

Conference Paper

Implementation of the Role of Social Research Report in the Juvenile Criminal Justice System

Henny Susilowati and Wiwit Ariyani

University of Muria Kudus, Indonesia

ORCID:

Henny Susilowati: <https://orcid.org/0000-0003-2040-9906>

Abstract

Children as members of the next generation need to be protected. In the juvenile justice system, children are entitled to legal protection, both in the context of their position as children in conflict with the law (i.e. as criminals) and as victims or witnesses of crime. The laws of the Juvenile Criminal Justice System have been arranged to require the judge to consider the Social Research Report (SRR) given by community advisors before the verdict.

The purpose of the study is to explain the benefits of Social Research Reports for children in conflict with the law and the constraints faced in preparing them. The experiment was conducted using an empirical juridical approach by promoting the use of primary data and was supported by secondary data.

Based on the results of data analysis, it can be concluded that SRR preparation is very beneficial for children in conflict with the law. It contains conditions that explain the relationship between the condition of the offender and the committed criminal act so that it can be the basis of consideration for law enforcement officers in making the best decision for the children.

Keywords: Social Research Report (SRR), Community Advisors (CA), children in conflict with the law

Corresponding Author:

Henny Susilowati

henny.susilowati@umk.ac.id

Published: 8 July 2021

Publishing services provided by
Knowledge E

© Henny Susilowati and Wiwit Ariyani. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the AICoLiN Conference Committee.

1. Introduction

Children are a valuable asset for a nation, as well as for the Indonesian nation. It is in children's hands that sustainable development is expected to be realised in order to create a just and prosperous Indonesian society. Regarding the important role of children in the future, it is obligatory for a country to provide special legal protection for children. Legal protection for children is abstractly manifested in the form of regulating children's rights in a law. One form of legal protection is legal protection for children who are in trouble or in conflict with the law.

 OPEN ACCESS

Based on the reality of criminal acts that occur in society, many crimes are found not only committed by adults but also by children. Based on BPS data in 2003, it is stated that every year there are 4000 cases of legal violations committed by children, with 3722 children spread across 14 juvenile prisons.[1]

In principle, children who have committed a criminal act are still legally processed. However, in carrying out the process of examining criminal cases committed against children, it must still prioritize the interests of the child's welfare. This is as stated in *Standard Minimum Rules for the Administration of Juvenile Justice (SMR JJ) 1985*. In Rule 5.1 concerning *the Aims of Juvenile Justice* it is mentioned: *The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence.*[2]

In relation to the above mentioned point, Laws No.11 of 2012 concerning the Juvenile Criminal Justice System (JCJS) regulates the mandatory assistance from Community Advisors (CA) for children who commit criminal acts before, during or after the trial process in court. One thing which was worth researching is that when a judge is going to issue a court verdict, the judge is obliged to consider the Social Research Report (SRR) prepared by the Community Advisor (CA). This obligation can be interpreted as a basis of consideration for judges to be able to impose a verdict in accordance with the background of why a child committed a criminal act in accordance with the principle of proportionality as confirmed in Rule 5.1 SMR JJ above. In addition, a further community research report which was used by the writer as a short for SRR, is also needed as a basis for the implementation of diversion serving as the settlement of juvenile criminal cases through non-formal channels.

Referring to the description above, the researcher viewed that it was important to conduct a research on the implementation of the role of the SRR in the juvenile criminal justice system, especially in relation to the benefits and effectiveness of the preparation of the SRR by Community Advisors (CA) for children in conflict with the law and to judges' considerations in making decisions.

2. Research Method

The study was conducted using an empirical juridical approach. According to Ronny Hanitijo Soemitro, the empirical juridical approach is an approach that is carried out by identifying and conceptualizing law as a real and functional social institution in a patterned social system.[3] The reason for using an empirical juridical approach is

because the problems studied are based on an in-depth study of the existing laws and regulations (Law in books), especially the Laws on the Juvenile Criminal Justice System (JCJS) associated with its implementation in field (Law In Action).

The main data used in this study were primary data, while secondary data were also used as supporting data. The primary data were obtained through interviews with key informants, i.e.the Community Advise Officers of Semarang and Pati District. Meanwhile, the secondary data as the supporting data were obtained through literature study,i.e. ready-to-use data in form of books or magazines (scientific journals), laws and regulations related to the subject being studied.

3. Results And Discussion

In the Laws of Juvenile Criminal Justice System (JCJS), the Social Research Report (hereinafter abbreviated as SRR) has a very important role. This is as affirmed in Article 60 paragraph 3 which states “the judge is obliged to consider the social research report from the Community Advisor before making a decision of a case” and Article 60 paragraph 4”in the case that the social research report as referred to in paragraph 3 is not considered in the judge’s verdict; the verdict is void for the sake of the law”. A void verdict in legal theory is defined as a decision that has never existed and does not have any legal value (legally null and void) so that the verdict cannot be executed.[4]

Erasmus Napitupulu, a researcher at the Institute for Criminal Justice Reform (ICJR), suggests that social research is seen as the most important element in protecting children’s interests. Without social research, polices,prosecutors and judges will not easily understand the real condition of the children.[5]

3.1. SRR for the Purpose of Diversion

In the juvenile criminal justice system, the diversion mechanism is the main and mandatory thing to do. Diversion must be carried out at every stage of the examination of criminal cases committed by children, both at the level of investigation, prosecution and examination at trial. Diversion is a diversion from the settlement of juvenile cases from criminal justice processes to non-criminal justice processes. Diversion must be implemented in the event that a child commits a criminal act which is punishable by imprisonment of less than seven years and does not constitute a repetition of a criminal act.

Diversion is very important for children due to its non-stigmatizing nature (avoiding stigma or labeling for the punishment of liberty deprivation). As suggested by Kusno Adi[6], diversion starts from the assumption that the process of handling children through the juvenile justice system gives more likely negative impacts towards children's development.

The Diversion process is carried out by involving several parties; those are children of the perpetrators of criminal acts and their parents/guardians, children as victims and their parents/guardians, community counselors, professional social workers and law enforcement officials according to the interests of diversion at each stage of the case investigation. In addition, if desired by the child and/or parents/guardian, the implementation of the diversion discussion can also involve the community, such as: religious leaders, teachers, community leaders, assistants or advocates/legal aid providers.

Investigators, public prosecutors and judges in carrying out the diversion process must pay attention:

- a. interests of victims;
- b. children's welfare and responsibility;
- c. avoidance of negative stigma;
- d. avoidance of retaliation;
- e. community harmony and
- f. propriety, decency and public order.

Besides the six things mentioned above, the implementation of diversion must also consider: a. category of criminal offense; b. age of the child; c. *the results of social research*; and d. family and community support.

The results of the diversion agreement can generally take the form of:

1. peace with or without compensation;
2. return to parents/guardians;
3. participation in education or training in educational institutions for three months;
4. community service.

The aims and objectives of the SRR for proposing diversion as the author concluded from the literature review on the results of the compilation of social research documents from the Community Advisors at *Bapas* (Correctional Institution) Semarang and Pati are to present and find data and information objectively about the development and background of the client's life criminal from various aspects of sociological, psychological,

economic and so forth. It is hoped that the data and information will reveal the factors or background of the criminal acts committed by the client.

In principle, the things that become the objects of SRR can be interpreted as any data or information contained in SRR. At the stage of proposing diversion, the data or information includes:

1. Personal data of the offending child (client identity, identity of both parents, client's family composition)
2. Curriculum vitae and development of client.
 - (a) History of birth, growth and development of the client (history of the client's birth, client's physical growth and client's psychosocial development)
 - (b) Education history of client, education in family, formal and non formal education;
 - (c) Behavioral history (client's talents and potentials, social relations with parents and family, client's adherence to religion, client's good and bad habits, client's attitudes in following education, client's attitudes at work, history of legal violations and history of cigarette use, narcotics and alcohol)
3. Client's Condition
 - (a) Parents' socioeconomic conditions (marital history of parents, social relations in the family, work and economic conditions);
 - (b) The condition of the social, cultural and natural environment where the client lives (social relations with the community, the natural conditions in which the client lives, the state of the community, the pattern of interactions in the community)
 - (c) History of a criminal act, containing the background, chronology of the crime, the victim's condition, the consequences of the crime against the victim and the consequences for the client, parents and society
4. Behaviour and Response of Client
5. Attitudes and responses of the client's family, victim, community and local government.
 - (a) Attitudes, responses and expectation of the client's parents;
 - (b) Attitudes, responses and expectation of the victim towards the committed criminal act;

- (c) Attitudes, responses and expectation of local community;
 - (d) Attitudes, responses and expectation of local government.
6. Result or recommendation of assessment.
7. Analysis
- (a) Analysis of the client's development from birth to the occurrence of criminal acts;
 - (b) Analysis of the committed criminal act;
 - (c) Analysis of the causing factors of the occurrence of the criminal act;
 - (d) Analysis of the views of families, victims and community leaders;
 - (e) Analysis of mitigating and aggravating factors.
8. Conclusion and Recommendation.
- (a) The conclusion contains a brief description of the points of social research results as mentioned in points 1 - 8 above;
 - (b) Recommendations contain descriptions of suggestions for handling the best interests of children through diversion.

3.2. SRR for the purpose of Examination in Trial

The juvenile criminal justice system is essentially the same process as that applied to adult criminal offenders. What distinguishes in principle is the existence of special protection of the rights of children that are different from adults. Differences in special protection arise due to the child's mental growth and development which is still unstable so that the child is regarded not or unable to judge the act committed with legal consequences that may result from the act the child has committed.

Based on its process, the juvenile criminal justice system starts working when there is a report or complaint of a crime committed by a child. Furthermore, the criminal case will be processed starting from the investigation stage at the police, the prosecution stage at the prosecutor's office and finally the trial examination at the court. As the final stage of the juvenile criminal justice process is the implementation of punishment and guidance for children in juvenile prisons.

In the trial stage at the court, the judge may also seek diversion. However, in the event that the diversion is not achieved, the judge will continue the examination of

the case until finally the judge can issue a verdict or court decision in the form of an acquittal, an acquittal of all lawsuits and convictions.

In connection with the consideration of a court verdict by the judge, in this case the purpose and objective of making the SRR for the sake of the trial is to reveal or find the causative factor (independent variable) that causes problems (dependent variable) in form of negative acts allegedly committed by the client. By revealing the factors causing the negative actions, it is easy to make accurate suggestions or recommendations. Accurate recommendations supported by valid and significant data or facts are expected to help give consideration to judges in making decisions against children who are criminal offenders in the best interests of the child.

Based on the results of interviews with Community Advisors at *Bapas* (Correctional Institution) Semarang and Pati, it can be explained that the results of the social research reports that have been made by them have in principle been appreciated and used by judges as material for consideration in trials, i.e. before handing down sentences on children. Therefore, this is in accordance with what is mandated in the Laws of Juvenile Criminal Justice System (JCJS) which states that *“judges are obliged to consider the social research report from the Community Advisory officer before deciding the case, otherwise it will result in the null and void verdict”*.

3.3. SRR for the Purpose of Conditional Release (Parole)

Conditional release or Parole according to Article 15 of the Criminal Code is granted to a convict who has served two-thirds of the length of his imprisonment imposed for at least nine months. The conditional exemption is given by depending on certain conditions that must be met by the convicted person, both general conditions and special conditions with a probation period. If during the probation period the conditions that have been determined are violated, the parole can be revoked.

The purpose and objective of making SRR for the purpose of proposing parole is to disclose or find and state the client's condition while undergoing coaching and the eligibility of the guarantor and his family regarding the evaluation of the proposed parole. With the disclosure of these conditions, it will be easier to put forward accurate suggestions or recommendations. Accurate recommendation recommendations supported by valid and significant data or facts are expected to help provide consideration to the head of a juvenile prison in assessing whether or not parole is given to clients.

4. Conclusion

Based on the results of the discussion in the previous chapter, it can be concluded that the preparation of SRR (Social Research Report) is very beneficial for children who are in conflict with the law because the SRR contains conditions that explain the relationship between the condition of the offender and the committed criminal act so that it can become a basis of consideration for law enforcement's officials in making decisions in the best interests of the children at every stage of examination of criminal case at hand.

References

- [1] Kurniasari, Alit. (2007). Studi Penanganan Anak Berkonflik Hukum. *Jurnal Penelitian Kesejahteraan Sosial*, vol. 6, issue 2, pp. 107-118
- [2] Arief, Barda Nawawi. (1990). Perlindungan Hukum Terhadap Anak Dalam Proses Peradilan. *Journal of FH UNDIIP- Masalah-Masalah Hukum*. Vol. 19, issue 3, 1990, p. 9
- [3] Soemitro, Ronny Hanitijo. (1983). *Metode Penelitian Hukum*. Jakarta: Ghalia Indonesia; p.7
- [4] Mahendra, Yusril Ihza. (2015, June 24). Batal Demi Hukum: Putusan MK Sama Dengan Sebelum Ketok Palu!. *Kompasiana*. https://www.kompasiana.com/yusrilihza_mahendra/55198e17a333117119b65916/batal-demi-hukum-putusan-mk-sama-sebelum-ketok-palu
- [5] Institute for Criminal Justice Reform. *Penelitian Kemasyarakatan Dalam Peradilan Anak Bukan Sekedar Pemanis UU*, retrieved August 7, 2016 from <https://icjr.or.id/penelitian-kemasyarakatan-dalam-peradilan-anak-bukan-sekedar-pemanis-undang-undang/>
- [6] Kusno, Adi. (2019). *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika oleh Anak*. Malang: UMM Press, p. 59