

## Optimizing Community Research Report Function at The Prosecution Stage Under the Juvenile Court



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**ABSTRACT:** The establishment of Law No. 11 of 2012 on the Juvenile Criminal Justice System was driven by two aspects, those are restorative justice and the diversion attempt. Those two things aims towards out of court settlement revolving around juvenile criminal cases, as well as recovering losses suffered by victims and rehabilitating the juvenile delinquent. Child imprisonment is only used as the last resort. Therefore, it is quite reasonable to consider Litmas recommendation of not imprisoning children. However, this may not always be the case. This paper will then analyze the reasoning on why there still many recommendations from Bapas Community Advisors in the social research reports that are not considered during the prosecution process. This requires 9psearch is a normative research completed by analyzing secondary data. This study explains that there are still many recommendations in Litmas that are not considered at the prosecution stage.

**KEYWORDS:** Community Research Report, Juvenile Criminal Justice System

### INTRODUCTION

The Law No. 11 of 2012 on Juvenile Criminal Justice System (SPPA Law) divides children who are facing the law into three categories, namely: children committing the juvenile delinquency, the children as victims, and the children as a witness.

The child perpetrator generally does not acquire lawyer support as well social service support, it is no surprise that 90 % of these children are convicted.<sup>1</sup> This percentage makes children a vulnerable party under the criminal justice process, therefore children must always receive protection.<sup>2</sup> In addition, many children in places of detention and incarceration are housed together with adults. This is very much influenced by child prison facilities which are still limited and deemed inadequate, often times, there are child prisoners who are put together with adult prisoners.<sup>3</sup>

As a matter of fact, the SPPA Law has mandated child care during the judicial process at the Temporary Child Placement Institution (LPAS). However, providing that the LPAS has not been established, the child would then be entrusted to the Social Welfare Organization (LPKS). The issue here is the lack of LPAS and LPKAS available all throughout Indonesia. This results in uncertainty as to where to place the children in.<sup>4</sup>

On the other hand, the SPPA Law is not merely formed as a legal means of trying children in court and imposing crimes as well detaining them in a place separate from adults. However, the main spirit of the formation of the Law *a quois* would be the existence of a restorative approach that is carried out from the investigation stage to the criminal implementation stage; as well as diversion efforts that aims to settle cases outside of the court by bringing together the parties involved in the case.

Furthermore, in conducting diversion, the whole Investigators, Public Prosecutors and Judges must consider:

- a. category of criminal offense;
- b. age of the child;
- c. the results of community research from Bapas; and
- d. support of the family and community environment.<sup>5</sup>

<sup>1</sup> Day A.J., 2017, *Catatan Materi Kuliah Restorative Justice dan Diversi dalam Penanganan ABH* [Notes on Restorative Justice and Diversion course materials in handling ABH]. Issued by Pusdiklat Kejaksaan Agung R.I., Jakarta, p. 24

<sup>2</sup> Beniharmoni Harefa, 2017, *Perlindungan Hukum terhadap Anak sebagai Penyalahguna Narkotika dalam Sistem Peradilan Pidana Anak di Indonesia* (Legal Protection of Children as Narcotics Abusers in the Child Criminal Justice System in Indonesia), Issued by Perspektif, Surabaya, p. 222.

<sup>3</sup> Suara Melani, *Setop Penayangan & Hindari Pemenjaraan Anak* (Stop Screening & Avoid Child Imprisonment), downloaded from [www.pikiranrakyat.com/printed](http://www.pikiranrakyat.com/printed) October 14, 2017.

<sup>4</sup> <https://icjr.or.id/anak-masih-berpotensi-masuk-rumah-tahanan/> accessed Januari 25, 2021.

<sup>5</sup> Article 9 paragraph (1) Law No. 11 of 2012 on the Juvenile Criminal Justice System.

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Based on the aforementioned provisions, the results of Community Research are an important consideration under the diversion process. In fact, the Litmas report has not been implemented according to the expectations of the SPPA Law due to the fact that the Judge imposes more criminal sanctions (imprisonment) rather than initiative against the children. Therefore, optimizing the function of Litmas reports in juvenile justice is necessary in order to create a court that truly guarantees the protection of the best interests of children who are faced with the law as the nation's successor.

In connection with the unsatisfactory function of the Litmas report, this research will examine why there are still many recommendations from Bapas Community Advisors in community research reports that are not considered in during prosecution process, as well as how to optimize the function of social research reports at the prosecution stage in juvenile criminal justice in the future to come.

### RESEARCH METHOD

This research is a normative research that involves the library and secondary data.<sup>6</sup> The findings of the secondary data is concluded by studying documents or library materials. The results of data findings through document study or library materials are then collected by observing, studying, and understanding related information which is then taken limited to relevant matters and in accordance with the research topic.

Author utilizes few approaches as a guideline to assist with the data findings and collections. Those approaches are the statutory approach, case approach, historical approach as well as conceptual approach.<sup>7</sup>

### DISCUSSION

Components of the Criminal Justice System (SPP) in general within the scope of law enforcement consist of: the police, in order to carry out investigations and investigations; prosecutors, conduct prosecutions and enforce court decisions; the court as an institution that examines, hears and decides cases; as well as correctional facilities.<sup>8</sup> All these institutions must work together in order to achieve an integrated criminal justice system, especially the prosecutor's office as the first guard in upholding the fundamental principles of SPP.<sup>9</sup>

As mentioned above, the prosecutor's office, in this case the public prosecutor, has the authority, one of which is to prosecute someone who is suspected of having committed a criminal act. In general, the powers related to prosecution are contained in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). However, there are several special criminal regulations that override or expand the scope of prosecution that has been regulated in the Criminal Procedure Code, for example in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which emphasizes restorative justice and diversion in cases. the case of children in conflict with the law.<sup>10</sup>

One of the important things to consider in undertaking diversion efforts is the results of community research (Litmas) from the Correctional Center (Bapas). Gradually: Bapas submits Litmas to investigators within a maximum period of 3 x 24 (three times twenty-four) hours when the request letter from the investigator is received. In connection with the use as one of the things considered in the diversion effort, if the diversion attempt at the investigation process fails, the case files are transferred to the public prosecutor by attaching an official report on diversion and Litmas.

At the prosecution stage it is very important to consider the Community Research Report, because at this stage it is the last door before entering the trial process, and in Litmas at least it recommends that cases be resolved outside the court (deponir) as is the spirit of diversion efforts, or if the case remains to be resolved in In court proceedings, the public prosecutor should sue the offender's child with reasonable and wise demands, as in the spirit of restorative justice. However, in practice, Litmas is rarely considered in the prosecution stage, if this continues for a long time then it is feared that restorative justice in the juvenile criminal justice system is only limited to the spirit of the formation of the SPPA Law, the background, environmental influence and children's associations are not understood. was done, so that the spirit to eliminate the bad stigma of society towards the child offenders of delinquent was not achieved, and in the worst possible case the SPPA was only oriented towards retaliation.

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<sup>6</sup> Maria S.W. Sumardjono, 2014, *Bahan Kuliah Metodologi Penelitian Ilmu Hukum* (Legal Studies Research Methodology Materials), Issued by Universitas Gadjah Mada, Yogyakarta, p. 17.

<sup>7</sup> Peter Mahmud Marzuki, 2013, *Penelitian Hukum: Edisi Revisi* (Legal Research: Revised Edition), Issued by Kencana, Jakarta, p. 133.

<sup>8</sup> Romli Atmasasmita, 2011, *Sistem Peradilan Pidana Kontemporer* (Contemporary Criminal Justice System), Issued by Pranada Media Group, Jakarta, p. 16.

<sup>9</sup> The principles in question are: Equality in public; Due process of law; Simple and fast; Effective and efficient; and Accountability. Sidik Sunaryo, 2004, *Kapita Selekta Sistem Peradilan Pidana* (Kapita Selekta Criminal Justice System), Issued by UMM Press, Malang, p. 231.

<sup>10</sup> *Lex specialis derogat legi generalis* is a legal principle which means specific legal rules overriding general legal rules.

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Basically, Litmas must be considered by judges in the examination stage at trial. However, because it is in the form of a "recommendation" and does not have legal consequences if it is canceled, it is not uncommon for the sanctions imposed on children not to recommend sanctions contained in the Litmas.

In The Beijing Rules Rule as quoted by Betania Fransiska Sitanggang dan Irma Cahyaningtyas,<sup>11</sup> that "The juvenile court must emphasize the well-being of adolescents and must ensure that every reaction to child offenders is always proportional to the circumstances of the perpetrators and the offense". If the conception is connected with Litmas, similarities will be found, namely in Litmas it contains the background of a criminal act, which is also used as a basis for a study of sanctions recommendations offered in Litmas.

Litmas can be said to be a form of effort to understand children's mistakes. Particularly at the prosecution stage, Litmas offers that the demands formulated by the public prosecutor against children not only contain juridical considerations, but also other considerations. Restorative justice is not only oriented towards the imposition of punishment (retaliation) for the perpetrator, but also for the creation of improvement and benefits for: 1) Children who are delinquent, so that they are not deprived of their independence, are not labeled as bad by their environment; 2) Victims, can participate in decision making, losses can be recovered immediately and avoid suffering; 3) The community, can participate in decision making, can avoid prolonged conflict between citizens; and 4) Law enforcers, can reduce workloads so that they can focus more on heavier cases and can economically save operational funds for case handling.<sup>12</sup>

Litmas as a concrete form of restorative justice, the benefits provided should not be much different. However, there are several things that need to be discussed regarding the optimization of Litmas in the prosecution stage, so that the benefits provided by restorative justice can be fully adapted in the Litmas, namely:

- a. Litmas recommendations at the stage of juvenile criminal justice (investigation, prosecution, trial) are more oriented towards children of offenders. In Litmas contains all personal information about children, the environment at play, playmates, to the background of the occurrence of crime. While the Litmas was given to APH, especially the public prosecutor, who was the representative of the victim, this could be a factor in the rarity of Litmas being considered in the prosecution stage. Therefore, the information presented in the Litmas must be balanced, the meaning is also to see the conditions or losses suffered by the victim, because Bapas as the authority providing Litmas recommendations must be neutral, not acting as if they are legal advisers to the children of the offender.
- b. Litmas which are confidential in nature because they contain personal information of the offender's child, making limited parties who know the background of why the child made a mistake. This can result in the presentation of "understanding" the child's mistakes being lower than "justifying", especially the community where the child will return later, because there is no bias at will to obtain this information. Therefore, Litmas at the adjudication stage is not only limited to recommendations regarding child coaching therapy, but also recommendations regarding if the child has finished undergoing coaching in a Penitentiary, Child Prison, Bapas and so on, so that it is still supervised by both these institutions and parent/ guardian, as well as providing socialization to the community (in any form) that a child perpetrator of delinquency cannot be fully equated with an adult who has committed a criminal act.

Apart from this, there are several problems in relation to the optimization of the juvenile criminal justice system, especially for special guidance institutions for children. The lack of distribution of special development agencies for children throughout Indonesia has resulted in the fostered children being united with adult prisoners, even in an incident in Medan, North Sumatra, a child offender was tried in a general court (adult), and without the assistance of a legal advisor from Accredited LBH.<sup>13</sup> Furthermore, the lack of government support is also a stigmatizing factor for children of delinquent actors, for which the local government should be even more active in conducting socialization in order to minimize the stigmatization.

Finally, the efforts to strengthen the position or position in the context of optimizing the Community Research Report in the Juvenile Criminal Justice System have basically received contributions of thought through several scientific studies. Most of the research is focused on the examination stage at trial, but according to the author, optimization in this connection is important to also be carried out at the prosecution stage, in order to minimize the settlement of cases of children through court.

In addition, the optimization of future Community Research Reports is also expected to be able to anticipate negative things as mentioned in the initial discussion. Therefore, there needs to be some changes, especially the material contained in the Litmas which not only focuses on the offender's child, but also on the victim. In addition, in broad terms, Litmas should also contain recommendations on the supervision of children by institutions, parents / guardians or so on after completion of coaching and

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<sup>11</sup> Betania Fransiska Sitanggang and Irma Cahyaningtyas, 2020, Penanganan Perkara Anak dalam Perspektif Jaksa Penuntut Umum (Handling of Child Cases in the Perspective of a Public Prosecutor), *Jurnal Pembangunan Hukum Indonesia*, Volume 2, Nomor 1 Tahun 2020, p. 75.

<sup>12</sup> *Ibid*, p. 201

<sup>13</sup> Laras, "Duduk Perkara ZF (Anak Dibawa Umur) yang Diajukan Ke Peradilan Dewasa", <https://www.larasonline.com/berita/Duduk-Perkara-SF--Anak-Dibawah-Umur--Yang-Diajukan-Ke-Peradilan-Dewasa/>, accessed on March 14, 2021.

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providing socialization to the community, so that children avoid stigma that is not good for their growth and development. In the end, with some of these reforms, it is hoped that Litmas will not only have a status as a formality but actually serve as a consideration in continuing or not continuing a child criminal case to the court stage, or considerations about formulating good and wise demands, or as a consideration in making decisions on children who made a mistake.

### CONCLUSION

Based upon the aforementioned Community Research Report (Litmas) above, it can be concluded, among others:

1. In several cases of juvenile crime, the system failed to evaluate the Community Research Report, it is apparent from the fact that the child offenders received a recommendation to be convicted with the main crime on condition (Article 71 paragraph (1) letter b of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System), however the child was sentenced to imprisonment during the trial stage, in other words, the Litmas recommendations is not even considered. One of the things that causes this, especially at the prosecution stage is that this Community Research Reports is in the form of "recommendations", which do not have legally binding power or have no legal consequences, but are only morally binding or depending on the subjectivity of APH, and the Attorney General's Office experiences obstacles when carrying out executions because of the stigmatization of children who are delinquent who make it difficult to accept them at places of rehabilitation or community services.
2. Optimization of the Community Research Report at the prosecution stage are accomplished by adding to its content: it does not only contain information about children but also about victims. The addition of material about victims is important in order to ward off the assumption of unequal assistance between child perpetrators of delinquency and children as victims by Bapas as the authority that issues the Community Research Report. In addition, the position of Bapas which must be neutral should not cause the prejudice that Bapas is the legal adviser for the child perpetrators of delinquency. In addition, government support (central and local) to help minimize the stigma against children of delinquent offenders by conducting socialization, or collaborating with APH to provide legal counseling in relation to juvenile criminal justice.

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