

# RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW STUDY IN THE MALAYA COMMUNITY OF ASAHAN NORTH SUMATRA

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## Abstract:

The concept of restorative justice in Law Number 11 of 2012 concerning the Criminal Justice System (SPPA) is oriented toward completing deliberation and promoting dialogue between the parties to find a solution that benefits all parties. The study aims to examine and analyze how the concept of restorative justice for children conflicts with the law in the Asahan Malay community and how the settlement mechanism for children conflicts with the law in the Asahan Malay community, North Sumatra. The research method used is normative and empirical juridical research with descriptive analysis. The data collection tools used is library research, a document study, interviews, questionnaires, and observations. All of the data were analyzed qualitatively to conclude depth, systematically and deductively. The research results that restorative justice for children's settlement in conflict with the law in the Malay Community of Asahan, North Sumatra, is known as the *bapokat* tradition in resolving cases outside the judicial process. The practice by the community in the Asahan Malay community in North Sumatra is still chosen when considering an out-of-court settlement is an option because of the disgrace in the family, and the review is more effective by the Asahan Malay community. This rule shows that cases settled in the Asahan Malay community are more successful. The traditional *bapokat* approach from issues resolved by the police with restorative justice.

**Keywords:** Asahan Malay, Children in conflict with the Law, Community, Restorative Justice.

## 1) INTRODUCTION

Children are the future of the nation's next generation who have limitations in understanding and protecting themselves from the various influences of the existing system.<sup>1</sup> Children are the nation's offspring with a strategic role and unique characteristics. Children as the nation's buds are meant as a potential generation successor of ideals and ensure the continuity of the existence of the country and state in the future.

In the Asahan Malay community, the concept of children's best interests in resolving children's conflict with the law, all processes, accountability, and imposition of sanctions for children are always returned to efforts to protect children and provide the best decisions for children. Considering that the soul of a child is still sensitive and unstable, as far as possible, the child as a criminal act is avoided from being examined in court. In the Asahan Malay community, the resolution of children's conflict with the law contains the values of deliberation and forgiveness that follow the concept of essential restorative justice as the basis for considering the birth of restorative justice in Indonesia philosophically, juridically and sociologically.

In the Malay community of Asahan, North Sumatra, children are known for deliberation in society life. The process of thinking that results in consensus are known as bapokat, which becomes the law that lives in social life. Bapokat is another sound from the word agreement, mamokati (mekati), sapokat (agree) whose the base word is pokat or pakat.<sup>2</sup> Etymologically, bapokat or consensus is an agreement. Consensus comes from Arabic, namely (الفاق) waafaqa (which means to agree or agree).<sup>3</sup> The deliberation process in resolving cases outside the judicial process in the Asahan Malay community to produce consensus (bapokat) becomes a forum for discussing and resolving issues by bringing together various parties.

This research was conducted in the Asahan Malay community, namely Tanjungbalai City, Asahan Regency and Batubara against their uniqueness and different characteristics. This area is a coastal area on the east coast of Sumatra which solves cases in the community sourced from traditional values in heterogeneous communities that are different from homogeneous communities. The Malays referred to are not ethnic descendants, but the Malays in question are Muslims who live in the Malay area and speak Malay daily.

Asahan Malays in Tanjungbalai, Asahan and Batubara are said to be urban areas because Tanjungbalai are ethnic Malays and Bataks. Most of whom are Muslim,<sup>4</sup> In addition to these ethnicities, there are also several other ethnic groups such as Javanese, Acehese, Minangnese, Indianise and Tionghoa ethnics. Although the population of the Bataknese is more dominant, the nuances of the Malay culture are very clearly visible in the life of the people. This rule is related to the historical roots of Tanjungbalai city which are directly related to the Malay Sultanate that once ruled Tanjungbalai Asahan. Asahan Regency used to be the capital city of Tanjungbalai, now the town of Kisaran.

The Asahan Malay community in the city of Tanjungbalai, Asahan and Batubara Regency has a very strong religious belief that violations of the law that occur in the community are related to the disruption of spiritual values that exist in the community, where the settlement approach must be carried out with a religious approach and customary tradition is considered better and more satisfying for the conflicting parties.

In the Asahan Malay community, the role of community leaders (nan elders) and their figures have an essential role in resolving criminal acts that occur in the community. Cases that were reported to determine by community leaders through deliberation to reach consensus (bapokat) were actually more successfully resolved when compared to subjects that reached law enforcement officials. The settlement that is determined outside the judicial process through the customary deliberation approach is more of the community's choice and is more successful than cases completed using restorative justice by the police.

The primary purpose of the restorative justice approach is to open access for victims to be one of the parties that determine the final settlement of a crime because the victim is the injured party. The restorative justice approach must be able to bring the perpetrator towards awareness of the mistakes he made. The birth of the SPPA Law has not accommodated the concept of punishment from restorative justice, which comes from traditional values in society the criminal settlement process. The position of victims and perpetrators is not balanced and enforces peace

without seeing a balanced part. The results of the research conducted by the author show that the concept of restorative justice and the value of resolving children in conflict with the law in the Asahan Malay community has a vital justice concept that can contribute to the juvenile criminal justice system in Indonesia in the future.

## **2) RESEARCH METHODS**

This research is qualitative normative juridical research. The objective of this normative legal research is to analyze the concepts of law and regulations which are closely related to the subject matter. A juridical empirical approach is used to perceive the law as a behavior pattern of society and as a social force.

The types of data used in this research are primary data obtained through field research by conducting interviews with customary leaders, community members, children in conflict with the law, organizations working with children and law enforcers. Meanwhile, the secondary data is collected through documentary research. Library research is conducted to search for various conceptions, theories, principles, doctrines and documents related to the subject matter.

## **3) THE CONCEPT OF RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW IN THE ASAHANMALAY COMMUNITY**

The draft of restorative justice is a criminal justice system that existed in the past before the current criminal justice system. In Indonesia, this is still very much found; this system still exists and is still a mechanism for resolving criminal cases run by the community. The concept of restorative justice has actually been born in Indonesia since the existence of Pancasila became the basis of the state as well as unifying the nation. The fourth precept of Pancasila, which states that "people led by wisdom in representative deliberation", shows that, in fact, the Indonesian people have implemented consensus as a path to wisdom. In addition, it also states the importance of an understanding or agreement based on democracy in the joints of the life of the Indonesian nation. So, we can conclude that the Indonesian people are very supportive of this restorative justice process to reach agreement and understanding both in the family environment and in the community.<sup>5</sup>

The concept of restorative justice is resolving legal violations that occur by bringing the victim and the perpetrator to sit down and talk together in one meeting. The mediator in the meeting provides the opportunity for the perpetrators to give a clear picture of the actions they have taken. With this explanation, the victim is expected to be able to accept and understand the conditions and causes of the perpetrator doing the act and the perpetrator is responsible to the victim and the community for the actions he has committed.<sup>6</sup>

In the Asahan Malay community, North Sumatra, restorative justice is promoted in the Juvenile Criminal Justice System Act and also the restorative justice approach, which is conceptualized from the existing forms by many countries, namely Victim-Offender Mediation, Conferencing, Family and community group conferences, Circle Sentencing, Community Panels Meeting, Traditional Village or Tribal Moots, Reparative Board / Youth Panel So the closest approach

to the Bapokat custom deliberations in the Asahan Malay community in resolving child criminal cases is the Circle Sentencing approach, which is a process at the initiative of the community to reach a joint consensus on a criminal plan with a mediator as a mediator and Community Panels Meeting, namely meeting attended by community leaders, perpetrators, victims (if desired), and parents of perpetrators to reach an agreement to correct errors. The aim is to uphold local community values to reintegrate those who have violated these values.

#### 4) THE MECHANISM FOR RESOLVING CHILDREN IN CONFLICT WITH THE LAW IN THE MALAY COMMUNITY OF ASAHAN, NORT SUMATERA

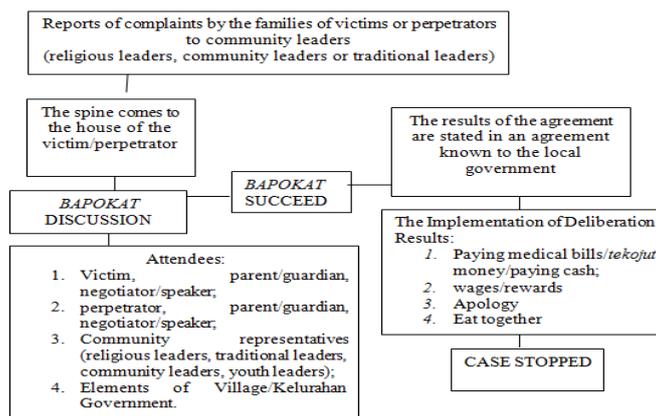
##### A. The Mechanism of Resolving Children in Conflict with the Law between Personal, Family or Environment facilitated by Community Leaders (Religious Leaders, Community Leaders or Nan elders, Customary Leaders) in the Asahan Malay Community.

The Settlement of cases outside the judicial process with a local wisdom approach to producing consensus through customary deliberation bapokat is a form of dispute resolution commonly carried out by the Malay community in Asahan. The settlement of this criminal case is meaningful as the result of a process of deliberation or deliberation in joint discussions to decide on a settlement of a problem with a customary approach.<sup>7</sup>

The mechanism for resolving children in conflict with the law that is carried out in the Asahan Malay community with a local wisdom approach based on bapokat customs in the community is described as follows:

Chart 1

The Mechanism Settlement of Child Cases in Conflict with the Law Settled on the Appointment of the Parties between Personal, Family or Environment in the



From the diagram above, it can explain the flow of the mechanism for resolving children in conflict with the law by the Asahan Malay community

1. The whistleblower can come from (victim/parent/guardian), (perpetrator/parent/guardian) directly come to community leaders, it can be religious

- leaders, community leaders/older people or traditional leaders, asking for advice and input on cases experienced by their children;
2. Community leaders will express their opinions and discuss finding telangkai to come to the victim's or perpetrator's house if the perpetrator's home means the victim asks that the perpetrator is responsible for the victim. If the victim's house means that the perpetrator/parents hope that the settlement of the case can be resolved by way of deliberation and consensus through the Bapokat custom;
  3. In general, those who the parties choose are people who are respected and generally have brotherly relations so that they can quickly enter and feel strong family ties;
  4. After it has been agreed on by the financier in the case of the child in conflict with the law (the child as the perpetrator) then the telangkai will come to the victim's house and convey the good intentions of the parents of the child who is the perpetrator so that the case experienced by the victim can be resolved by consensus;
  5. If there is an agreement that says "bilo ondak datang", it means that there is acceptance from the victim's family to accept the good intentions of the perpetrator's family;
  6. Deliberations, in order to reach consensus, are traditionally carried out by bapokat, and then each party has a negotiator or spokesperson.
  7. Those present at the Bapokat implementation other than the spokesperson were victims, perpetrators of parents/guardians, negotiators/speakers, community representatives (religious leaders, traditional leaders, community leaders, youth leaders) and elements of the Village/Kelurahan Government;
  8. The negotiator of the perpetrator conveys the intention of coming and asks the victim to accept the good intentions and asks what form of recovery or compensation can be given to the victim;
  9. The negotiator from the victim responds that usually begins and is inserted with a rhyme, petatah and petitih accept arrivals and ask community representatives to become mediators based on voluntary appointments to obtain information from victims, perpetrators and witnesses, then ask each negotiator how to produce agreement;
  10. The negotiator from the victim's side is welcome and conveys the agreement of the victim's family;
  11. If the victim or parents accept something said by the negotiator of the perpetrator, it will be determined when the day of implementation of the fulfilment of the agreement;
  12. The result of the agreement can be with the obligation to provide compensation by giving tekojut money, songgot money or balai money, or without compensation, based on the results of the agreement, if it causes bleeding wounds generally must be paid for (songgot/upah-upah);

13. The results of the agreement are stated in the agreement, asking the local government to attend and representatives of the victims and perpetrators as witnesses, and shake hands with the perpetrators/parents, victims/parents, and parties present;
14. On the agreed date, the perpetrator's child and parents and family return to the victim's house to submit the implementation of the agreement and carry out wages/rewards if there is bleeding, for example, a child who is a victim of abuse, the perpetrator's child and the victim are juxtaposed with wages in a balai containing pulut. , get advice and generally continue with a group meal inviting community and local government representatives.

#### **B. Mechanism of Resolving Children in Conflict With the law outside the judicial process by the integrated service center for women's Empowerment and Child Protection (P2TP2A)**

The Integrated Service Center for Women's Empowerment and Child Protection (P2TP2A) is a series of activities to protect victims of violence which are carried out jointly by the relevant agencies or institutions as an integral part of implementing health rehabilitation, social rehabilitation, repatriation, social reintegration, and legal assistance.<sup>8</sup>

P2TP2A is one of integrated service unit that the functions as the information Centre for woman and child, a service Centre for woman and child who gets the violence; and empowerment Centre for woman and child.<sup>9</sup> One of the programs of the Ministry of Women's Empowerment & Child Protection program P2TP2A to realize gender equality & justice which has been developed since 2002 until now and is followed up by the Province and District/City.

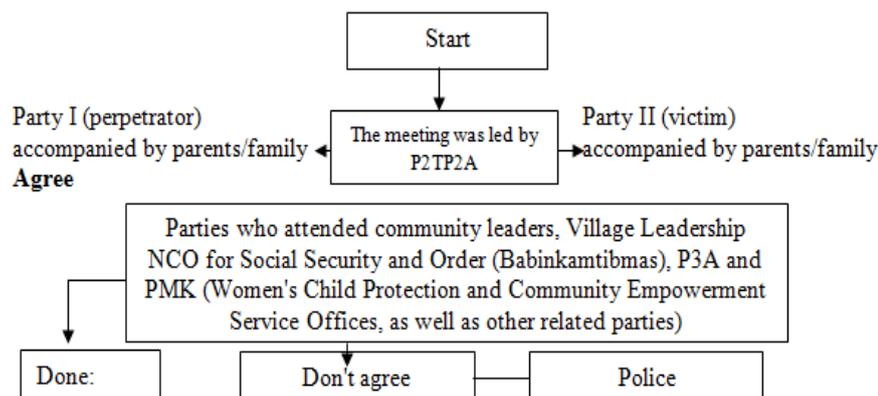
The formation of the P2TP2A was based, among other things, on the very high commitment of the Indonesia Government to implement the results of the 1995 Beijing Platform for Action, CEDAW & MDG's eradicating poverty and realizing gender equality and justice.<sup>10</sup>

The implementation of integrated child protection services by P2TP2A is regulated in the provisions of Regional Regulations, one of which is Tanjungbalai City which is coordinated by Regional Apparatus Organizations which have main tasks, functions in the field of child protection, and coordinates with regional apparatus organizations and related agencies or institutions in the context of fulfilling children's rights.<sup>11</sup>

P2TP2A for the community of Tanjungbalai, Asahan and Batubara Regencies plays a role in resolving children who are generally victims but can determine when the case are that the child perpetrator and the victim are also children or called children in conflict with the law as facilitators with the following mechanism:

## Chart 2

The Mechanism of Resolving Children in Conflict with the Law outside the Judicial Process by the Integrated Service Center for Women's Empowerment and Child Protection (P2TP2A)



From the chart above, it can explain the mechanism for resolving children in conflict with the law facilitated by P2TP2A as follows:

1. The victim reports the case to the police; if the perpetrator and victim are children, the police will refer the matter so that it can be resolved by restorative justice through assistance from P2TP2A;
2. P2TP2A summons the parties concerned, parents/families, to find a middle way for the case to be resolved outside the judicial process by way of deliberation to obtain consensus;
3. P2TP2A, since receiving a report from the police studied the case and made an agreement for deliberation and invited the parties;
4. After an agreement on a date and time approved, P2TP2A generally invites community leaders, parties related to the case, witnesses, Babinkamtibmas, and the parents of the parties to jointly negotiate outside the judicial process to reach a consensus which is carried out at the P2TP2A office which has an office at the WUA office and PMK;
5. P2TP2A as a mediator asks the chronology of the case to children as perpetrators and victims. After knowing the problem, the mediator from P2TP2A asks for responses from community representatives;
6. After P2TP2A receives suggestions and input, the parents of both parties are asked for their opinions. If they agree it will be conveyed how their decisions regarding the severity and punishment will be adjusted according to the results of the mutual agreement;
7. In the deliberations that are carried out, generally, there will be a result that an agreement can be with compensation, tekojut medicine, or the cost of repairing the damage that has been done. The deal is stated in a peace letter signed by the parties and witnesses;
8. The letter of reconciliation is submitted to the parties and parties present as evidence that the case has been resolved outside the judicial process according to the bapokat custom;
9. P2TP2A asks both parties to the dispute to shake hands in front of the witness and the parties present also shake hands and also agree on when wages will be held (bearing);

10. If the results of the customary deliberation result in an agreement on the existence of wages/rewarding wages, the implementation can be carried out based on an agreement as a form of cold bargaining and the parties are juxtaposed for wages, and after the performance of the wages/rewarding, a long meal is held;
11. If no agreement is achieved, P2TP2A will forward it to the police so that the case can be continued;
12. If successful, P2TP2A will convey the agreement results to the police, submitting the minutes of the agreement or not because the case has not been entered into the investigation process by the police.

## 5) CONCLUSION

Based on the research and discussion results, it can conclude that the settlement of children in conflict with the law in Malay community of Asahan, North Sumatra, occurred in several stages of settlement, namely the settlement of children in conflict with the law carried out by the community in the Malay community of Asahan, North Sumatra, namely in Tanjungbalai City, Asahan and Batubara Regencies the role of community stakeholders (religious leaders/ Mualim, elders/community leaders) plays a very important role in resolving conflicts in the community when they agree to resolve cases of children in conflict with the law without the judicial process. The settlement of children in conflict with the law can also be resolved in a unit formed by the government, namely P2TP2A.

The decision result or the final agreement for the settlement of children in conflict with the law by paying compensation or also known as ubat tekojut or paying compensation for medical expenses, an apology without paying compensation, submission to the clergy, menyonggot /wages. In the settlement of children in conflict with the law the role of community stakeholders, namely (religious leaders/ Mualim, elders/community leaders) becomes a very instrumental figure in resolving cases of children in conflict with the law when the parties agree to resolve the case outside the judicial process.

The values of the Asahan Malay community life in treating children follow the nation's ideology. They can explore the values of social life to use as input in the legal reform of the juvenile criminal justice system in the future.