

# The Formulation Policy in Involving Bapas in the Restoration of a Child's Rights Post Free Verdict

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## Abstract

The purpose of writing this article is the Policy on the Formulation of Bapas' Involvement in Restoring Children's Rights after the Free Verdict. The study method uses a statutory approach (statue approach), a case approach (case approach), and a conceptual approach (Conceptual Approach). Children as perpetrators of crime are sometimes not purely of the intentions of their own children, but victims of persuasion or influence of adults around them. Although the crime is carried out by children together with adults, but the rules on the imposition of punishment against children are different from adults in the Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare (hereinafter referred to as the Child Welfare Act). There are several main types of criminal for children, and imprisonment is the last choice for judges in convicting children who are in conflict with the law, while the implementation of the Penal System has the ultimate goal of creating self-reliant prisoners or building independent people. Penitentiary philosophy and practice (system) basically requires understanding and synchronizing work between law enforcement agencies in the Criminal Justice System. And someone who is under the guidance of BAPAS (Article 1 Number 9). The role of the National Development Planning Board can be seen in Government Regulation Number 1 of 1999 Concerning Guidance and Guidance of Prison Assisted Citizens. Based on the SPPA Law related to the task of BAPAS above there is no assistance to children if the child is terminated freely because his actions are not proven legally violate the law, in terms of the child has gone through every process of juvenile justice, because of that indirectly the government or law enforcers must also pay attention to the child's condition after the criminal justice process of the child

**Keywords:** Juvenile Court, Child Protection, Bapas

**DOI:** 10.7176/JLPG/98-16

**Publication date:** June 30th 2020

## PRELIMINARY

When viewed from the juridical aspect, understanding that a child is someone who is not yet 18 years old, including children who are still in the womb, as the next generation of the nation, deserves adequate rights and needs (Nandang Sambas, 2013).

Over time and the development of the current era when children and minors get caught in criminal cases, indirectly, children will come into contact with the structures and systems that are developing at this time. The dynamics run in one institution, government or country to determine the shape and characteristics of children's problems (Muhammad Joni dan Tanamas Zulchaina Z, 2004). Therefore, when a child is faced with a law involving the Correctional Institution (hereinafter referred to as BAPAS) it is very necessary, so that cases involving children dealing with the law are different from adults, so that will make the child feel safe, not afraid and will be cooperative when dealing with law, as explained in article 3 letter b of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System of the Republic of Indonesia State Gazette of 2012 Number 153 (hereinafter referred to as SPPA Law), therefore a special juvenile justice which deals with acts Crimes against children are different from the general justice environment, so the government makes a regulation that regulates how to handle and process justice for children so that law enforcers in dealing with cases of children are not confused, then rules are made to fund the Juvenile Justice System. Article 1 paragraph 1 of the SPPA Law is the whole process of resolving cases of children dealing with the law, from the investigation stage to the guidance stage after serving a crime.

Children as perpetrators of crime are sometimes not purely of the intentions of their own children, but victims of persuasion or influence of adults around them. Although the crime committed by children together with adults, but the rules for the imposition of punishment against children is different from adults. Children in this case, must be given the opportunity to be heard and valued their opinions in matters concerning their interests, (Susilowati, 2008) in the Republic of Indonesia Law Number 4 of 1979 concerning Child Welfare (hereinafter referred to as the Child Welfare Act), SPPA Law, Republic of Indonesia Law Number 17 of 2016 concerning the Establishment of Perpu Number 1 of 2016 concerning Second Amendment to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection (hereinafter referred to as UUPA), which in substance the Act distinguishes the treatment and threat of criminal offenses for adult offenders and offenders committed by children. The rise of legal cases affecting children in Indonesia does not mean they are the same as adults who already have reason and

experience.

Based on the explanation above, it can be concluded that there are several main types of criminal penalties for children, and imprisonment is the last choice for judges in convicting children who are in conflict with the law, while the implementation of the Correctional System has the ultimate goal of creating self-reliant prisoners or building an independent human being. Penitentiary philosophy and practice (system) basically requires understanding and synchronizing work between law enforcement agencies in the Criminal Justice System. The authority of the police, prosecution and court is enormous to criminalize or not criminalize someone, and return it to the community. Without the support of other Criminal Justice Sub-systems, in this case the police, prosecutors and courts, the objective of Reintegration from Corrections is relatively difficult to achieve. In addition, the implementation of (Correctional) Correctional System, requires facilitative support and human resources with appropriate quality. Therefore, in changing the penal system (system), administrative aspects become important (Iqraq Sulhin, 2010).

Criminal Justice System in the framework is a series of activities carried out to enforce criminal law and maintain social order, carried out starting the work of the police in carrying out criminal investigations, prosecution by the Public Prosecutor, examining cases in court and carrying out sentences in Correctional Institutions (hereinafter referred to as Lapas), Detention House (hereinafter referred to as detention center) and detention branch. The entire series of activities must support each other synergistically so that the objectives of the Criminal Justice System can be achieved, one of the activities in the series of criminal justice system activities is carried out by BAPAS which is part of the prison penal system sub-system or criminal justice sub-system (Sutatiek, 2013). The legal position in Indonesian laws and regulations can be found in the Law of the Republic of Indonesia Number 12 of 1995 Concerning Corrections (hereinafter referred to as Correctional Law). In Article 1 number 4 it is stated that BAPAS is the institution to carry out correctional client guidance, while the correctional client is formulated as someone who is in the guidance of BAPAS (Article 1 number 9). The role of the National Development Planning Board can be seen in Government Regulation Number 1 of 1999 Concerning Guidance and Guidance of Prison Assisted Citizens. According to Article 1 Number 6, Correctional Officers who carry out the task of correcting client correctional clients referred to as Community Guidance.

## METHOD

In writing this legal research, the author uses 3 (three) research approaches namely: *statue approach*, *case approach*, dan *Conceptual Approach*). Pendekatan legislation is carried out by examining all laws and regulations relating to legal issues and the philosophical content of a law and to learn whether there is consistency and suitability of the provisions contained in a law between one law and other laws. (Peter Mahmud Marzuki, 2009).

## RESULTS AND DISCUSSION

### I. I POLICY FORMULATION OF BAPAS INVOLVEMENT IN POST-RULES OF RULES OF RIGHTS

In dealing with children's cases, it is necessary to have prior knowledge related to psychological aspects, human growth experiences phases of psychiatric development, each of which is characterized by certain characteristics. It is undeniable that the knowledge of law enforcers on it is very much needed especially law enforcers who handle cases of children, to determine the criteria of a child, besides being determined on the basis of age limits, can also be seen from the growth and development of the soul they experience (Ahmad Fauzan, 2009).

Therefore the position of a small child to the point of having both cases. The results of the para investigation *fuquaha* states that there are 3 (three) periods, namely:

- 1) The period of lack of ability to think this period begins from birth and ends at the age of 7 (seven) years, with the agreement of the para *fuquaha*. At that time a child is considered to have no ability to think and is called "the child has not *tamyiz*" actually the ability to think is not limited to a certain age, because the ability to think can sometimes arise before the age of 3 (three) years and sometimes late, according to differences in people, environment, circumstances and mental.
- 2) The period of ability to think weak  
This period starts from the age of 7 (seven) until reaching maturity (*baligh*) and mostly *fuquaha* limit it to the age of 15 (fifteen) years.
- 3) A period of full thinking ability  
This period starts when a child reaches the age of ingenuity or in other words, after reaching the age of 15 (fifteen) years or 18 (eighteen) years, according to the *fuquaha*, a person may be liable for criminal liability or the radius of the radius he can make after all kinds (Andi Oghi Sandewa, 2014).

Based on the phase of child development, the age limit of the child, the age of the child determined by law and other legal disciplines as well as the responsibility of the child according to Islamic law as the

author described above, is used by law enforcers in determining whether the child can be held responsible or not in a crime.

## II. CHILDREN CASE HANDLING

Criminal imposed solely because someone has committed a crime or criminal offense. Criminal offense is an absolute consequence that must exist as a retaliation to the person who committed the crime, the basis for justification of the crime lies in the existence or occurrence of the crime itself. The main purpose of crime is to satisfy the demands of justice. Thus, crime is not a means to an end, but to realize justice. According to the theory of legal protection that all adults and children, women and men have the same rights that are equally have the same rights in getting protection against the law. Legal protection carried out in the country of Indonesia itself can be classified into 2 (two), namely: (1) Form of legal protection carried out by the state: the state in this case provides legal protection in the form of rehabilitation, recovery and compensation; (2) The form of legal protection carried out by the community is in the form of a compensation. According to the provisions of Article 193 of the Criminal Procedure Code, a criminal verdict is handed down if the court is of the opinion that the defendant is guilty of committing the criminal act charged with him. Based on the Criminal Procedure Code formulation, the judge's decision can be classified into 2 types, namely:

### a. final verdict

This decision can occur if the panel of judges examine the defendant who is present at the hearing until the subject matter has been examined. The purpose of the case is completed before the verdict has been carried out proceedings in the form of a trial declared open and open to the public, examination of the identity and warning of the chairman of the assembly to the defendant to hear and pay attention to everything that happens in the trial and read the decision in an open trial for general.

### b. Interlocutory decision

Decisions that are not final decisions refer to the provisions of Article 156 paragraph (1) of the Criminal Procedure Code, namely in a legal advisor raising objections or exceptions to the indictment of the prosecutor / public prosecutor. The decision or interim decision ends the case if the defendant and the public prosecutor accept what is decided by the panel of judges. However, materially the case can be reopened if resistance from the public prosecutor by the High Court is justified so that the High Court orders the District Court to proceed with the examination of the case in question. This interim decision is not a final decision because aside from allowing the case to be materially reopened due to justified resistance, it is also because in this right the subject matter of the case or the subject matter is actually the statements of witnesses, defendants and subsequent proceedings which have not been examined by the judges. So, the form of the decision handed down by the court depends on the results of the deliberation which starts from the indictment with everything that is proven in the examination at the court hearing. In the judgment of the panel of judges it might be possible that what was charged in the indictment is proven, it might also be judged, what was charged was indeed proven but what was charged was not a criminal offense, but included the scope of the civil case or included the scope of the criminal offense or according to the assessment the criminal judge convicted was not proven at all. Starting with these possibilities, the decision handed down by the court regarding a case may take the form of:

#### 1) Free Verdict

An acquittal is a decision which states that the defendant is acquitted of lawsuits. To be acquitted of lawsuits means that the defendant is freed from conviction or in other words is not convicted. According to Article 191 Paragraph (1) of the Criminal Procedure Code, the defendant is declared free from lawsuits if the court is of the opinion that the results of the examination at the court hearing the defendant's wrongdoing for the act charged with him is not proven legally and convincingly. Free verdict in terms of juridical terms According to Yahya Harahap is a decision judged by the relevant panel of judges does not meet the principle of evidence according to the law negatively and does not meet the minimum evidentiary principles (M. Yahya Harahap, 2000).. The purpose of not fulfilling the principle of evidence according to the law negatively is that the evidence obtained in court does not sufficiently prove the defendant's guilt. Whereas what is meant by not fulfilling the principle of minimum evidence is to prove that the defendant must have a minimum of two pieces of evidence.

#### 2) Decision of Waiver of All Lawsuits

The decision to release from all lawsuits is regulated in Article 191 paragraph (2) of the Criminal Procedure Code, which reads:

"If the court is of the opinion that the act does not constitute a criminal offense, then the defendant shall be acquitted of all lawsuits".

3) Criminal Decision

The conviction for the defendant is based on the court's judgment in accordance with Article 193 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion and judgment that the defendant is proven guilty of committing an act committed to him, the court handed down a criminal sentence against the defendant or with other explanations. The court is of the opinion and judge if the defendant has been legally and convincingly proven to have committed the wrongdoing of a criminal offense charged with him in accordance with the evidentiary system and the principle of minimum evidence of evidence specified in Article 183 of the Criminal Procedure Code. The defendant's guilt has been sufficiently proven by at least two valid evidences that give the judge confidence, the defendant is the criminal. The judge's decision can be executed if the decision has permanent legal force, which has been accepted by the parties concerned. Decisions in the form of criminal punishment in the form of a criminal as regulated in Article 10 of the Criminal Code (hereinafter referred to as the Criminal Code).

### III. HANDLING OF CHILDREN'S CASE DECIDED FREE OR REMOVAL

The root of the research investigated by the authors comes from the existence of legal issues, related if a child is faced with a law, a verdict is released. As one example in this study is a child dealing with a 15-year MCR law, based on decision number 13 / Pid.Sus-Anak / 2018 / PN Bil, in the Bangil District Court in this case the Public Prosecutor's claim stated in a single indictment stated that the MCR child legally and convincingly guilty of violating article 365 paragraph (2) of the 2nd Criminal Code (hereinafter referred to as the Criminal Code), in a single indictment the MCR Public Prosecutor was sentenced to 4 years, and stipulated the child to be charged a case fee of Rp.2,000, - (Two Thousand Rupiah), this is different from the judge's ruling stating that the MCR was not legally proven and convincingly guilty of committing a criminal offense as charged in a single indictment. So that in this case the MCR was sentenced to be free, if it is examined in terms of the rules and laws that apply in Indonesia. An adult or child offender who has been acquitted or freed from all lawsuits by the Panel of Judges in a child criminal case trial where the decision has permanent legal force then the child offender should have legal protection given by the state in the form of compensation and rehabilitation as stipulated in the Criminal Procedure Code general explanation point 3 letter d, namely:

1. Compensation is the reimbursement of costs incurred by the injured party / person.

Rehabilitation is the right of a person to recover his rights in the ability, position and dignity and dignity given at the level of investigation, prosecution or trial for being arrested, detained, prosecuted or tried without reason based on the law or because of errors regarding the person or the law applied according the way regulated by law (Parman Soeparman, 2007).

### IV. FORMULATION OF BAPAS INVOLVEMENT POLICY FOR THE RESTORATION OF POST-DISCLAIMED RIGHTS

#### 1. Legislation And Regulations Used In Indonesia In Handling Child Cases

In dealing with children's cases, it is necessary to have prior knowledge related to psychological aspects, human growth experiences phases of psychiatric development, each of which is characterized by certain characteristics. It is undeniable that the knowledge of law enforcers on it is very much needed especially law enforcers who handle cases of children, to determine the criteria of a child, besides being determined on the basis of age limits, can also be seen from the growth and development of the soul they experience (Ahmad Fauzan, 2009). In terms of developmental phases, a child experiences three phases, namely:

- 1) Masa kanak-kanak, terbagi ke dalam:
  - a. Infancy, namely the time a child is born until the age of 2 years;
  - b. The first childhood, namely children aged 2-5 years;
  - c. The last childhood, which is between the ages of 5-12 years..
- 2) Adolescence, between the ages of 13-20 years. Adolescence is a period of rapid change in all fields; on the body from the outside and inside; changes in feelings, intelligence, social attitudes, and personality.
- 3) Young adulthood, between the ages of 21-25 years. In young adulthood, in general, the data is still grouped into the younger generation. Although in terms of physical development and intelligence are truly adults, in this condition the child is stable. However, in terms of the stability of religion and ideology is still in the process of stability.

## 2. The Role of Bapas in Handling Child Cases

Criminal imposed solely because someone has committed a crime or criminal offense. Criminal offense is an absolute consequence that must exist as a retaliation to the person who committed the crime, the basis for justification of the crime lies in the existence or occurrence of the crime itself. The main purpose of crime is to satisfy the demands of justice (*to satisfy the claims of justice*).

Thus, crime is not a means to an end, but to realize justice. According to the theory of legal protection that all adults and children, women and men have the same rights that are equally have the same rights in getting protection against the law. Legal protection carried out in Indonesia itself can be classified into 2 (two), namely: (1) Form of legal protection carried out by the state: the state in this case provides legal protection in the form of rehabilitation, recovery and compensation; (2) The form of legal protection carried out by the community is in the form of a compensation.

Children have special rights as regulated in specific legislation governing children including the SPPA Law, the BAL as well as international rules of international human rights law instruments such as the Convention on the Rights of the Child, the Minimum Rules on the UN Standards on the Administration of Justice for Children (Beijing Rules) and UN Guidelines in Order

The Riyadh Guidelines (Manan Bagir, 2006). The handling of a child case is indeed different from an adult child, in this case the conviction imposed by a child must be in accordance with the concept whereby the law can provide justice, order, certainty, usefulness and peace. Children who are dealing with the law are indeed different from adults in the judicial process in other words have special treatment as outlined in the Principles Juvenile Court the United States. When a child is confronted with the law and the child is terminated free or released, BAPAS should participate in the psychological recovery of children, the role of BAPAS should be more than just providing assistance to children while in court, however. In practice, if a child is in conflict with the law through a judicial process and the child is terminated free, due to the lack of evidence at that time there was no BAPAS involvement, this was because the authority of BAPAS was only up to the trial stage, whereas BAPAS assistance was very necessary for children

## 3. The Concept of Penitentiary in Guidance and Assistance of Children in Conflict with Law

Child Criminal Justice System, Child Judges in taking and making decisions certainly influenced by several things including the Community Research Report from BAPAS which is very helpful for judges in deciding a child case by looking at the background of children and the motives of children to commit crimes. Making a social report is an obligation that must be carried out by the Community Guidance. This is stated in Article 13 letter (b) of the Joint Decree of the Chief Justice of the Supreme Court, Attorney General, Chief of Police, Minister of Law and Human Rights, Minister of Social Affairs, and Minister of Women's Empowerment and Child Protection that BAPAS is required to make correctional research reports (Margaretha, 2012).

Whereas the Community Guidance is BAPAS which based on Article 64 paragraph (1) of Law No. 11 of 2012 has the task of carrying out community research, assistance, guidance, and supervision of children and making a social research report used for the purposes of investigation, prosecution and trial. The same thing was said by Gultom that judges in making decisions related to the case of children, there are several factors that affect judges one of which is a report on the results of Community Research from BAPAS which in the report explained the background and condition of the child. In addition, considerations related to the psychology of children must still be considered by the judge in making decisions. This is solely for the good of the child himself. Incorrect handling of juvenile court proceedings can lead to a growth in mentality or mental health of children which is negative and dangerous for the creation of young people for the future. (Maidin Gultom, 2013).

The Community Guidance Report for the benefit of the trial covers the following matters:

1. Personal data of children, family, education and social life;
2. The background of the crime;
3. The state of the victim in the event that there is a victim in a Crime towards body or life;
4. Other things deemed necessary;
5. Minutes of diversion; and
6. Conclusions and recommendations from the supervisor social.

Article 60 Paragraph (3) of the SPPA Law explains that Judges are obliged to consider a social research report from the Public Advisor before giving a case verdict. If the judge does not consider the social research report in his decision, the judge's decision is null and void. In addition, the social research report by the Community Guidance is very influential on the success or failure of juvenile justice. This is as explained by Hawnah Scaff quoted in the study Anggraeni, (Anngraeni U.R., 2013), states that: The success of juvenile justice depends much more on the quality of the probation officer than the judge. Juvenile justice which does not have a trial supervision corps that guides wisely and compassion into the

environment of a child's life and provides guidance for children's pure standards of thought about right living, only results in the juvenile justice function being blurred if it does not want to be in vain. Based on the above explanation, it can be obtained that the success of a juvenile justice depends on how much the quality of the probation officer (BAPAS officer) referred to in this case is the Community Guidance in conducting research and making social research reports.

#### **4. Penitentiary Efforts to Protect the Rights of Children in Conflict with the Law**

Protection of the rights of children dealing with law in the context of international human rights is one part of a series of obligations that must be fulfilled by the state, namely to respect (to respect), protect (to protect), and fulfill (to fulfill). Normatively, based on international human rights standards and the Constitution (including national human rights provisions) and operationally intended to advance the implementation of human rights. Obligation (obligation to respect): it is the duty of law enforcement officers especially Bapas not to interfere in regulating their citizens when exercising their rights. In this case it has an obligation not to take actions that will hinder the fulfillment of all children's rights (Komnas Ham, 2007).

Obligation to protect: is the obligation of law enforcement officers especially Bapas to act actively to guarantee the protection of children's human rights. In this case the obligation to take measures to prevent violations of all child rights by law enforcement officials. Obligation (obligation to fulfill): is the obligation and responsibility of law enforcement officials, especially Bapas to act actively so that all citizens can be fulfilled their rights. The state is obliged to take legislative, administrative, legal and other measures to fully realize the child's human rights.

Obligations to respect, protect and fulfill the rights of children, each containing elements of the obligation of law enforcement officials and the community to act (obligation to conduct) and the obligation to impact (obligation to result): Obligation to act (obligation to conduct): requires enforcement officials law, especially Bapas takes certain steps to carry out the fulfillment of a right, namely protecting the rights of children in the judicial process, requires adequate infrastructure and facilities, as well as adequate human resources in accordance with the regulations governing it. Even providing alternative solutions in handling children in conflict with the law so that they can prevent new problems if the child is still being tried in a court of law through the results of Community Research.

## **CONCLUSION**

The SPPA Law explains that children with the status of child clients are the responsibility of BAPAS. Children's Clients are entitled to guidance, supervision and assistance, as well as the fulfillment of other rights in accordance with the provisions of the legislation. BAPAS is also obliged to carry out guidance, supervision and assistance, evaluate the implementation of guidance, supervision and assistance, as well as fulfillment of other rights in accordance with statutory provisions. The Role of Law Enforcement as explained in this research cannot be denied to play an important role, but the important role of law enforcement in upholding the SPPA Act is possible to abuse authority, therefore in order to ensure that the implementation of SPPA Law is carried out properly, chapter XII states about sanctions criminal for law enforcement

Involving BAPAS in restoring children's rights to free decisions that have been put together by judges, BAPAS in this case is at every stage starting from the investigation, prosecution and when the child is dealing with the law undergoing a verdict, but when the child is not legally proven guilty of committing an BAPAS did not get involved at all after the child was free because of the related rules of the child or other legislation does not regulate the related assistance after the child is free by BAPAS, even though the child himself has actually experienced mental trauma or stigma bad that he gets when the child is dealing with the law.

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