Discussion takes place until all parties have expressed their wishes. The usual form of settlement is restitution or compensation, as well as the forgiveness of perpetrators by the community and victims (Justice et al., 2001). The system of the Circles is successful e if there is cooperation with the formal justice system and the community. The formal justice system plays a role in ensuring that the process carried out provides justice and is just towards all parties without coercion. The power of the people who participate in the circle will be more closely intertwined through jointly caring to overcome the crime of children.

d. Reparative Board/Youth Panel

This program began in the state of Vermont in 1996 with the companion agency Bureau of Justice Assistance. Its aim is to resolve cases of crime committed by children involving perpetrators, victims, the community, mediators as well as judges, prosecutors and defenders jointly formulating appropriate forms of sanctions for perpetrators and compensation for the victims or the community. The objective is the direct and active participation of community members in the criminal justice process, which provides the opportunity for victims and community members to have a direct dialogue with perpetrators of the agreement reported to the court to be ratified. Thereafter, in the board's involvement with the perpetrators ends (Laksana, 2017). The success of restorative justice in the settlement of criminal acts is related to the success and views of the mediator and the justice system in understanding the concept of restorative justice (Bazemore and Umbreit, 1998). Restorative justice sanctions become educational for the community not only for perpetrators but for rehabilitating justice and the law. This process can be carried out even if the perpetrators are unknown or not arrested as the perpetrators are part of the concept of restorative justice.

Rule of Law Bapas' Role Increases Restorative Justice in the Juvenile Justice System

The concept of restorative justice was adopted by the Indonesian state in Law No. 11, 2012 concerning the Child Criminal Justice System. Article 1 paragraph 6 states that Restorative Justice is the settlement of criminal cases involving perpetrators, victims, the families of the perpetrators/victims, and other related parties to jointly seek a fair resolution by emphasising restoration to its original state, rather than retaliation.

The approach outlined in Article 5 paragraph 1, must be carried out in the juvenile justice system by prioritising the Restorative justice approach. Article 18 in handling cases of children, involving the children of victims, and/or the children of witnesses, Community Guides, Professional Social Workers and Social Welfare Workers, Investigators, Public Prosecutors, Judges, Advocates or other legal aid providers must pay attention to the child's best interests and endeavour to maintain the family atmosphere .

According to Article 2, the process is carried out based on the principles of protection, justice, non-discrimination, the child's best interests , respect for the child's opinion, the child's survival and development , his or her formation and guidance , deprivation of liberty and punishment as a last resort and proportional avoidance of retaliation. Law enforcement officers are given the authority to carry out diversionary actions from the stages of investigation, prosecution and trial (Yudaningsih, 2014). Based on Article 7 paragraph 2, a crime which is under a seven year sentence does not constitute a repetition. The aim is to keep children away from the judicial process, avoid their stigmatisation and it is hoped that children can return to the social environment .

Article 69 paragraph (2) of Law Number 11, 2012 regarding SPPA

1. Children can only be sentenced for criminal behaviour subject to action.
2. Children who are not yet 14 (fourteen) years old may only be subject to action.

Based on Article 11 of Law Number 11, 2012 concerning the Child Criminal Justice System. The results of the diversity agreement may take the form of, inter alia:

1. Peace with or without compensation;
2. Submission to parents / guardians;
3. Participation in education or training in educational institutions or LPKS no later than 3 (three) months;
4. Community service.

Government Regulation No. 65, 2015 relating to Guidelines for the Implementation of Diversity and Handling of Children Aged 12 (Twelve) Years specifically regulates the guidelines for implementing diversion in order to implement the provisions of Article 15 and Article 21 paragraph (6) of Law Number 11, 2012 concerning the Criminal Justice System for Children .

Article 91 paragraph (1) of Implementing Government Regulation of Law Number 65, 2015 states:

"Children who are not yet 14 (fourteen) years old who are suspected of committing criminal offenses threatened with imprisonment of 7 (seven) years or more who are being detained at the stage of investigation, prosecution, or examination at a court hearing, expelled from custody and handed over to parents /guardians."

Supreme Court Regulation (Perma) Number 4, 2014 concerning Guidelines for the Settlement of Diversity in the Juvenile Justice System specifically regulates guidelines for implementing diversion in SPPA.

Article 2 PERMA No. 4, 2014 states:

"Diversion is applied to children who are 12 (twelve) years old but have not yet turned 18 (eighteen) years old or have been 12 (twelve) years of age even though they have been married but are not yet 18 (eighteen) years old, who are suspected of committing criminal acts. "

Article 3 PERMA No. 4, 2014 states:

"Child Judges are obliged to strive for diversity in the event that a child is charged with an offense threatened with imprisonment for under 7 (seven) years and also charged with an

offense threatened with imprisonment for 7 (seven) years or more in the form of an indictment, alternative, cumulative or a combination (combined).” (PERMA_04_2014)

Republic of Indonesia Presidential Regulation (Perpres) No. 59, 2015 concerning the Ministry of Women's Empowerment and Child Protection (Ministry of PPPA) was signed by the President of Indonesia on 18 May , 2015 and came into force on 25 May , 2015. The Ministry of PPPA has the task of organising government affairs in the field of women's empowerment and protection of children to assist the President in organising the State government. Article 14 of Presidential Regulation No. 59, 2015 states:

- (1) Deputy in the field of Child Protection is responsible to the Minister;
- (2) The Deputy in the field of Child Protection is directed by the Deputy.

Article 15 Presidential Regulation No. 59, 2015 states: "The Deputy for Child Protection has the task of carrying out policy formulation and coordinating and synchronising the implementation of policies in the field of child protection."

Based on this provision, the investigator facing a case of a child who committed a criminal offense can report it to BAPAS immediately . Bapas immediately conducted a litmas to investigate the victim's condition , the perpetrator, the victim's family, the perpetrator's family, the victim's state and condition in the community, the playing and household environment of the victim's parents and perpetrators as well as the obedience of the perpetrator's family to religion. (Yudaningsih, 2014). All this will be completed within 72 hours . The results of community research must be submitted by Bapas to the Investigator within a maximum of 72 hours after the investigator's request is received. The Litmas is a consideration for the police to carry out diversion (diversion).

The process of resolving the crime is carried out using a restorative justice approach. The settlement process involves parties who aim to jointly seek a fair solution by emphasising restoration to its original state, rather than retaliation. Conclusions and recommendations in litmas are considered as diversions. Furthermore, Article 8 of SPPA Law stipulates that the Diversi process is carried out through deliberations involving children and parents/guardians, victims and or parents guardians, Community Guidance, and Professional Social Workers based on a Restorative Justice approach. If necessary, deliberations can involve Social Welfare Workers, and / or the community.

When undertaking the diversionary action apparatus, the police, the prosecutor's office and the court pay attention to the victim's interests , the child's responsibility , avoidance of negative stigma and retaliation, community harmony, propriety, decency and public order. This consideration avoids negative impact in the process and diversification agreement. After a

restorative justice approach is adopted, the Diversi Agreement results can take the following forms:

- a. Peace with or without compensation;
- b. Submission to parents / guardians;
- c. Participation in education or training at an educational institution or LPKS no later than 3 (three) months;
- d. Social service.

Medan, Binjai, Stabat and Lubuk Pakam. Nearly 80% of the agreed agreement was peace with compensation. The victim will receive compensation from the perpetrator or 20% of the perpetrator's family at the Institute of Vocational Training in Tanjung Morawa. Children do not submit to parents because almost 80 % of children who face the law have problems in the family and community, meaning that the family does not pay attention to 20 % children returned to their parents. The Social Supervisor immediately reports to the responsible official who is obliged to follow up on the report within a maximum period of 7 (seven) days, though the process can be continued at a later stage.

Article 2 paragraph 1 Decree of the Minister of Justice of the Republic of Indonesia No. M.01-PK.10, 1998, states : Community research conducted by BAPA to assist the task of investigators, public prosecutors, and judges in the case of delinquent children. Conduct community guidance and work guidance for correctional clients. Based on Article 65 of Law Number 11, 2012 concerning the Child Criminal Justice System creating litmas becomes the main task of the Penitentiary, (Marianti Soewandi, 2003: 87-88) in accordance with the decision of the Minister of Justice of the Republic of Indonesia Number: M.02-PR.07.03, 1987 concerning the Organisation and Work Procedures of Penitentiary and Child Penitentiary Centers.

Bapas is the executor of the task of creating social research for the juvenile court and TPP hearings in prison. Regulation of the Director General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia Number: Pas-111.Pk.01.05.02, 2012 Pas.1.Pk.05.02, 2010 regarding Modules for Community Guidance of the Directorate General of Corrections. Broadly speaking, the main task of the community supervisor is to make a report on the results of community research for the purposes of investigation, prosecution and trial in the case of children, provide assistance, conduct guidance and supervision of children during the diversion and implementation of the agreement.

This Community Research Report must provide an overview of the background of the client's life both before and after becoming a client, so that all problems contained in his or her life and social environment are included in the contents of the report (Justice et al., 2001). Litmas

is confidential because it contains a very personal problem. The usefulness and benefits of the Community Research report consist of 2 (two) categories: before and after going to a Court hearing. The diversion process is carried out through deliberations involving children and parents / guardians of the victim and / or parents / guardians of the social advisors. Based on the restorative justice approach, , professional social workersa create agreements to resolve criminal acts in the form of minor criminal offenses, criminal offenses without victims, or the value of the victim's loss do not exceed the minimum wage of the local province as referred to in article 9 paragraph (2) which can be carried out by the investigator together with the perpetrator and/or his or her family, social counsellors and community leaders (Mardiah and Nizarli, 2012).

Conclusion

Based on existing regulations, BAPAS has an important role in creating restorative justice. Regulations indicate that the process of subsidising children who are dealing with the law requires Bapas Litmas. The legal rules of the role of correctional institutions in creating restorative justice are Law No. 12, 1995 concerning Penitentiary, Law No. 11, 2012 concerning the juvenile justice system, Law no. 35, 2014 regarding Child Protection, Government Regulation No. 65, 2015, Supreme Court Regulation No. 4, 2014, Minister of Justice Decree No. M.02-PR.07.03, 1987 concerning the Organization and Work Procedures of Penitentiary and Child Alleviation Centres, Director General of Corrections of the Ministry of Law and Human Rights Republic of Indonesia No. Pas-111.Pk.01.05.02, 2012 Pas 1 Pk.05.02, o 2010 concerning Modules for Community Guidance of the Directorate General of Corrections.

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