



Assistance by Community Counselors to Children Who Conflict With The Law in Online Trials

Muhammad Rusli Arafat¹, Aryo Fadlian¹, Wahyu Donri Tinambunan¹

¹Law Faculty, Universitas Singaperbangsa Karawang, Karawang, Indonesia
rusli.arafat@fh.unsika.ac.id

Abstract. Based on the Juvenile Criminal Justice System Law of the government focuses on Restorative Justice and Diversion which focuses on the recovery of perpetrators rather than convictions such as on criminal acts committed by adults. The establishment of this law is intended to be able to eliminate the stigma of society towards children as criminals / crimes, it is hoped that this law will make the community aware that children are still in a period of self-development, therefore they have not been able to fully account for their actions. It's referred to as Juvenile Delinquency in criminology. This study aims to determine the implementation of assistance by community counselors to children who conflict with the law in online trials and find out the obstacles faced by correctional supervisors or community counselors in the implementation of assistance to children in online trials. The research method used is empirical juridical research with a qualitative approach. Data sources based on primary data are obtained through interview, observation, and documentation techniques. Research results showed that during the trial conducted online, the correctional assistant at the correctional center was not fully beside children who conflict with the law, making it vulnerable to violations of children's rights. Factors that hinder correctional advisers in the implementation of child assistance in online trials are the long distance of online trial venues, as well as the limited number of Special Child Assistance Institutions.

Keywords: Children, Criminal, Criminal Justice, Legal Protection

1. Introduction

In essence, the concept of the legal state cannot be separated from the existence of the state itself, according to legal science, the state is a concept. Thus the state and law are two phenomena that are very closely related to the issue of sovereignty, government, and public welfare.[1] The qualification as a state of law is clearly contained in the Explanation of the Indonesia Constitution 1945, among others, affirmed, that Indonesia as a state based on law (*rechtsstaat*) and not a state based on power (*Machtsstaats*). Indonesian state law is based on the noble values contained in the precepts of Pancasila, as the basis of philosophy and ideology in the life of the nation and state and government.as well as affirmed in Article One Paragraph Three Indonesia Constitution 1945.

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Equality before the law as a manifestation of the achievement of justice is reaffirmed in Article 28D of the 1945 Constitution, which states: "Everyone has the right to recognition, guarantee, protection, and just legal certainty and equal treatment before the law". Based on this provision, everyone has the right to a fair and impartial court. The right to a fair and impartial trial is a fundamental right of every human being. This right is universal, valid anywhere, anytime and to anyone without discrimination. The fulfillment of this right is the duty and obligation of the State.

Children must be protected from the negative impact of the development of globalization flows in the field of communication and information, the development of science and technology, as well as changes in the style and way of life of some parents who have brought fundamental social changes to people's lives that greatly affect children's values and behavior. Deviations in behavior or unlawful acts committed by children occur because they are influenced by factors outside the child. Based on case data of children facing the law from the Directorate General of Corrections shows that crime and the negative influence of narcotics, psychotropics, and addictive substance abuse show an increase in cases.

The establishment of law is intended to be able to eliminate the stigma of society that views children as criminals, it is hoped that this law will make people aware that children are still in a period of self-development therefore they cannot fully account for their behavior in criminological teachings, this situation is called Juvenile Delinquency. The report of the Indonesian Child Protection Commission recorded 123 cases of children facing the law as perpetrators until August 2020. The highest crime was violence of physical as many as 30 cases and sexual violence 28 cases. In addition, children as perpetrators of traffic accidents and theft followed with 13 and 12 cases respectively.[2] The data is certainly very concerning, Children who should enjoy adolescence should actually have problems with the law. Serious efforts are needed so that children who face the law can return to living a normal adolescent life and farthest from the stigma of being a criminal.

The role of the Correctional Center through community counselors is to spearhead the improvement for the perpetrators both physically and mentally. The role of community counselors is very important, especially after the Covid-19 pandemic, the implementation of trials can be carried out online. Serious attention is needed so that the mandate of the Law on the juvenile criminal justice system is fulfilled, namely regarding the rights of children who face the law must be fulfilled. In accordance with this Law, the community counselors is required to play a greater role in handling ABH. As stipulated by Article 24 of Juvenile Justice System Law, community counselors carry out the duties and functions of Correctional Research, guidance, supervision, and assistance.

Research that has been conducted related to the role of community assistance in handling children's cases includes Lifiana Tanjung with the research title, namely The Role of Social Workers in Assisting Children as Witnesses in the Criminal Justice Process at the Class I A Padang District Court[3], the research focuses on assisting children as witnesses in the criminal justice process. Research on child protection was also conducted by Muh. Jufri Ahmad with the title of the study, namely Child Protection in the Justice System in Indonesia[4], this research focuses

on child protection in the criminal justice system in general research is carried out before the implementation of online justice. The next research is a research conducted by Guntarto Widodo with the research title, namely the Child Penal System as Perpetrators of Criminal Acts Perspective of Juvenile Criminal Justice System act[5], the research focuses on punishment regulated in the Law on the Juvenile Justice System.

Based on the research that has been done as mentioned above, this research is certainly different from previous research studies. This research focuses on the protection of children as perpetrators of criminal acts in online trials. This is interesting because so far there have been problems related to the implementation of online trials. So it is interesting to conduct research to determine the role of community counselors as an effort to protect children's rights in online trials.

2. Problems

In this study, the problem to be examined is how is the implementation of community counselors in providing legal assistance to child defendants during the online trial period?, and what obstacles are faced by community counselors in providing legal assistance to child defendants during the online trial period?

3. Method

The approach taken in this research is qualitative approach, with empirical juridical research methods. Data is sourced from primary and secondary data. With the method used, it's hoped that it will get a clear picture of the implementation of normative legal provisions in action / concretely. Primary data were obtained through interviews, observations and documentation at a predetermined research site, namely at the Correctional Center in the jurisdiction of West Java, Namely Correctional Center of Cirebon and Bekasi. Secondary Data is obtained through literature review either sourced from Primary Legal Material, Secondary Legal Material or Tertiary Legal Material. Researchers conducted a review of Juvenile Criminal Justice System act, Government Regulation of the Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 act , and Government Regulation concerning Forms and Procedures for Criminal Implementation and Actions Against Children. This study specializes in an approach using empirical data and positive legal rules to be able to determine the implementation of legal assistance carried out by community counselors in protecting children who face the law during online trials as well as the obstacles faced in its implementation. This study uses descriptive analysis methods with the main data sources, namely primary data, in the form of interviews, observations and documentation.

4. Discussion

4.1. Implementation of Community Counselors in Providing Legal Assistance to Child Defendants During the Online Trial.

Satjipto Rahardjo argues that protection in law can be interpreted as an effort to provide protection to human rights that are misused by others. The purpose of this protection is so that people can exercise rights that have been guaranteed by law. There is also another view that states that laws can be adjusted to create protections that are not only responsive and flexible, but also proactive and anticipatory.[7] Arief Gosita defines child protection as the act of creating an environment where children can carry out their rights and responsibilities responsibly. In other words, protecting children means ensuring that they can exercise their rights to live, survive, grow, thrive, and be safe, either on their own or with the help of adults. [6]

Child protection aims to fulfill all children's rights in order to live, grow, develop and participate optimally in accordance with human dignity, as well as provide protection from threats or violence, discrimination in order to realize healthy, quality and prosperous children as the next generation of young people. The threat of violence, violence and discrimination are significant factors that hinder the realization of a bright and free children's future, physically and spiritually healthy.[7] Child Protection is also regulated in International Legal Instruments. International law has established standards and general guidelines to which each State can refer to treatment in dealing with the problems of children facing the law. International law provides guidance for states to provide legal protection and respect for children who face the law through the formulation of legal policies, procedures, authorities, and institutions oriented towards child protection.[8] International legal instruments governing the protection of children's rights are regulated in the 1989 UN Convention on the Rights of the Child, ratified by more than 191 States. Indonesia as a member of the United Nations has ratified with Presidential Decree Number 36 of 1990. Thus the UN Convention on the Rights of the Child applies and becomes national law and binding for all Indonesian citizens.[9] The Convention on the Rights of the Child is an instrument that contains the formulation of universal principles and provisions of legal norms concerning children.

Legal protection is provided by the state in several forms. In general, legal protection can have a prohibitive nature and a sanction. Preventive legal protection can be realized through the existence of law enforcement institutions, namely courts, prosecutors, police, and dispute resolution institutions outside the court.[10] These institutions play a role in preventing lawlessness and enforcing established rules. Child protection means an effort to realize the situation of children being able to carry out their rights and obligations properly. The concept of *parents patriae* means that the state has a responsibility to care and protect as parents give to their children. Therefore, handling cases of children who are perpetrators of violent crimes must also be carried out by considering the best interests of children and based on the values of Pancasila.[11]

Article 18 provides security for children's protected rights, including handling children's cases, both as child victims and child witnesses. The parties involved, such

as community counselors, social workers, investigators, public prosecutors, judges, advocates, and other legal aid providers such as paralegals, lecturers, and law students, must prioritize the best interests of children and maintain conditions and situations that provide a sense of family. In this case, a comfortable, child-friendly, and free atmosphere from fear and pressure should be sought.

Facing the case of children who commit criminal acts, in this case through the legal process, of course, in solving it requires treatment and handling that is different from the process of handling adults because children have various differences, both physically and mentally or psychologically so that a pattern of protection and / or protection is needed that still considers the best interests of the child's future.[12] In this case, the role of Community Guidance is one of assisting and conducting Community Research on Children Facing the Law in the investigation stage at the police level. Litmas is carried out to explore data on child perpetrators related to the background of child perpetrators, families, and the environment.

Community Guidance itself is a law enforcement functional official who carries out litmas, guidance, supervision, and assistance to children inside and outside the criminal justice process as stipulated in Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 23 Paragraph (1), namely "At each level of examination, children must be provided with legal assistance and accompanied by a Community Advisor or other companion in accordance with the provisions of the regulation legislation".

During the online trial period, the Community Advisor provides assistance in two ways, namely First, by being present directly at the right time for the child defendant to be detained. Second, accompany the child defendant by being present through a virtual room at work. Based on the results of interviews with Community Advisors in the jurisdiction of West Java, during the online trial period, Community Advisors provide assistance by being present in virtual rooms during the trial process. In principle, community counselors are required to be present to accompany children who face the law wherever the child is. Even if a child facing the law is detained, a community counselor must be beside the child. If the child facing the law is not detained, they will be gathered at a child shelter that has collaborated with social services to be questioned in an online trial. For children who face the law who are not detained, community counselors provide direct assistance by visiting the shelter. However, community counselors must be present to directly accompany children who face the law where the child is located as an effort to protect children's rights.

In practice, the procedure for online child assistance by community counselors is based on the policy of the court where the child will be tried. There are some courts that have a policy that all interested parties must appear in court offline, but children who face the law can be carried out online. This condition certainly affects the psychological condition of children, namely children are not directly accompanied by community guides so that protection of children is less than optimal. Based on the Juvenile Justice System Law, community counselors are required to accompany the child after the child is declared a child facing the law. Every community guidance examination process must accompany the child. From the moment the minutes of the examination of the community counselor must accompany the child, even if the

community counselor is not present with the child, the minutes of the examination are null and void. So that the consequence of the absence of community guidance for children is that the judicial stage cannot be implemented and is invalid.

In juvenile justice, the concern of community counselors is the process in the police, there are often intimidations and threats to the investigation process carried out by investigators to children who face the law. In the process of making the examination minutes must be accompanied by a community assistant. In practice, if the examination is not directly accompanied by a community supervisor, the community supervisor under the law can request a re-examination.

Thus, it is very important the role of community guides in the criminal justice process, especially those involving children as perpetrators of crimes. although as perpetrators of child crimes have special characteristics The government views that children as the next generation of the nation so they need to be protected. This is affirmed in Law Number 23 of 2002, which states "in order for every child to be able to bear this, children need to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially and have noble morals, it is necessary to make efforts to protect and to realize the welfare of children by providing guarantees for the fulfillment of their rights and there is treatment without discrimination." Guarantees for the implementation of child protection and welfare by the state can be seen from various laws and regulations established.[13]

4.2. Obstacles are Faced by Community Counselors in Providing Legal Assistance to Child Defendants During the Online Trial

Law enforcement problems in Indonesia, there are three factors that are obstacles in law enforcement, namely the integrity of law enforcement officials, legal products, and legal culture. Furthermore, Lawrence Friedman stated that three aspects that are the basis for the decline of a country's law are structure, substance and culture. Legal structure is an institutions formed by the legal system that have various functions to support the working of the legal system. The role of this institution is to measure how the legal system provides services to the regular enactment of legal materials. legal substancy is the output of the legal system, which is in the form of regulations, decisions used by both regulated and regulated parties. legal cultur consists of values and attitudes that influence the application of the law, or by Friedman referred to as legal culture. Legal culture as described earlier serves as a liaison that integrates the substance of law with the legal behavior of all citizens of society.

Structure and substance are core components of a legal system, but they are merely designs or blueprints and not working machines. Structure and substance are problematic because they are both static; Both are like images of the legal system. Friedman divides the legal culture into, First, *Internal legal culture* That is the legal culture of judges and lawyers or law enforcement in general. Second, *External legal culture* that is, the legal culture of the wider community. Legal culture is the part of the general culture – customs, opinions, ways of working and thinking – that binds people to approach or move away from the law in a special way. In this frame of mind, Friedman views that of the three components above, legal culture is the most important component.

Law enforcement can be interpreted in the administration of justice by law enforcement officials and all parties involved according to the laws applicable to their respective agencies. Law enforcement is an effort to realize the ideals of legal certainty, welfare and justice.[14] The process of realizing these three ideas is at the core of law enforcement. Law enforcement can be disrupted when values, rules, and patterns of behavior don't match. The issue of child protection in the criminal justice system is an important concern because children have striking differences both psychologically and physically compared to adults. The difficult times faced by children can be their encouragement in carrying out actions that are contrary to the law. Therefore, serious handling of children who commit crimes is needed.[15] Special handling as referred to, of course, can be done through law enforcement that has legal certainty and benefits for children as a form of state protection for the nation's young generation. [3]

Article 17 states that investigators, public prosecutors, and judges have the obligation to provide specific protection to children who are being observed in emergency conditions due to criminal acts committed. In this case, the action taken will be carried out without the burden of sanctions. Emergency situations referred to in this article include displacement, riots, natural disasters, and armed conflict. Article 18 provides security for children's protected rights, including handling children's cases, both as child victims and child witnesses. The parties involved, such as community counselors, social workers, investigators, public prosecutors, judges, advocates, and other legal aid providers such as paralegals, lecturers, and law students, must prioritize the best interests of children and maintain conditions and situations that provide a sense of family. In this case, an atmosphere that is comfortable, child-friendly, and free from fear and pressure must be strived for. Furthermore, article 18 also contains that the identity of children, child victims, and/or child witnesses must be kept confidential from media news, both print and electronic.

Based on research conducted by the author, the author obtained some information about the obstacles faced by community counselors in assisting children who face the law. Of course, the data or information obtained will be connected with theories about law enforcement, especially related to obstacles faced in the law enforcement process. The following is the author's analysis related to the obstacles faced by community counselors in the process of mentoring children who face the law:

First, Legal Structure Constraints, as previously explained, what is meant by legal structure is the institution created by the legal system with various functions in order to support the work of the system. In child pretrials, there are several parties who play a role in handling children's cases facing the law, including, Investigators, Public Prosecutors, BAPAS represented by community advisors, social workers, judges, and legal counsel. The large number of parties involved in juvenile justice certainly aims to provide protection for children. Structurally, the obstacle faced is the lack of new institutions to replace places of arrest, detention of children. So far, children who face the law are placed in Special Child Development Institutions, but unfortunately not all districts have, so it often happens that law enforcement officials leave children who face the law in prisons mixed with adult prisoners. However, there

are also some children who face the law placed in Social Welfare Institutions but these institutions are also not available in some districts.

For children aged 14 to 18 years who face the law, the SPPA Law mandates child care in LPAS as a substitute for detention centers. If there is no LPAS in the area concerned, the child can be deposited in LPKS. To protect the safety of children, the SPPA Law mandates that the placement of children in LPKS (temporarily) can be carried out as a substitute for LPAS. Until now, LPAS and LPKS are not widely available throughout Indonesia. Only a few regions at the provincial level have begun to have LPAS. However, it is almost the same as the condition of LPAS, so the number of LPKS does not exist in every district. As a result, law enforcement officials are often confused about where the child will be placed.

In practice the only solution is to entrust it to social services under the Ministry of Social Affairs, but there is a first difficulty, not all regions also have social institutions. Second, if it is related to security the local police cannot guard every day at social services, and there is also a matter of bureaucratic security at the National Police that must be done, the point is that for placement in social services there are no regulations that accommodate it. As a result, children also have the potential to be entrusted to the Detention Center, which is actually rejected by the SPPA Law. Conversely, in practice, in that area there is no LPSK, so finally the child is also entrusted to the available LPKA. What is more problematic is what if one area does not yet have LPAS, and LPKS and RPKA then for children who are arrested are forced to enter the Police Detention Center. As a result, it is inevitable the condition of children detained from the investigation to the court decision in order to maintain security, because there is no institution mandated by the SPPA Law.

Second, the Constraint of Legal Substance, output of the legal system, which is in the form of regulations, decisions used by both the governing and regulated parties. According to Barda Nawawi Arief, functionally the work of criminal law requires more and varied supporting facilities both in organic legislation, implementing agencies and apparatus, facilities and infrastructure as well as their operationalization in the field.[17] Special organic legislation, capable of accommodating and harmonizing the best interests of the child and the purpose of punishment in general.

This raises the problem of the lack of new institutions to replace places of arrest, detention of children. The SPPA Law has encouraged the birth of four institutions, namely LPKA, LPKS, RPKA and LPAS. Replacement places for detention, guidance and juvenile prisons but this is felt to be not optimal because the new institution has not been implemented in several regions in Indonesia. So that in regulation, there are still many obstacles in the implementation of juvenile criminal justice, especially these conditions greatly affect the role of community counselors in providing assistance to children both at the pre-adjudication, adjudication and post-adjudication stages.

Third, Legal Culture Constraints, consisting of values and attitudes that affect the working of the law. The challenge of law enforcement in the future is to prioritize professionalism, accountability, and progressivity. Law enforcement in Indonesia until now is considered to have not run well in accordance with existing procedures

and is very very concerning. The problem of law enforcement has to do with the imbalance of dynamic interaction between aspects of law in expectation, with aspects of the application of law in reality.[18]

As part of the juvenile criminal justice sub-system, community counselors have an important position in providing protection to children who face the law. Therefore, a professional attitude is required in order to provide protection and assistance to children. The implementation of assistance to children at every stage of the judicial process determines the realization of protection for children who face the law. Based on research conducted, researchers obtained data that often community supervisors do not provide assistance at the investigation stage. There are two factors that make community counselors not provide assistance to children, including lack of understanding between law enforcement in handling children who face the law and investigators who do not notify the examination of children who face the law. Thus, the legal culture in the sense of Internal legal culture must continue to be improved. This greatly affects the guarantee of state protection for children who face the law.

5. Conclusion

Based on research conducted by the author, the author concludes that during the online trial period, the Community Advisor provides assistance in two ways, namely First, by being present directly at the right time for the child defendant to be detained. Second, accompany the child defendant by being present through a virtual room at work. Based on the results of interviews with Community Advisors in the jurisdiction of West Java, during the online trial period, Community Advisors provide assistance by being present in virtual rooms during the trial process. The obstacles faced by community counselors in providing assistance to children facing the law are as follows: First, Legal Structure Constraints, Structurally the obstacles faced are the lack of new institutions to replace places of arrest, detention of children. Second, the constraints of legal substance, until now supporting regulations are still not all available. Third, Legal Culture Constraints, that often community advisors do not provide assistance at the investigation stage.

Based on the explanation above, the author recommends that the government supervise juvenile justice. The government should immediately form special units as a form of government protection against children who face the law. Provide strengthening of the role of community counselors in fostering and assisting children who are in conflict with the law.

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