

# Considering the Potential of Pesantren's Contribution in Diversion Programs for Juvenile Offenders

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**Abstract-** Diversion, in the Law of the Republic of Indonesia No. 11 of 2012 concerning the Juvenile Justice System, aims to save the future of children (victims and perpetrators). In the process diversion involves the community in the process of restoration of relations between victims and perpetrators. Diversion is carried out bearing in mind that children who are perpetrators of crime have the right to be treated fairly by the United Nations Convention on the Rights of the Child in 1989. The problem in the current diversion is the stigmatization of society and the rejection of perpetrators and their families. To overcome this, a selter is needed for adequate coaching. The existence of selter and competent social workers who handle is still very less when compared with the existing needs. Is an Islamic boarding school as an educational institution in Indonesia, has made many contributions in the development of social society in Indonesia. Not only religious education, the role of pesantren also contributes to the development of community skills, poverty alleviation, empowerment and other behavior-based activities. Islamic boarding school education applies a live in system, which makes students (santri) live in a dormitory. With a system like this pesantren must have adequate facilities such as dormitories, places to study and mosques. Data from the Directorate of Islamic Education (Pendis) Ministry of Religion of the Republic of Indonesia, recorded 27,230 pesantren with various models (salaf and modern) that have accommodated 3,759,198 santri, both male and female. This number illustrates that pesantren has the potential to contribute to the handling of child offenders. Contribution of pesantren can be in the form of shelter and guidance for children of perpetrators. Some potential reasons that pesantren are alternative places to carry out diversion programs: 1) in large quantities and spread throughout Indonesia 2) have adequate facilities and human resources for mental development; 3). tested in a mental development program; 4). Community trust in pesantren is quite high. Before the pesantren becomes an alternative, there are a number of things that need to be addressed, among others: 1) aligning the vision of diversion between the legal apparatus and the boarding school administrators; 2) readiness of other pesantren residents (santri and teachers) to accept child crime perpetrators. 3) improvement of coach / teacher skills in handling child offenders.

**Keywords—** *Diversi, Islamic boarding school, juvenile justice*

## I. INTRODUCTION

The number of cases of Children Against Law (ABH) experienced fluctuations throughout the years 2011 to 2017.

NU Online on October 10, there were 9,266 cases of Children Against Law in the past six years. From year to year, the largest number of contributions occurred in 2012 to 2014. In 2012 there were 1,413 cases, then increased in the following year to 1,428 cases, and reached the highest peak in 2014 of 2,208 cases.

The statistical curve of the number of ABH sloping in 2015 up to now can provide a positive evaluation for the ongoing efforts of various parties responsible for guarding the protection of this nation's children. However, for the sake of a holistic effort to build a child-friendly country, attention cannot only be focused on numbers, but also on the quality of prevention and treatment.

The total number of ABH cases summarizes the overall case records of children who are dealing with the law as victims and perpetrators. This year, the ABH ratio recorded as perpetrators and victims has a thin ratio, as many as 116 cases of children as perpetrators of sexual violence, while there are 134 children as victims of sexual violence (NU Online 10/10/2017).

Indonesian Commition for Child Protection (KPAI) received reports of 3,581 cases of violations of children's rights in 2016. The amount is an accumulation of cases of children dealing with law, family cases and alternative care, cases of pornography and cyber crime, as well as cases of violations in the field of education. A series of cases were not caused by a single factor. There are two major sources that currently need serious attention to minimize the potential for child abuse. In terms of state protection, efforts to protect children still need to be added. The existence of a positive internet as Indonesia's internet protection against pornographic content and violence has become a good start in the protection effort. But efforts to increase immunity are clearly needed. Just ask Google about what you need to do to break into the positive internet, then in a matter of seconds a series of blogs and articles will be loaded with effective steps that defeat the positive internet protection. So that access to pornographic content, children's games containing gambling, violence, and sadism is still very possible. The second source is culture in educational institutions which are considered not yet fully responsive to child protection. Various types of violence in schools and madrasas still occur: seniority, discipline by

means of violence, and orientation of schools with violent contents are easily found in a number of schools / madrasas.

### III. FINDINGS AND DISCUSSION

#### A. *Psychological Dynamics of Juvenile Offender*

Delinquency behavior committed by adolescents is a result of psychosocial aspects namely the psychological condition of a teenager in general and its relation to the social conditions in which the teenager interacts. There are three psychosocial aspects that influence adolescents in delinquency. The first aspect is the aspect of adolescent personality: adolescent characteristics but also includes individual values, hopes and beliefs held by adolescents themselves. The second aspect is the environmental system that is accepted by the teenager: a place to live or interact with other people such as the family environment, school environment, or peer environment. The last aspect is the behavioral system, which includes the methods used or chosen by adolescents to behave in daily activities[1]. In the study of Islamic education, juvenile delinquency is a very serious problem because it is not in accordance with the objectives of Islamic education. This requires strengthening the values of *Iman*, Islam and *Ihsan* [2].

In studies of child crime factors carried out in various place settings shows the consistency of the role of psychosocial aspects. Ihsan & Jonyanis, found child crime in the city of Pekanbaru triggered by economic, educational, environmental factors, weak law enforcement, and negligence of parents in educating children[3]. In general Unayah & Sabarisman, states that internal factors of adolescents such as the upheaval of searching for identity and self-control are the causes of juvenile delinquency. While external factors, such as family conditions, friendship and community relationships also trigger juvenile delinquency. Furthermore juvenile delinquency can continue in the realm of crime with the intention of more serious violations[4]. For example Rochmah & Nuqul, determine that the bad influence of family conditions, the influence of friends and exposure to pornography on social media triggers sexual crime [5]. This reinforces Veneziano & Veneziano, that crimes committed by children are more due to external factors[6]. Then it needs special handling that is rehabilitative for child offenders[7].

#### B. *Diversion Process*

In the Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System for Children, article 8 states that "The Diversion Process is carried out through deliberations involving children and their parents / guardians, victims and / or parents / guardians, Community Guides, and Workers Social Professional based on a Restorative Justice approach. If necessary, deliberation as referred to in paragraph (1) may involve Social Welfare Workers, and / or the community".

Article 8 also mentions points that must be considered during the diversion process, namely, "The Diversion Process

must pay attention to: the interests of the victim; the welfare and responsibility of the child; avoidance of negative stigma; retaliation avoidance; community harmony; and propriety, decency, and public order".

(1) Diversion agreement to settle criminal offenses in the form of violations, minor crimes, crime without victims, or the value of the loss of the victim is not more than the value of the local provincial minimum wage as referred to in Article 9 paragraph (2) can be done by investigators together with the perpetrators and / or his family, Community Guidance, and can involve community leaders.

(2) The Diversion Agreement as referred to in paragraph (1) shall be carried out by the Investigator on the recommendation of the Community Guidance to take the form of: recovering losses in the event of a victim; medical and psychosocial rehabilitation; Submission back to parents / guardians; participation in education or training in educational institutions or LPKS no later than 3 (three) months; or community service for a maximum of 3 (three) months.

#### C. *Evaluation of Diversion Process Implementation*

Komariah & Cahyani Juridical sociological research at the Police Precinct, the District Attorney's Office and the District Court in Malang Regency found that the application of diversion was effective[7]. On the other hand Jaelani said that the provision of diversion in practice was understood differently by law enforcement. In some cases of children who do not meet the provisions of Article 7 paragraph (2) of the UUSPPA and have been dealt with, children are treated differently is one law enforcer diversifies while another law enforcer does not. This difference in treatment will be very detrimental to the interests of the child[8].

This achievement still leaves homework to be completed because severe obstacles still hamper the diversion process in the field. One of the most difficult obstacles to implementing diversion to suit is the unavailability of places to educate, foster and place naughty children as mandated in the law. The absence of infrastructure and SPPA Act implementing regulations governing the diversion process resulted in the non-optimal implementation of the diversion[9].

To overcome these obstacles, several social institutions have taken the initiative to intervene in helping the government realize the diversion program for the protection of the nation's children who are dealing with the law. In Malang Regency there are at least a number of government supporting institutions / institutions in implementing diversion, including: BAPAS and P2TP2A [7]. PKPA through its official website also actively reports various activities and programs carried out to support the ABH diversion process. Not only focusing on those involved in the law by providing direct services to children, PKPA also strengthens the capacity of the community to be a part of child protection by conducting paralegal training and community-based child protection. As a pilot project the formation of community-based child protection is Amplas and Belawan Distric (PKPA, 2016).

The role of the community is recognized as having an important role in the diversion process. KPAI Trafficking Commissioner Ai Maryati Solihah in the Child Protection Seminar with Commission VII of the Indonesian House of Representatives in Bogor (NU Online 10/10/2017), said that the ABH case turned out to cause stigma in the community. The stigma is an indirect contributor to the occurrence of psychological violence against children who can impact suicide attempts on children.

Humans are born as babies and then grow and develop, treading childhood, adolescence, then adulthood. Children are the buds of this nation who will continue the baton of the nation's future. How crucial the development and growth of children has been repeated every year in research texts and has become a general truth that is known to everyone. Children will enter their productive period when they are in their twenties. We need to realize that an appropriate diversion process will not only have a positive impact on social life, but also affect other sectors of life, such as education and the economy. Protecting children means providing protection to all children of the nation without exception to keep them away from the potential of being involved in the law as perpetrators and victims.

#### *D. Pesantren*

The pesantren is predicted as an educational institution that can play a role as a character education model in Indonesia [10], [11]. The positive outlook pinned on the pesantren is not without foundation. Every year studies that make pesantren as a research setting place never subside. The role of pesantren in the surrounding environment and the innovation of education models that are based on character building are the pesantren's strongest attractions. Paturohman, found that pesantren have a role in improving religious conditions in the surrounding environment[12].

Data from the Directorate of Islamic Education (Pendis) Ministry of Religion of the Republic of Indonesia, recorded 27,230 pesantren with various models (salaf and modern) that have accommodated 3,759,198 santri, both male and female[13]. This number illustrates that pesantren has the potential to contribute to the handling of child offenders. Pesantren has a great opportunity to mediate and direct the attitudes and behavior of the people in a positive direction. The character-based education model adopted at the pesantren is also a necessity for the diversion process of ABH perpetrators.

Pesantren has long been known as a printer of national and international figures starting from the family of KH Hasyim Asyari, KH Ahmad Dahlan as the founder of the world's largest social organization. There were also Gus Dur, KH Ma'ruf Amin as President and Vice President in their respective periods. This is inseparable from the pattern of learning and content of the pesantren curriculum, which is a comprehensive education curriculum. This curriculum consists of the contents of religious sciences, science-technology, humanities, social sciences and life-skills related sciences.

The science and practice of religion has become a pesantren generic curriculum, ranging from the Science of Fiqh, Akhlaq, Tawheed to the science of tools. Provision of learning in Islamic boarding schools is tailored to the abilities of students. At this time the study of religious knowledge in pesantren there are two patterns, first, the classical formal pattern. This pattern is manifested by the pattern of madrasa diniyah. This pattern of education follows class levels with standards of learning as formal education in general. The second learning pattern is a classic pattern, with a bandongan and sorogan recitation system [14], [15]. This recitation system makes students learn directly on the clerics, with materials tailored to the needs of students. There is no summative or formative test of this classical system, but the learning patterns are centered on the clerics who determine with a flexible system [10], [16].

For ABH, which in the process of diversion of classical model of religious learning will be the right pattern of learning religious knowledge, because it is not limited by time. On the other hand, the diversion process is time-limited, the success of the diversion process is monitored for 30 days in the 2012 juvenile justice law. With the bandongan system in Islamic boarding schools, the Kyai will measure the compatibility between the material and the needs of ABH. The problem that is often considered as a factor in the fall of children into crime is religious morality. Then the religious education system in pesantren becomes a logical and appropriate offer.

Pesantren, in addition to providing religious knowledge, also provides general education to students. The management of the pesantren is well aware of the challenges of the students in the community. For this reason, pesantren provide facilities for formal education that are standardized in national and even international education. In some Islamic boarding schools there are also state educational institutions ranging from public Ibtidaiyah madrasa (MIN), State Tsanawiyah madrasahs (MTsN) and State Aliyah Madrasahs (MAN). The pesantren also facilitates education with a work-ready curriculum in vocational high schools[14]. For the diversion program of the existence of madrasahs and schools, this can give hope to ABH to increase their hopes after the legal process they are undergoing.

Another advantage of pesantren, which can be utilized to be programmed in the diversion process is the learning of daily life. Pesantren as an institution that aims to improve moral capabilities and human values, pesantren provide many "menus" for students to be able to behave properly, not only at the level of cognition alone [17].

Before actually involving a pesantren, there are a number of things that need to be observed in a pesantren to be able to be the right partner in the diversion process. First, not all pesantren members, both mentors and students, have a good understanding of diversion. Generally the public understands that the perpetrators of crimes must be punished with the west. But not with ABH who put forward the process of restoration. This inaccurate understanding has the potential to cause stigma on ABH. Second, it is necessary to communicate with the surrounding community outside the pesantren, both

students' parents and residents around the pesantren. Even though the community's trust in the pesantren is quite good, it does not rule out the possibility of raising concerns in the community about the negative effects of the existence of ABH in pesantren.

#### E. Stages of Involvement of Pesantren in Diversion

To realize the concept of involving pesantren in the ABH diversion process, in essence, the work of 2 different ministries. In this case the Ministry of Law and Human Rights as the implementing of the Law on Making Children No. 12 of 2012. Then the Ministry of Religion as the ministry that coordinates pesantren in Indonesia. For this reason, there are several stages that must be passed by the two ministries to truly realize this idea.

First, start with the initiation of cooperation between the two ministries. To involve pesantren, a strong legal basis is needed so that, for example, a joint ministry decree is issued. This decree will have implementation up to the lowest level. Starting from diversion to the police, prosecutors and even the judiciary, and involving the prison as an institution responsible for the ABH correctional process.

Second, set the required standards. Starting from the ABH needs assessment standards, religious learning standards for ABH, life skill standards and assimilation processes as well as monitoring and evaluation standards. This standard is very much needed considering that each pesantren has a specificity in its learning patterns. Standards will also provide legal certainty to ABH during the diversion process.

Third, preparation of human resources in pesantren. Even though the human resources at the pesantren are quite qualified in the implementation of guidance in the pesantren, in the implementation of the diversion process the coach must have an understanding of the legal basis of the process of the diversion itself.

Fourth. Socialization to the community about the involvement of pesantren in the diversion process needs good socialization. To the community. the aim is to reduce the stigma of the ABH concerned. The socialization was also intended to create a network both with schools and workplaces that could be accessed for ABH after undergoing the diversion program.

#### IV. CONCLUSION

Children of perpetrators of crime remain national assets, but unfavorable conditions make them have to conflict with the law. The legal process in these children does not have to face justice. So the diversion regulated by the juvenile justice law is expected to reduce the mistreatment of children who commit this crime. The diversion process requires community involvement. Pesantren is a trusted educational institution so far, has good potential to be involved in diversion. Nevertheless, it needs strong joint efforts from the Ministry of Justice and Human Rights and the Ministry of Religion to realize the idea of involving pesantren massively.

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