



Position of community advisor in the application of law

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Abstract

This study aims to find out and explain the implementation of the implementation of the Qanun Jinayat for children who are in conflict with the law in Aceh, involving community supervisors, to find out and explain the basis for the involvement of community supervisors and to find out and explain the position of community advisors in the application of Qanun Jinayat to children in conflict with the law. in Aceh. To answer and explain the research formulation above, the method used in this research is normative juridical research, which is library research, namely through library data collection. Article 66 of the Jinayat Qanun, there are indeed rules as a bridge for community mentors to carry out mentoring for children. If the examination carried out on the child is not accompanied by the Community Counselor, it can be null and void by law. When considering the law as it is written and cannot be translated further, it can be concluded that the role of community advisors is only limited to assisting during the examination. So it needs further explanation whether it is permissible to carry out a role that has no rules. Or what are the consequences when carrying out duties outside the roles ordered by the legislation. So based on this provision, the position of the Community Counselor is as a companion in the case of children in conflict with the law facing the criminal justice process. In this case, it is recommended to the Aceh Government to make a clear provision regarding the involvement of Community Counselors in providing assistance to children in conflict with the law, so that justice, benefit and certainty are achieved.

Keywords: criminal justice system, community advisor

Introduction

Children as part of the younger generation are the successors of the ideals of the nation's struggle and human resources for national development in the context of realizing quality Indonesian human resources who are able to lead and see the unity and integrity of the nation in the unitary State of the Republic of Indonesia based on Pancasila and the Law. 1945 Constitution of the Republic of Indonesia (Maidin Gulton, 2006) ^[7].

Children are inseparable and inseparable both in the family and in the community. It is also the children who will continue the baton for the progress of development, because the development of children can determine and ensure the continuity of the existence of the nation and state. Children are part of society, they have the same rights as other communities and must be protected and respected. Every country in any part of the world has an obligation to give full attention to and protect children's rights, including civil, economic, social and cultural rights. However, from a legal perspective, it seems that the status and rights of children have not received attention from the government, law enforcement officers, and all levels of society, and are still far from what they should be given. This situation is also complicated by the inadequate application of laws related to children's rights by law enforcement officials themselves.

In Indonesia, the regulation which basically respects and pays attention to children's rights is the ratification of the Convention on the Rights of the Child (CRC) through Presidential Decree no. 36 of 1990. Other laws and regulations enforced by the Indonesian government include: Law Number 39 of 1999 concerning Human Rights, Law Number 3 of 1997 concerning Juvenile Courts, Law Number 23 of 2002 concerning Child Protection and Law No. -Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The definition of a child according to Article 1 point 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is someone who is not yet 18 (eighteen) years old and is even still in the womb. A criminal act is an act that is prohibited by a rule of law, and is threatened with sanctions. Criminal acts have spread to children. It is not only children who are victims of criminal acts, the most concerning now is that when children themselves are perpetrators of criminal acts.² Adult criminal behavior cannot be equated with the behavior of children or adolescents. The juridical classification of child crimes can be determined from the formation of the concept of child crime. Juvenile delinquency or often referred to by foreign terms Juvenile Delinquency, Juvenile means young, children, young people, characteristics of youth, while Delinquency means evil, anti-social, criminal, violator of rules, usurper, terror can not be repaired anymore, durjana, dursila, and others (Wigiati Sutedjo, 2008) ^[19].

The Criminal Code (KUHP) emphasizes that a person can be held accountable for his actions because of the self-awareness of the person concerned and he has also understood that the act is prohibited under applicable law. Child criminal behavior is a manifestation of adolescent puberty, without any intention to harm others, as

implied in criminal behavior listed in the Criminal Code (KUHP), the perpetrator must be aware of the consequences of his behavior and the perpetrator must be able to act for him responsibly. In responding to various behaviors and behaviors of children as perpetrators of criminal acts, various characteristics and characteristics of children must be considered.

Children who commit criminal acts or commonly referred to as children in conflict with the law. Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. Then Article 1 point 4 of the same Law explains that a child in conflict with the law, hereinafter referred to as a Child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.

The birth of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as stated in Article 1 Point 13, namely Community Counselors are law enforcement functional officials who carry out community research, guidance, supervision, and assistance to children inside and outside the criminal justice process. The law involves community advisors specifically in terms of protecting the rights of children in conflict with the law.

Aceh is one of the provinces that received special autonomy. The Indonesian government grants special autonomy to the province of Aceh, which includes all government authorities, except for powers in foreign relations, defence, against external disturbances, and monetary. In the formation of the province of Aceh as a special region experienced various kinds of problems and a long struggle. The privileges possessed by Aceh include the implementation of religious life, customs, education, and the role of ulama in determining regional policies (Abu Bakar Al Yasa, 2007) ^[1].

In the qanun jinayah which regulates various acts of prohibition against adults as well as against children. However, in Aceh Qanun No. 7 of 2013 concerning the Jinayat Procedural Law has not fully involved the Community Advisor in the application of the law to children. It can be seen that there is no mention of a Community counselor. So that this is very contrary to the Act on Juvenile Justice Sessions involving Community Counselors starting from the pre-trial stage until the law is carried out by the child. Whereas in the Qanun the law of jinayat procedure is only in trial as in Article 222 point 6 of the Jinayat event Qanun, namely the provisions regarding juvenile trials are guided by the laws and regulations regarding juvenile courts. In Article 66 of the Jinayat Law Qanun, there are indeed rules as a bridge for community mentors to provide assistance to children. If the examination carried out on the child is not accompanied by the Community Counselor, it can be null and void by law. When considering the law as it is written and cannot be translated further, it can be concluded that the role of community advisors is only limited to assisting during the examination. So it needs further explanation whether it is permissible to carry out a role that has no rules. Or what are the consequences when carrying out duties outside the roles ordered by the legislation. So many questions arise in looking at this issue.

However, the involvement of other law enforcement parties is quite clear, starting from the Syar'iyah Court, the Supreme Court of the Republic of Indonesia, the National Police, the Wilayatul Hisbah Police, Civil Servant Investigating Officers and Prosecutors. However, in the application of the qanun jinayat law currently involved Community Counselors who do not have a sufficient legal basis.

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Thus, there is a need for a research to answer the position of Community supervisor in the implementation of Qanun Jinayat in Aceh. Based on a literature search conducted within the Legal Science Doctoral Study Program, the research entitled "The Position of Community Guidance in the Application of Law to Children Who Do Fingering In Aceh. "Judging from the Qanun on Jinayah Procedures and the Juvenile Criminal Justice System Act" has never been done. Thus, this research is original as long as the title and the problems described above, and in terms of the material of this research, the author can be responsible for its authenticity.

Based on the description of the background above, the problems in this research are as follows: (1) Does the implementation of the implementation of the Qanun Jinayat against children in conflict with the law in Aceh involve Community Counselors? Qanun Jinayat against children in conflict with the law in Aceh? And (3) What is the Position of Community Guidance in the Application of Qanun Jinayat towards children who are in conflict with the law in Aceh?

Material and Methods

To answer and explain the research formulation above, the method used in this research is normative juridical research, which is library research, namely through library data collection (Suteki, 2018). The normative approach is very relevant to analyze the applicable laws and regulations in analyzing the Position of Community Guidance in the Application of Law to Children Who Do Fingering in Aceh.

Results and Discussion

1. Implementation of the Qanun Jinayat for Children in Conflict with the Law in Aceh Involves Community Counselors

Law No. 11 of 2006 concerning the Government of Aceh was established by the Indonesian government and the Indonesian House of Representatives as a special legislative framework granted by the state to certain regions based on the provisions of Article 18 B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In addition, the Law on the Government of Aceh was established as a follow-up to the Aceh Peace Agreement (MoU Helsinki). Therefore, the Law on the Government of Aceh should also be a reflection of the Aceh peace agreement made between the Government of Indonesia. Based on this special status, Aceh is given special powers regulated in the Aceh Government Law, one of which is the application of Islamic Shari'a values to the local community which is regulated by Qanun. The position of Qanun in the Indonesian legal system is at the same level as the regional regulations governing the administration and life of the Acehnese people. Although the Aceh Government has the right to regulate its regions autonomously and specifically based on the Aceh Governance Law, it should be remembered that this authority is not absolute. There are corridors of national law and humanitarian values, including international treaties in the field of human rights that have been ratified by the State of Indonesia, which are limitations on the implementation of the Aceh government's authority.

Based on this special authority, the Aceh Government and the Aceh DPR have issued Aceh Qanun No. 6 of 2014 concerning Jinayah Law (Qanun Jinayah). Implementation of Aceh Qanun No. 6 of 2014, especially in the execution of child perpetrators, faced several obstacles. Whereas in qanun number 6 of 2014 article 66 regulates if a child who has not reached the age of 18 (eighteen) years commits or is suspected of committing Jarimah, then the child will be examined based on the laws and regulations regarding juvenile criminal justice which is based on article 26 paragraph (3) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing recovery. the original state and not retaliation Article 67 paragraph (2) of Qanun number 6 of 2014 concerning Jinayah law states that procedures for implementing uqubat against children that are not regulated in the legislation regarding the juvenile justice system are regulated in the Governor's Regulation this is very clearly very difficult. the decision on the Qanun case which carried out by a child will be executed, problems that will arise are the legal basis for how the execution of a child will be carried out and the caning punishment known in the Aceh Qanun is contrary to the spirit contained in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, namely restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state and not retaliation. and the juvenile justice system is implemented based on the principles of protection, justice, non-discrimination, the best interests of the child, respect for the opinion of the child, survival and development of the child, the development and guidance of the child, proportionally, deprivation of liberty and punishment as a last resort and the avoidance of retaliation as well as in Law No. 11 of 2012 does not recognize the type of caning. Law No. 11 of 2012 only recognizes 2 types of crime, namely the main crime and additional punishment, namely:

- a. Criminal warning
- b. Criminal conditions with the following conditions: coaching outside the institution, community service and or supervision.
- c. Work training
- d. Institutional Coaching
- e. Prison.

The obstacle that occurs at this time is that there are still parties involved in handling Qanun cases in Aceh Province that do not yet have certification regarding children, making it very difficult to take action and handle and resolve qanun cases involving children as perpetrators. On 27 September 2014, the Aceh Government has ratified Aceh Qanun Number 6 of 2014 concerning Jinayah (hereinafter referred to as Jinayah Qanun) which will take effect on 23 October 2015 meaning that after the ratification of this Qanun, socialization will be carried out for approximately 1 year. Prior to the implementation of the Qanun, the Islamic Shari'a Service itself had carried out socialization beforehand. It is hoped that the people of Aceh will be aware of the Qanun Jinayah. And when it has been implemented, a fictitious principle of law will apply, namely the principle which states that everyone is considered to already know a regulation that has been recorded in the State Gazette so that there is no reason for someone to break free from a rule. with a statement not knowing the existence of the rule. Ignorance of the Qanun cannot be used as an excuse to free oneself. This Qanun is ratified first, if there are problems in its implementation, this Qanun will be revised again and will involve many parties in its refinement. In its implementation, things that must be considered are whether this Qanun Jinayah can meet the basic needs of the Acehnese people, and whether this Qanun is able to reach the perpetrators or at least minimize the actions that are prohibited in it. Speaking of kaffah enforcement, this Qanun should provide the means to support its implementation and Empirically, it can be seen that there are several aspects that have been facilitated, but have not covered all aspects that are specifically for children as perpetrators of criminal acts. One of the rules that are not regulated in this Qanun is the execution of child perpetrators. In this Wanun the execution of children is

further regulated in the Governor's Regulation as the implementing rule. However, until now the Aceh Government has not issued the Governor's regulation (Munandar, 2017).

2. What is the basis for the involvement of community advisors in the application of the Qanun Jinayat against children in conflict with the law in Aceh

With the Law. No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which focuses on Restorative Justice and Diversion which emphasizes 'recovery' rather than 'revenge' such as the application of adult criminal law. The making of this law is expected to change the stigma of society that views children as 'criminals', making the public aware that children are still in a period of self-development and therefore they are not yet fully accountable for their behavior. Teaching from parents and the surrounding environment has a big role in shaping the behavior of the child (Meilanny Budiarty & Rudi S. Darwis, 2018). Article 1 paragraph 3 explains that Children in Conflict with the Law (ABH) are children aged 12 (twelve) years, but not yet 18 (eighteen) years old who are suspected of committing a crime. In other words, the age of 12 years is the threshold for children to be responsible for their actions, although not in full like adults. Children who are under 12 years old cannot be subject to a crime, but can only be given action in accordance with article 21 paragraph 1.

In terms of handling ABH cases, of course, it is also different from handling adult cases. This requires the participation of APH, the community, as well as related institutions such as advocates, Correctional Centers (BAPAS), Professional Social Workers (Peksos), Social Workers (TKS), and Non-Governmental Organizations (NGOs). APH consists of the levels of the police, prosecutors, courts, and prisons. Then the NGOs involved are NGOs working in the field of children, such as the National Commission for Child Protection (Komnas PA), the Indonesian Child Protection Commission (KPAI), the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), and so on. In this regard, in accordance with the Law. No. 11 of 2012, the Community Counselor (PK) is required to play a bigger role in handling ABH. As regulated by Law no. 11 of 2012 concerning the Juvenile Justice System paragraph 24, PK Community Guidance carries out the duties and functions of LITMAS, guidance, supervision, and assistance. Based on data from the ABH situation mapping report and the SOP for handling ABH cases carried out by the National Child Protection Commission (Komnas PA), the Community Counselor applies an approach model for three stages:

1. Investigation phase in the Police: PK attempts to mediate by involving the family, the victim, and the local community;
2. Juvenile trial stage: PK accompanies the child during the court process and coordinates with LBH;
3. The investigation stage and after the judge's decision: PK coordinates with social institutions.

After the decision is made that AKH gets Action and/or Criminal, related parties will monitor and assist AKH until the third step, namely Reintegration. They ensure that AKH can be reintegrated into society as before. Related to this, the Community Counselors make efforts to improve the quality of Community Counselors in accordance with the provisions of Law no. 11 of 2012. Efforts have been made, among others, by providing technical guidance, training and including PKing into the Community Guidance Training and Education. In addition, synergies and coordination with other Law Enforcement Institutions are also carried out in order to increase the insight and knowledge of Community Counselors. Article 66 of the Jinayat Qanun, there are indeed rules as a bridge for community mentors to carry out mentoring for children. If the examination carried out on the child is not accompanied by the Community Counselor, it can be null and void by law. When considering the law as it is written and cannot be translated further, it can be concluded that the role of community advisors is only limited to assisting during the examination. So it needs further explanation whether it is permissible to carry out a role that has no rules. Or what are the consequences when carrying out duties outside the roles ordered by the legislation.

3. The Position of Community Guidance in the Application of Qanun Jinayat Against Children in Conflict with the Law in Aceh.

In the qanun jinayah which regulates various acts of prohibition against adults as well as against children. However, in Aceh Qanun No. 7 of 2013 concerning the Jinayat Procedural Law has not fully involved the Community Advisor in the application of the law to children. It can be seen that there is no mention of a Community counselor. So that this is very contrary to the Act on Juvenile Justice Sessions involving Community Counselors starting from the pre-trial stage until the law is carried out by the child. Whereas in the Qanun the law of jinayat procedure is only in trial as in Article 222 point 6 of the Jinayat event Qanun, namely the provisions regarding juvenile trials are guided by the laws and regulations regarding juvenile courts.

The Community Counselor has the task of being a Companion and Guidance for Children in Conflict with the Law both inside and outside the judicial process in undergoing every examination of criminal cases. This study aims to determine the activities of Mentoring and Guidance by Community Counselors for Children in Conflict with the Law who become Child Clients.

The form of Community Counseling activities in terms of assisting Children in Conflict with the Law is Assistance at the level of Investigation, Prosecution and examination in the District Court. The form of assistance at the investigation level is to provide suggestions and recommendations to investigators by compiling a Community Research Report (Litmas). Government Regulation Number 31 of 1999 concerning Guidance and Guidance of Correctional Inmates, Article 1 point 3 stipulates that: Community Research, hereinafter referred to

as Litmas, is a research activity to find out the background of the lives of Correctional Inmates. Litmas contains the Client's life history from birth to committing a crime, chronology of the case, the consequences and then analysis to produce conclusions and recommendations for the Client. Litmas also contains complete information regarding the condition of the Client, Family/Guardian and the environment around the Client's residence. Litmas preparation is done by interviewing clients, families, communities and local government, victims by taking into account social conditions and the surrounding environment.

The form of assistance from the Community Advisor in the Prosecution stage at the Prosecutor's Office is also related to the Litmas that has been prepared. Litmas must be considered when the Prosecutor prepares an indictment to delegate the case to the court. The Community Counselor again brings his recommendation for Children in Conflict with the Law to the Prosecutor who will prepare an indictment. The form of assistance in the examination stage at the District Court is that the Community Counselor accompanies Children in Conflict with the Law in undergoing examinations at the District Court, the Litmas that has been compiled is used to provide advice and recommendations to the Judge in making decisions, the Judge is obliged to pay attention to the suggestions and recommendations of the Community Counseling Litmas in making decisions. The resource person also revealed that the Community Counselor was given the opportunity to speak adding suggestions or suggestions for Children in Conflict with the Law at the District Court examination. The suggestions or suggestions given certainly have the best goals for the child.

Forms of Assistance if the case goes through the Diversion process, the Community Counselor accompanies Children in Conflict with the Law to go through the Diversion process, providing advice and recommendations in reaching a Diversion agreement. The Community Counselor also strives for the Child Perpetrators to remain responsible and aware of the actions that have been taken without any intimidation or torture to either party. The form of supervision here is to oversee the implementation of the Diversion agreement, if there are parties who violate the Community Counselor will report to the Head of the District Court. The Diversion Agreement will be revoked and the case transferred to the trial process at the District Court. The form of Guidance from the Community Counselor for Children in Conflict with the Law is when the Child has implemented the decision or if there is a Diversion then when the Diversion agreement has been implemented. The most common form of Guidance is the Counseling activity, which is a means by which the Community Counselor for Children in Conflict with the Law submits complaints, complaints or personal developments. Counseling also invites families or guardians, the community and local government. Community Counselors receive complaints, complaints or reports on the development of Children in Conflict with the Law who are their Clients, including reports on other Guidance programs, with examples such as Job Training. The Community Counselor also conducts counseling with the owner of the place where Children in Conflict with the Law carry out Job Training. The next form of Guidance is conducting activity programs for Children in Conflict with the Law, which can be in the form of Job Training, taking courses or training, involving Children in activities in the community, worship programs, and others. This program was formed through prior discussions with children, families and related parties, while still paying attention to Litmas.

Conclusion

To improve the function of Community Counselors and the role of Community Counselors, further efforts can be made, among others, by adding Community Counselors so that cases of children in conflict with the law are not neglected. This must also be accompanied by maintaining the intensity of regular communication between the Advisor and the ABH in carrying out the proper service process. In addition, there is a need for services provided to parents of children in conflict with the law so that parents are also able to help children in conflict with the law return to the community.

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