

POWER RELATIONS OF CHILDREN FACING THE LAW IN THE APPLICATION OF DIVERSION

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ABSTRACT

Handling of children in conflict with the law is still oriented towards punishment. This qualitative descriptive study aims to explain the power relations of children who face the law in the application of diversion. Qualitative research using a phenomenological approach in the Special Region of Yogyakarta with the selection of informants by purposive sampling. Data collection techniques with in-depth interviews. The validity of the data by triangulating sources and methods, then analyzed using an interactive model. The results showed that the power relation of children in conflict with the law and family occurred in the diversion process, there was a balanced and mutually reinforcing relationship, because the family tried to run the diversion process so that the child was spared from imprisonment. The power relation of children in conflict with the law and schools occurs because the mandate of the school as an educational institution has a duty to educate children, and children must obey what has been set at school. The power relationship between children who are in conflict with the police has an unbalanced relationship because the police have the duty to take action against children who violate the law, even though the police must also commit to carry out the diversion process for children who are in conflict with the law. Likewise, the child's relationship with the law and the prosecutor's office, in this case the judge, is because the judge decides the sentence for this deviant act, and the child must comply with what has been determined. The power relation of children who are faced with the law with peers occurs in a balanced relationship, because there is solidarity between the child and his friend so that there are actions that are helping each other. The power relation of children in conflict with the law and social workers occurs in a balanced relationship because social workers seek diversion to avoid imprisonment and social workers become the main performance indicators if they can accompany the diversion process even up to the decision process. Likewise, the child's relationship with child protection agency assistants and with Bapas.

KEYWORDS: Power relations, Children in conflict with the law, Diversion

INTRODUCTION

Children in Conflict with the Law or commonly referred to as ABH are always considered trash and useless in the eyes of the community. The community always rejects the existence of ABH and leaves it to the state, namely law enforcement officials to handle ABH. It was as if imprisoned the ABH problem would be resolved. KPAI data shows that from January to August 2010 out of 1,100 public complaints, 11% of them were complaints about ABH, namely 130 complaints (Material for the KPAI

hearing with Commission VIII DPR RI, 22 September 2010). This means that ABH is considered a matter of concern to the community, therefore they are reported as a form of complaint because of the public's discomfort with ABH's existence.

Restorative justice views that criminal behavior involving children as perpetrators is behavior that is detrimental to the victim and community members. The response of the restorative model to child crime is directed at repairing or compensating the victim and healing community wounds. The policy for handling children in conflict with the law with a restorative model is not positive. Its main objectives are repair of losses suffered by victims, recognition of the perpetrators for losses caused by their actions, and conciliation and reconciliation between victims, perpetrators and members of the community. This model also emphasizes the restoration of social welfare through ways of exposing criminals to the form of responsibility for their actions. Victims are also given the opportunity to participate in the handling process.

Crime cases involving children as perpetrators and victims seem to continue to increase. In the Special Region of Yogyakarta, based on data from the Indonesian Child Protection Commission (KPAI), it was recorded that in the 2011-2016 period, children dealing with the law experienced a significant increase. If parsed further, there are 146 children who are currently dealing with the law, this data does not include children who have committed criminal crimes. Then, 23 children became victims of physical violence and 28 children became victims of physical violence.

When restorative justice is considered as a middle way to save ABH's future, building community participation is one of the important things to do considering that a series of laws and conventions and regulations that protect children are still unable to minimize children from imprisonment. Community participation in handling ABH is a form of our seriousness in applying restorative justice policies and to provide maximum protection for children in Indonesia.

Handling children in conflict with the law is not only through a juridical approach where the aspects of children's rights also need to be considered. The social structure of the community where children are also influential in influencing children's development and development education, even in the millennial era and increasingly advanced globalization, technological sophistication cannot be filtered because content deemed inappropriate for consumption by children is growing. From this background, the formulation of the problem of this research is how the power relation of children in conflict with the law in the application of diversion in special regions. Yogyakarta. The purpose of this study was to analyze the power relation of children in conflict with the law in the application of diversion in Yogyakarta Special Region.

MATERIALS AND METHODS

In this study, researchers conducted research with a phenomenological approach with a constructivist paradigm. The constructivist paradigm views social science as a systematic analysis of socially

meaningful action through direct and detailed observation of social actors in normal or natural daily life, in order to be able to understand and interpret how the social actors concerned create and maintain or manage their social world. Phenomenology not only allows researchers to see from the perspective of participants; it also offers a kind of way to understand the framework that each individual has developed, over time, to shape their responses to events and experiences in their life. With phenomenology we can study the forms of experience from the point of view of the person who experienced it directly, as if we had experienced it ourselves. This study examines the power relations of children who are faced with the law in the application of diversion, with phenomenology not only classifying every conscious action taken, but also including prediction of future actions, seen from the aspects related to it.

This research was conducted in the Special Region of Yogyakarta. The reason for choosing this location is related to the increasing number of crimes committed by children. One of the popular actions today is the “klithih” behavior performed by children who are still in high school (SMA). In this study, the criteria for informants that are used as a reference are subjects who have been involved in a criminal act and have conducted trials and verdicts and subjects who have sufficient time to be asked for information. The sampling technique is theoretical sampling because this technique allows selecting informants according to information needs and representation of parties who are considered to know information about the theme or research focus, namely Saktipeksos, ABH, the manager of the Child Protection Agency (LPA), the Head of PPA Sleman Yogyakarta Police, judges, ABH's family, ABH's peers, and teachers. Collecting data by in-depth interviews with informants who have previously taken care of permits to be able to meet and interview informants, for data completeness a literature study is carried out to obtain reading sources that can strengthen information in accordance with the research problem. The analysis technique uses the Miles and Huberman model with the steps of data collection, data reduction, data presentation and conclusion drawing.

RESULTS AND DISCUSSION

In Yogyakarta, criminal cases committed by children, which are currently on an increasing trend, are klithih. Many newspapers, news portals, and websites that raise klithih cases in Yogyakarta generally become headline news. Klithih actions that are exposed are not only limited to persecution. But also in the form of vandalism, beatings, vandalism of public facilities, alcohol, brawl and even murder. Supposedly, the klithih action occurs because the perpetrator does not know what to do. Going out the night aimlessly and then wasting time doing something against the law.

Table 1: Types of Crimes Committed by Klithih Perpetrators in Yogyakarta City in 2018
No Type of Crime Total

1 Persecution	16
2 Vandalism	1
3 Beatings	8

4 Destruction 2

5 Liquor 1

6 Brawl 2

7 Sjam 10

The number 40

Source: Yogyakarta Police 2018

It is clear that there were 40 cases of klithih in Yogyakarta City in 2018 with cases of maltreatment being so dominant compared to other cases. Followed by Sharp Weapons (sharp weapons) with 10 cases, then beatings with 8 cases. These dominant cases are the clithe acts described above. How klithih is not just about mistreating the victim. But it also includes conventional crimes which tend to be categorized as typical juvenile delinquency and are usually committed by teenagers because they do not know what activities will be carried out and are aimless (Nglithih)

Based on the records of the Indonesian Child Protection Commission (KPAI), from 2011 to 2017, complaints related to the cases of Children with the Law (ABH) have always been in the highest rank, both children as perpetrators and as victims. The number of complaints is never even below 1000 cases each year.

Power Relationship Forms

1. Power Relationship Between Parents and Children

Understanding a child is unique, a unique meaning in such a sense that a child who is stubborn or naughty is not necessarily negative in nature, on the contrary, sometimes a child who is quite stubborn has a higher degree of resilience in facing stressful situations in this case it is called resilience. Likewise, children who are difficult to manage are not necessarily negative in nature, because they may actually have certain abilities because they do not get good direction, their development becomes less well organized so that it seems difficult to manage. Besides, each individual has their own specificity, it is impossible for a child to be equated with another child, different children from one another are natural.

Expectations of parents that their children are better than other children, in order to have certain advantages compared to peers, and to be able to accept and process the information given to then carry them out properly are reasonable expectations. Every parent has the ideal hope that their offspring will grow and develop into a good human being, of good quality, knowledgeable, good character and moral. But this ideal hope may have to be achieved through a fairly long process. Children in their infancy may not be able to immediately live up to their parents' expectations. Meanwhile, parents hope that their children will fulfill their expectations as soon as possible. Since childhood, children are expected to be able to fulfill their parents' orders. In front of other family members, they are often asked to show their skills. They are asked to sing, dance, say certain words, show certain mimics and even read

rhymes. Once they do these things, family members applaud and the child is praised, and the parents feel proud.

There are times when children are not willing to carry out parental orders to carry out "stage actions" in front of their friends. Then often what parents say is "Ah how come you are so shy, usually you can, now how come you are stupid, try that look at your smarter brother, he wants to sing not like you because you are stupid", accustomed to hearing words like This, the child is not really ashamed, it just happens that he doesn't do that. Maybe it is during these periods that the child's ego starts to grow and develop, begins to want to have a self-identity, to show power over himself and always disobey others. But in the midst of this growth and ego development process, parents began to bear in mind words such as shame, stupid and a number of negative labels, this happened because parents had high hopes to show their children's abilities in front of many people who had to face different realities. The child is not incapable but unwilling. There is disappointment in the heart, there is internal shame because the orders are not obeyed, and the tone of fear is judged negatively by relatives as if they have failed to educate the child to be an obedient child.

2. Relationship between Children and Teachers at School

The relation of teacher discourse to juvenile delinquency is when students do not participate in the teaching and learning process during school hours in class. In this case, the power relationship between the teacher and the child is imbalanced, where the child is in a weak relationship from the teacher. Because the teacher is in an educational institution whose job is to educate students with predetermined rules, so that students / children must comply with these applicable rules. In addition, Mrs. Dyah also revealed the factors that cause juvenile delinquency. Like it or not, children / students must obey the rules set in school, so that the power relationship between children and schools is not balanced, children are required at school to follow the teaching and learning process, have good achievements and have good behavior. Teachers' knowledge about the educational process is expected not only at school, but at home there also needs education from their parents, because after returning from school, teachers and homeroom teachers cannot observe children's behavior, the ones who can observe are the parents at home.

The power relation between children / students and schools should receive attention and efforts to overcome it from the school. This is because schools are formal educational institutions that are deliberately designed to carry out education, where their function is to prepare their students as knowledgeable, skilled and characterized individuals, citizens of society, citizens of the world, and citizens of the world. Such schools are expected to be able to carry out educational functions optimally, namely shaping students into complete personalities based on high morals and character. Prevention that is usually done is to provide direction and advice and guidance, verbal warning if they violate the rules, followed by procedural actions according to the rules. Minimizing the gap for children to leave school during school hours, providing programs so that children can spend their full ability academically / non-academically, such as performing arts activities (pensi).

The teacher's knowledge about solving the child's / student's delinquency is to gently reprimand and be invited to communicate to solve the problem, but if this does not change the behavior of the student / child, the school calls the parent so that the parent knows what the child / student has done. The relationship between teacher and child in this case is not balanced, children must obey what has been done by the school and parents must also be cooperative, because parents also play a role in educating children.

Sanctions from schools to children / students are an unbalanced relationship because children must obey the rules set by the school, if they cannot comply, the punishment will be obtained by the child / student. Schools make rules that have been socialized to children and parents so that the socialization of these rules must be obeyed. Some students who commit violating acts by the school are called to provide an explanation regarding what has been done by the child, if deviant behavior is done during school hours then it is resolved internally, whereas if it is done outside the school environment it will be coordinated with the parties involved obliged to solve the problem so that there is a deterrent effect from the child / student.

3. Power relations between children and law enforcement officials

Article 1 number 2 Law No. 23 of 2002 concerning Child Protection determines that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity, and receive protection from violence and discrimination. Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating, and empowering children who have experienced child abused, exploitation and neglect, in order to ensure the child's survival and growth and development properly, physically, mentally and social.

Diversion, is the granting of authority to law enforcement officials to take policy actions in handling or resolving problems of child violations by not taking formal steps, including stopping or not continuing to the criminal justice process or returning to the community and other forms of social service activities.

The diversion application is actually to provide guarantees of protection for children who are faced with the law in juvenile justice in Indonesia, by applying it in every stage of the examination. Diversion application and Restorative justice approach are intended to avoid children from the criminal justice process so as to avoid stigmatization of children who are in conflict with the law. And it is hoped that children can return to the social environment naturally.

The assignment of diversion by the child special investigator was granted because it met the requirements and did not contradict statutory regulations and also contained the consideration that the development of the suspect's child was carried out in the house where the parent lived at the request of the parent. And guaranteed by the local Village Head. In the consideration of the diversion, it was

also stated that the diversion was carried out. Because the child defendant has only committed a criminal act only once, this consideration is the rule that diversion does not apply if the suspect's child repeats the act by the Head of the District Court who grants the petition for the special investigator for the child in the diversion. As for the results of the concentration of diversion as outlined in the letter. A statement that, a child, was suspected of committing a crime.

It states there the articles that the child convict has violated. The document also contains information related to the fact that the child is returned to the parent with supervision carried out by the relevant agency. Guidance for the suspect is carried out at the house where his parents live at the request of his parents. The parents' request is guaranteed by the local Village Head, the guarantor is known by the related agency. In the document, information is also obtained that the diversion was carried out because it was the first time the suspect had committed the crime. It is also stated in the document that the diversion does not apply if the person concerned repeats the act. In addition to the documents referred to above, before a diversion determination is made at the investigation level, there is also a diversion report. Similar to the above letter, the report on the diversion is also included in the letter with the letterhead of the Indonesian National Police, followed by a statement saying Pro Justitia.

In investigations against children in conflict with the law carried out

by the Child Investigator, which is determined based on the Decree of the Head of the Indonesian Police or an official appointed by him. Therefore, the General Investigator cannot carry out investigations on criminal acts committed by children, except in certain cases, such as there is no Child Investigator in that place.

Based on Law Number 11 of 2012 concerning the Criminal Justice System for Children, investigations conducted by investigators on children's cases have requirements that must be met, namely:

- a. Has experience as an investigator
- b. Have interest, attention, dedication and understand children's problems
- c. Has attended technical training on juvenile justice.

In the event that there is no child investigator who meets the requirements as referred to in Article 26 paragraph (3), the task of investigation is carried out by the investigator who carries out the task of investigating criminal acts carried out by adults. Investigation of children in conflict with the law is pursued in a family atmosphere, and for that investigators are also required to ask for advice or advice from the Community Advisor after the criminal act is reported or complained in accordance with Law No. 11 of 2012. Examined in a family atmosphere, means that when examining a child suspect, the investigator does not wear uniform / official clothing, and makes an effective, active, and sympathetic approach.

In implementing the Diversion function of the criminal investigation investigator in the Women and Children Protection unit of the Sleman Yogyakarta Police, this is one of the functions in the police that

handles children in conflict with the law (ABH), both the process of investigation, investigation to arrest and detention is one of the investigators' duties and functions. In the application of the juvenile criminal justice system, it has been strictly regulated that investigators in handling children who are in conflict with the law the investigator handling child crimes are obliged to seek diversion by using the concept of Restorative Justice, namely the settlement of criminal cases by means of kinship between the perpetrator and the victim and the victim's family. To carry out an investigation into a juvenile case, the investigator is obliged to ask for consideration or advice from the Community Advisor after the criminal act is reported or complained.

4. Relationship between Child Power and Child Protection Institutions and Social Workers

Handling child cases by social worker restorative justice places great emphasis on mediation to resolve cases. Based on the information above, it can be stated that the policy of the orphanage in the implementation of restorative justice basically consists of two major parts, namely efforts to resolve cases and reintegration of ABH. Therefore, the role of social workers in the implementation of restorative justice in this study will be described in two parts according to the orphanage policy, namely the role of social workers in case resolution and ABH reintegration. To see a description of this role, this study will take two examples of cases where ABH perpetrators were still undergoing a guidance program at PSBR Sleman. One of the cases is a case that has been resolved by a restorative justice mechanism, namely a case that has not been handled by law enforcement officials, and a case that is still being processed by law enforcement officials, but is being attempted by social workers to be resolved by a restorative justice mechanism.

5. Power Relationship between Children and Bapas

The role of the Balai Pemsayarakatan (Bapas) in cases involving children as perpetrators of sexual harassment, Mrs. Laily said that in giving the verdict for the child case the judge was based on Law Number 11 of 2012 concerning the Juvenile Justice System. In addition, the judge is also obliged to consider the social research report from the Community Advisor before making a decision on a case and if the research report is not considered in the Judge's decision, the decision is null and void, it is stated in article 60 paragraph (3), namely the judge is obliged to consider the social research report from Bapas before passing a decision on the case and paragraph (4) which states that in the event that the social research report is not considered, the verdict is null and void. Everything was done not only for cases of sexual harassment but also for other cases.

Judges are obliged to consider Bapas' social research reports because they are related to determining the sanctions to be imposed on children who are in conflict with the law. Judges have the choice, among others, to impose criminal sanctions or take action. The choice of sanctions that can be imposed on children is to make decisions the best for the child. Sociologically, a child who is confronted by the law cannot be declared completely wrong because he has not realized the consequences of his actions and has not been able to choose which actions are good and which actions are not good for him or for others.

Criminal offenses committed by children are the failure of the socialization process and the weakness of social control for children. So, the judge's decision in a child's case must consider the real situation of the child or the social reality of the child, not only from one aspect. Children are entitled to protection from inhuman sentences and arrest, detention or punishment can only be taken as a last resort.

It is appropriate for children who are in conflict with the law not to be sentenced to punishment, if the child is sentenced to punishment, the other rights of the child which are guaranteed by the law and the child's growth will be disturbed. In addition, it is also known that the best place for education or fostering children is their family. If the family is unable to educate children, there are many alternative family substitutes that can be assigned the task of guiding children, such as their extended family relatives. Mrs. Laily said that in making the decision the judge had to consider several parties. The first party is the research report from the Correctional Center, then from the victim's side, then the parents of the perpetrator's child guardian, legal counsel, the perpetrator's own child and also from the public prosecutor. So, the judge in making a decision does not only consider from one side but the judge must be able to see several considerations then make a decision which he feels is the best decision for the child as the perpetrator and the victim.

ANALYSIS

In the context of this research regarding the power relations of children who are faced with the law in the application of diversion of knowledge about children who are faced with various laws, especially in the handling process, the teacher assesses that children who are faced with the law need involvement from parents in educating and supervising children, while parental knowledge regarding Children who are faced with the law are failing schools in providing education to children, so that is absolutely the responsibility of the school. Parents fully entrust the school to educate their children so that some parents choose schools with full study hours so that their children are more educated.

Knowledge is different when viewed from the police or the judge, the police's knowledge about children who are in conflict with the law because the environmental influence is very dominant in changing the child's behavior. The environment here is intended as a friend outside of school and outside the home, because the behavior of children who are faced with the law is found to be violating when they are in an environment other than at school or at home. The environmental influence that is community in nature is very influential on the behavior of children in conflict with the law. Judges' knowledge about children dealing with the law is due to the failure of parents to educate children, judges' knowledge of children facing the law is assessed because parents lack supervision and communication of children. Because fully when the child is out of school it is fully the responsibility of the parents. It is different from the knowledge of social workers and child companions that children who are faced with the law are children who are looking for their own identity, meaning that these children want to show their friends that children who are in conflict with the law have a brave concept in themselves. So that the concept of looking for self-identity really depends on who the child is

hanging out with and where the child is hanging out, especially his peers. For peers, the knowledge of children dealing with the law is an attitude that is considered high in solidarity with their friends, because what the child does is solely to help his friends both from an economic and social perspective.

Children who are faced with the law behave not in accordance with written or unwritten rules, written rules are produced by government institutions such as schools, police, and prosecutors, while unwritten rules are produced by non-formal environments such as the community through an agreed consensus. The discourse of written regulations such as laws and government regulations represents the presence of the state to regulate children's behavior. And the discourse of written rules is a source of knowledge that can subdue children in conflict with the law because it is absolute and absolute, because the discourse of thought related to case settlement with diversion and kinship needs certain conditions and consensus from various stakeholders is needed.

CONCLUSION

The power relation of the child in conflict with the law and the family occurs in a diversion process where a balanced and mutually reinforcing relationship occurs, because the family tries to run the diversion process so that the child is spared from imprisonment.

The power relation of children in conflict with the law and schools occurs because the mandate of the school as an educational institution has a duty to educate children, and children must obey what has been set at school.

The power relationship between children who are in conflict with the police has an unbalanced relationship because the police have the duty to take action against children who violate the law, even though the police must also commit to carry out the diversion process for children who are in conflict with the law. Likewise, the child's relationship with the law and the prosecutor's office, in this case the judge, is because the judge decides the punishment for this deviant act, and the child must comply with what has been determined.

The power relation of children who are faced with the law with peers occurs in a balanced relationship, because there is solidarity between the child and his friend so that there are actions that are helping each other.

The power relation of children in conflict with the law and social workers occurs in a balanced relationship because social workers seek diversion to avoid imprisonment and social workers become the main performance indicators if they can accompany the diversion process even up to the decision process. Likewise, the child's relationship with child protection agency assistants and with Bapas.

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