

THE RENEWAL OF CRIMINAL LAW TOWARD THE ROLE OF “BAPAS” IN  
THE PROCESS OF SENTENCING JUVENILE WHO COMMITS A CRIME  
FOLLOWING THE ENACTMENT OF LAW NO 11 YEAR 2012 ON THE  
JUVENILE JUSTICE SYSTEM  
(A JUDICIAL AND SOCIOLOGICAL STUDY)

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ABSTRACT

Juvenile as a culprit of certain crime are no longer considered as new phenomena. To address this issue, juvenile needs protection from negative impact of fast growth and development, the flow of globalization in the field of communication and information, the rapid progress of knowledge and technology, and the shift of parents' life style. These factors have been brought a basic social change in society that affects children's values and behavior. Therefore, serious concern to the treatment of law toward children should be given to protect the children from violence, displacement, pressure, harassment, and anxiety. In this case, the role of *bapas* in the process of children sentencing is important considering that the result of the report is one of the most vital features in taking decision. For that reason, the judge has to be sure that their decision will be a fundamental aspect to supervise children toward a better future.

This research applied a statute approach. Prior to executing the approach, the writers analyzed the study using theoretical and conceptual approaches. The next approach in this research is creating inventory of the laws related to the renewal of criminal law toward the role of “bapas” in the process of sentencing children who commits a crime following the enactment of Law No 11 year 2012 on juvenile justice system (a judicial and sociological study). In addition, a policy oriented approach was also applied in this research. This policy will be studied from rational, economic and pragmatic perspectives as well as values oriented approach. As a complement, case approach to analyze the punishment toward children who committing a crime was also employed. All of these methods are expected to support each other in attaining law materials that can be utilized as analytical tools in this research.

Key words: children, *bapas*, sanction

INTRODUCTION

Within the Juvenile Justice system Act, children in conflict with the law are those who have reached the age of 12 (twelve) but under the age of 18 (eighteen) years. In Indonesia, the government, law enforcements, and society in general are paying less attention to the status and the rights of Indonesian children. Therefore, when children are in conflict with the law they do not get proper treatment from them. This condition is getting worse by the lack of implementation of laws regarding the rights of children carried out by the law

enforcements. Children who still search for their identity are easily influenced by their external circumstances and environmental conditions. A good condition will support children good behaviour and vice versa. This issue surely brings disadvantage for children and even for their society. Sometimes children who are going through the process of finding their identity have to deal with the law enforcements as they express themselves in a wrong way. The real purpose of punishment for children is for the sake of their well-being by giving priority for their best interests as an integral part of social welfare.<sup>1</sup> Based on this philosophy, a paradigm of juvenile justice act system should also adhere to the restorative philosophy that concern with the state of recovery due to the existing violations. As the manifestation of the philosophy of punishment, the goals and sentencing guidelines need to be set explicitly.

To avoid and minimize children's violations towards law, regulations in the form of legislations is needed. The regulations will protect for children rights. The protection is necessary despite the fact that they are proven to have violated the law in the country. The rights of children shall be upheld by every people. Unfortunately, there are some external and internal obstacles when the law enforcement is applied.<sup>2</sup> One of them is the criminal justice system that treats juvenile who violates the law as adults' perpetrators. The child is placed in a position as a criminal who deserves to get similar punishment as adults based on the law system in Indonesia.

The punishment itself is somehow more oriented to the individual offender or commonly referred to individual accountability / personal (Individual Responsibility) where the offender is seen as individuals who are able to take full responsibility for their act. Whereas children are individual who has not been able to fully understand the actions / deeds he does, as their still immature in their way of thinking. Indirectly these factors psychologically influence children and affect their mental development. Juvenile Delinquency is discussed in the US Courts in an attempt to establish a Juvenile Justice Act. There are two main topics of the discussion; the violation of law and the nature of children's actions if it deviates from the norm and breaks the law or not. Juvenile Delinquency is an act of norms violation, both legal norms and social norms committed by children at young ages.<sup>3</sup> Juvenile delinquency is interpreted as a form of crimes committed by juvenile as stated under specific titles of the criminal code (KUHP) and/ or the system of regulations or ordinances.<sup>4</sup>

The birth of Law Number 11 Year 2012 on Juvenile Justice System Act (SPPA Act) provides great hope for the Ministry of Justice and Human Rights

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<sup>1</sup>In the second principal of *Declaration of the Rights of the Child dinyatakan: "The child shall en joy special protection and shall be given opportunities and facilities, by law and other mearis, to enable hlm to develop physically, morally, spiritually and social in a healty and normal manner in conditions of freedom and dignity. In the anectment of laws for this purpose the best interest of the child shall be the paramount consideration.*

<sup>2</sup> Harkristuti Harkrisnomo, Tantangan dan Agenda Hak-Hak Anak, (Jakarta : Newsletter Komisi Hukum Nasional,2002) Edisi Februari, Hlm. 4

<sup>3</sup> Wagjati Soetodjo, Hukum Pidana Anak, (Bandung : PT Refika Aditama,2004 ), Hlm.11

<sup>4</sup>Maulana Hassan Wadong, Pengantar Advokasi dan Hukum Perlindungan Anak , (Jakarta : Grasindo,2000 ) Hlm.81

(c.q. Directorate General of Corrections) to urgently strengthen the existence of "BAPAS" or Correctional Centres in the judicial process as the SPPA Act provides a great role for Correctional Centres (Bapas) in the treatment of children in conflict with the law.

*Bapas*, through the officer of Community Advisors (PK), is not only a government agency whose task is to conduct social research related to children involved in criminal cases as stipulated in the Act Juvenile Justice System. Through this Act, *Bapas* becomes one of the important elements in the process of settlement of criminal offenses committed or involving children.

The SPPA Act sets out clear and unequivocal role that should be run by BAPAS. Some roles have gradations of "mandatory" for BAPAS to run it. BAPAS role moves from the stage of investigation to the stage of coaching after a sentence. However, the spirit in SPPA Act is to promote equitable relief effort (Restorative justice) and prevent children from judicial proceedings (Diversion).. Therefore, Article 7 (1) states that the district court shall pursue Diversion at the level of investigation, prosecution, and the investigation case of children. However, we need to understand that Diversion cannot be applied to all of the offenses. Diversion is implemented in terms of the terms of: punishable by imprisonment under seven (7) years; and not a repetition of criminal acts.

Meanwhile, if the case of children should be proceeded in the judicial process, then *Bapas* (in this case the Supervisor of Community) or other escort in accordance with the provisions of the laws has an obligation to provide assistance to children in every level of examination (see article 23 (1)).

One of the reasons of the emergence of SPPA is that the punishment given to children through the formal juvenile justice system by putting children in prison had not been able to give them deterrent effect and or lead them be a better person in their future growth and development process. The worse thing is that prison somehow makes them more professional in committing a crime.<sup>5</sup> This process shows the steps to be followed in applying the legal provisions motivated by a system, which is often referred to the Criminal Justice System. This system means that in the system there are sub-systems. The stages in the institutions that closely related to one another are: investigation stage in police department, prosecution stage by the attorney, proceedings stage and decision making stage in the Court, and the execution of the sentence at the Correctional Institution.

Sanction in a criminal law is not just a technical issue of legislation, but rather an integral part of the substance or the material of law itself. It means that the problem of penalization, depenalisasi, criminalization and decriminalization must be understood comprehensively with all aspects of substantial issue or legislation materials at the stage of the legislative policy.<sup>6</sup>

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<sup>5</sup> M. Joni dan Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Bandung, Citra Aditya Bakti, 1999, hlm. 1, dikutip dari UNICEF, *Situasi Anak di Dunia 1995*, Jakarta 1995, hlm. 1. 5

<sup>6</sup>M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana (Ide Dasar Double Track System & Implementasinya)*, PT Raja Grafindo Persada, Jakarta, 2003, hlm. 5.

This sort of problems give an impression that legislation product will be perceived deficient when they do not have provision of criminal (sanctions).<sup>7</sup> We need to concern on the limitations and ability of the criminal law that used by our law enforcement in tackling crime. Moreover, there are tendencies criminal law as the product of legislation process is mostly used to frighten or to secure different kind of crimes that may arise in various field. With regard to the matter, the formulation of legislation criminal law which includes the criminal sanctions should be formed in an integrated crime prevention effort. It means that this law should also be viewed in a broader perspective that is the perspective of the criminal policy.

Currently, the sentence for a child has adopted the idea of Double Track System explicitly. This system is previously unknown in the Criminal Code. Theoretically the difference between criminal and action can be based on its purpose. Sentencing aims at giving retaliation against people who commit criminal acts, while the action is intended to educate those who commit criminal acts or intended to protect the public against the dangers that may arise on certain action.<sup>8</sup>

Court decisions on criminal acts committed by juvenile are dominated by the decision in the form of imprisonment. However, this decision has to consider the best interest of the children due to the negative impact of criminal deprivation that can hinder children development physically, psychologically as well as social affect such as stigmatization. Whereas the philosophy of sanction arrangements is very different from the Criminal Sanctions.<sup>9</sup>

This legal treatment somehow will damage the child's future. Therefore, in taking decision, the judge must be convinced that their decision will be a solid foundation to restore, regulate and develop themselves toward a better future as responsible citizens responsible for their country.

Psychologically, the protection of children aims to provide protection for them from violence, neglection, abuse, pressure, mistreatment, anxiety and so on. Based on this reason, the need for sentencing guidelines in the application of sanctions, especially for children is needed. The guideline is necessary in order to achieve prosperity and law to ensure fair treatment toward children.

The renewal of sanctions for juvenile who committed crime had been developed due to the reform of criminal law. The renewal is based on and inspired by the firm will of society in accordance with the philosophy of Pancasila and UUD 1945 (Indonesian Constitution year 1945). It is expected that Pancasila and UUD 1945 will inspire the improvement of law enforcement in Indonesia to be better improved in the future. We do hope that justice system law will be able to satisfy all parties.

The establishment of the law and legal system, as well as how the legal system is applied should be based on the values within Pancasila. As Pancasila

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<sup>7</sup>Barda Nawawi Arif, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT. Citra Aditya bakti, Bandung, 1990, hlm. 40.

<sup>8</sup>*Ibid*, hlm 4

<sup>9</sup> Purniyanti, *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Delinquency System) di Indonesia*, Fisip UI, Jakarta, hal. 27

is the philosophy of the nation or the basic principle which is derived from Indonesian values. Pancasila as the philosophy and the foundation of the state is expected to become the foundation in creating dignified society. Therefore law in Indonesia will serve as protector.<sup>10</sup> Based on these conditions, the authors are keen to discuss "Renewal of criminal law toward Bapas role in the process of sentencing juvenile who commits crime after the enactment of Law No. 11 of 2012 concerning juvenile justice system (a judicial and sociological study)"

## **METHOD**

The problems were examined with the approach of law (statute approach) and policy-oriented approach. This policy will be reviewed from the perspective of a rational, economical and pragmatic approach as well values oriented approach.

Specifications of this research is normative juridical perspective by reviewing the rational, economical and pragmatic and values oriented approaches based on the existing Law and associated with the renewal of the criminal law towards Bapas role in the process of criminalization of children who commit crime after the enactment of Law No. 11 of 2012 concerning juvenile justice system (a juridical and sociological studies).

The nature of research this research is descriptive analytical research, because research is expected to gain a clear picture, detailed and systematic analysis why the child committed a criminal act. Descriptive study aims to provide an overall picture of the existence as well as the provisions regarding the sanctioning of action for children who commit crime in terms of ideas or thoughts, values, rules, norms, dogma or principle and the arrangements in legislation and its existence in society by exploring and clarifying the studied object.<sup>11</sup>

Literature data collection was conducted by using small notes of the results of research on some norms (positive rules), books or the existing literature related to the issues discussed in this research. Then these legal materials are reviewed using the concepts, ideas, or opinions of some legal experts. The researches are then examined them with the theories related to the issues particularly the imposition of sanction for juvenile who commit crime.

Based on the nature of descriptive analytical research methods used in this research, primary and secondary datas were analysed using qualitative approach. The data were analyzed qualitatively with deductive reasoning and legal interpretation was used to interpret the data. Qualitative analysis methods were expected to deliver the writers on the study of The Renewal of criminal law towards *Bapas* role in the process of sentencing juvenile who commits crime after the enactment of Law No. 11 year 2012 concerning juvenile justice system (a judicial and sociological study). The results of this study are expected

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<sup>10</sup>Teguh Prasetyo, *Hukum dan Sistem Hukum Berdasarkan Pancasila*, Media Perkasa, Yogyakarta, 2013, hlm. 92

<sup>11</sup> Sanapiah Faisal, *Format-Format Penelitian Sosial*, Jakarta : Raja Grafindo Perkasa, 2003, hlm. 20

to provide input for the development of the Indonesian criminal law in the future.

## **RESULT AND DISCUSSION**

Indonesia has not shown satisfactory results in the protection of children yet, both the protection for general condition of children and specific condition when they are in conflict with the law. These issues can be seen from the regulation and its application in real life. In terms of regulations, there are policies that lead to labeling juvenile who commit crime acts as naughty and evil. This labelling will affect children mentally and socially to the development of their growth.

The protection of children in one country indicates the degree the nation's civilization. Therefore one country is in obligation to ensure the application of children protection in its country. Child protection is a legal action that resulted in the law.<sup>12</sup> Therefore, legal guarantees for child protection are necessary. Legal certainty needs to be cultivated for the continuity of child protection and to prevent abuses that bring will negative consequences in the implementation of child protection.<sup>13</sup> For this purpose, child protection activities should at least have two aspects. The first aspect is related to policies and legislation that govern the protection of children's rights. The second aspect is related to the implementation of the policies and regulations.

The policy of criminal system on children cannot be separated from the purpose of children protection and development. The policy has to emphasize on objectives to repair, rehabilitate, and guarantee the welfare of the child. One of Indonesian Government efforts to address this policy is the formulation of Law No 11 year 2012 on the Criminal Justice System Centre (UU SPPA). This new law replacing the Juvenile Court Act contains some important changes to achieve the realization of restorative justice for children. It is expected that this new law will be friendlier for the prosecuted children.

Child Criminal Justice System Act clearly becomes a new hope in the application of criminal justice for children. Criminal Justice System Act for Children is considered decent because it aims to safeguard the dignity of children, and children are entitled to special protection, especially protection of the law in the judicial system. Therefore, the Criminal Justice System Act for Children should not only emphasize to the imposition of criminal sanctions for child perpetrators of criminal acts, but also focusing on the idea that the application of sanctions is intended as a means to achieve the welfare of the child offender<sup>14</sup>.

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<sup>12</sup> Abdul Hakim G. Nusantara stated that this particular child protection is one of protection through judiciary approach. Wider approach involves economic, social, and cultural factors. Abdul G. Nusantara, *Hukum dan Hak-Hak Anak*, disunting oleh Mulayana W. Kusumah, Rajawali, Jakarta, 1996, hlm 34

<sup>13</sup> Arief Gosita, *Masalah Korban Kejahatan Akademika* Pressindo, Jakarta, 1993, hlm. 222

<sup>14</sup> Lilik Mulyadi, *Menyongsong berlakunya UU Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak: Problema dan Solusinya*, Makalah, disampaikan pada 2013 di Fakultas Hukum Universitas Atma Jaya, Yogyakarta

## 1. Penal Reform

Penal reform is part of penal policy. The meaning and nature of criminal law reform is closely related to the background and the urgency of conducting the criminal law reform. The background and urgency of conducting criminal law reform can be viewed from the aspect of socio-political, socio-philosophic, sociocultural or other policies aspects of (in particular social policy, criminal policy and law enforcement policy). Thus, penal reform is basically mean as an effort to re orientate and to reform the law based on central values of socio politic, socio philosophy, and socio cultural of Indonesian. These central values are the spirit of social, criminal, and law enforcements policiy to create criminal law based on Indonesian values.<sup>15</sup> In short, the renewal of criminal law has to go through policy oriented and values oriented approaches.

The meaning and nature of criminal law reform are as follows;

1. Seen from *policy oriented approach*;
  - a. As part of a social policy, criminal law is a part of efforts to address social problems (including problems of humanity) in order to achieve / support the national objectives eg. social welfare and so on.
  - b. As part of the criminal policy, criminal law is an essential part of efforts to protect the public.
  - c. As part of law enforcement policies, criminal law is a part of the efforts to improve the substantive law (legal substance) in order to increase the effectiveness of law enforcement.
2. Seen from *value oriented approach*;

If the renewal of criminal law basically is an effort to re- review and re-orientate socio- politics, sosio-phyloshopy, and socio cultural values that underlying and provide meaning to normative content and substantial criminal law as aimed in the new KUHP, it will be similar with the values orientation on the old criminal law created by the former colonialist (WvS).

In addition to rational, functional and pragmatistical approach, values oriented approach is also need to reform the criminal act. Policy approach is basically a part of social, crime, and law policy and is also part of law enforcement policy. Whereas values oriented approach is an effort to re-orientate and re- evaluate socio- politics, sosio-phyloshopy, and socio cultural values that underlying and provide meaning to normative and substantial content of the desired criminal justice system.<sup>16</sup>

On the case of criminal law for children, policy approach to implement has to follow the prime purpose of providing welfare for children eventhough they have violated the existing norms in society. Re- orientates and re- evaluates the values onthis law is an urgent thing to do as well. The law reform through the establishment of Law No 11 year 2011 on Juvenile Justice System is considered leaving the concept of child protection. Therefore, we all hope to create a formula with creative strafshoort as the

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<sup>15</sup>Barda Nawawi Arief, *Op.cit*, hlm. 30.

<sup>16</sup> Loc.Cit, Barda , hlm.27

principal manifestation of double track system. However, obstacles to implement the formula might still arise due to the following factors:

- 1) Protection of material criminal law for children has not included criminalization issue related to juvenile justice system. The need for understanding the crime committed by juvenile as all acts which are defined in criminal law and other acts are in fact detrimental to the development of the child itself and harmful to society, which should be defined in details legislation of Juvenile Justice System. Formulation on juvenile justice system would also determine a clear type and size of punishment for the juvenile, which is differentiated from the formulation for adults. However Law No 11 year 2012 also does not formulate submaterial / material of juvenile justice system which is devoted to children. This means that the good formula of the Criminal Code and Law derived from other source than the Criminal Code Act will still be applied to children.
  - 2) Formulation of Objective and Guideline Sentencing is not found. It is urgent to formulate Guideline of Sentencing as well as Objective of Sentencing as the implementation of the idea of individualized justice system. This formula will be beneficial especially for juvenile in conflict with the law. The best interests of the juvenile is the main issue that ultimately has implications for the selection of appropriate sanctions for the them, to keep the impact of psychological and social for children, to formulate objectives and sentencing guidelines are intended as controller and provide a philosophical basis, the basis of rationality and motivation of a clear and focused punishment.
  - 3) The selection of sanctions besides criminal sanctions against children, will certainly lead to the court decision. From the above data judge is merely a mouthpieces of legislation. Judge characters and their formal legality is certainly not supporting the issuance of a principles-based decision to the best interest of the child.
2. Therefore, the Criminal Justice System Act for Children should not only emphasize to the imposition of criminal sanctions for child perpetrators of criminal acts, but also focusing on the idea that the application of sanctions is intended as a means to achieve the welfare of the child offender.

Article 1 point 3 of Child Criminal Justice System Act provides liability age limit for children at the age of 12 years but has not reached the age of 18. This arrangement is based on psychological research stating that a 18 year old children is deemed to be able able to face justice<sup>17</sup>

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<sup>17</sup> See article 1 (1) SPPA Act stating that “..., menyebutkan bahwa “...Minimum Age of Criminal Liability for Children Is 12 years old to be roceeded to juvenile court based on sociological, psychological, dan pedadogical considerations, as children under 12 years old is considered under age.



Table 1  
 Minimum Age of Criminal Liability for Children

NO	COUNTRY	Minimum Age of Criminal Liability for Children
1	Australia	10
2	Austria	15
3	Belgium	14
4	Denmark	15
5	England	10
6	French	13
7	Hongary	14
8	Italy	14
9	Japan	14
10	Netherlands	14
12	Russia	14,16
13	Swiss	15
14	Sweden	7

Source: Comparative studies on the Law from different countries

### 3. Social Research on Child Criminal Justice System

Correctional Centres (BAPAS) is a technical unit to implement duties and do social research, guidance, supervision, and assistance (Article 1 Paragraph (24) of Law No.11 year 2012 on the Child Criminal Justice System).

Correctional Centres is an institution to carry out the reduction of Society and Child Guidance, in carrying out their duties and functions based on: 1. Article 1 Paragraph (4) and Article 8 of the Law of the Republic of Indonesia No. 12 Year 1995 regarding Correctional; 2. Article 34, Article 36 of the Law of the Republic of Indonesia No. 3 of 1997 on Juvenile Justice; 3. Article 1 clause (14) and Article 59 of the Law of the Republic of Indonesia No. 23 year 2002 on the Protection of Children; 4. Article 1 clause (24) of the Constitution of the Republic of Indonesia No. 11 Year 2012 on Juvenile Justice System (SPPA); 5. Article 11, Article 14, Article 15 and Article 16 KUHP 6. Article 276, Article 280 clause P(4) Criminal Code 7. Government Regulation No. 31 year 1999 on the Development and Mentoring Citizens Patronage of Corrections; 8. Implementation Guidelines for the Minister of Justice No. E.40-PR.05.03 1987 on Mentoring Clients Penal Justice Ministerial Decree No. 26 M.01.PK.04.10 1998 on Duties, Liabilities, and Conditions for Community Advisors. (Retrieved from [http // bapassmg.wordpress.com](http://bapassmg.wordpress.com), dated August 27, 2016).

Social research report is the most important task in determining the completion of criminal assault of children. This issue is described by Maldi Gultom that social studies or case study is an important method of

approach in order to develop lawbreakers and is very useful in helping the judge to make an appropriate and fairest decision<sup>18</sup>

Community officer has an important role in juvenile justice system as described by Hawnah Scaff in Anggraeni<sup>19</sup> research report “the success of juvenile justice is much more dependent on the quality of the probation officer (officer Correctional Centres) rather than the judge”. Juvenile justice that does not have a corps of supervisory who guided by wisdom and compassion into the environment of children life and to provide guidance for standard original thought for children about right living, will only ensure the functioning of juvenile justice systems blurr or end up in vain. Based on the above explanation, it can be obtained an understanding that the role of the Correctional Institute for handling the case of children is very large. One of the most important roles is to conduct research and create reports on the conducted research by Supervising Community as a functional officer or community officer. Social research reports are used for the process of investigation, prosecution, and the proceedings to be taken by judge in deciding the case of children in conflict with the law. Therefore Correctional Center research report can be regarded as a determinant for the fate of children in conflict with the law.

Social research report that will serve as a basis for consideration of the judge at least contain: personal data of children, family, education, and social life; background execution of a criminal offense; the state of the victim in the case there is a victim in a criminal act against the body or life; Another thing that is deemed necessary; the minutes of diversion; conclusions and recommendations from the Advisor Community (Article 57 paragraph (2) of the Act the Criminal Justice System Child). The main objective of the report made by community supervisor is to provide consideration for the judge and it is expected that Supervising Community can assist the judge in deciding the fate of the child, where the research community could be one of the judges sociological considerations in deciding the case of children.<sup>20</sup> Speaking about research community, there are three issues related to the scope of Community research, namely; a. The research activities of community social research activities include social studies such as client’s curriculum vitae; client feedback on problems encountered; overview and family responses; clien’s view on the social environment; and so forth.

In addition to social research, there are case studies and research state of a person who committed a crime or violated law. Case research is to find out whether the offenses are committed alone or together; whether the main actors or helpers; whether the act was planned or not; and so forth.

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<sup>18</sup>Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, PT Refika Aditama, Bandung 2008, Hlm. 150.

<sup>19</sup>Anggraeni U.R. 2013. *Jurnal Supermasi Hukum: Peranan Pembimbing Kemasyarakatan di dalam Sistem Peradilan Pidana Anak di Kota Bengkulu*. Bengkulu: Universitas Bengkulu. Volume 22 No.1. Januari 2013

<sup>20</sup>!bid Anggraeni, Hlm 116 )

Whereas state of person research is a reason to discover the the factors of the one who commits a crime like physical condition, psychological, or other factors underlying the perpetrators of crimes

b. The mechanism of research community execution is conducted after a demand from the investigators, the public prosecutor, or the court, then the community supervisor perform their duties in a way; 1. Visiting prison, residence, neighbors, schools, workplace, the victim, and other parties considered necessary to support the research; 2. Collect data by observation and/ or interview; 3. Research Reports Writing. c. Role of Social Research in the Juvenile Court process. The role of community researches in the juvenile court process is more to the matters related to investigation, prosecution and trial.<sup>21</sup>

Similar thing is basically also alluded in the Criminal Justice System for Children which mentions that in the trial phase, after the indictment was read, the judge ordered the Supervisor of Community to read community research reports about the children.<sup>22</sup>

Both in the Juvenile Court Act and the Child Criminal Justice System Law Society Research position is very strategic. In the Juvenile Court Act, the role of the Society Research is to inform the condition of the child's personal, relationship with the family, the environment and other matters of Community Advisors who later played a role in determining the verdict by judge in juvenile criminal cases.

Similar thing applies in the Law on Juvenile Justice System, even in Juvenile Justice System Act, the role of society research has larger portion. There are some regulations that require Research Society, for example at the time of the Investigator, Public Prosecutors and Judges conducting Diversion process, they are required to consider the results of the research community from *Bapas*<sup>23</sup>

Or other provisions, such as on the stage of the investigation, investigators shall ask consideration or suggestion from Community Supervisor after criminal offenses reported where the results of Community Research shall be submitted by *Bapas* to the investigator within a maximum of 3 x 24 (three times twenty-four hours) after receiving investigators' requests.<sup>24</sup>

In addition to regulation that requires the existence of Community Research, there are also regulations related to Community research. When it is not implemented, it can lead to "null and void" the ongoing process or the finished process, in fact it applies to the verdict the judge too.

It is stated in Article 60 of Law SPPA, where the judge shall consider the report of the research community from Supervising Community before dropping verdict of the case, and in terms of social

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<sup>21</sup> Wahyudi, S.2011.Implementasi Diversi dalam Pembaharuan Sistem Peadilan Pidana Anak di Indonesia.Purwokerto;Genta Publishing. Hlm 239

<sup>22</sup> Lihat Pasal 57 ayat (1) UU SPPA

<sup>23</sup> Lihat Pasal 9 ayat (1) huruf c UU SPPA

<sup>24</sup> Lihat Pasal 27 ayat (3) jo. Pasal 28 UU SPPA

research report is not considered in judge's decision, the verdict is considered null and void.

The firm regulation related to Community Research in Judge's Decision is apparently not the first regulation set on this issue. Article 59 (2) Juvenile Justice System Act also accommodates regulation requiring the judges to consider Community Research proposed by Community Advisor. As stated in the explanation "The meaning" of shall in article 59 (2) of Juvenile Justice Act is if the provisions are not filled, it will nullify the verdict".

These data indicate the performance of Bapas in June 2016, on how to handle juvenile in conflict with the law. It is shown that the number of culprit outnumbered the number of officers, therefore BAPAS officers have to do extra work on their mentoring session.

*Data on BAPAS Clien, June 2016*

No	UPT	Kanwil	Adult Clien		Total	Juvenile Clien		Total	Litmas		Total	Grand Total
			BKDL	BKDP		BKAL	BKAP		LITA	LITD		
1	<u>BAPAS KLAS I SEMARANG</u>	KANWIL JAWA TENGAH	813	63	876	15	1	16	22	55	77	969
2	<u>BAPAS KLAS II PEKALONGAN</u>	KANWIL JAWA TENGAH	407	22	429	4	0	4	14	23	37	470
3	<u>BAPAS KLAS II MAGELANG</u>	KANWIL JAWA TENGAH	417	20	437	48	0	48	10	64	74	559
4	<u>BAPAS KLAS II PATI</u>	KANWIL JAWA TENGAH	470	12	482	2	0	2	6	21	27	511
5	<u>BAPAS KLAS II PURWOKERTO</u>	KANWIL JAWA TENGAH	937	59	996	31	1	32	34	34	68	1,096
6	<u>BAPAS KLAS II SURAKARTA</u>	KANWIL JAWA TENGAH	170	10	180	50	6	56	11	17	28	264
Total			3,214	186	3,400	150	8	158	97	214	311	3,869

BKDL : Male Adult Clien	BKDP : Female Adult Client
BKAL : Male Juvenile Clien	BKAP : Female Adult Client
LITA : Litmas Juvenile	LITD : Litmas Adult

As a result of observation, interview, and research, it can be concluded that there are some weaknesses that "Bapas" committed in conducting community research on juvenile in conflict with law. The weaknesses are: The lateness of related institution that requires (investigation, prosecution, trial) causing Community Research Officer

overwhelmed to conduct community research. This happened as a result of a short time detention for juvenile; the lack of accommodation subsidy for community research officer; parents/ society's lack of knowledge on the advantage of the result of community research; insufficient number of community research officer to conduct the research in terms of academic and analytical skills as well as skills to predict the possibility that can occur when taking particular policy/ decision related to juvenile. There is no technical regulation on the delegation of children mentoring from the investigators to the judges. Budget Planning 2016 eliminates some budget items include, diversion, mediation and coordination resulting in the limitation of community research officer mentoring session to juvenile.

## **CONCLUSION**

"*Bapas*" has a significant role in the process of punishment for juvenile who commits crime after the enactment of Law No. 11 year 2012 concerning juvenile justice system (a juridical and sociological study) in order to produce community research report. Their roles are: conducted mentoring, coaching, and supervising juvenile in conflict with the law so the purpose of juvenile justice system act can be achieved maximally by ensuring the protection of children best interest.

The constraint is the lateness of related institution that requires (investigation, prosecution, trial) causing Community Research Officer overwhelmed to conduct community research. This happened as a result of a short time detention for juvenile; the lack of accommodation subsidy for community research officer; parents/ society's lack of knowledge on the advantage of the result of community research; insufficient number of community research officer to conduct the research in terms of academic and analytical skills as well as skills to predict the possibility that can occur when taking particular policy/ decision related to juvenile.

On its role to conduct mentoring, *BAPAS* also run its function to carry out community research and deliver the result to the judges as their considerations in deciding cases of juvenile in conflict the law. These role and function are carried out by community officer through community supervisor.

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