

## "THE ROLE OF POST-DIVERSION SUPERVISION IN PREVENTING RECIDIVISM AND SOCIAL REINTEGRATION OF CHILDREN"

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### Abstract

Diversion in the juvenile justice system aims to promote rehabilitation and avoid formal justice processes. However, weak post-diversion supervision increases recidivism and hinders social reintegration. This study identified regulatory challenges, limited resources, and a lack of inter-agency coordination in the post-diversion supervision of children. The roles of the Child Protection Agency (Bapas), families, and communities are crucial in ensuring successful rehabilitation. Policy reforms and strengthening of restorative justice-based monitoring systems are needed. More effective supervision will help children lead better lives and prevent re-offending.

**Keywords:** *diversion, social reintegration, post-diversion supervision, juvenile criminal justice system, restorative justice, recidivism.*

### INTRODUCTION

Children are the next generation of the nation who play an important role as the successors of the nation's ideals, hopes and development. In criminal justice, the settlement of cases involving Children in Conflict with the Law (ABH) is carried out with special procedures (Lex Specialis). There are 2 (two) reasons underlying this, first because psychologically and emotionally, children are considered not to have the maturity of thinking like adults so they are easily influenced and are believed to still be able to be guided so as not to repeat the same mistakes, and second is if the process of resolving cases involving ABH is resolved through mechanisms like adults which have more connotations of corporal punishment such as imprisonment, it will raise concerns about risks such as children experiencing violence, exploitation, or even bad influences from other inmates. Thus, a special mechanism was born known as the Juvenile Criminal Justice System based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which in resolving its cases prioritizes the principle of the best interests of the child.

In Article 1 of the Child Criminal Justice System Law, it is stated that what is meant by the Child Criminal Justice System is the entire process of resolving cases of Children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence and Children in conflict with the law also include Children in Conflict with the Law (ABH) hereinafter referred to as Children are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime. The main specialty in the Child Criminal Justice System is the existence of Diversion, namely the granting of authority to law enforcement officers to take discretionary actions in handling or resolving the problem of child offenders by not taking formal routes, including stopping or continuing or releasing from the criminal justice process or returning or handing over to the community and other forms of social service activities.<sup>1</sup> As stipulated in Article 6 of the SPPA Law, the objectives of Diversion are a). to achieve peace between the victim and the child; b). to resolve the child's case outside the judicial process; c). to prevent the child from being deprived of liberty; d). to encourage community participation; and e). to instill a sense of responsibility in the child. From this Article, it can be further explained that Diversion as a process of diversion from the judicial process to a non-judicial process, aims to prevent children from the application of criminal law which often results in bitter experiences in the form of prolonged stigmatization (negative label), dehumanization (exile from society) and prevent children from the possibility of prisonization which becomes a means of transferring crimes against children.<sup>2</sup> Enforcing the principle of the best interests of children in the Juvenile

<sup>1</sup>R. Wiyono, Juvenile Criminal Justice System in Indonesia, Jakarta: Sinar Grafika, 2016, p. 47.

<sup>2</sup>Prof. Dr. Rusli Muhammad, Indonesian Juvenile Criminal Justice System, Yogyakarta: FH UII Press, 2020, p. 49.

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Criminal Justice System should not only prioritize the implementation of Diversion, but also go beyond that to Post-diversion, namely the existence of supervision to ensure that children truly receive rehabilitation, no longer re-commit crimes, and have truly gained acceptance by society when returning to the social environment (Reintegration). In the context of juvenile criminal justice, reintegration refers to efforts to return children who have undergone diversion or guidance to their communities, families, and social environments so that they can live normal lives without stigma or the risk of repeating crimes. Post-diversion supervision has an important role in ensuring that children can truly adapt to the environment without experiencing stigma or difficulties that can hinder their development.

Although theoretically, post-diversion supervision is very important in the process of reintegrating children, in practice, various obstacles are often found in its implementation, one of which is the legal vacuum regarding the institutional supervision of children after diversion. Reintegrating children after diversion in practice requires the involvement of various groups such as Bapas, Social Services, Schools, Village Officials, and especially families. However, legal regulations do not provide guidance on the coordination pattern and responsibilities of each party, and there is no specific independent institution appointed by law with the main task of carrying out long-term supervision of children after diversion, with the main goal of preventing children from repeating criminal acts (recidivism), so that these roles often overlap and are neglected.

Legal regulations that do not specifically regulate further supervisory actions regarding the evaluation procedures for children after diversion, including the extent to which children have succeeded in undergoing social reintegration, make it difficult to assess the effectiveness of Diversion in accordance with its objectives, namely to protect children from the negative impacts of the judicial process and imprisonment. In addition, even though in reality children have undergone Diversion and are trying to reintegrate into the community, social stigma that can hinder the recovery and development of children is something that must be faced, so that reintegration with continuous supervision is a key program in the process towards restorative justice through Diversion which aims to eliminate the negative stigma from society attached to children.<sup>3</sup>Based on the description above, in this study the author raised the title "From Diversion to Reintegration: The Urgency of Strengthening Post-Diversion Supervision for Children in Conflict with the Law."

## RESEARCH METHODS

This journal was written using the Normative Research Method, namely research conducted by examining norms related to the Research title, reviewing library sources, reviewing legislation so that there is a clear difference between the two. In other words, the research approach emphasizes the literature review, namely the legislative approach.

## DISCUSSION

Children are part of citizens who have obligations and rights based on the provisions of the law. Article 19 of Law Number 23 of 2002 concerning Child Protection outlines things that are included in the obligations of a child, namely: a) the obligation to respect orangutans, guardians, and teachers, b) the obligation to love family, society, and love friends, c) the obligation to love the homeland, nation and state, d) the obligation to carry out worship according to the teachings of their religion, and e) the obligation to implement ethics and noble morals. As for the rights of children based on the Convention on the Rights of the Child (CRC) 1989 (UN Resolution Number 44/25 dated December 5, 1989) can be grouped into 4 (four) categories, namely: a) The right to survival (right to survival), b) the right to develop (right to grow and develop), d) the right to participation (right to participate).<sup>4</sup>To fulfill the obligations and rights of children, synergy is needed to support this, starting from the smallest environment, namely the family, school, and all the way up to the state. The state's obligation in carrying out its role is to protect, fulfill, provide, and serve the rights of every citizen, including children.<sup>5</sup>

The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and its derivative regulations is a manifestation of the State's role and responsibility for Children's rights. Through these statutory provisions, the State provides protection and fulfills Children's rights by regulating that the resolution of cases

<sup>3</sup>Atik Rahmawati, Wahyuni Mayangsari, "The Role of Correctional Social Workers in the Rehabilitation and Social Reintegration of Children in Conflict with the Law at the LKSA Bengkel Jiwa, Jember Regency", Scientific Journal of Social Rehabilitation, Vol. 4 No. 1 (June 2022), p. 83.

<sup>4</sup>Dolly Singh (ed), Child Rights and Social Wrong An Analysis of Contemporary Realities, Vol. 3, Child as Global Citizen: A Third World Perspective, (New Delhi: Kanishka Publisher, 2001) p. 21-22.

<sup>5</sup>Yuswanto, "The Role of the Indonesian Legal State in Protecting Its People in Welcoming the 2015 Asian Economic Community (AEC), Fiat Justitia Journal (Journal of Legal Studies), Vol. 8 No. 4 (October 2014), p. 571.

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involving Children, especially those in conflict with the law, must be resolved through a *lex specialis* mechanism that prioritizes the principle of the best interests of the child. Children in conflict with the law, based on certain conditions, have the right to have their cases resolved through Diversion, which aims to prevent children from formal judicial processes that result in corporal punishment such as imprisonment. However, the challenges faced by Children in conflict with the law include not only how their cases can be resolved in a way that is pro-Children's interests, but also post-Diversion is implemented and the Children return to society and live their social lives. This is because the negative stigma of society towards Children in conflict with the law is a problem in itself which often has an impact on Children finding it difficult to be accepted again. How children, in this case children in conflict with the law, are prepared to be able to return to the family and community environment is a process known as social reintegration.

As regulated in Article 91 paragraph (3) of the SPPA Law, children have the right to obtain social reintegration from institutions or agencies that handle child protection based on the results of community research from Community Guidance. Similar matters regarding social reintegration are also included in the explanatory description of Article 22 paragraph (1) of Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age, that what is meant by social reintegration is the process of preparing children to be able to return to the family and community environment. Preparation for the return of children or reintegration can be done through several steps:<sup>6</sup>

- a. *Assessment*, which is the initial step to find out information related to the profile of children in conflict with the law, their relationship with their family and their relationship with society.
- b. Social Reintegration of ABH through peer intervention, supporting interventions on children's behavior requires support interventions, namely interventions on peer groups using peer group manipulation methods because the influence of peers greatly influences children's development.
- c. Social reintegration of ABH through family intervention involves education related to accepting the child's condition so that upon release from prison, the family can welcome the child back. Other education involves implementing parenting strategies, with the family providing support, providing material support and affection to children in conflict with the law whose sentences have completed. Parenting education is based on behavioral changes that have been and have not yet changed. Families are expected to support the continuation of these unchanged behaviors.
- d. Social reintegration of children in conflict with the law through community intervention is carried out to ensure the safety of children in conflict with the law. Community intervention also takes into account the victim's willingness to accept the return of children in conflict with the law.

The SPPA Law and its derivative laws and regulations have outlined the rights of children to be prepared both in terms of personality and environment before being returned to their families or the community. However, this regulation only regulates how all of this can be prepared and the institutions that are authorized to prepare it, there are no further provisions regarding how supervision and evaluation should be carried out in stages to ensure whether the child has truly received good acceptance by his environment, or whether the child does not repeat the crime, so in other words, these provisions do not provide provisions that can ensure the success of post-diversion child reintegration. Supervision is defined as the process of monitoring activities to ensure that all organizational activities are carried out as planned and also as an activity to correct and improve if any deviations are found that could interfere with the achievement of objectives. Supervision is also a management function necessary to evaluate the performance of the organization or units within an organization in order to determine progress in accordance with the desired direction.<sup>7</sup> As stipulated in the provisions of Article 65 letters a, d, and e of the SPPA Law, Supervision of Children is carried out by Community Guidance during the Diversion process and implementation of the agreement, for Children who are sentenced to criminal penalties or are subject to Action based on court decisions, for Children who receive assimilation, conditional release, free, and conditional leave. Implementation of supervision, especially Post-Diversion is carried out to ensure the social reintegration of Children that Children have received good acceptance from their families and communities and to ensure that Children do not re-commit crimes. The following are some of the challenges faced in the implementation of post-diversion supervision:

- a. Lack of technical guidance for implementing post-diversion supervision. Technical guidance for post-diversion supervision, particularly regarding social reintegration, is crucial to ensure that children can return

<sup>6</sup>Najmudil Akbar Kadafi, Atik Rahmawati, Wahyuni Mayangsari, Kris Hedrijanto, Belgis Hayyinatun Nufus, "Social Reintegration of Children in Conflict with the Law Through the Synergy of BAPAS Class II Jember and POKMAS LIPAS", Journal of the National Conference of FISIP Partners, Vol. 2 No. 1 (June 2024), pp. 527-529.

<sup>7</sup>Nelis Hernawanti, "Supervision of Community Guidance Counselors on Correctional Clients," Journal of Learning Thought and Development, Vol. 2 No. 2 (May-August 2020), p. 21.

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to society with positive acceptance and do not reoffend. This is because clear guidelines make the child's development process more focused. Clear guidelines for structured supervision can minimize the risk of children returning to negative environments.

- b. The limited role of the Child Protection Officer (Bapas). The Bapas is one of the parties involved throughout the judicial process for children in conflict with the law, from the time the child is arrested until the child completes their sentence.<sup>8</sup>In post-diversion supervision of children, the Correctional Center (Bapas) plays an important role in ensuring that the social reintegration process runs effectively and children do not re-commit crimes. Bapas can be a supervisor, guide, and also a facilitator so that children can adapt well to the community environment. The implementation of the Bapas role is carried out by Community Guidance, namely officials who, based on Article 64 paragraph (1) of Law No. 11 of 2012, have the task of conducting community research, mentoring, guidance, and supervision of children and making community research reports used for the purposes of investigation, prosecution, and trial. The role of Bapas in implementing post-diversion supervision of children is still limited, the fundamental factor being caused by the lack of supporting regulations, where the rules related to Bapas' authority in post-diversion child supervision are still limited, so that the room for maneuver in providing further intervention is limited. Apart from that, the mechanism for imposing sanctions or follow-up if children do not carry out post-diversion obligations properly has not been further regulated.
- c. Lack of community participation in supporting post-diversion child protection. Article 93 of the SPPA Law provides a place for the community to play a role in providing child protection, starting from preventing children from committing crimes to the reintegration process. These include: a). reporting violations of children's rights to the authorities; b). submitting proposals regarding the formulation and policies related to children; c). conducting research and education regarding children; d). participating in resolving children's cases through diversion and restorative justice approaches; e). contributing to the rehabilitation and social reintegration of children, child victims, and/or child witnesses through community organizations; f). monitoring the performance of law enforcement officers in handling children's cases; or g). conducting outreach regarding children's rights and laws and regulations related to children. However, the community's participation is needed to be greater than that, because the negative stigma against children who have been in conflict with the law often makes them isolated and makes it difficult for them to get a second chance. Low public awareness of the importance of post-diversion child rehabilitation leads to a lack of support for development programs. Furthermore, minimal community involvement in providing a safe and supportive environment makes children vulnerable to returning to deviant behavior. Community involvement is crucial in providing spaces for children to learn, work, and participate socially.
- d. Unsupportive economic and social factors. The success rate of a child's reintegration into society after being separated from their community is also influenced by economic and social factors. From an economic perspective, families with more stable economic capabilities are able to provide for the child's basic needs, such as food, education, and shelter, which are essential supporting factors for the child's continued reintegration and reduce the child's potential to re-offend. Meanwhile, from a social perspective, positive relationships and emotional support from the family can be key factors in ensuring successful reintegration after diversion, as this will make the child more likely to adapt. Another social factor is related to negative stigma and societal acceptance. In this case, if the community accepts the child well without stigma and discriminatory behavior, the reintegration process can proceed more smoothly for the child.

Post-diversion supervision is crucial to ensure that children who have undergone the diversion process do not re-offend and can integrate effectively into society. This requires technical guidance supported by legal regulations. Through post-diversion supervision, children's development can be regularly monitored. If any obstacles arise in their social adaptation, appropriate interventions can be implemented immediately.

Weak supervision and the lack of adequate technical guidance and legal basis carries the risk of children committing crimes again (recidivism) due to reintegration that only focuses on the preparation stage for returning children to the community without further supervision and evaluation regarding how children develop after diversion. Weak supervision will also make it difficult for children to adapt back to their social environment, due to the negative stigma and discrimination that they are very likely to receive from the community. In addition, post-diversion supervision that has not been properly regulated will further result in the goal of diversion as a form of restorative

<sup>8</sup>Okky Chahyo Nugroho, "The Role of Correctional Institutions in the Juvenile Criminal Justice System Reviewed from a Human Rights Perspective," Jurnal HAM, Vol. 8 No. 2 (December 2017), p. 166.



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justice, namely restoration to the original condition, and punishment as a final resort, so that other methods outside the court need to be prioritized.

### CONCLUSION

From the above description, it can be concluded that children, as legal subjects and citizens, have rights and obligations guaranteed by both national laws and international instruments. In the context of children in conflict with the law, the state has demonstrated its commitment through the ratification of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) and various derivative regulations, which prioritize a restorative justice approach through a diversion mechanism. The intended diversion aims to resolve children's cases outside the formal justice system in the best interests of the child and to prevent children from the negative impacts of the conventional criminal system. One important aspect after diversion is social reintegration, namely the process of preparing children to function well again within the family and community environment.

However, in its implementation, this reintegration process still faces various challenges, such as weak post-diversion supervision, the lack of comprehensive technical guidance, the limited role of Correctional Institutions (Bapas), low community participation, and socioeconomic inequality within the child's family environment. Although regulations have provided a legal basis, implementation in the field still lacks systematic support and sustainability. Supervision carried out by Community Guidance Officers is not yet equipped with evaluation tools that can guarantee the success of the child's complete reintegration. Furthermore, the stigma from society towards children who have been in conflict with the law is a major challenge, as it can thwart the child's recovery process even though they have legally fulfilled their obligations.

Therefore, real synergy is needed between the state, families, schools, and communities to oversee the comprehensive and sustainable social reintegration process of children. This can be achieved through strengthening post-diversion supervision regulations, increasing the capacity of institutions responsible for child protection, and social campaigns that encourage community acceptance of children returning from the legal process. Without adequate supervision and the involvement of all social elements, the primary goal of diversion as a form of restorative justice and child rehabilitation will be difficult to achieve, and may even lead to children falling back into deviant behavior (recidivism). Therefore, ensuring the successful social reintegration of children after diversion is not only a legal responsibility but also a moral responsibility of all levels of society.

### SUGGESTION

Based on the various challenges outlined, the following recommendations highlight the need to strengthen regulations and technical policies related to post-diversion supervision to ensure optimal and sustainable child social reintegration. The government needs to develop comprehensive guidelines for implementing post-diversion supervision, involving cross-sectoral coordination, including the Correctional Facility (Bapas), child protection agencies, law enforcement officials, and the active participation of the community and families. Furthermore, increasing the capacity of Community Guidance Officers, who spearhead supervision, must be a priority, including providing adequate funding and training. Equally important, a humanistic and educational approach is needed to change the negative public stigma against children who have been in conflict with the law, including through social campaigns and the involvement of community and religious leaders. With these steps, children's social reintegration will not be solely the responsibility of the state but will also become a collective movement capable of creating an environment that supports children's recovery and holistic development.

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