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**Ecofeminist Movement: Roles of Youth
in Community-Based Waste Recycling Management**

Kania Bening Rahmayna, Antik Tri Susanti, Rizki Amalia Yanuartha

**Implementation of Diversion System on Juvenile Delinquency
to Manifest Restorative Justice at Badan Pemasarakatan Kelas II
(Class II Correctional Institution) in Samarinda**

Endang Herliah, Suryaningsi, Marwiah Johansyah, Widyatmike Gede Mulawarman

**Socialization of Law No. 16 of 2011 by The Aisyiyah Community in Samarinda:
Efforts to Fulfill Justice and Equality before The Law for People Experiencing Poverty**

Suryaningsi, Endang Herliah, Aullia Vivi Yulianingrum, Marwiah Marwiah,
Venna Puspita Sari, Nur Fitri Handayani

Phases of Forgiveness in Early Adult Women with Parental Infidelity

Eunice Christine Manoe, Wahyuni Kristinawati

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Gender-based Violence against Women from Human Rights Perspective**

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Table of Content

Ecofeminist Movement: Roles of Youth in Community-Based Waste Recycling Management Kania Bening Rahmayna, Antik Tri Susanti, Rizki Amalia Yanuartha	1
Implementation of Diversion System on Juvenile Delinquency to Manifest Restorative Justice at Badan Pemasarakatan Kelas II (Class II Correctional Institution) in Samarinda Endang Herliah, Suryaningsi, Marwiah Johansyah, Widyatmike Gede Mulawarman	21
Socialization of Law No. 16 of 2011 by The Aisyiyah Community in Samarinda: Efforts to Fulfill Justice and Equality before The Law for People Experiencing Poverty Suryaningsi, Endang Herliah, Aullia Vivi Yulianingrum, Marwiah Marwiah, Venna Puspita Sari, Nur Fitri Handayani	33
Phases of Forgiveness in Early Adult Women with Parental Infidelity Eunice Christine Manoe, Wahyuni Kristinawati	53
Influences of Patriarchal Culture and Femicide as a Form of Gender-based Violence against Women from Human Rights Perspective Fanny Refikal, Heni Susanti, Endang Suparta	63

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Implementation of Diversion System on Juvenile Delinquency to Manifest Restorative Justice at *Badan Pemasyarakatan Kelas II* (Class II Correctional Institution) in Samarinda

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ABSTRACT

This study explores the application of the Diversified Penal System for Children (DPS) in overcoming the phenomenon of juvenile delinquency, focusing on the application of Restorative Justice in Badan Pemasyarakatan (BAPAS) Kelas II (Class II Correctional Institution) in Samarinda. This study aims to analyze the role of the Bapas in handling law cases involving children, especially in the context of sexual crimes. The data were gathered through normative legal research and secondary data sources, such as legal documents and interviews with key stakeholders, including the Head of Client Guidance of Bapas Kelas II Wonosari, the Judge of the Bantul District Court, and child investigators at the Samarinda Regional Police. This study examined the challenges faced by the Bapas in handling cases of child offenders and Bapas' recommendations and suggestions. The findings of this study are hoped to shed light on the role of Bapas in Indonesia's legal framework, particularly the Juvenile Justice System Law of 2012.

KEYWORDS: *phenomenon, juvenile delinquency, penitentiary, law, role*

INTRODUCTION

Restorative justice focuses more on creating justice and balance for victims and perpetrators (Suryaningsi, 2017). The diversion system emphasizes that the purpose of the criminal justice process is not on punishment but on improving conditions, maintaining and protecting children, and preventing repetitive actions through constructive court actions (Nazifah,

2021). In this way, the system does not ignore the rights of perpetrators and victims (Ramayanti, 2022; Saltiana, 2021). In this context, the so-called perpetrator is a child who is still a minor according to category Number 35 of 2014 concerning Child Protection. Meanwhile, the so-called victim is someone without a vulnerable age limit who suffers from the behavior or actions committed by the child as a perpetrator of crime (juvenile

delinquency) (Herliah & Zakiyah, 2021).

According to Law Number 35 of 2014 concerning Child Protection, a child is someone who is not yet 18 years old, including children who are still in the womb. Meanwhile, according to Article 1 Paragraph 3, a child in conflict with the law, referred to as a child, is a child who is 12 (twelve) years old but not yet 18 years old and who is suspected of committing a crime. Reflecting on the existing reality, in Indonesia alone, legal cases against minors reached 33% in 2018. Bapas Kelas II in Samarinda, as part of the prisoner correctional sub-system or criminal justice sub-system, has a very strategic and vital role in supervising and fostering child criminal cases in the city.

There are several supporting and inhibiting factors. Supporting factors include the available facilities such as libraries and mosques, the presence of support from several parents of clients, and communication and relationships established by the Bapas (Putri et al., 2024; Suryaningsi et al., 2022). Meanwhile, inhibiting factors involve limited budgets, limited human resources, long distances, and limited time (Suryaningsi & Sari, 2021; Suryaningsi, 2020). These factors must be a benchmark for the success of Bapas' performance in supervising and guiding child criminal cases in Samarinda.

Based on the above problems and concepts, research was conducted to determine whether Bapas Kelas II Samarinda can appropriately implement the concept of diversion in handling criminals by minors.

METHODS

Restorative justice recommends methods to hold perpetrators accountable while providing victims a voice, which includes a voluntary meeting between the offender and the victim. A 2013 Cochrane review restorative justice conferences where the offender meet the victim face-to-face, and explained that "[t]he victim is encouraged to attend but is under no obligation, and in some instances the victim may be represented by another party." However, alternatives to the practice exist, such as reading victim impact statements while holding the perpetrator accountable, reducing the risk of further harm or revictimization. In addition, the meeting may include people representing the wider community.

This section details data collection procedures and analysis techniques used in this research, including research design, subject characteristics, and data collection process. This research is a case study involving a detailed study of a particular case (a person or a small group). Observation and interviews with related parties implementing the diversion system were used in this research. In this case, the researchers interviewed the head of Bapas Kelas II Samarinda represented by an advisor from the Bapas and a community advisor.

This is field research employing a descriptive-analytic method. Data and information were sourced from Bapas Kelas II in Samarinda. After the data was collected, the researchers first described the causes of criminal crimes by minors and then identified the implementation of the diversion system by the Bapas Kelas II Samarinda.

The research approaches used in this study were:

1. The normative approach applied at Bapas Kelas II Samarinda.
2. The juridical approach is based on legislation that regulates diversion procedures and mechanisms and handles minors in criminal law cases.

The research was conducted at the Bapas Kelas II Samarinda located on M. T. Haryono Street No. 22, Karang Anyar, Sungan Kunjang District, Samarinda, East Kalimantan, from March to October 2022.

In general, the researchers classified the data obtained into two types: primary and secondary data.

1. Primary Data

Primary data is data obtained directly from the research subject using a measurement or data collection tool as a source of information. The data were obtained by reading and observing the situation directly and by interviewing people who practiced diversion.

2. Secondary Data

Secondary data is basically existing documentation or report data. In this research, the secondary data were from books or documentation related to this study. In addition, researchers also read archives of Bapas data up to several years back to track the progress and success rate of diversion system implementation.

Data Collection Techniques

1. Documentation: studying documents related to diversion and procedures for its application

and reviewing various writings related to this research.

2. Interviews: conducted with parties authorized to carry out diversion activities to realize restorative justice, including the head of the Bapas UPT and the head of child and community advisors.

The collected data were analyzed qualitatively using the following methods:

1. The inductive method is a way of thinking that explains specific data and then generalizes them into general conclusions. In this study, the data were the occurrence of criminal law on minors. The general conclusion drawn was related to the causes of juvenile delinquency (Siegel et al., 2011).
2. The deductive method analyzes general data and draws specific conclusions. Using these arguments or rules strengthens the analysis in this study.

RESULTS AND DISCUSSION

1. Results

The research began with a general visit to determine the supporting elements, especially facilities and infrastructure, of diversion implementation in criminal cases of minors in Bapas Kelas II Samarinda. During the following visit, the researchers and team interviewed parties involved in diversion implementation, including community and child client advisors. The findings are as follows:

1. Diversion is the main goal in every case of minors facing the law of the Bapas Kelas II Samarinda.

2. Challenges often cause the failure of diversion implementation on law violations by minors.
3. Diversion implementation leads to a positive trend, a decrease in criminalization by minors, and an upward trend in the success rate of diversion.
4. In fostering criminals, Bapas develops several programs focusing on developing economic abilities and skills.

The Juvenile Criminal Justice System Act of 2012 provides a solid legal basis for counselors and community counselors to perform ceremonial duties, attend court hearings as members of juvenile courts, and give instructions to clients (unlawful children). In addition, Bapas has a role and function in conducting community-based research, which investigators use to review during diversion at the police and court levels (Blundell, 2014).

Juvenile delinquency, also known as juvenile offending, is the act of participating in unlawful behavior as a minor or individual younger than the statutory age of majority. These acts would otherwise be crimes if the individuals committing them were older. The term delinquent usually refers to juvenile delinquency and is also generalized to refer to a young person who behaves in an unacceptable way. A juvenile delinquent is a person who commits a crime and is under a specific age. Most states specify a juvenile delinquent, or young offender, as an individual under 18, while a few states have have slightly different maximum age (Graham & Bowling, 1995). The term "juvenile delinquent" originated in the late 18th and early

19th centuries when the treatment of juvenile and adult criminals was similar, and punishment was over the seriousness of an offense. Before the 18th century, juveniles over age 7 were tried in the same criminal court as adults and, if convicted, could get the death penalty. Illinois established the first juvenile court (Bartol & Bartol, 2009). This juvenile court focused on treatment objectives instead of punishment, determined appropriate terminology associated with juvenile offenders, and made juvenile records confidential. In 2021, Michigan, New York, and Vermont raised the maximum age to under 19, and Vermont law was updated again in 2022 to include individuals under 20. Only three states, Georgia, Texas, and Wisconsin, still appropriate the age of a juvenile delinquent as someone under the age of 17. While the maximum age in some US states has increased, Japan has lowered the juvenile delinquent age from under 20 to under 18. This change occurred on 1 April 2022 when the Japanese Diet activated a law lowering the age of minor status in the country. Just as there are differences in the maximum age of a juvenile delinquent, the minimum age for a child to be considered capable of delinquency or the age of criminal responsibility varies considerably between the states. Some states that impose a minimum age have made recent amendments to raise the minimum age. However, most states remain ambiguous on the minimum age for a child to be determined a juvenile delinquent. In 2021, North Carolina changed the minimum age from 6 to 10 years old, Connecticut moved from 7 to 10, and New York adjusted from 7 to 12. In some states, the minimum age

depends on the seriousness of the crime committed. Juvenile delinquents or juvenile offenders commit crimes ranging from status offenses such as truancy, curfew violation, or underage drinking and smoking to more serious offenses categorized as property crimes, violent crimes, sexual offenses, and cybercrimes.

Some scholars have found an increase in youth arrests and have concluded that this may reflect more aggressive criminal justice and zero-tolerance policies rather than changes in youth behavior. Youth violence rates in the United States have dropped to approximately 12% of peak rates in 1993, according to official US government statistics, suggesting that most juvenile offending is non-violent. Many delinquent acts can be attributed to environmental factors such as family behavior or peer influence. One contributing factor that has gained attention in recent years is the school-to-prison pipeline. According to Diverse Education, nearly 75% of states have built more jails and prisons than colleges. CNN also provides a diagram that shows that the cost per inmate is significantly higher in most states than the cost per student (Theriot, 2009). This shows that taxpayers' dollars are going toward providing for prisoners rather than providing for the educational system and promoting the advancement of education. For every school that is built, the focus on punitive punishment has been seen to correlate with juvenile delinquency rates. Some have suggested shifting from zero-tolerance policies to restorative justice approaches. Juvenile detention centers, juvenile

courts, and electronic monitoring are common structures of the juvenile legal system. Juvenile courts are in place to address offenses for minors as civil rather than criminal cases in most instances. The frequency of use and structure of these courts in the United States varies by state. Depending on the type and severity of the offense committed, people under 18 can be charged and treated as adults.

The urgency of implementing child criminal diversion on the juvenile delinquency phenomenon in Samarinda

The state has a criminal implementation agency, a sub-system of the Directorate General of Corrections, with the function and task of fostering and advocating for children. One such sub-system is Bapas, part of the Directorate General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia. The handling of child cases by Bapas is very crucial, considering that there must be child advisors since the child has been made a suspect.

Bapas Kelas II Samarinda

In Bapas, diversion is the earliest effort and the primary goal. Bapas' efforts are as follows.

1. Litmas (Community research)
2. Early warning
3. LPKS (Temporary Child Placement Institutions)
4. LPKA (Children's Development Institute)

In general, the trial is the final path taken when peaceful efforts fail and face a deadlock. However, it

needs to be emphasized that diversion is only given once in a lifetime. Therefore, convicts who have been granted diversion will not be able to receive it in the future.

The highest level of Bapas employee education is a master's (2), followed by a bachelor's degree (36) and high school graduates or equivalent (5). To improve the advocacy function, Bapas Kelas II Samarinda employs 31 functional officials, consisting of 2 middle-aged community advisors, 26 young community advisors (PK), 14 new community advisors, and 5 proficient community advisor assistants.

Table 1. *Percentage of correctional client advocacy services based on the standards in 2021*

No	Activities	Total
1	<i>Litmas</i> request	2,247
2	<i>Litmas</i> solution	1,805
3	TPP Bapas meeting	240
4	Surveillance/Home visit	873
5	Mandatory report	2,745

Source: Performance Report of Government Agencies of the Ministry of Law and Human Rights Bapas Kelas II Samarinda

In 2021, the adult client advisor sub-section at Bapas Kelas II Samarinda received requests of 2,247 *litmas*, with 1,805 completed. It means that there were 442 unfinished *litmas*. In addition, the TPP Internal/Bapas session had been held 240 times.

Given the large number of requests for advisors and the number of clients, human resources (HR) and infrastructure that support these activities are needed to handle

the requests better and yield more measurable progress.

Table 2. *Data on the implementation of child client advocacy and supervision in 2021*

No	Activities	Total
1	<i>Litmas</i> request	207
2	<i>Litmas</i> solution	207
3	TPP Bapas meeting	36
4	Surveillance/Home visit	110
5	Mandatory Report	83

Source: Performance Report of Government Agencies of the Ministry of Law and Human Rights Bapas Kelas II Samarinda

The sub-section of child client advisors at Bapas Kelas II Samarinda received 207 requests, of which 207 were completed. Children's trial assistance had been carried out 36 times.

According to the interview with Fitriadi Muchransyah, the head of the child client guidance sub-section, the data and the number of children guided throughout 2019-2021 in Bapas Kelas II Samarinda are as follows.

Table 3. *List of minors at Bapas Kelas II Samarinda from 2019 to 2021*

No	Year	Total
1	2019	215
2	2020	148
3	2021	123

Source: Interview with the head of UPT Bapas Kelas II Samarinda

The above table indicates that the number of guidance children decreased from 215 to 148 to 123 in 2021.

The following database presents the number of diversions Bapas Kelas II Samarinda carried out in 2020.

Table 4. *Resolution cases using diversion in 2020*

NO	MONTH	DIVER-SION	SUCCESS-FUL DIVERSI ON
1.	January	5	5
2.	February	2	2
3.	March	4	4
4.	April	2	2
5.	May	0	0
6.	June	4	4
7.	July	5	5
8.	August	3	3
9.	September	1	1
10.	October	6	6
11.	November	5	5
12.	December	5	5

Source: Bapas database, processed in 2020

According to Table 4, the implementation of diversion decreased from January to May to 0 but experienced a considerable increase in June and reached its peak in October.

Table 5. *Diversion cases in 2021*

NO	MONTH	DIVER-SION	SUCCESS FUL DIVERSI ON
1.	January	2	2
2.	February	1	1
3.	March	2	2
4.	April	2	2
5.	May	1	1
6.	June	0	0
7.	July	5	5
8.	August	1	1
9.	September	1	1

10.	October	3	3
11.	November	7	7
12.	December	2	2

Source: Bapas database, processed in 2022

Settlement cases of minors facing the law in 2021 experienced a significant downward trend compared to 2020. In 2021, the highest cases of diversion were in July, with 5 diversion implementations, and the peak was in November, with 7 cases. In other months, the number of cases and successful diversions ranged from 2 to 3.

Table 6. *Cases implementing diversion in 2022*

NO	MONTH	DIVER SION	SUCCESSFUL DIVERSION
1.	January	8	8
2.	February	1	1
3.	March	1	1
4.	April	3	3
5.	May	1	1
6.	June	2	2
7.	July	4	4
8.	August	6	6
9.	September	2	2
10.	October	2	2
11.	November		
12.	December		

Source: Bapas database, processed in 2022

In January, the total number of cases that must be resolved using diversion was quite a lot compared to December 2021. However, it experienced a significant downward trend in the following months.

It can be seen from the diversion database in 2020, 2021, and 2022 that there is a balance between diversion implementations and

successful diversion implementations in Bapas Kelas II Samarinda. This can be seen from the comparison between the diversion and successful diversion implementation columns, indicating 100% of successful implementations. This means the Bapas performs optimally in implementing diversion.

1. *Obstacles to diversion implementation on juvenile delinquency*

Bapas Kelas II Samarinda encountered several obstacles when implementing diversion on juvenile delinquency. Technically, the following were the obstacles¹ identified by the researchers.

- 1) Bapas Kelas II Samarinda covers² vast areas spreading quite far from each other, including:
 - a. Bontang
 - b. Kutai Kartanegara Regency
 - c. East Kutai Regency
 - d. West Kutai Regency
 - e. Maluhu Regency
 - f. Samarinda
- 2) There was insufficient funding. Hatus recognized that mobility,⁶ especially for community advisors, in Bapas Kelas II Samarinda was urgent and necessary. However, the advisors were expected to reach all areas within the Bapas' working areas with a fairly limited budget.
- 3) The surrounding community's lack of understanding of diversion caused them to reject the offer several times. They thought that diversion defended the perpetrators.

- 4) The misconception that diversion was to defend sensitive cases also led to Bapas Kelas II Samarinda's rejection of diversion efforts.

Despite the above rejections, Bapas Kelas II Samarinda performed and achieved optimally. This was due to the involvement of all Bapas elements in implementing its missions, functions, strategic programs, and community participation through various partnerships with third parties. In achieving the results, the following obstacles and problems affected the efficiency and effectiveness of Bapas Kelas II.

The lack of community supervisors at Bapas Kelas II Samarinda.

Unoptimal assessment operation of prisoners in the prison area.

Tardy reporting as some correctional clients did not report according to the schedule set by Bapas.

The absence of a forum for Bapas officers to hone their soft and hard skills.

No precise system and the delayed implementation of service standard measurement.

DISCUSSION

The pre-diversion optimization at Bapas Kelas II Samarinda was conducted based on the results of former diversion implementations.

Besides escorting the process of solving child criminal cases from the beginning to the advocacy stages, Bapas also monitors the return of the child to both parents. The Decree of the Minister of Justice of the Republic of Indonesia Number

M.01-PK.04.10 of 1998 concerning Duties, Obligations, and Conditions for Community Advisors lists the duties of community advisors.

1. Conduct community research to assist investigators, public prosecutors, and judges in juvenile cases. Here, the advisors' status is the same as law enforcers, each of whom has a particular task: determining the advocacy program for prisoners and correctional clients in juvenile prisons, determining prisoner treatment programs in prisons, and determining additional advocacy programs for correctional clients.
2. Carry out community and work advocacies for correctional clients.
3. Provide services to other agencies and communities requesting data or results of specific client community research.
4. Accommodate community advisors and volunteer workers involved.
5. Supervise convicted juveniles sentenced to supervision and correctional protégés handed over to parents, guardians, or foster parents.

To optimize its role and function as a community unit, Bapas has several work programs to equip fostered children with skills (Garz, 2009). The observations and interviews suggested that Bapas Kelas II Samarinda also strived to develop the minors' skills.



Figure 1. Coffee Machine



Figure 2. Results of Welding Training

The pictures above show some facilities provided by Bapas to develop the abilities and skills of supervised clients. The training activity is under POKMAS (Community Work Program). In addition to making coffee and welding, there is training in sewing and beading to produce traditional Kalimantan bags.



Figure 3. Agricultural planting media

Bapas Kelas II Samarinda also trains supervised children to develop creative economic ideas to plant by preparing media, tools, and management procedures. This is a once in two months advocacy activity. The training offered by the Bapas aims to equip the supervised children to be helpful to the

surrounding community and motivate others when released. In this way, the impact is on oneself and the society around them (Garz, 2009). Bapas Kelas II Samarinda optimizes the advocacy programs they offer through collaborative efforts through MoUs with several institutions, such as Islamic boarding schools, to carry out religious activities and several other religious places of worship.

CONCLUSION

Restorative justice is an approach to justice that aims to repair the harm done to victims. In doing so, practitioners work to ensure that offenders take responsibility for their actions, to understand the harm they have caused, to give them an opportunity to redeem themselves, and to discourage them from causing further harm. For victims, the goal is to give them an active role in the process, and to reduce feelings of anxiety and powerlessness. Restorative justice programs can also complement traditional methods, such as retributive justice, and it has been argued that some cases of restorative justice constitute punishment from the perspectives of some positions on what punishment is.

Though academic assessment of restorative justice is positive, more recent studies have shown that academic performance falters in school districts where restorative justice is practiced. Proponents argue that most studies suggest it makes offenders less likely to reoffend. A 2007 study also found that it had a higher rate of victim satisfaction and offender

accountability than traditional methods of justice delivery. However, practitioners have commented that the field has attracted increased risks of revictimization. Its use has seen worldwide growth since the 1990s. Restorative justice inspired and is part of the wider study of restorative practices.

One response to a crime, in a restorative justice program, is to organize a meeting between the victim and the offender. This is sometimes done with representatives of the wider community (Fowler, 2010). The goal is for them to share their experience of what happened, to discuss who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offense. This may include a payment of money given from the offender to the victim, apologies and other amends, and other actions to compensate those affected and to prevent the offender from causing future harm. However, restorative justice practices are firmly rooted in the needs of the victim, and may simply support holding the perpetrator accountable and the sharing of victim impact statements without dialogue.

Bapas has an essential function and role in overcoming various problems in carrying out community guidance and assistance. In implementing diversion, Bapas Kelas II Samarinda encountered several obstacles. Technically, the researchers identified several obstacles, such as the number of rejections, wide working areas, and lack of operational funds. Besides escorting the process of solving child criminal cases from the beginning to

the advocacy stages, Bapas also monitors the return of the child to

both parents.

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ABOUT

SALASIKA etymologically derived from Javanese language meaning 'brave woman'. SALASIKA JOURNAL (SJ) is founded in July 2019 as an international open access, scholarly, peer-reviewed, interdisciplinary journal publishing theoretically innovative and methodologically diverse research in the fields of gender studies, sexualities and feminism. Our conception of both theory and method is broad and encompassing, and we welcome contributions from scholars around the world.

SJ is inspired by the need to put into visibility the Indonesian and South East Asian women to ensure a dissemination of knowledge to a wider general audience.

SJ selects at least several outstanding articles by scholars in the early stages of a career in academic research for each issue, thereby providing support for new voices and emerging scholarship.

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There are other journals which address those topics, but SJ approaches the broad areas of gender, sexuality and feminism in an integrated fashion. It further addresses the issue of international collaboration and inclusion as existing gaps in the area of academic publishing by (a) crossing language boundaries and creating a space for publishing and (b) providing an opportunity for innovative emerging scholars to engage in the academic dialogue with established researchers.

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