

**Effectiveness of Correctional Institution (Bapas) Guidance Towards the
Fulfillment of Children's Rights as Murder Perpetrators (Decision Number
19/Pid.Sus-Anak/2022/Pn Dps)**

AAA Ngurah Tini Rusmini Gorda, Dewi Novita Lestari, I Gede Agus Kurniawan
Fakultas Hukum, Universitas Pendidikan Nasional, Indonesia
Email : tinirusmini@undiknas.ac.id

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Abstract

Children need special attention and protection to support optimal physical, mental, and social growth and development. In the legal context, handling children involved in criminal acts, including murder, requires a different approach from adult perpetrators. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) regulates special treatment for children in conflict with the law, with the Correctional Center (Bapas) as a strategic institution in protecting children's rights. This study aims to analyze the effectiveness of the Bapas' role in assisting children who have committed the crime of murder, especially in the case of Decision Number 19/Pid.Sus-Anak/2022/PN Dps. The research method used is an empirical design through interviews with judges at the Denpasar District Court, Bapas Class I Denpasar officers, and informants at the Karangasem Class II Juvenile Correctional Institution. The results of the study indicate that Bapas plays a strategic role in providing legal assistance, community research (litmas), and mediation that prioritizes restorative justice-based resolution. This role aims to ensure that children's rights are protected and children are treated fairly without discrimination, in accordance with Article 1 Paragraph (8), Article 3, and Article 64 of the SPPA Law. The effectiveness of assistance is determined by the professionalism of officers, policy support, and synergy with families and communities. This study emphasizes the importance of an approach based on the principle of the best interests of children in ensuring the fulfillment of children's rights during the legal process, while supporting their rehabilitation and social reintegration.

A. INTRODUCTION

Children are a gift from Almighty God bestowed on every parent, symbolizing the value and completeness of humanity. Children are members of the younger generation who will continue the previous generation and have unique roles and characteristics. Children need direction and protection so that they can grow and develop holistically, physically, mentally and socially, which is very important for the future of the nation and state. The definition of a child as stated in Article 1 paragraph (2) of Law Number 4 of 1979 concerning Child Welfare is "A child is a person who has not reached 21 (twenty one) years of age and has never been married." ¹The definition of a child is also stated in Article 1 number 2 of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection (hereinafter abbreviated as UUPA) which states that "Child Protection is all activities to guarantee 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." Basically, children who are in the process of maturing have a very high curiosity and want to try new things or what is usually called searching for their identity. Children also have very sensitive feelings towards something that criticizes or other things because children are still in an unstable stage and their emotions are not yet stable so that they can influence them to act beyond the control or rules that apply in society. The factor of children's involvement in criminal acts is usually caused by technological developments, which are currently developing so rapidly that among children and among adults, even toddlers, of course, can have a bad influence on behavior and social life, so that criminal acts cannot be avoided.²

According to Lamintang, every criminal act in the Criminal Code can generally be described into 2 (two) types of elements, namely subjective elements and objective elements. ³Subjective factors are factors related to the perpetrator and include anything in the perpetrator's mind. Objective factors are situational factors, namely the situation in which the perpetrator's actions must be carried out. Crimes can cause harm or suffering to others, including victims of the crime. These losses and suffering can be in the form of material losses, physical suffering, and mental suffering. Criminal acts are not only committed by adults but children can also commit crimes due to behavioral deviations committed by teenagers. Like one example of a crime committed by a child is the crime of murder. The crime of murder is not only committed by adults, but children can also be

¹Bilher Hutahaean, 'Implementation of Criminal Sanctions for Child Criminals', *JurnalYudisial*, 6.1 (2013), 64–79. p. 67

²Satino Sulastri et al., 'Legal Protection for Children Who Commit Crimes Through Diversion Based on the Juvenile Criminal Justice System', *Jurnal Esensi Hukum*, 2.1 (2020). Pp. 2-3

³Nasution et al., SI, Nando, RAC, Criminal Policy of Own Richting Masses (Jakarta: Media Pustaka, 2024). Page 30

involved in this crime. The crime of murder is regulated in the Criminal Code Book hereinafter referred to as the Criminal Code, CHAPTER XIX concerning crimes against life, which is stated in Article 388, which means a crime against life, namely "causing the death of another person."⁴

Through the principle of *lex specialis derogat legi generalis*, juvenile criminal law justifies other laws outside the Criminal Code that relate to juvenile issues, such as the legal provisions regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.⁵ Other laws that have been made by the Indonesian government to support the guarantee of children's rights include Law Number 4 of 1979 concerning Child Welfare, Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and various other regulations that regulate matters related to children. Based on these regulations, it is clear that the state generally pays great attention and protection to children's rights. Unfortunately, when we look at what happens in the field, law enforcement is often faced with very complex problems. Based on one example of a case based on Decision Number 19/Pid.Sus-Anak/2022/Pn Dps against a police officer with the initials FNS who was stabbed in the neck because the victim felt that when he met with witness Luh KDS who was booked by the victim did not match the photo in the application (*michat*), and the victim wanted to cancel the order but witness Luh KDS did not accept it and ended in an argument. At the time of the argument, a friend of the witness, namely the perpetrator with the initials F and A, came out of one of the rooms and joined in the argument until the victim FNS was stabbed which resulted in death. Therefore, the Judge tried the Child with a prison sentence of 4 (four) years in the Class II Karangasem Children's Penitentiary (LPKA). Regarding handling cases of children in conflict with the law, the Correctional Institution (BAPAS) has an important role in the juvenile justice process in order to protect the rights of children involved in the criminal justice system.⁶

In this case, children may legally act the same as adults, either intentionally or unintentionally, but of course it is not the same in terms of the treatment given to children who commit bad acts with adults who commit bad acts. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, hereinafter referred to as UUSPPA in Article 27 paragraph (1) states that "In conducting investigations into juvenile cases, Investigators are required to ask for consideration or advice from Community Guidance (PK) after the crime

⁴Sударsono, *Juvenile Delinquency*, 2nd printing (Jakarta: PT. Rineka Cipta, 1991). p. 32

⁵ Edward Omar Sharif Hiariej, 'The Principle of Lex Specialis Systematis and Criminal Tax Law', *De Jure Journal of Legal Research*, 21.1 (2021), 1 <<https://doi.org/10.30641/dejure.2021.v21.1-12>>. Pg. 12

⁶ Andik Prasetyo, 'Legal Protection for Children of Criminal Acts', *Journal of Legal Studies*, 9.1 (2020), 51–60. p. 55

is reported or complained about".⁷ In this case, UUSPPA recognizes the Correctional Center, hereinafter referred to as BAPAS. In this case, UUSPPA gives a very large role to BAPAS in handling children in conflict with the law. Therefore, BAPAS has the authority to provide guidance to inmates and correctional students, as in Article 1 number 3. BAPAS has the task of providing community assistance and guidance in accordance with applicable laws and regulations. ⁸Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the main objective of the Correctional Institution is to facilitate the work of investigators, public prosecutors, and judges in juvenile delinquency cases, both inside and outside the juvenile court, by compiling reports on community findings. The task of guiding, accompanying, and supervising juvenile offenders who are sentenced to probation, conditional release, or fines by the state must include vocational training determined by the judge and children who are given probation.⁹ Therefore, the socio-economic, psychological and other backgrounds prioritize the application of the *Best Interest of the Child Principle* in correctional institutions, the environment and the situation in which guidance is carried out need to be considered so that in implementing guidance there are no obstacles.¹⁰

Thus, guidance and training must be able to change the way students think, not as an influence of the situation, but rather managing the situation so that the training material can be absorbed properly, so that community officials must know the needs, character, level of maturity, emotions, logic of each individual child along with the principle of *the Best Interest of the Child* in implementing guidance for students in the field of correctional institutions. In Government Regulation Number 31 of 1999 concerning Guidance and Guidance of Correctional Institution Residents, it is stated that the implementation of guidance for correctional institution students is carried out by the Correctional Institution Supervisor as regulated in Article 15 paragraph 1 and the facilities and infrastructure needed are provided as regulated in Article 16. Based on the background that the researcher has explained above, the researcher wants to know the effectiveness of BAPAS Assistance in handling cases of child criminal acts and fulfilling Children's Rights while in the Special Correctional Institution for Children (LPKA), whether it is in accordance with

⁷ Okky Chahyo and others, 'The Role of Correctional Institutions in the Juvenile Criminal Justice System Reviewed in a Human Rights Perspective', *Jurnal HAM*, 8.2 (2017), 24–35 pp. 161

⁸ Agata Ascourlina Mourin and Hery Firmansyah, 'The Role of Class 1 West Jakarta Correctional Institution (Bapas) in Implementing Out-of-Institutional Guidance for Children in Conflict with the Law (Abh)', *Adigama Law Journal*, 2.1 (2019), 148 pp. 148

⁹ Ali Muhammad Promono, *Community Research on the Best Interests of Children in Conflict with the Law*, ed. by Reza Indragiri Amriel, printed by pe (Yogyakarta: CV. Ainun Media, 2021). Pg. 13

¹⁰ Agus Darwanta, 'Implementation of the Best Principles for Children (*The Best Interest of The Child*) in Fulfilling Children's Rights in Special Child Development Institutions', *Jurnal Reformasi Hukum*, XXIV.1 (2020), 60–76. Pg. 60

the law that has regulated BAPAS assistance in accompanying children in conflict with the law with the reality that occurs in the field. So the author is interested in conducting a study entitled "Effectiveness of Correctional Center Assistance (BAPAS) on Fulfilling Children's Rights as Murder Perpetrators (Decision Number 19 / Pid.Sus-Anak / 2022 / Pn Dps)" with the formulation of the problem What is the Role of the Correctional Center (BAPAS) in Protecting Children as Perpetrators of Murder in the Judicial Process? and How Effective is Correctional Center Assistance (BAPAS) on Fulfilling Children's Rights as Perpetrators? The study uses the theory of legal protection and the theory of legal effectiveness and the principles of guidance and mentoring for children which aims for the general purpose of this study, namely to obtain and provide insight and information related to the effectiveness of the Correctional Center (BAPAS) assistance in fulfilling the rights of children as perpetrators of murder and as a requirement to obtain a Masters of Law degree and the Special Objective is to understand and analyze the Role of BAPAS in assisting perpetrators in the judicial process. And to understand and analyze the effectiveness of BAPAS assistance in fulfilling children's rights as perpetrators.

RESEARCH METHODS

This study was conducted at the Denpasar District Court, at the Denpasar Class I Correctional Center (BAPAS) and at the Karangasem Class II Special Child Development Institution (LPKA) with the aim of testing the effectiveness of Correctional Center Assistance (BAPAS) in guaranteeing the rights of child murder perpetrators, as stated in Decision Number 19/Pid. Sus-Anak/2022/Pn Dps. This study uses an empirical research design, in this study using a qualitative research approach with the Author conducting interviews with related parties, especially law enforcement officers, namely judges at the Denpasar District Court and related informants at the Class I Denpasar Correctional Center (BAPAS) and the Class II Special Children's Correctional Institution (LPKA) in Karangasem. This study uses descriptive research in order to dig up in-depth information about the object being studied. The author specifically focuses on examining the law as actual behavior *that* is not formally documented but experienced by individuals in society. Empirical legal studies, also known as social legal research or field research, investigate actual legal practices and events in society. By completing this thesis, you will gain relevant knowledge through observations of the function of law and testing its efficacy in managing social affairs and its role in society. This thesis seeks to examine the effectiveness of support provided by the Correctional Center (BAPAS) in enforcing the rights of child perpetrators of murder, based on the analysis of Decision number 19 / Pid.sus-Anak / 2022 / Pn Dps relating to judges' decisions on cases involving child murder. Therefore, it is necessary to conduct direct research in the field, especially at the Denpasar District Court, the Class I Denpasar Correctional Center (BAPAS) and the Class II Special Children's Correctional Institution in Karangasem.

The research methodology used in this study involves the use of case study strategies (*the*

case approach) and factual analysis approaches (*the fact approach*) to investigate the research problems. The author uses empirical research methods, especially the case and factual approaches, to obtain accurate data from the District Court Office, Class I Denpasar Correctional Center (BAPAS) and Class II Juvenile Correctional Institution in Karangasem. The type of data used is Primary Data which refers to information collected directly from the source, such as field data or individual responses. The main data source consists of data collected either directly from the source or from the field, using interview techniques with stakeholders or related respondents. This data will provide the necessary information related to the problem being investigated. Field investigations will be conducted at the Denpasar District Court, Class I Denpasar Correctional Center (BAPAS) and Class II Special Children's Correctional Institution in Karangasem. Secondary Data consisting of Primary Legal Materials, namely Primary legal documents are legal materials that have authority and are considered authoritative and the main legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections, Government Regulation Number 31 of 1999 concerning Guidance and Guidance of Correctional Inmates and Court Decision Number 19 / Pid.Sus-Anak / 2023 / PN Dps.

Secondary legal materials, namely additional legal sources used in this study were obtained from scientific journals, books, research results in the form of publications related to the author's investigation into the application of criminal penalties against minors who commit deadly physical violence. This study was conducted at the Denpasar District Court. Data Collection Techniques namely Data collection procedures refer to specific approaches used to collect and obtain information or facts needed for a study. This study includes two different data collection methodologies, specifically Interview Techniques. Literature Study Technique, namely the data collection technique on secondary data is carried out by conducting a comprehensive literature review to collect supporting research data. This includes collecting data from previous research, laws and regulations, journals, books, and other relevant documents related to the research topic. This literature-based data collection technique seeks to provide research materials and assistance in overcoming specific problems that will be discussed in more depth in this study. Data and information obtained through the library research method are then analyzed and integrated with data obtained from field interviews to produce research findings. Documentation Technique, namely the documentary/documentation technique is one example of a data collection technique used in this research method because a large number of facts and social data are stored in materials in the form of documentation. The form of documentation is divided into 2 (two), namely personal documents and official documents. The researcher used an official document, namely a copy of the decision in case Number 19/Pid.Sus-Anak/2022/Pn Dps obtained from the Denpasar District Court to be used as analysis material.

Data Analysis Technique After the data obtained from all interviews and other data sources

are collected, they will be analyzed using qualitative descriptive data analysis techniques. Qualitative descriptive data analysis techniques are evaluation studies that aim to assess the extent to which the variables to be studied have been studied in accordance with predetermined benchmarks, namely by providing an explanation of the picture and explaining the research object based on existing facts which will later be tested with data validity in this case the validity of data in quantitative research and adjusted to the demands of knowledge, criteria, and paradigms themselves. Data validity is the degree of trust or truth of the results of a study. Here the author uses a source triangulation technique where source triangulation to test the credibility of data is carried out by checking data that has been obtained from various data sources such as interview results, archives, or other documents regarding the effectiveness of BAPAS assistance and the fulfillment of children's rights for perpetrators of murder in Denpasar District. Denpasar District Court, Class I Denpasar Correctional Center (BAPAS) and Class II Children's Correctional Institution in Karangasem. The data obtained will be analyzed using a qualitative system, namely describing and illustrating the data with facts obtained through field research in accordance with what actually happened.

B. DISCUSSION

The Role of the Correctional Institution (BAPAS) in Protecting Children as Perpetrators of Murder in the Judicial Process.

Regarding cases of children, children who commit crimes are referred to as children in conflict with the law (ABH), this is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 paragraph (3) which states "Children in Conflict with the Law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing crimes". In this case, it is appropriate for the government and law enforcement officers to pay special attention to children in obtaining guidance and mentoring for children in order to make children into stronger and more qualified individuals without eliminating the rights they should receive. The role of the Correctional Center (BAPAS) in this case has an obligation to provide assistance, supervision and guidance to Children in Conflict with the Law (ABH) because Children who are still under 18 (eighteen) years old are considered not legally competent in the trial process. Children have the right to receive protection and assistance in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 23 paragraph (1) which states "At every level of examination, Children must be given legal assistance and accompanied by a Community Guidance or other companion in accordance with the Provisions of Laws and Regulations." In this case, the author has conducted interviews at 3 (three) different institutions, namely, the

Correctional Center (BAPAS), Denpasar District Court and the Special Correctional Institution for Children (LPKA) and each of the institutions emphasized that legal protection carried out by each institution must prioritize the principle of the best interests of children by paying attention to how to provide assistance, guidance and guidance to children in conflict with the law, hereinafter referred to as ABH, from the beginning when the ABH was arrested until the trial process carried out in court.

According to Mrs. Putu Yogi Hithawati SH, MH as the Head of Child Client Guidance, she stated that regarding the handling of child cases, she strictly adheres to the principle of the best interests of the child and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Likewise, in line with what was said by Mr. AA Made Aripathi Nawaksara SH, MH as a Judge at the Denpasar District Court, he also highly prioritizes the principle of the best interests of the child and prioritizes the Rights of ABH such as when at the Denpasar District Court, facilities are provided that make ABH feel comfortable and not intimidated, namely prison cells are separated from adult cells, during trials the trial is carried out closed to the public, and during the trial process law enforcers are required not to use attributes or licenses related to their respective agencies so that children do not feel intimidated and traumatized by the course of the trial process until they are sentenced to prison in LPKA.¹¹ When the child is in LPKA, the child will undergo a coaching process carried out by the LPKA. According to Mr. I Wayan Nova Puspa Adi as Head of Coaching at LKPA Class II Karangasem, he stated that when the child arrives at LPKA after the Judge's Decision, the child will immediately be registered beforehand which will be carried out by LITMAS with the aim of obtaining a coaching program that will be given to the child. ¹²Furthermore, the child will be given activities according to their respective expertise and children who are still in school are required to follow the package C program implemented by the Government. Because their right to education must still be fulfilled, and if there is a child who has a high risk such as endangering themselves and/or others, the child will be separated and will be given treatment such as health and psychological services. According to Satjipto Rahardjo, legal protection is the granting of Human Rights authority to a person to guarantee his/her interests. Legal protection for children aims to safeguard the basic rights, freedoms, and welfare interests of children. Legal protection given to children covers various fields.

The state's obligation to protect its citizens, including children, is stated in the opening of the 1945 Constitution of the Republic of Indonesia, namely in Paragraph IV

¹¹ Results of the interview with Mr. AA Made Aripathi Nawaksara SH, MH as Judge at the Denpasar District Court on December 6, 2024

¹² Interview results with Mr. I Wayan Nova Puspa Adi as Head of Development at LKPA Class II Karangasem on November 25, 2024

CHAPTER XA which focuses on Human Rights. Based on Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia specifically regulates child protection, namely "every child has the right to survival, growth and development, and has the right to protection from violence and discrimination". The Juvenile Justice System is used as a guideline for law enforcers to make a wise decision regarding whether the imposition of criminal sanctions on children is the right decision for the best interests of the child or vice versa. While criminal punishment is the result of a violation of the law in the form of a crime. Criminal punishment for children is generally different ¹³from the punishment for adults. Criminal punishment for children prioritizes the best interests of the child. The threat of criminal punishment for children is 1/2 (one half) of the threat of criminal punishment for adults except for crimes that are threatened with the death penalty or life imprisonment, then the punishment imposed is a maximum imprisonment of 10 (ten) years. In this case, in Decision Number 19 / Pid.Sus-Anak / 2022 / PN DPS, the demands given by the Prosecutor are 5 (five) years and the Decision given by the Judge is 4 (four) years. This is one example of the difference in the treatment of children by prioritizing the Best Interests for Children. Basically, children who are in the process of maturing have a very high curiosity and want to try new things or what is usually called searching for their identity. Cases where children who often lack attention, affection, guidance and direction in the development, coordination, supervision of attitudes and behavior by parents, guardians, and those responsible for the child in everyday life fall into a negative social environment and that is bad for the child's growth and development.

One example of a case against a police officer with the initials FNS who was stabbed in the neck because the victim felt that when he met the witness Ni Luh KDS who was booked by the victim did not match the photo in the application (*michat*), and the victim wanted to cancel the order but the witness Luh KDS did not accept it and ended up in an argument. At the time of the argument, a friend of the witness, namely the perpetrator with the initials F and A, came out of one of the rooms and joined in the argument until the victim FNS was stabbed which resulted in death. So the judge sentenced the child to prison in Decision Number 19 / Pid.Sus-Anak / 2022 / PN DPS was sentenced to 4 (four) years in the Special Child Development Institution in Karangasem. In general, the role of BAPAS in the judicial process for children in conflict with the law is divided into 3 stages, namely the stage before the court hearing (pre-adjudication) namely investigation, the stage during the court hearing (adjudication) namely assistance in court and the stage after the court (post-adjudication) namely, supervision and guidance for children in conflict with the law.

¹³ Dwi Florence, ' *Reconstruction of Legal Protection Regulations for Perpetrators of Criminal Acts of Violence Against Children Based on Justice Values* ' (Sultan Agung Islamic University, 2023). Page 94

Stages before the court hearing (Pre-Adjudication). In the adjudication process, the Correctional Center through the Community Guidance Officer conducts Community Research which contains information about the child's social spiritual background to the child's educational history and behavior. Stages in the court (Adjudication) The Community Guidance Officer is also tasked with facilitating, mediating and accompanying children at the Juvenile Court Hearing, to monitoring and evaluating based on Articles 55, 56, 57 and 58. At this stage the court is the place where the trial process takes place, while the authority to hold the trial itself lies in the hands of the judicial institution. Stages after the trial process (Post Adjudication). In the post/post adjudication process, the Community Guidance Officer conducts community research to determine the prisoner guidance program inside and outside the Prison in the form of Litmas guidance in, Assimilation, and Integration), Conducting *Assessments* that the Community Guidance Officer as *an Assessor*, Supervising and guiding Correctional clients by collaborating with BAPAS with the Police and the Prosecutor's Office and Providing assistance, guidance, supervision in the context of further guidance.

Children who are proven to have committed a crime will be placed in a Special Child Development Institution (LPKA). Imprisonment for children is only used as a last resort to guide children who are in conflict with the law. According to Article 6 paragraph (1) of Law Number 12 of 1995 concerning Corrections, it states that "Guidance of Correctional Inmates is carried out in LAPAS and guidance of Correctional Inmates is carried out by BAPAS." Based on Article 23 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, one of the parties required to accompany children in conflict with the law at every level in the judicial process is the Correctional Center (BAPAS), whose duties and functions include conducting community research, counseling, and support for state children, providing recommendations for conditional release of prisoners, and correctional students. ¹⁴Then Article paragraph (3) states "Guidance by BAPAS is carried out for Conditional Convicts; Prisoners, Criminal Children and State Children who receive conditional release or leave before being released; State Children whose guidance is handed over to foster parents or social agencies based on a court decision; State Children whose guidance is handed over to foster parents or social agencies based on a Decree of the Minister or an official within the Directorate General of Corrections who is appointed; and Children whose guidance is returned to their parents or guardians based on a court decision.

Based on Article 21 paragraph (3) it states that "BAPAS is obliged to evaluate the implementation of the Education, Guidance and Mentoring program which can be

¹⁴Hernawanti, Nelis, "Supervision of Community Guidance Officers on Correctional Clients." *Journal of Learning Thought and Development*, 2(2), (2020). Pp. 16-23.

extended for a maximum of 6 (six) months." The role of Community Guidance in assisting Children in conflict with the Law is very large, in addition to providing a sense of security and comfort to the Child, it also provides motivation and information and is a place for the Child to express feelings that can be conveyed. Sometimes children in conflict with the law do not have the courage to convey the real incident, only obey what the questioner asks, or do not have the strength to defend themselves. Based on the formulation of the problem, the role of the Correctional Center (BAPAS) in Protecting Children as Perpetrators of Murder in the Process Judicial In line with Article 87 of Law Number 11 of 2012 concerning The Juvenile Criminal Justice System, namely child clients have the right to receive guidance, supervision and assistance, as well as fulfillment of other rights. BAPAS is also required to organize and conduct evaluations of the implementation guidance, supervision and assistance, as well as the fulfillment of other rights. Every Children are required to register and follow the guidance program in an orderly manner. held by BAPAS. Class II Denpasar Correctional Center (BAPAS) itself as one of the government agencies under the Ministry Law and Human Rights, which carries out the tasks and functions of social research, guidance, supervision, and assistance. To provide children with rights in the form of guidance, supervision and assistance, as well as the fulfillment of other rights in accordance with with the provisions of statutory regulations.

Effectiveness of Correctional Center Assistance (BAPAS) in Fulfilling Children's Rights as Offenders

In Indonesia, the Correctional Center, hereinafter referred to as BAPAS, is under the Ministry of Law and Human Rights. The Correctional Center (BAPAS) is one of the technical implementation units (UPT) under the Directorate General of Corrections through the local Regional Office of the Ministry of Law and Human Rights (KEMENKUMHAM) which has the task and function of implementing community guidance for Correctional Clients. Correctional Clients are also referred to as Correctional Center Clients (BAPAS) who are people who receive the Re-Integrity Program. BAPAS assistance is also regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, hereinafter referred to as the SPPA Law in Article 23 paragraph (1) which states firmly that "At every level of examination, Children must be given legal assistance and accompanied by a Community Guidance Officer or other assistant in accordance with the provisions of laws and regulations." In this case, the SPPA Law clearly states that ABH must be accompanied by BAPAS at every level of examination. Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 4 paragraph (1) states

firmly that "Children who are serving a sentence have the right to receive a reduction in their sentence, receive assimilation, receive leave to visit their family, receive conditional release, receive leave before release, receive conditional leave, receive other rights in accordance with the provisions of statutory regulations. Based on the results of interviews conducted at 3 (three) institutions, namely the Denpasar District Court, the Class I Denpasar Correctional Institution (BAPAS) and the Class II Karangasem LPKA, they have the same and harmonious opinion, namely that the assistance provided by BAPAS must be in accordance with Article 18 of the UUSPPA which states that "In handling cases involving children, child victims, and/or child witnesses, Community Counselors, Professional Social Workers and Social Welfare Workers, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers are required to pay attention to the best interests of the child and ensure that a family atmosphere is maintained."

This statement is supported by Mrs. Putu Yogi Hithawati, SH, MH as the Head of Child Client Guidance, she stated that in the case of a child, the BAPAS accompanies the child when the child is first arrested, and the police are required to make a letter of request for assistance to the ABH to the BAPAS agency. BAPAS will ask the Community Guidance Officer, hereinafter referred to as PK, to conduct research on the Community and the environment around the child. The function of PK is to explore the child, the school environment, the family environment, RT/RW, parents, and closest friends to later be given to the relevant parties such as the Police, the Prosecutor's Office and Court.¹⁵ The initial stage of the emergence of BAPAS to provide assistance when coming to the police to meet ABH / naughty children, PK will conduct an initial interview with ABH, and conduct interviews with the child's parents / guardians to find data and match data from the family, environment, and community. Based on Article 28 of Law Number 11 of 2012 concerning the Child Criminal Justice System which states that "The Results of Community Research must be submitted by BAPAS to the Investigator within a maximum of 3 x 24 (three times twenty-four) hours after the investigator's request is received." because when this Law was made the purpose was good, because this was in the best interests of the child, because if the process is long and no deadline is made for how long, law enforcement will slow down the research process and affect the child's psyche. But it is not possible to conduct a 3x24 hour study, the reason why it cannot reach 3x24 hours is the distance that affects LITMAS to be slow.

Changes in weather and nature also affect the slowness of LITMAS to conduct research; Willingness and ability of the guarantor or local government to conduct research; After conducting research, the research results will be tried first, the TPP hearing is a

¹⁵ Results of an interview with Mrs. Putu Yogi Hithawati, SH, MH as Head of Child Client Guidance on December 3, 2024.

hearing to determine the proposed remission, proposed integration and proposed development program, whether the Correctional Inmates (WBP) are worthy of being proposed or not, by considering the fulfillment of requirements both administratively and substantively; Furthermore, requesting approval from the parties involved during the TPP hearing; Furthermore, after the TPP hearing is successful, it will be entered into the application in BAPAS in the correspondence, stamp section; Furthermore, after leaving the general section, it will be sent to the police, the Prosecutor's Office and the Court. One example of a case based on Decision Number 19/Pid.Sus-Anak/2022/Pn Dps against a police officer with the initials FNS who was stabbed in the neck because the victim felt that when he met with witness Ni Luh KDS, what was ordered by the victim did not match the photo in the application (*michat*), and the victim wanted to cancel the order but witness Luh KDS did not accept it and ended in an argument. At the time of the argument, a friend of the witness, namely the perpetrator with the initials F and A, came out of one of the rooms and joined in the argument until the victim FNS was stabbed which resulted in death. So the judge sentenced the child to 4 (four) years in prison at the Karangasem LPKA.

The naughty child or Child in Conflict with the Law (ABH) received Conditional Release (PB) in June which is hereinafter referred to as a Correctional Client who must carry out Compulsory Reporting with the provision of mandatory reporting once a month. Based on the results of the interview with Mrs. Putu Yogi Hithawati SH, MH as the Head of Child Client Guidance, stated that in LPKA Children are referred to as Correctional Residents (WBP) after leaving LPKA they are referred to as Special Child Correctional Clients. BAPAS itself Correctional Clients have their own rights such as mandatory remissions which are given 2x a year, namely general remission and special remission, general remission is August 17, and special remission is a holiday according to the religion of each Child. The rights obtained by Correctional Clients in addition to general remission and special remission are Conditional Leave (CB), Conditional Release (PB), Leave Before Release (CMB), Leave to Visit Family (CMK) and BAPAS has the authority to recommend their Rights. In LPKA Children's Rights are also fulfilled in addition to the mandatory remissions given.¹⁶The Right to Education, the Right to Food Needs, Health Needs and the Channeling of the Child's talents according to the Child's interests. Based on the results of the interview with Mr. I Wayan Nova Puspa Adi as Head of Guidance, he stated that regarding the procedure for granting Conditional Release (PB), namely the LPKA correctional observation team recommends a proposal for granting PB for prisoners and juvenile prisoners to the Head of LPKA based on data on prisoners and juvenile prisoners who have met the requirements, the Head of LPKA approves the proposal for granting

¹⁶ Results of an interview with Mrs. Putu Yogi Hithawati SH, MH as Head of Child Client Guidance on December 3, 2024

Remission, the proposal for granting PB is submitted to the Head of the Regional Office based on the recommendation of the Correctional Observation Team of the regional office. The proposal is submitted to the Director General, the Director General on behalf of the Minister determines the granting of PB. Based on Soerjono Soekanto's opinion that the theory of legal effectiveness states that effectiveness refers to the extent to which a collective can achieve its goals. Effective law can be defined as a law that successfully influences or changes human behavior to be in line with legal standards, thereby achieving the intended goals. The effectiveness of a law depends on the optimal functioning of the forces that influence it. The effectiveness of a law or regulation is achieved if the community complies with the hopes or desires outlined by the regulation.¹⁷ Reviewing the theory of legal effectiveness from Soerjono Soekanto, he stated that there are 5 (five) important components in his theory for fulfilling the rights of children as perpetrators of murder in the 5 (five) components, namely: Reviewed From The Legal Factor Itself Related to the effectiveness of BAPAS in accompanying Children has been carried out in accordance with the provisions of the applicable Law. This is supported by a statement from Mrs. Putu Yogi Hithawati SH, MH as the Head of Special Child Guidance who said "BAPAS highly prioritizes the Best Interests for Children, and BAPAS is making every effort so that children can be diverted and if diversion cannot be done, then a work research stage will be carried out, and prison is the last solution."¹⁸ Based on the Child Criminal Justice System Law, Article 7 paragraph (2) states "Children who can be diverted if the threat of punishment is less than 7 (seven) years and is not a repeat of the crime."

Therefore, it can be concluded that children in conflict with the law still receive special protection and treatment that is different from adults, such as at every level of the judicial process such as at the Investigation Level, Investigation Level and Court Level, children are given special treatment, namely that children's detention cells are different from adult cells, must be accompanied by parents/guardians, legal counsel, correctional facilities, and LITMAS, during the trial process, the trial is carried out in a closed session and during the trial process, it is mandatory not to use the attributes of each agency so that children do not feel threatened and intimidated and law enforcers prioritize the best interests of children and the fulfillment of the rights of the child itself, for example, children in the decision receive a remission of conditional release and are required to report to BAPAS every 1 (one) month. The legal enforcement factors are based on the results of interviews conducted at 3 (three) agencies, namely:

¹⁷ Galih Orlando, 'Legal Effectiveness and Legal Function in Indonesia', *Religious Education and Science*, 6.1 (2022), 50–55. P. 55

¹⁸ Results of an interview with Mrs. Putu Yogi Hithawati SH, MH as Head of Special Child Development on December 3, 2024

Denpasar District Court, Class I Denpasar Correctional Center (BAPAS) and Class II Karangasem Special Child Development Institution (LPKA) can be concluded regarding law enforcement in Decision No. 19/Pid.Sus-Anak/2022/Pn Dps, it has been effective in fulfilling Children's Rights, namely in the judicial process special treatment given to Children by Law Enforcers such as during investigations at the police, police who handle children must have a special Certificate for children, when meeting with Children, police officers are required not to use police attributes and the place used is made in conditions so that Children feel comfortable and not intimidated regarding the ongoing investigation process.

At the investigation stage, children must be treated specially, just like at the investigation stage. Furthermore, at the trial stage, during the trial process, children must be treated specially, such as in a separate detention cell from adult prisoners. During the trial process, the trial is carried out in private and must be accompanied by parents/guardians, legal counsel, BAPAS/Social Services and LITMAS. If parents/guardians and/or BAPAS are not present, the trial process cannot be continued (postponed) and will be scheduled for the next trial, taking into account the child's detention period. During the trial process, law enforcement officers are required not to use their respective agency attributes so that children do not feel intimidated and traumatized by the conditions of the atmosphere during the trial process. Factors of Facilities and Infrastructure that Support Law Enforcement. Based on the results of interviews conducted at 3 (three) Agencies, namely the Denpasar District Court, the Denpasar Class I Correctional Center (BAPAS) and the Karangasem Class II Special Child Development Institution (LPKA), it can be concluded that regarding law enforcement in Decision No. 19/Pid.Sus-Anak/2022/Pn Dps, it is said to be ineffective because Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated in Article 28 which reads "The Results of Community Research must be submitted by BAPAS to Investigators within a maximum of 3 x 24 (three times twenty four) hours after the investigator's request is received." In this case, the Correctional Center (BAPAS) acknowledges that when conducting research, it often experiences difficulties due to several factors that hinder the correctional research process, such as distance factors, natural factors such as heavy rain and wind, landslides, floods, earthquakes and other natural events, factors of willingness and ability of guarantors or local governments, and factors of uncooperative communities.

In addition to the 4 (four) factors mentioned above, other factors that cause the research process to be hampered, such as Community Guidance Officers (PK) who are competent in the Juvenile Criminal Justice System, are still few who have a certificate in the Juvenile Criminal Justice System. This is also supported by the results of an interview conducted by Mrs. Putu Yogi Hithawati SH, MH as the Head of Special Guidance for

Children who said " Currently, there are only a few Community Guidance Officers (PK) who can handle Juvenile cases because they are still many do not yet have a certificate of the Juvenile Criminal Justice System. and also in this case PK often experiences obstacles because the Community in the Child's environment such as the family environment, the school environment sometimes still feels embarrassed and uncooperative when providing information, especially in some schools the school usually immediately expel the Child and keep information related to the Child tightly closed because some schools still prioritize the reputation of the school's good name so that it does not become bad ".¹⁹ Community Factors. Based on the results of interviews conducted at 3 (three) Agencies, namely the Denpasar District Court, the Denpasar Class I Correctional Center (BAPAS) and the Karangasem Class II Special Child Development Institution (LPKA), it can be concluded that regarding law enforcement in Decision No. 19/Pid.Sus-Anak/2022/Pn Dps, it is said to be ineffective because the Fulfillment of Children's Rights in BAPAS Assistance has not been maximized when conducting community research.

This is due to community factors themselves, some communities are not cooperative with the Community Guidance, such as delaying in providing information regarding Children, and the willingness and ability of guarantors or the local government. This causes delays in the LITMAS process to conduct research. Meanwhile, in the Child Criminal Justice System Law, Article 28 states that LITMAS only has a deadline of 3 x 24 hours after the investigator's request is received. Cultural Factors. Based on the results of interviews in 3 (three) institutions, namely the Denpasar District Court, the Denpasar Class I Correctional Center (BAPAS) and the Karangasem Class II Special Children's Correctional Institution, it can be concluded that from the 5 (five) factors, the effectiveness of the Community factor and the cultural factor is still ineffective, because this effectiveness depends on the professionalism of the community counselor, collaboration with related parties (courts, families, and communities), as well as adequate infrastructure and policy support. BAPAS is obliged to carry out the implementation and supervision as mentioned above, the Correctional Center is also given the obligation to evaluate the implementation of guidance, supervision, and assistance as well as the fulfillment of other rights to children to become a place to realize and provide special attention and guidance to child community inmates without eliminating the rights they must receive including education. All correctional inmates are essentially human beings and human resources who must be treated well and humanely in an integrated system without exception. For that reason, even though the children are in a Special Child Development Institution, detention center

¹⁹ Results of an interview with Mrs. Putu Yogi Hithawati SH, MH as Head of Special Child Development on December 3, 2024

or have become former inmates, their rights should not be ignored like children in general. In addition, the Correctional Center also builds cooperation with other agencies.

Therefore, it can be concluded, seen from Article 87 paragraph (1,2,3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 number 24 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Both from the government and the private sector to achieve the goals. In the guidance effort, many things are done by the Correctional Center such as counseling, psychotherapy, providing skills training, providing religious, moral and social education, conducting community research for trials and remissions. Restoring the social function referred to in this study is an activity to help heal, recover and restore the psychosocial condition of child criminals under the age of 18 as correctional inmates so that they can return to normal life in society. Because both children who are victims or perpetrators of crimes will definitely get a stamp or label as child criminals and it is not impossible that their bright future will turn into a gloomy future. Children's issues are one of the main issues that must be considered and thought about by the Indonesian nation in relation to the development of the next generation of the nation who are skilled and responsible. The psycho-social conditions that are expected include self-confidence, responsibility for the future of oneself, family and society and being able to carry out social functions in society. Child development and guidance must always prioritize the welfare of the child, encourage their overall growth and development, and respect the needs and perspectives of the individual from a scientific perspective. The presence of the state is very important in ensuring the survival and growth of children. The goal is to reform incarcerated individuals, encourage their holistic development, facilitate self-reflection, and encourage personal growth to prevent *recidivism* and facilitate their *reintegration* into society.²⁰

According to Article 35 of Government Regulation Number 31 of 1999 concerning Guidance and Guidance of Correctional Inmates, there are two groups of people under the guidance and supervision of BAPAS, namely juvenile clients and adult clients. Guidance provided by the Correctional Center to a child in conflict with the law must be oriented towards rehabilitation and social reintegration. Although each case is certainly different, here are some types of guidance that may be needed, namely psychological counseling, social skills programs, education and training, and social reintegration. The guidance provided by the correctional center to children in conflict with the law aims to help them improve their behavior, understand the consequences of their actions, and prepare them to return to society in a positive way. The following are some important types of guidance,

²⁰ Lefaan, VBB, & Suryana, Y. *Review of Legal Psychology in Child Protection* . (Deepublish: Yogyakarta, 2018)

namely religious guidance, educational guidance, physical and psychological guidance, skills guidance, and health guidance.

CONCLUSION

Based on the discussion above, it can be concluded regarding the effectiveness of the Correctional Center (BAPAS) assistance in fulfilling the rights of children as perpetrators of murder (decision number 19/Pid-Sus-Anak/2022/Pn Dps) as follows The Role of BAPAS in Protecting Children As Perpetrators has a role in protecting children, namely by ensuring that at every level of the law enforcement process children in conflict with the law receive assistance, guidance and continue to prioritize the best principles for children, such as respect for the dignity of children, restorative justice, and the best interests of children. Bapas' role includes providing legal assistance, assessing children's needs through community research (LITMAS), and mediation efforts that lead to a more humane resolution, such as diversion, if possible. Regarding the effectiveness of mentoring carried out by BAPAS, it was studied using the effectiveness theory of Soejono Soekanto, there are 5 (five) factors, namely the legal factor itself, the law enforcement factor, the means and facilities that support law enforcement, the community factor, and the cultural factor. Of the factors above, there are 2 (two) factors that are not yet effective, namely the community factor and the cultural factor, because from the community and culture there are several things that hinder the mentoring process, such as when conducting community research conducted by the Community Guidance (PK), sometimes the community is still uncooperative and seems to be covering up regarding children. and the current culture still adheres to a culture of indifference and self-interest, this is one of the obstacles that occurs when conducting mentoring and research conducted by BAPAS.

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