

## Conference Paper

# The Challenges Faced by Community Advisors in Diverting Children who are in Conflict With the Law

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**Abstract**

The challenges that community advisors face in trying to divert children at the Penitentiary Center of Pati Regency who are in conflict with the law are: first, the lack of understanding of the perpetrator party and/or the victim party. Second, the victim party assumes that the Penitentiary Center will take the side of the perpetrator. Third, the demands for compensation are considered burdensome according to the perpetrator party. Fourth, the coordination among the law enforcement officers in handling diversion is not optimal. These challenges must be overcome so that justice, legal certainty and benefits can be realized for all parties. Legal protection is not only given to children who are in conflict with the law, but also to the victims. Efforts to protect victims are carried out by restoring losses that have been experienced by the victims. Therefore, in diversion, the victim is directly involved in the process of solving the case.

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## 1. Introduction

Children are the next generation of a nation. They will play a role in actualizing a fair and prosperous Indonesian society. Considering the important roles of children in the future, so it has become an obligation to the country to give special legal protection for the children, specifically for those in conflict with the law. That is because criminal acts are not only committed by adults but also by children. This can be seen from the number of cases of children in conflict with the law that have been reported to the Indonesian Child Protection Commission from 2011 to 2019, reaching 11,492 cases. This is much higher than the reported cases of children entangled in health and drug problems (2,820 cases), pornography and cyber crime (3,323 cases), and trafficking and exploitation (2,156 cases) [1].

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In the laws and regulations in Indonesia against children in conflict with the law, the handling of them is regulated in Law Number 11 Year 2012 concerning the Juvenile Criminal Justice System (hereinafter abbreviated and written as UU SPPA). A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old, who is suspected of committing a criminal act [2].

Since 1960 there has been awareness to resolve conflicts based on a criminal law framework and outside criminal law in accordance with community values [3]. Basically, children who have committed criminal act are still legally processed. However, in its implementation, the process of examining criminal cases toward children must still prioritize the interests of the child's welfare. One of them is the diversion mechanism. Diversion under the UU SPPA is defined as the transfer of settlement of juvenile cases from criminal justice processes to non-criminal proceedings [4]. Diversion must be pursued at every stage of the criminal justice process, namely at the Police, Attorney General's Office and Court levels, as stipulated in Article 96 of the UU SPPA. Diversion is needed for the protection of the best interests of the children because through diversion, the possibility of prosecution for the sentence is invalidated, so that it can prevent children from the stigmatization process that usually occurs in the process of criminalizing children [5].

In connection with the foregoing, the UU SPPA regulates the mandatory assistance from Community Advisors during diversion. Community Advisors are law enforcement functional officers who carry out community research, guidance, supervision and assistance to children inside and outside the judicial process. One of the duties of the Community Advisor in the juvenile criminal justice process is to make community research reports for diversion purposes, to provide assistance and supervision to children during the diversion process and the implementation of the agreement, including reporting it to the court if diversion is not implemented [6].

Penitentiary Center of Pati Regency (hereinafter abbreviated and written as BAPAS Pati) has 21 Community Advisors and four Community Assistants [7] to handle all community research, mentoring, guidance and supervision in the Pati Residency. Up to December 2019, there were 25 child clients who were supervised by Community Advisors of BAPAS Pati. In 2018 and 2019, Bapas Pati has succeeded in carrying out diversions of children in conflict with the law as many as 78 cases. However, there are five cases of children in conflict with the law that cannot be diversified. This unsuccessful diversion was because there was no agreement between the perpetrator and the victim [8].

Based on the background above, the problem that will be studied is, What are the challenges of community advisors in optimizing the success of diversion against children in conflict with the law at Penitentiary Center of Pati Regency?

## 2. Theoretical Framework

According to Muhammad Azil Maskur, there are at least five types of general approaches used in dealing with children who violate the law, namely an approach that purely prioritizes children welfare, a welfare approach with legal intervention, an approach that uses the criminal justice system only, an educational approach in providing law and a purely retributive approach to punishment [9].

Diversion is one of the mechanisms to resolve children in conflict with the law used in restorative justice. Restorative justice is a theory that emphasizes the recovery of losses caused by a criminal act by involving all related parties so that an agreement is reached to recover the losses that arise [10]. Tony F. Marshall describes about restorative justice as a process whereby all the 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 [11]. Restorative justice is viewed as a humanitarian approach that brings to the foreground ambitions of forgiveness, healing, reparation and reintegration [12]. Similar understanding of restorative justice is as stated in Article 1 paragraph 6 of the UU SPPA. According to David Fogel, the Restorative Justice Model was proposed by Abolitionists who consider that the criminal justice system is problematic or structurally flawed so it must be changed. Abolitionist analysis according to Brants and Silvis is more aimed at the failure of the criminal justice system than on its success [13].

## 3. Research Method

This research is a sociological juridical study that uses primary data and is also supported by secondary data. Primary data was obtained through interviews with key informants, namely Community Advisors of Bapas Pati. The form of interview is free guided. In this case, the researcher used a list of questions as an interview guide. Secondary data which is used as supporting data is obtained through literature study, which is obtained from books, scientific journals and laws and regulations related to the subject matter to be studied. This research is specified as a descriptive-analysis qualitative research.

## 4. Results and Discussion

Community advisors are often referred to as after care officers, who have a special task in the law enforcement process as well as police, prosecutors, judges or legal advisors. Community Advisors are law enforcement functional officials who carry out social research, guidance, supervision and assistance to children inside and outside the criminal justice process [14]. In carrying out his duties, a Community Advisors is required to have certain technical skills, as regulated in Article 64 (2) of the UU SPPA.

Penitentiary Centers, as in the UU SPPA Article 1 paragraph 24, are social technical implementation units that carry out the tasks and functions of community research, guidance, supervision and assistance. The implementation of these duties and functions is carried out by the Community Advisor. Penitentiary Center of Pati Regency has six working areas including: Pati Regency, Kudus Regency, Jepara Regency, Rembang Regency, Blora Regency and Grobogan Regency.

In 2018, the Penitentiary Center of Pati Regency managed to carry out diversion of 54 cases of children in conflict with the law, while four cases of children in conflict with the law could not be resolved through diversion. Furthermore, in 2019 Bapas Pati has succeeded in carrying out 24 diversions against children in conflict with the law, but there is one case of children who are in conflict with the law, namely for committing a crime as stated in Article 80 of Law Number 35 Year 2014 concerning Child Protection in conjunction with Article 351 Criminal Code that cannot be resolved by diversion. Community Advisors provide assistance, mentoring, and supervision of the implementation of the agreed diversion agreement. If the diversion agreement is not implemented within the agreed time period, the Community Advisor will report in writing to the investigator's direct supervisor for a formal follow-up on the proceedings based on existing provisions with a copy to the Chairman of the local District Court. Regarding the agreement that occurred in the diversion process in 2018 and 2019, the Community Advisors of Bapas Pati has never met a party that did not implement the results of the diversion agreement. The failure of diversion was because there was no agreement between the perpetrator and the victim. The Community Advisors have tried to fight for diversion to be successful, but it cannot be denied that its success also depends on the parties' success or failure to reach an agreement between them [15]. The challenges of community advisors in optimizing the success of diversion against children in conflict with the law at the Penitentiary Center of Pati Regency are [16]:

#### **4.1. The lack of understanding of the perpetrator party and/or the victim party.**

Before the diversion was carried out, the Community Advisors of Bapas Pati first met the parties involved in the position of facilitator and mediator. Then after that the parties were summoned to meet in the context of implementing diversion. Bringing both parties together in order to find the best way for the benefit of both parties is not something that is easy to do. The reasons for the absence of the parties are usually due to work, but some simply do not care. There is also worry from the parties when they have to come because of the summons, because they think their children will be punished. There are also parents who think, because their child is not detained, the case is considered finished, so why should attend the summons. The effort made by the Community Advisors to overcome this problem is by establishing communication with the parties and patiently explaining the diversion, so that the parties involved do not have to feel afraid.

#### **4.2. The victim party assumes that Penitentiary Center takes side with the perpetrator.**

The victims usually feel from the outset that the Community Advisors are not on their side, but tends to side with the perpetrators instead. This is felt as an injustice for the victim. The victim feels forced to make peace with the perpetrator, regardless of all the suffering and loss they have experienced. Misconceptions about the victim's perception of the Community Advisors were resolved by approaching the victim. Diversion is not a settlement mechanism that can be forced on victims. However, Community Advisors always explains the virtues of diversion, by opening a heart-to-heart discussion to the parties involved.

#### **4.3. The demand of compensation considered burdensome according to the perpetrator party.**

A diversion agreement based on Article 11 of the UU SPPA can take the form of, peace with or without compensation, return to parents / guardians, participation in education or training in educational institutions or LPKS for a maximum of three months or community service. The victims often do not want to do diversion. They just want the perpetrator to be jailed and there is no need for compensation or an apology from the perpetrator. However, sometimes the victim also filed for compensation that the perpetrator could

not fulfill, so they just gave up if the case was processed until the court hearing. In this condition, the community advisor tries to become a negotiator and mediator in order to reach an agreement that benefits both parties.

#### **4.4. The coordination among the law enforcement officers in handling diversion is not optimal.**

The institutions involved in handling children in conflict with the law are the Community Advisors, the Police, the Attorney General's Office and the Court. Often there is communication that is hampered or misperceived between law enforcement officials in handling cases of children in conflict with the law. One example is the application of articles for children in conflict with the law. Therefore, coordination between the authorities involved in solving cases of children in conflict with the law must always be maintained in order to succeed in diversion.

Diversion must be carried out on condition that the criminal act is punishable by imprisonment of less than seven years and does not constitute a repetition of a criminal act [17]. The conditions as mentioned above are cumulative, which means that both of them must be fulfilled. A diversion agreement must obtain the consent of the victim and / or the victim's family and the willingness of the child and his family, except for criminal acts in the form of offenses, minor crimes, criminal acts without victims or the value of the victim's loss is not more than the value of the local provincial minimum wage. If the diversion process does not result in an agreement or is not implemented, then the juvenile justice process is continued at every level. This is regulated in Article 13 of the UU SPPA.

The diversion process is carried out through deliberation involving the children and their parents / guardians, community counselors and professional social workers, even if necessary it can involve social welfare workers and / or the community. This is in line with the provisions of Article 8 of the UU SPPA. Supervision of the diversion process and the implementation of the resulting agreements is reported to the direct supervisor of the responsible official at each level of the examination. During the diversion process until the agreement is implemented, the community advisors is obliged to provide assistance, guidance and supervision, as confirmed in Article 14 of the UU SPPA. Diversion shall be carried out within a maximum period of 30 (thirty) days from the commencement date of the investigation at the Police. If the diversion fails, the investigator will continue to make a report on the diversion and continue the process of the case by sending the case file to the attorney. If the diversion is successful, a diversion agreement will be

made signed by all involved and a decision is requested to the District Court to obtain legal certainty. The purpose of diversion as contained in Article 6 of the UU SPPA is to achieve peace between victims and children, resolve children cases outside the judicial process, prevent children from being deprived of liberty, encourage the community to participate and instill a sense of responsibility in children. Juvenile criminal justice with restorative justice aims to strive for peace between victims and children, prioritizing solutions outside the judicial process, keeping children away from the negative effects of the judicial process, instilling a sense of child responsibility, realizing children's welfare, preventing children from being deprived of freedom, encouraging the community to participate, and improving children's life skills [18]. The settlement through this route is positive because it can reduce the buildup of cases in court, as stated by Robert Julian, while this approach focuses primarily on less serious cases, these individuals can represent a significant proportion of the courts caseload [19].

The challenges faced by Community Advisors in pursuing the success of diversion as mentioned above must be overcome so that justice, legal certainty and benefits can be realized for all parties. Legal protection is not only given to children who are in conflict with the law, but also the victims. Efforts to protect victims are carried out by restoring losses that have been obtained by victims. Therefore, in diversion the victim is directly involved in the process of solving the case.

## 5. Conclusion

The challenges of community advisors in optimizing the success of diversion against children in conflict with the law in Penitentiary Center of Pati Regency, are: first, the lack of understanding of the perpetrator party and/or the victim party. Second, the victim party assumes that Penitentiary Center takes side with the perpetrator. Third, the demand of compensation considered burdensome according to the perpetrator party. Fourth, the coordination among the law enforcement officers in handling diversion is not optimal. These challenges can be overcome if the Community Advisors become the activators for good communication with all parties involved in diversion.

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