



JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

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Abstract

The role of community mentors for the recovery of minors due to violations of the law to realize the constitutional rights of children is a paradigmatic key to the correctional system. The problems that will be researched and analyzed are how the legal arrangements, implementation, and what factors become obstacles and solutions to community mentors for the recovery of minors due to violations of the law to realize the constitutional rights of children. Methods of data collection in this research using library research and field studies. Data analysis used qualitative analysis. this type of research uses normative law research and is supported by empirical law research. The results of this legal research reveal that community advisors make the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under 12 (twelve) years old, very important in determining the future fate of children. The role of community counselors as researchers, mediators, mentoring, mentoring and supervision of children dealing with the law while serving a sentence. Barriers to lack of human resources, limited facilities and infrastructure, lack of coordination of law enforcement, family conditions, personal factors, low education of children, and environmental influences. Solutions to increase human resources, excess facilities and infrastructure, the creation of law enforcement coordination, children's family conditions, increasing knowledge for themselves, increasing children's education, and environmental influences. It is hoped that legal arrangements can run well, community supervisors prioritize the best interests in accordance with applicable law, and continue to provide support to children in order to create justice, certainty and benefit for children for the best future.

Keywords: *Community Advisor, Children, Violation of the Law*

1. INTRODUCTION

Children are the mandate of God that must be maintained to grow and develop and have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to assume that responsibility later, it is necessary to have the widest opportunity to grow and develop optimally, physically, mentally, socially and spiritually. They need to get their rights, need to be protected and prospered. Therefore, all forms of violence against children need to be prevented and overcome.

Children by their nature still have reasoning power that is not good enough to distinguish between good and bad things. Crimes committed by children are generally a process of imitating what they see and the existence of deviant behavior towards children. The formal criminal justice system which ultimately places children in prisoner status certainly brings considerable consequences in terms of their growth and development. The existence of children does need attention, especially regarding their behavior. In heading towards adulthood, a child commits actions that are out of control, so that they can harm others or harm themselves. The behavior that the child does is because in the period of growth the attitude and mentality are not stable, and also cannot be separated from the social environment. The facilities and infrastructure in question

JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

Agi Zulin. H

concern the interests of the child as well as those concerning deviations in attitudes and behavior that make the child forced to face the law or be brought before the court. Apart from that, legal facilities aim to anticipate the stigma or label of evil and naughty that is caused when a child commits a criminal act or is in conflict with the law, as well as to rehabilitate and re-socialize the child.

In the Indonesian Constitution, children have a strategic role which is explicitly stated that the state guarantees the rights of every child to survival, growth, and development as well as protection from violence and discrimination. Based on Article 1 Paragraph 3 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, "Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen). years suspected of committing a crime". Child protection is an important work that must be carried out by all elements of our country. Child protection is the embodiment of justice in a society, thus child protection is sought in various fields of state and social life.

Cases involving children as criminals are a different phenomenon from adult criminals. Children as perpetrators of criminal acts who are sentenced to be fostered in the Special Child Development Institution, need to receive special treatment in serving their criminal period. There are many cases of criminal acts involving minors in recent times. Cases of children dealing with the law that are brought in the judicial process are only serious cases, it must also always prioritize the principle of the best interests of the child, and the sentencing process is the last resort (Ultimate Remedium) while not ignoring the rights of the child. Apart from that, children's cases can be resolved through non-formal mechanisms based on standard guidelines.

Forms of non-formal handling can be done by diversion as the mediation process is facilitated by law enforcement at every level to achieve restorative justice which can be resolved by requiring children who are in conflict with the law to attend education or training at certain institutions such as other actions taken with recovery for children and victims, or if forced to occur punishment of children's rights should not be ignored. Citizens who neglect/deliberately do not carry out their obligations to the detriment of society, are said to have "violated the law" because these obligations have been determined by law. Law is experience governed and developed by reason. The most basic substance in this law is strict regulation of restorative justice and diversion, which is intended to avoid and keep children away from the judicial process, so as to avoid stigmatization of children in conflict with the law. It is hoped that the child can return to a natural social environment. This is explained in the general provisions of this Juvenile Criminal Justice System Act.

In Article 59A of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. First, prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health problems. Second, psychosocial assistance from treatment to recovery. Third, the provision of social assistance for children who come from underprivileged families. And fourth, the provision of protection and assistance in every judicial process.

2. IMPLEMENTATION METHOD

To analyze the legal material that has been collected in this study, the normative qualitative analysis method is presented descriptively. What is meant by qualitative analysis method is a



research procedure that produces analytical-descriptive data, namely what is stated by the source in writing or verbally, as well as real behavior, which is studied as a whole. Furthermore, it is analyzed in accordance with the normative provisions to obtain answers to research problems. The theoretical basis is using the legal theory of utilitarianism from Jeremy Bentham as a grand theory. For the middle theory by using the theory of legal justice from Aristotle. Applied theory is a theory of legal systems from Lawrence M. Friedman.

3. RESULTS AND DISCUSSION

Henceforth, in this section an analysis/discussion will be conducted on the formulation of the problem as described in the section above. In the context of carrying out the analysis, it will be carried out in three stages as presented in the section below:

1. Legal Arrangements for the Role of Community Counselors for the Recovery of Minors Due to Violation of the Law to Realize the Constitutional Rights of Children.

The handling of juvenile criminal cases involves law enforcement officers in the criminal justice process such as investigators, public prosecutors, judges also involving correctional officers as supporting elements of juvenile criminal justice. The Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System strengthens the existence, especially the role of community mentors during the judicial process. Sociologically, the judiciary is a social institution or a social institution that processes to achieve justice. Correctional centers are one of the important elements in the process of resolving criminal acts committed or involving children.

In carrying out the work of community supervisors, they have obligations as regulated in the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01-PK.04.10 of 1998 concerning Duties, Obligations, and Requirements for Community Counselors, namely:

- a. Prepare reports on the results of community research that has been carried out or known as community research reports (litmas).
- b. Participate in the trial of the correctional observer team to provide data, suggestions, and considerations on the results of research and observations that have been carried out.
- c. Participate in court hearings examining juvenile delinquent cases in order to provide explanations, suggestions and considerations to judges regarding all matters relating to juvenile delinquents being examined in court based on the results of community research that has been carried out.
- d. Provide assistance, guidance, and supervision of children in the juvenile justice system process.
- e. Report each task implementation to the head of the correctional center.

Article 63 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that correctional officers consist of community counselors, professional social workers and social welfare workers. Article 64 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that community research, assistance, guidance, and supervision of children is carried out by community counselors.

Article 65 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the Community Advisor has duties including making reports on the results of community research for the benefit of diversion, providing assistance, mentoring and supervision of children. Article 1 paragraph 13 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that

JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

Agi Zulin. H

community counselors are law enforcement functional officials who carry out community research, guidance, supervision and assistance to children inside and outside the criminal justice process. make community mentors and mentoring have a strong legal basis in their duties to make litmas, attend the hearing as a member of the children's trial and guide clients (children in conflict with the law). that the guidance carried out by the Community Counselor is carried out when the child has received a determination as a result of diversion or after the child has received a court decision. The status of a child in conflict with the law will change to a child client. Child clients according to Article 1 paragraph 23 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System are children who are in the service, guidance, supervision, and assistance of Community Counselors.

According to the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections, the Community Counselor is a technical position held by correctional officers at the correctional center with the main task of carrying out guidance and research on Correctional Inmates in accordance with Article 8 paragraph (1) and paragraph (2). Meanwhile, according to the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, Community Counselors are functional law enforcement officials who carry out community research, guidance, supervision and assistance to children outside the criminal justice process.

The legal basis used by community counselors when carrying out their duties:

- a. Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections (State Gazette of the Republic of Indonesia of 2022 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 6811).
- b. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia of 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332).
- c. Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not yet 12 (Twelve) Years Old (State Gazette of the Republic of Indonesia of 2015 Number 194, Supplement to the State Gazette of the Republic of Indonesia Number 5732).
- d. Regulation of the Minister for Empowerment of State Apparatus and Bureaucratic Reform of the Republic of Indonesia Number 22 of 2016 concerning the Functional Position of Community Supervisor (State Gazette of the Republic of Indonesia of 2016 Number 1716).
- e. Regulation of the Minister for Empowerment of State Apparatus and Bureaucratic Reform of the Republic of Indonesia Number 23 of 2016 concerning the Functional Position of Social Guidance Assistant (State Gazette of the Republic of Indonesia of 2016 Number 1717).
- f. Regulation of the Head of the State Civil Service Agency Number 5 of 2017 concerning Guidelines for the Implementation of the Development of Functional Positions of Community Counselors (State Gazette of the Republic of Indonesia of 2017 Number 571).

According to the Law of the Republic of Indonesia Number 11 of 2012, the Penitentiary Community Counselor is required to play a greater role in handling children in conflict with the law. As regulated by the Law of the Republic of Indonesia Number 11 of 2012 concerning the juvenile criminal justice system paragraph 24, the Penitentiary Community Counselor carries out the duties and functions of community research, guidance, supervision, and assistance. Based on the data on the mapping of the situation of children in conflict with the law and standard operating



procedures for handling cases of children in conflict with the law carried out by the National Commission for Child Protection, the Correctional Center applies an approach model for 3 stages:

- a. Investigation phase in the Police: Community Advisors attempt to mediate by involving families, victims, and the local community.
- b. Juvenile court stage: Community Advisors accompany children during the court process and coordinate with legal aid agencies.
- c. The investigation stage and after the judge's decision: the Community Counselor coordinates with the child social protection house.

the case of the child concerned to be investigated, prosecuted, and examined in court to obtain a decision. After the decision is made that the child is in conflict with the law, he will receive Action and/or Criminal Action, the relevant parties will supervise and assist the child in dealing with the law until the third step, namely Reintegration. They ensure that children in conflict with the law can be reintegrated into society as before.

2. Implementation of the Role of Community Counselors for the Recovery of Minors Due to Violation of the Law to Realize the Constitutional Rights of Children.

Implementation to realize children's constitutional rights is an effort to synchronize children's rights and freedoms which are recognized as basic and natural rights, and which are inherent from birth as part of human rights. which rights are indeed recognized and protected, both universally for all nations in the world, as well as their recognition and protection according to the national law of a country.

At the stages in the juvenile justice process, the Community Advisor must include the Community Advisor, which is to provide assistance to Children Facing the Law in all stages of the juvenile justice process, in line with the mentoring process. The Community Advisor has the following roles:

- a. Researcher: The role of the Community Counselor in providing initial assistance to Children Facing the Law is as a researcher or information seeker, the research conducted by the Community Counselor is referred to as Community Research. Community research is carried out at the investigation stage in the police since the child has been reported and is suspected of having committed a crime.
- b. Mediator: Mediator is a neutral party whose role is to assist parties or clients in the negotiation process and provide recommendations or express opinions to seek various possibilities in resolving a case by being fair without forcing their views and judgments on the case during the mediation process to the parties. So the role of the Community Counselor is as a Mediator to help the perpetrators and victims in the decision-making process. As a negotiator, the Community Counselor must have communication and listening skills and avoid attacking attitudes.
- c. Assistance: Assistance at the Pre-Adjudication stage is assistance carried out by the Community Counselor at the initial examination stage at the investigation level, deliberation/mediation in the context of implementing diversion at the police, prosecutor and court levels, examination at the prosecutor's office, deliberation/mediation that does not meet the diversion requirements, and implementation of the results of the diversion agreement. Assistance carried out at the adjudication stage is assistance carried out by the Community Counselor during the trial until the judge makes a decision on the crime committed. At the prosecution stage, the Community Counselor also provides assistance, ensuring that

JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

Agi Zulin. H

children's rights are still fulfilled. Community Advisors can give consideration so that there is no detention of children. The post-adjudication stage is carried out on the implementation of court decisions and assistance related to the fulfillment of the rights of clients while undergoing crime or mentoring. Social Advisors are required to accompany children in accordance with Article 55 paragraph 1 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. This is done so that children in conflict with the law do not experience trauma which can ultimately damage the child's psychology so that it is difficult for children to change and to minimize the bad stigma that develops in society because of the crime committed by the child. Social Advisors are required to accompany children in accordance with Article 55 paragraph 1 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. This is done so that children in conflict with the law do not experience trauma which can ultimately damage the child's psychology so that it is difficult for children to change and to minimize the bad stigma that develops in society because of the crime committed by the child. Social Advisors are required to accompany children in accordance with Article 55 paragraph 1 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. This is done so that children in conflict with the law do not experience trauma which can ultimately damage the child's psychology so that it is difficult for children to change and to minimize the bad stigma that develops in society because of the crime committed by the child.

- d. Guidance: This guidance is carried out to ensure that children in conflict with the law still get their rights as children so that they can continue to grow and develop into good and beneficial individuals for the state and society as well as ensure the judicial process carried out by children in conflict with the law in accordance with the law. the mandate of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely a juvenile justice system based on protection, justice, non-discrimination, the best interests of children, respect for children's opinions, survival and growth and development of children, coaching and mentoring of children, proportionally, deprivation of liberty and punishment as a last resort, and avoidance of retaliation.
- e. Supervision: Supervision is carried out by the community counselor when the Child is undergoing the process of implementing a criminal sentence or action. Supervision is used to ensure the implementation of the requirements and programs that have been set as stipulated in article 56 paragraph 5 of the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections. when the sentencing process is running and to find out whether the child has recovered to its original state after experiencing trauma when facing the criminal justice process.

3. Obstacles and Solutions to the Role of Community Counselors for the Recovery of Minors Due to Violation of the Law to Realize the Constitutional Rights of Children.

Obstacles In carrying out its role as a community advisor at the Batam City Correctional Center Post, there are internal and external obstacles, as follows:

- a. Barriers to internal factors from community counselors: lack of human resources for community supervisors must be owned by a community supervisor in carrying out their roles. The limited quality of human resources from a community counselor can affect the



effectiveness in carrying out their roles as researchers, mediators, mentoring, mentoring and supervision because they are still relatively weak in terms of developing other sciences outside of law, namely psychology and social science for children and adolescents. mature. The lack of ability to do counseling on the Community Counselor causes counseling guidance to be ineffective and not all children get counseling guidance. There are no facilities and infrastructure specifically for child clients in the implementation of mentoring. Child clients who rarely report to the Correctional Center Post are one of the obstacles in the implementation of mentoring. The limited number of employees is also an obstacle because community counselors must carry out their work diligently because the workload and obligations in carrying out tasks are not proportional to the number of community counselors. , guidance, and supervision of the lack of facilities and infrastructure. Community counselors at the Correctional Center Post still use personal items ranging from tables, chairs, computers, paper printers, and the room is too small for the 7 employees. and lack of coordination with law enforcers. An understanding based on the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System must be applied when handling cases of children who are in conflict with the law, including Community Counselors, Public Prosecutors, Judges, and all law enforcement officers who related to handling cases of children. This is very important related to prioritizing the best interests of the child or the application of Restorative Justice, which is restoration, not deterrence. With the application of Restorative Justice, children can get their rights as individuals who have child status. Children should be given protection, love, and fulfillment of their rights to freedom, not discrimination or intimidation. etc. Community advisors in carrying out their roles when accompanying children who are in conflict with the law in court must strive for children to get their rights as individuals who have child status, namely to get protection against all forms of discrimination from certain parties, all done in the best interests of the child.

- b. Barriers to external factors from the child: the condition of the child's family. Family is a parent consisting of father, mother and/or other family members who are trusted by the child. Harmonious relationships with families are investigated and can reduce the number of juvenile delinquency. Family is the closest social environment to raise, mature and in which children get their first education. The family has an important role in the development of children. A good family will have a positive effect on children's development, while a bad family will have a negative effect. The intensity of the relationship between children and their parents is very less, resulting in the emotional closeness between children and their parents is not close, children are less able to be open to their parents. While parents are less able to care for their children. In addition, children's parents are less able to provide sufficient attention and supervision to children who tend to be stubborn and often argue against their parents' advice. Both parents are busy and the lack of attention from the housemates towards the child, until the child feels less attentive. Lack of attention makes the child act according to his mindset and will as a result of taking actions that should not be done by children such as stealing. Especially when opportunity and intention have become a strong urge to steal. This is supported by an internal drive to fulfill their needs in a way that they think is very easy and makes money quickly. The self factor with the development of life makes a greater sense of desire without thinking about the rights of others being taken away. And because children are easily influenced, children are always an attempt to commit

JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

Agi Zulin. H

crimes. A person who can control himself and develop his personality in a positive way will be able to produce many benefits, including for himself and for others. For a child who can't control himself even as if swayed by development, he will continue to be dragged by the current where it will flow, whether it's good or bad, they will still be influenced or follow it. These things greatly affect the behavior or actions of a child, including criminal acts committed by a minor. The low level of children's education is because schools are a medium or intermediary for the development of children's souls, or in other words, schools are responsible for children's education, both scientific education and behavioral education. The number or increase in juvenile delinquency indirectly shows the lack of success of the education system in schools. In education, it becomes a driving force for children to take action because children do not know what is good and what is bad in the level of knowledge that is lacking in the values of the way of life in society. Someone who has good behavior will result in someone getting self-esteem from the community, but if someone does the opposite, that is doing bad things, then that person will get condemned by the community. And environmental influences, namely the influence of "alleys" and street corner associations (groups of street children) caused by the lack of healthy recreation and community centers or youth centers that encourage children to gather and get acquainted with drinkers, gamblers, and prostitutes. Also the negative influence of movies, magazines and newspapers can encourage children to take negative actions. The environment is one of the factors that have an important role in the occurrence of criminal acts committed by a child. Someone who lives and lives in an environment that supports the commission of a crime, then at one time the child can do or imitate the actions that led to the crime.

- c. Solutions for internal factors from community advisors: increasing human resources for community supervisors In an effort to improve the capacity of human resources for Community Counselors, the Correctional Center has attempted to involve Community Counselors to take part in the education and professional training of Community Counselors at the Human Resources Development Center of the Ministry of Law and Human Rights in Jakarta. In addition, Community Counselors are also included in professional support trainings, seminars and other supporting knowledge and skills organized by the Ministry of Law and Human Rights of the Republic of Indonesia and other agencies related to the handling and guidance of prisoners. advantages of facilities and infrastructure Facilities is one of the factors that must be considered. In contrast to correctional institutions that carry out coaching within the institution, the Correctional Center as a technical implementer outside the institution carries out more activities in the field. One of the supporting facilities is a computer at the Batam City Correctional Center Post with the aim of being able to balance the duties of the Community Counselor whose workload has piled up so that the Social Counselor can carry out his duties as much as possible. And the creation of coordination with law enforcement so that law enforcers, namely the police, public prosecutors, and judges who handle children's cases, always pay attention to the results of community research made by community counselors in order to create justice,
- d. Solutions for external factors from children: The condition of the child's family requires exemplary from parents and Social Advisors so that children can be polite and have good character in social life and children are protected from the desire to commit crimes, because they already know by reasoning that crime it should not be done, because if sentenced to



prison then his family will be miserable / not prosperous. Children who receive a conditional sentence are given the opportunity to improve themselves in their respective homes by following certain conditions. The economic factor of the child's parents is the factor that is considered the dominant or the biggest factor that encourages a child to be involved in violating the law. Community counselors will encourage children to look for work and be diligent in trying so that they can meet their own needs so as to ease the burden on parents. The increase in knowledge for oneself, namely Skills guidance, is intended as an effort to provide short skills for trainees so that they are able to become human beings who work so that they can return to the community. Meanwhile, other skills learned are only enrichment and experience. By providing skills, it is hoped that it will be able to help them in finding work or independent work. Increasing children's education so that the school in this case teachers are expected to take part in moral education and provide suggestions for children not to commit acts that violate social norms and increase the intensity of the implementation of character education for children, and the influence of a good environment for children's growth and development, both neighborhood, school, and society in general. The influence of bad association from friends of children who are more mature and have bad behavior, especially taking other people's belongings without permission.

4. CONCLUSION

Based on the results of research and discussion, the following conclusions can be drawn:

1. The legal regulation of the role of community mentors for the recovery of minors due to violations of the law to realize the constitutionality of children is guided by the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not yet 12 (twelve) years old, where these laws and regulations are very important in determining the fate of children in the future starting from the pre-adjudication, adjudication and post-adjudication stages.
2. The implementation of the role of community mentors for the recovery of minors due to violations of the law to realize the constitutionality of children is very influential on the handling and efforts to resolve cases of children in conflict with the law, because social mentors are the stages that children go through in the judicial process. The role of community advisors are: First, as a researcher. Second, as a mediator. third, as a mentor. Fourth, as guidance. Fifth, as supervision of children dealing with the law while serving a sentence, both criminal punishment and action punishment.
3. Factors that become obstacles and solutions to the role of community mentors for the recovery of minors due to violations of the law to realize a child's constitutionality are as follows:
 - a. Barriers to internal factors from community advisors: lack of human resources for community advisors, limited facilities and infrastructure, and lack of coordination with law enforcers.
 - b. Barriers to external factors from children: the condition of the child's family, personal factors, low education of children, and environmental influences.

JURIDICAL ANALYSIS OF THE ROLE OF COMMUNITY ADMINISTRATION FOR THE RECOVERY OF UNDERAGE CHILDREN DUE TO BREACHING OF LAW TO REALIZE THE CONSTITUTIONAL RIGHTS OF CHILDREN

Agi Zulin. H

- c. Solutions for internal factors from community advisors: increasing human resources for community supervisors, excess facilities and infrastructure, and creating coordination with law enforcers.
- d. Solutions for external factors from children: Children's family conditions, increasing knowledge for themselves, increasing children's education, and environmental influences.

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