

# Optimizing the Role of Correctional Institution in Resolving Cases Through Diversion at the Class I Correctional Institution of Tangerang

Khusnus Sa'bani<sup>1\*</sup>, Eva Achjani Zulfa<sup>2</sup>  
<sup>1,2</sup>Master of Laws, Universitas Indonesia

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## ABSTRACT

The implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System depends heavily on the effective functioning of Correctional Institutions (BAPAS) in carrying out their duties as correctional technical implementing units. In the judicial process, BAPAS plays a crucial role in conducting research, providing guidance, supervision, and assistance to criminal children. However, the failure of BAPAS to fulfill its responsibilities could result in the failure to achieve the objectives of the law. This study aims to address the role of BAPAS in optimizing diversion efforts for the settlement of cases involving children facing the law, with a focus on the Class I Correctional Institution of Tangerang from 2019-2021. Specifically, the study investigates the extent to which BAPAS is successful in implementing diversion as a means of addressing cases involving juvenile offenders, and identifies the challenges that BAPAS faces in effectively carrying out its diversion duties. This study utilizes socio-legal research, specifically descriptive analytical research, to thoroughly describe and categorize the object of the subject matter. Primary and secondary legal materials, as well as qualitative analysis, are used to gather and analyze data. The study draws inductive conclusions from the data obtained to provide clarity in problem-solving. The findings of the study reveal that the role of BAPAS is significant in the success of diversion efforts to solve cases involving juvenile offenders. However, the study also identifies several challenges that hinder the effective implementation of diversion in the Class I Correctional Institution of Tangerang, as evidenced by the low number of cases that were effectively addressed through diversion compared to the total number of cases handled.

## ABSTRAK

Pelaksanaan Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak sangat bergantung pada efektifitas Balai Pemasyarakatan (BAPAS) dalam menjalankan tugasnya sebagai unit pelaksana teknis pemasyarakatan. Dalam proses peradilan, BAPAS memegang peranan penting dalam melakukan penelitian, pembimbingan, pengawasan, dan pendampingan terhadap anak pidana. Namun, kegagalan BAPAS dalam menjalankan tanggung jawabnya dapat mengakibatkan tidak tercapainya tujuan hukum. Penelitian ini bertujuan untuk melihat peran BAPAS dalam mengoptimalkan upaya diversifikasi untuk penyelesaian perkara anak yang berhadapan dengan hukum, dengan fokus pada Lembaga Pemasyarakatan Kelas I Tangerang tahun 2019-2021. Secara khusus, penelitian ini menyelidiki sejauh mana keberhasilan BAPAS dalam mengimplementasikan diversifikasi sebagai sarana untuk menangani kasus-kasus yang melibatkan pelaku anak, dan mengidentifikasi tantangan yang dihadapi BAPAS dalam menjalankan tugas diversifikasi secara efektif. Penelitian ini menggunakan penelitian sosio-legal, khususnya penelitian deskriptif analitis, untuk menggambarkan dan mengkategorikan objek yang menjadi pokok bahasan secara menyeluruh. Bahan hukum primer dan sekunder, serta analisis kualitatif, digunakan untuk mengumpulkan dan menganalisis data. Penelitian ini menarik kesimpulan secara induktif dari data yang diperoleh untuk memberikan kejelasan dalam pemecahan masalah. Temuan dari penelitian ini mengungkapkan bahwa peran BAPAS cukup signifikan dalam keberhasilan upaya diversifikasi dalam menyelesaikan kasus yang melibatkan anak. Namun demikian, studi ini juga mengidentifikasi beberapa tantangan yang menghambat efektivitas pelaksanaan diversifikasi di Lembaga Pemasyarakatan Kelas I Tangerang, yang terlihat dari rendahnya jumlah kasus yang berhasil diselesaikan melalui diversifikasi dibandingkan dengan jumlah kasus yang ditangani.

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**Corresponding Author:**

Khusnus Sa'bani,  
Master of Laws,  
Universitas Indonesia,  
Jl. Salemba Raya No. 4 Jakarta 10430,  
Email: Khusnus1995@gmail.com

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## I. INTRODUCTION

The Indonesian government has taken steps to safeguard the rights of children involved in legal proceedings by implementing Law 11 of 2012, which focuses on the Juvenile Criminal Justice System (Aji, 2019). The primary goal of this law is to ensure that the legal process does not hinder the development of children suspected of committing crimes, allowing them to grow and develop like any other child (Subroto, 2022). Furthermore, it aims to preserve the inherent rights of children in conflict with the law, particularly those suspected of committing criminal acts. By providing special treatment to children in this situation, the state demonstrates its commitment to nurturing a healthy and responsible generation that will carry on the country's legacy in the future. However, this does not imply that the misbehavior of children suspected of committing crimes is acceptable or should go unpunished.

The number of crimes perpetrated by children rises every year (Yuliartini, 2019), while there are various reasons for this, law enforcement officials are sometimes particularly concerned about young people who turn into criminals. Determining the best ways to prevent and handle children who are breaking the law requires prompt action. The juvenile justice system is one of the methods used today to stop and handle cases of children who are in legal trouble. As such, support is required, both in the form of institutions and legal tools that are more reliable and suitable for educating and protecting children. Accordingly, it is necessary to specifically implement provisions relating to the administration of justice for minors (Lubis & Siregar, 2021). In essence, the goal of prevention initiatives is to lessen the number of children who become victims of criminal actions as well as to prevent children from engaging in deviant behavior that takes the shape of criminal activity (Hutabarat et al., 2022).

Still, some parties believe that no penalty, not even an investigation, should be imposed out to a child who has been charged with or confirmed to have committed a crime. Prijambodo (2019) said that children did not deserve to be punished let alone put in jail. Children who go through the legal system and appear in court will be under emotional and psychological stress, which will impede the child's development. It should be understood that children who are caught breaking the law, especially those who are given criminal sentences, will experience stigmatization that will last their entire lives. This poses the most risk to the child's future, making it the most dangerous. If we pay attention to this perspective, it is quite acceptable. However, if we see it from the victim's point of view, it will obviously not be good. For instance, if the victim was killed or raped, the crime that was committed would be related to obtaining justice for the victim. However, the eradication of crimes is definitely justified for offenses that are still considered to be minor.

Due to this reason, restorative justice in the juvenile justice system is known as a legal mechanism for settling disputes by presenting victims, perpetrators, and the community to play a proactive part in finding the best solution to their problems (Zulfa, 2020). Restorative Justice is a way of thought that addresses how the criminal justice system has evolved by emphasizing the necessity of involving perpetrators, communities, and victims in the criminal justice process (Zulfa, 2009). In

accordance with the Juvenile Criminal Justice System Law, this is referred to as diversion, with the goal of diversion being for the juvenile offenders, crime victims, and the community to meet directly to find the best resolution in resolving cases.

The Juvenile Criminal Justice System Law regulates diversionary judgments, requiring that diversion be used at all levels of examination (investigation, prosecution, and trial) (Aji, 2019). The requirement to adopt diversion is outlined in Articles 5 and 7 of the Law on the Juvenile Criminal Justice System, which indicates that every conceivable loophole is being used to execute diversion. This is done to make sure that peace is maintained or that the best method for resolving conflicts is sought while dealing with children who are in legal trouble. The juvenile judicial system's diversion attempts heavily rely on correctional facilities, often known as Correctional Institution or BAPAS.

Articles 8 paragraph 1, Article 10 paragraph 1, and Article 11 paragraph (2) (3) of the Juvenile Criminal Justice System Law all mention the role of Correctional Institution (BAPAS) at the diversion stage. Using a restorative justice framework, the diversion process is carried out through discussions with juveniles and their parents or guardians, victims and/or their parents or guardians, community advisors, and licensed social workers. The investigator, the perpetrator and/or his family, Community Advisors (PK), and community leaders can work together to reach diversion agreements to resolve criminal acts that take the form of violations, misdemeanors, victimless crimes, or where the value of the victim's loss is not greater than the value of the local provincial minimum wage as referred to in Article 9 paragraph (2). Community Advisors of Correctional Institution which refers to PK BAPAS must offer support, direction, and monitoring throughout the Diversion procedure until the Diversion agreement is put into effect. PK BAPAS will instantly notify the responsible official if the Diversion agreement is not implemented within the specified period (Noor & Sukinta, 2016). These provisions make it apparent that BAPAS is crucial to each level of law enforcement; even in the decisive phase before the judge makes a decision, BAPAS will be asked to provide research findings that will be taken into account by the judge.

It is crucial to examine Correctional Institution (BAPAS) role in diversion initiatives in order to determine how successful those efforts have been and how many cases involving children and the legal system can be addressed through diversion. Since this is the case, the author investigate it in the Class I Correctional Institution of Tangerang area between 2019 and 2022 under the title "Optimizing The Role Of Correctional Institution In Resolving Cases Through Diversion At The Class I Correctional Institution of Tangerang"

Based on the description above, we can formulate the problem as follows: (a) What are the provisions for Diversion in Law 11 of 2012 concerning the juvenile criminal system? (b) What is the Correctional Institution (BAPAS) role in promoting diversion in the juvenile justice system? (c) How to optimize diversion efforts in Cases of Children in Conflict with the Law through Correctional Institutions at Class I Correctional Institutions in Tangerang in 2019-2022?

## II. RESEARCH METHODS

The type of research used in this study uses socio legal research. Socio-legal research is a combination of research in the social sciences, including political science, economics, culture, history, anthropology, communication and a number of other sciences, combined with research known in law, such as learning about principles, doctrine and hierarchy of legislation.

In this research, the specification used is descriptive analytical, which is a research that describes thoroughly and systematically the object of the subject matter. The research specification applied in this research is descriptive analytical. Descriptive is research that only describes the overall state of the object of research. Analytical means grouping activities, categorizing in accordance with the objectives of this study to answer problems in research (Soekanto, 2010).

The data used include: Primary data, namely data obtained directly from research subjects from the results of interviews and the delivery of a list of questions. Secondary Data, namely data obtained from library research in the form of legal materials consisting of: (Soekanto & Mamudji, 2003) (a) Primary legal materials, namely legal materials that are binding in nature consisting of: (1) Law No. 39 of 1999 on Human Right, Law No. 3 of 1997 on Juvenile Justice, Law No. 11 of 2012 on the Juvenile Justice System, Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection, Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System., Law No. 12 of 1995 on Corrections, Regulation of the Attorney General No. PER-006/A/JA/04/2015 on Guidelines for the Implementation of Diversion at the Prosecution Level. (a) Secondary Legal Materials, namely legal materials that provide guidance and explanation of primary legal materials, which consist of literature books, papers, articles, research results, and other scientific works related to this research. (b) Tertiary legal materials, namely legal materials that provide instructions and explanations for primary legal materials and secondary legal materials consisting of: General Indonesian Dictionary, Legal Dictionary, English - Indonesian Dictionary, Encyclopedia.

The data analysis technique used in this research is qualitative analysis, which is a research method that produces analytical descriptive data, meaning that the data obtained is arranged systematically and then analyzed qualitatively (Soekanto & Mamudji, 2003). The data obtained both from field studies and document studies are basically data that is analyzed descriptively qualitatively, namely after the data is collected then poured in the form of logical and systematic descriptions, then analyzed to obtain clarity of problem solving in this study (Sunggono, 2003). Then inductive conclusions are drawn, namely the process starting from secondary legal materials and data obtained from the field which then ends in a conclusion (Rahardjo, 1980).

### III. RESULTS AND DISCUSSION

#### **1. Diversion in the Juvenile Criminal Justice System in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System**

##### Definition of Diversion

Diversion is the practice of transferring the resolution of child cases from the criminal justice system to methods outside of the criminal justice system (Handayani, 2021). According to the United Nations Standard Minimum Rules For the Administration of Juvenile Justice, or also known as The Beijing Rules, define "diversion" as the power given to law enforcement officials to take arbitrary actions to address or resolve child offenses without engaging in formal activities, such as stopping or continuing the criminal justice process, releasing from it, returning the offender to the community, or engaging in other forms of release (Sarwadi & Bawono, 2021).

Diversion as the transformation of cases involving children suspected of committing specific crimes from the formal criminal process to an amicable resolution between the suspect/defendant/perpetrator of a crime and the victim facilitated by the family and/or community, police, prosecutor, or judge (Harahap et al., 2022). Levine (2021) further emphasizes that diversion is a practice used to keep perpetrators out of the formal criminal justice system and to offer them protection and rehabilitation in an effort to keep perpetrators from growing up to be criminals.

In addition, diversion is defined in Law No. 11 of 2012 governing the Juvenile Criminal Justice System as the transfer of child case resolution from the criminal justice process to mechanisms outside of the criminal justice system. Based on the definition of diversion provided above, we can deduce that diversion is an attempt to resolve criminal matters outside of the regular legal procedure. Simply put, it is an out-of-court settlement reached through a peace agreement between the parties. As such, not all cases of children in conflict with the law must be resolved through

formal justice channels. However, this can be overcome by providing an alternative for settlement with a restorative justice approach so that in resolving criminal cases children do not necessarily have to use the usual sentencing process.

According to Diah Ratna Sari Hariyanto and Gde Made Swardhana, the phenomenon shows that the results of the agreed diversion are often considered weak because they are different from criminal sanctions which are coercive in nature (Hariyanto & Swardhana, 2021). Historically, a milestone that has always been upheld in criminal law is the principle of legality so that criminal law enforcement is generally resolved through the judiciary (the principle of criminal law does not recognize peace), which means the legal process will continue even though peace has been reached between the parties. This has a crucial impact on law enforcers regarding the awareness to take the path of discretion which is still lacking given the habit of law enforcers repressively resolving cases through the judiciary. Peace that occurs between the parties who are victims and perpetrators in the penal system is only used as a judge's consideration that both parties have forgiven each other with a peace agreement.

Further, Fahmi Noor Adly also highlight the phenomenon of diversion in the process of the juvenile justice system, that the phenomenon of application of diversion in criminal acts committed by children shows weak protection for children so that it requires strengthening and improvement in various sectors (Adly, 2020). This remark implies that in order to effectively combat the crime phenomena, institutions and all systems must work together in order to obtain the best results. The possibility for the success of child protection in the criminal justice system is created by the discretion, therefore it must be implemented effectively and in line with the principles of restorative justice, which have been the goal ever since the concept of diversion was first considered. A particularly acceptable response to the problem of a surge in juvenile crime is the inclusion of diversion in the juvenile justice system. As such, the use of the criminal is only as a last resort, means that if no peaceful attempt can be pursued between the parties, the state must be present to carry out the mandate of the Act to process as it should be, but the process must be in place if the parties have agreed to peace.

As required by the Human Rights Law that we uphold, the creation of the Law on the Juvenile Criminal Justice System is a means of protecting all generations of the nation's children. The Government of Indonesia has issued a number of related laws and regulations, including Law Number 39 of 1999 concerning Human Rights, Law Number 3 of 1997 concerning Juvenile Justice, and Law Number 35 of 2014 concerning Child Protection, in an effort to provide protection for the interests and rights of children in conflict with the law. In order to address the issue of defending the rights of children who are in legal trouble, Law Number 39 of 1999's Article 66 lays out the following requirements: (a) Every child has the right not to be subjected to abuse, torture or inhumane punishment. (b) Death penalty or life sentence cannot be imposed for juvenile offenders. (c) Every child has the right not to be deprived of his freedom unlawfully. (d) Arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and can only be carried out as a last resort. (e) Every child deprived of liberty has the right to be treated humanely and with due regard to the needs for personal development according to his age and must be separated from adults, except for his own interests. (f) Every child who is deprived of his liberty has the right to receive legal assistance or other assistance effectively at every stage of the applicable legal remedies. (g) Every child who has been deprived of his liberty has the right to defend himself and obtain justice before the Juvenile Court which is objective and impartial in a session which is closed to the public. (g) Diversion Provisions in the Law on the Juvenile Criminal Justice System and Perma No. 4 of 2014 concerning Guidelines for Implementation of Diversion

Broadly speaking, the provisions regarding Diversion are regulated in the Law on the Juvenile Criminal Justice System No. 11 of 2012, then the implementation guidelines are regulated in Supreme Court Regulation (PERMA) No. 4 of 2014. In the provisions of these two legal bases,

diversion has very strict legal force. In fact, diversion at every stage of the legal process must be carried out. This means that in the stages of investigation, prosecution, up to the trial examination stage, law enforcers are obliged to seek diversion. However, in paragraph (2) of Article 7 of the Law on the Juvenile Criminal Justice System it is stated that diversion must be carried out with exceptions, meaning that diversion must be carried out in criminal acts punishable by imprisonment under seven years, and also not a repetition of a crime. In other words, the diversion that is carried out is not mandatory for non-criminals that are punishable by more than seven years in prison, this is because crimes that are punishable by over seven years are generally considered serious crimes. Then, the actions taken by the child are not repetition, meaning that the child has never done something similar or has become a recidivist in committing a crime. So that the provisions on the application of diversion must still adhere to article 7 paragraph (2). But in the event that Article 7 paragraph (2) is only imperative or facultative or conditional, it is possible that those prerequisites that become limitations can still be attempted to diversion.

However, if we look at the provisions above, diversion can only be carried out at the district court or at the first level (not up to the stage, appeal and cassation), this is because according to what is meant in Article 6 of the Criminal Procedure Code, diversion is included in the procedure for examining acts light crimes (as stipulated in Article 7 of the Law on the Juvenile Criminal Justice System). Actually, in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the continuation of cases to the high court is devolutive in nature, which means that the entire examination of cases is moved and repeated by the high court. In practice, diversion is carried out like a deliberation but involves several parties between the victim and the suspect (Saputra & Miswarik, 2021).

Deliberation in the diversion process is a joint meeting to find a solution or mutual agreement. This is explained in Article 8 paragraph (1) of the Law on the Juvenile Criminal Justice System, that the diversion process is carried out through deliberations involving children and their parents or guardians, victims and/or their parents or guardians, social counselors, and professional social workers based on a restorative justice approach. This means that deliberations carried out in diversion efforts are carried out as deliberations in general, namely by bringing together the parties to the dispute, accompanied by parties assigned to accompany or facilitate the deliberation meeting.

The results of the diversion carried out in court will be recorded in the minutes for further diversion agreement by the head of the court can be used as a basis for terminating the case examination. However, if it turns out that the diversion agreement was not fully implemented by the parties based on the results of a report from the social counselor at the Correctional Institution, the judge will continue examining the case in accordance with the procedural law of juvenile justice. If it is carried out during the investigation process, the Investigator makes a Diversion Agreement Minutes signed by the child and parents/guardians, victims and/or parents/guardians, Investigators, Correctional Institutions and Professional Social Workers. The Minutes of the Diversion Agreement shall be submitted within a maximum of 3 (three) days from the time the agreement was reached to the Head of the District Court to obtain a stipulation, while the stipulation shall be made no later than 3 (three) days from the receipt of the diversion agreement. The determination is then submitted to the Community Advisor, Investigator within a maximum period of 3 (three) days from the date of stipulation. After the stipulation is issued, the matters that have been agreed upon in the diversion agreement stage must be carried out by both parties (Ratnadewi & Setiyanto, 2018).

## **2. The Role of Correctional Institutions (BAPAS) in Diversion efforts to the Juvenile Criminal Justice System Act**

In implementing diversion, law enforcers cannot stand alone, meaning that all elements involved in law enforcement must participate in carrying out diversion efforts, even the community in carrying out diversion must also participate fairly in implementing diversion efforts. Apart from that, the

Juvenile Criminal Justice System Law (also known as UU SPPA) also mentions the role of Correctional Institutions (BAPAS), where BAPAS also have a significant role in achieving diversion efforts. In Law no. 11 of 2012 BAPAS is defined as a correctional technical implementation unit that carries out the duties and functions of community research, guidance, supervision, and assistance.

The legal position of BAPAS is contained in Law Number 12 of 1995 concerning Corrections, in this case BAPAS has the meaning of being an institution to carry out social client guidance. In particular, the role of BAPAS is to handle the guidance of correctional clients consisting of community convicts (adults and children), prisoners who get parole, leave before release, and state children who get parole or are handed over to foster parents, including state children who get leave to their parents.

BAPAS in the juvenile justice system has a very crucial role as stated in the implementation of Law no. 3 of 1997 calm children, and also later added its function in Law no. 11 of 2012. As such, the position of BAPAS in the Juvenile Criminal Justice System is getting stronger with the addition of duties and authorities regulated in the Juvenile Criminal Justice System Law. Role in the Juvenile Criminal Justice System whenever a crime is committed by a child or teenager, this institution is required to act. BAPAS, whose job is to accompany children in conflict with the law, so that BAPAS, in the event of a legal incident involving a child dealing with the law (also known as ABH), BAPAS is the party that understands the most regarding the chronology, to the matters behind the occurrence of the crime.

In the Law on the Juvenile Criminal Justice System, provisions regarding BAPAS are regulated in several articles. In Article 9 of the Law on the Juvenile Criminal Justice System it is explained that based on the results of community research from BAPAS it is one of the most important matters for consideration by Investigators, Public Prosecutors and Judges in carrying out diversion. Furthermore, in Article 21 of the Law on the Juvenile Criminal Justice System, BAPAS is required to evaluate the implementation of education, coaching and mentoring programs for children and obtain reports on child development from government agencies and LPKS (Social Welfare Organizing Institute) periodically every month.

The next arrangement is in Article 28 of the Law on the Juvenile Criminal Justice System explaining that Community Research Results must be submitted by BAPAS to Investigators within a maximum period of 3 x 24 (three times twenty four) hours after the investigator's request is received. In Article 84 of the Law on the Juvenile Criminal Justice System it is stated that BAPAS is required to supervise the implementation of education and coaching programs carried out by Community Advisors based on community research in terms of determining education and coaching programs for children who are in conflict with the law.

Further, it is also explained in Article 87 of the Juvenile Criminal Justice System Law, that BAPAS is responsible for children who have the status of child clients, BAPAS is obliged to provide guidance, supervision and assistance, as well as the fulfillment of other rights in accordance with the provisions of laws and regulations, and also matters of evaluation of the implementation of these matters.

The task arrangement for Community Advisors (PK) from the BAPAS institution regulated in the Juvenile Criminal Justice System Law has increased to five main tasks. As stipulated in Article 65 of the Law on the Juvenile Criminal Justice System, it is stated that Community Advisors (PK) duties include: (a) make community research reports for the benefit of diversion, provide assistance, guidance and supervision of children during the diversion process and implementation of the agreement, including reporting it to the court if the diversion is not carried out; (b) make social research reports for the purposes of investigation, prosecution and trial in child cases, both inside and outside the courtroom, including in the Temporary Child Placement Agency (LPAS) and Special Child Development Institute (LPKA); (c) determine child care programs in LPAS and child

development in LPKA together with other correctional officers; (d) provide assistance, guidance, and supervision of children who are based on a court decision sentenced to a crime or subject to action; and (e) provide assistance, guidance, and supervision of children who get assimilation, parole, pre-release leave, and parole leave.

From the description above, it is clear that the role of BAPAS in pursuing diversion was vital. Hence, the role assigned to BAPAS should be utilized as widely as possible by PK to always strive for diversion in ABH cases. In this case, the objectives of the Law on the Juvenile Criminal Justice System can be implemented properly. Because with the existence of social research reports, it is hoped that the decisions taken by judges will not hurt the sense of justice and a criminal justice system can be realized that guarantees the protection of the best interests of children, thus negative stigma towards children in conflict with the law can be avoided (Rekmusnita, 2020).

### 3. Diversion Efforts in ABH Conducted by Class I Correctional Institution (BAPAS) of Tangerang in 2019-2021

The following is table data for Correctional Institutions (BAPAS) clients in cases of children dealing with law (ABH) at BAPAS Class I Tangerang from 2019-2021. This data also includes the number of cases and the results of ABH case decisions, both those that were successful in diversion and those that were subsequently processed normally by the criminal justice system.

**Table 1.** BAPAS Class 1 Tangerang assistance in 2019-2021

No	Year	Number of ABH Cases	Verdict of Successful Diversion	Further process/ Ordinary Decision
1	2019	46	4	42
2	2020	103	0	103
3	2021	77	4	73

The table above shows that in BAPAS Class 1 Tangerang in 2019 has provided assistance through PK BAPAS with a total of 46 clients. Of these, only four cases were successfully resolved with diversion efforts. Furthermore, 42 cases were further processed and ordinary decisions used the juvenile justice system.

Whereas in 2020 there was an increase in cases handled, reaching 103 cases. However, with the increase in cases handled this year, there were no cases that could be resolved by means of diversion. Of these cases, all of them were processed by ordinary law using the criminal justice system, and some had received a permanent decision from the court.

Furthermore, in 2021 there will be 77 cases assisted by BAPAS Class 1 Tangerang. Of the total cases handled, only 4 cases were successfully resolved through diversion. Although in other rulings there is imposed discretion, this quantity is quite minor in comparison to the cases addressed.

From the 2019-2021 data, cases that can be resolved through diversion are very low, even though the cases handled are not cases that carry a sentence of more than seven years in prison. The success of BAPAS in pursuing diversion should be of particular concern to the government, whether the efforts made by BAPAS have been carried out optimally or only as a form of formality.

The success of BAPAS in pursuing diversion is influenced by many factors, this is the same as effectiveness in implementing law enforcement. According to Soerjono Soekanto (2008) there are five underlying factors influencing law enforcement, in this case the author analyzes the lack of success of BAPAS in achieving diversion through these five things namely;

The legal factor itself, Diversion in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, one of the articles namely: Article 5 Paragraph (1) states that; in the juvenile criminal justice system it is mandatory to prioritize a restorative justice approach. Moreover, in Paragraph (3) it is also stated that in the criminal justice system children must be pursued. Furthermore, in



the Regulation of the Head of the State Police of the Republic of Indonesia Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the Republic of Indonesia State Police. This Regulation of the Chief of Police of the Republic of Indonesia confirms the role of BAPAS as mentioned in Article 105, it states that in carrying out examination actions on children, officers must consider the right to get special escort officers for children, namely the right to be accompanied by BAPAS and parents. Laws issued by the government as well as regulations issued by state institutions in carrying out the functions of the criminal justice system which are oriented towards restorative justice, in this case diversion, have been carried out a lot. For example, in the Supreme Court regulations, which issued Perma No. 4 of 2014 concerning guidelines for the implementation of diversion in court. Besides, in the Attorney General Regulation PER 006/A/JA/04/2015 that the handling of cases of children in conflict with the law must truly guarantee the protection of the best interests of the child and must aim at creating restorative justice, both for children and child victims before moving on to the judicial process at the level of prosecution, the Public Prosecutor must seek diversion.

Law enforcement factor, The attempted diversion will fail if the law enforcers do not support it. What usually happens is that there is an intersection between components due to the strengthening of sectoral ego attitudes among existing law enforcement components. This makes diversion not achieved because of the attitude of the ego. In addition, there are some people who do not understand that diversion must be pursued. Apart from that, there is a lack of commitment to inter-sectoral (institutional) coordination in the juvenile justice system. Besides, there was a delay in assisting ABH by the BAPAS, due to the delay in submitting the assistance letter from the Police. In fact, it is clear in the Regulation of the Head of the State Police of the Republic of Indonesia Number 12 of 2009 which states that children must be accompanied by BAPAS when they enter the investigation process. Support that can be found in ABH's handling of law enforcement factors is: Strengthening the role of BAPAS in the form of cooperation between related agencies, in order to reduce gaps in the Integrated Criminal Justice System (ICJS) forum.

Facility factor , Diversion efforts that are sought often encounter obstacles in terms of facilities or facilities, including: There is no human resources or facilities mandated in the Juvenile Criminal Justice System Law, such as the presence of professional social work workers; social welfare workers, and temporary child placement agencies (LPAS). As such, the limited budget allocated also affect for carrying out the task of mentoring and assisting children in conflict with the law (ABH).

Community factor, Diversion is also hampered by factors from the community itself. Community understanding of cases of children in conflict with the law is not yet open, many people consider children who commit crimes as a social disgrace. According to such assumption, society is reluctant to provide protection for children who commit crimes. For example, if a child commits theft, sometimes people don't see the perpetrator as a child, so they treat the child as an adult perpetrator.

Cultural factor, The attempted diversion is sometimes hampered by cultural characteristics or practices that present in our society. The habit of society that has no tolerance for children in conflict with the law will greatly hinder the government from seeking diversion. This is motivated by a lack of understanding from the community in dealing with children who are in conflict with the law. Society is more inclined to give punishment to children who commit crimes compared to diversion for children. This view arose because of the assumption among the public that this punishment would teach the child a lesson so that he would not repeat similar acts. In fact, with this punishment, it does not guarantee that the child will not do the same thing in the future, even what happens is that the child will be further slumped in a negative situation.

The study revealed that while the idea of diversion is well-established in the juvenile justice system, its implementation has been limited in terms of its success. Despite its legal requirement, there are various challenges that hinder the effective implementation of diversion, including legal, law

enforcement, and cultural factors. For instance, the community still perceives punishment as the best solution, hindering the adoption of diversion. As a result, only a few cases have been resolved successfully through diversion at the Class 1 Correctional Institution (BAPAS) Tangerang. In order to achieve the intended goals of diversion, it is necessary to address these challenges and improve the understanding of diversion's benefits among the public. Additionally, the collaboration between law enforcement agencies and BAPAS should be strengthened to ensure that the diversion process is streamlined and has a higher success rate.

#### IV. CONCLUSION

In conclusion, this study has shown that diversion is an essential aspect of protecting children in conflict with the law, and its effectiveness can be improved with the support of BAPAS. However, the low success rate of diversion efforts in Class 1 Correctional Institution (BAPAS) Tangerang can be attributed to various factors, including legal factors, law enforcement, facilities, lack of understanding, and cultural factors. Furthermore, diversion has been implemented to a certain extent in the juvenile criminal justice system, but its success has been limited. While diversion is required by law, and BAPAS has been established as a key institution in supporting diversion, the number of cases that have been successfully resolved through diversion remains low. Various legal, law enforcement, and cultural factors contribute to this limited success.

To improve the juvenile criminal justice system, it is recommended that the government increases public understanding of the benefits of diversion and changes the perception that punishment is the only solution. Law enforcers should also work with BAPAS as a reliable partner to prevent any bureaucratic obstacles in carrying out their duties. Finally, the government should expand the availability of BAPAS offices to ensure that children in conflict with the law receive timely assistance without any hindrances. To ensure that diversion is effectively implemented, it is necessary to address these challenges and take steps to improve the public's understanding of the benefits of diversion. Additionally, greater collaboration between law enforcement agencies and BAPAS could help streamline the diversion process and improve its success rate. It is crucial for judges to consider the results of BAPAS's research when handling cases, and for BAPAS to continue to play an active role in supporting diversion efforts. By implementing these recommendations, the vision of the Juvenile Criminal Justice System can be realized, and the interests of children in conflict with the law can be better protected.

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