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### RESEARCH ARTICLE

#### DIVERSION AS A METHOD OF DISPUTE SETTLEMENT FOR THE OFFENCE OF ROAD TRAFFIC TRANSPORTATION ACCIDENT (THE DIGNIFIED JUSTICE PERSPECTIVE).

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#### Abstract

The perspective or the theory of dignified justice is a result of a contemplation and philosophical thinking, and scientific research about the world, especially in this case the legal world in general. It can therefore be considered as a grand theory of law. The Dignified justice theory understands, defines and justify or possibly falsify the idea of justice more broadly, encompassing a legal system and not merely defining the concept of justice as distributive, commutative, fairness or any other kind of justice. From the perspective of dignified justice theory, the researchers has found and believe that in the criminal pre-investigation phase of the Pancasila Legal System its laws and regulations which manifesting the spirit of the Indonesian people (*Volksgeist*) appears to imply possibilities of using diversion method to settle lawfully the violation of the legal provisions governing road traffic transportation which resulting in any road traffic accidents as an alternative way of obtaining justice based consensus and recognised by the court and the legal system. This is in line with the spirit in diversion known and existing in the Pancasila Legal System. Diversion, or penal mediation or whatever the name might be given to the alternative dispute or cases settlement, as long as it is in accordance with the legal principle of consensus deliberation (*musyawarah mufakat*), it is justified in the Pancasila Legal System, provided that it is not contrary to applicable laws and regulations in the System. In the Pancasila Legal System, particularly its criminal justice system (CJS) the investigator, public prosecutors and judges may use their discretionary power as the law to utilised the diversion to settle cases or disputes arising from the violation of the road traffic transportation laws and regulations which cause road traffic transport accidents.

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#### Introduction:-

This research has been conducted in order to analyze and find out the legal principles and arrangements for settling cases and disputes concerning the violation of the laws and regulations in the Indonesian CJS governing the road

traffic transportation which caused accidents. Additionally, this study has also been conducted to analyze and find out the philosophy of diversion which underpin the laws and regulations and their enforcement on the violation of the road traffic transportation accident based on justice or fairness value.

One of the major theories defended and used in this research to achieve its intended objectives is the theory or perspective of dignified justice. The perspective or the theory of dignified justice is a result of a contemplation and philosophical thinking about the world, especially in this respect namely the law or legal world in general. It can therefore be called a grand theory of law.

Dignified justice theory understands and defines justice more broadly, encompassing a legal system and not merely defining the nature of justice in the concept such as distributive, commutative or justice as fairness and any other kind of justice<sup>1</sup>. Dignified justice as the nick name of the dignified justice perspective or the dignified justice theory has postulates or the principles. Among others, it is believed that the existence of the law in a civilized society is to humanize man (*nguwongke wong*), or to make human human as a creature of the God Almighty, in accordance with the image of the deity and his dignity<sup>2</sup>.

Taking into account the aims of this research, the dignified justice would then being used to analyze and unearth laws and regulations in the Indonesian CJS which contained diversion as a method of settling the offences on the the road traffic transportation laws and regulations which bring about accidents. In other words, the research is also aims at finding a philosophy of diversion as a method of settling the cases and disputes caused by the road traffic transportation law.

At present laws and regulations and their enforcement to the road traffic transportation accidents in the CJS in Indonesia is based on justice, the manifestation of the spirit of the Indonesian people and derived solely from Pancasila as the First Agreement for the Indonesian nation as formulated in Article 7 paragraph (2) letter ( f ) of the Road Traffic Transportation Traffic Act. Law enforcement in the field of the road traffic transportation has been understood as the process of carrying out efforts for the enforcement or functioning of legal norms in the field of the road traffic transportation. As generally known, these law of the road traffic transportation are the legal norms in the road traffic transport field is a code of conduct governing the road traffic transportation. Currently, the legal norms of the road traffic transport could be found in the Road Traffic Transport Act, or the Road Traffic Act (The UU-LLAJ), The Law Number 22 of 2009.

#### **Law Enforcement of The UU-LLAJ:-**

The UU-LLAJ is the only legal product which governing the whole aspects of road traffic transportation in the Pancasila Legal System. This law is a result of the renewal of the laws and regulations, or the law reform in the form of a policy formulation (formulative policy) to adjust the old letter and the spirit of the criminal law in the field left by the Dutch Colonial Government and their relics adopted in 1930, 1951 and later renewed in 1965. In 1992 the reform took it last effort to change the colonial law before in the 2009 adjusting with the legal soul of the free and independent Indonesian nation, namely Pancasila.

Regarding this, Dr. Otto Yudianto has written that:

Efforts in the reform of Indonesian criminal law must remain on the basis of the soul that lives in Indonesian society itself, as well as the development of modern criminal law of the civilized nations as its feature the adaptive nature of the criminal law itself. Indonesian criminal law must reflect the values adopted and upholding by the Indonesian people as stipulated in the Pancasila<sup>3</sup>.

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1. Teguh Prasetyo, *Dignified Justice, A Legal Theory Perspective*, First Edition, Nusa Media, Bandung, 2015, p. 1.
  2. *Ibid.*
  3. Otto Yudianto, *Formulative Policy of Life Imprisonment for Indonesia Penal Law Reform*, Brilliant, Towards Insan Cemerlang, Cetakan First, Surabaya, 2015, p.7.

The UU-LLAJ has adapted new developments, especially new concepts and technologies in the law governing the road traffic transport management. This adoption is the manifestation of the soul of the Indonesian nation (the Indonesian *Volkgesit*) and it further manifest would then being articulated in four Government Regulations, namely Government Regulation No. 22 of 2009 on Road Transportation, on Vehicle Inspection, on Road and Traffic Infrastructure as well as about vehicles and drivers. Also published are several Ministerial Decrees that serve as technical guidelines for the application of the regulation, such as Ministerial Decree No. 60 of 1993 on Road Marking, Decree No. 61 of 1993 on Road Signs and Ministerial Decree No. 62 of 1993 on Traffic Lights.

According to these researchers one of the finding of this study is that the perpetrators who offended the road traffic transport law and cause accidents will not all carry out criminal proceedings and penalty, but can also take an alternative method of dispute or case settlement called *diversi* (diversion). This finding is impliedly found in the formulation of Article 12 letter ( f ) of the LLAJ Act. It has been stipulated in the provision that law enforcement, which includes violation and handling of road traffic transport accidents may be done peacefully with the parties, based on the classification of the accident. Particularly if the scale of traffic accident is mild the method of settling it is consensual one, so that quick handling is achieved and this will not create burden to the parties.

Possible use of diversion in the settlement violations of traffic laws and road transport which cause accidents is therefore a form of alternative law enforcement on traffic laws and road transport. Tis research has found that this type or method of law enforcement is possible, particularly at the pre investigative stage. The notion of the concept of pre investigation as part of a series of law enforcement processes, including the enforcement of legal norms in the field of traffic and road transportation can clearly be found clearly in KUHAP.

It is stipulated therein that investigation is a series of investigative actions, including the *penyelidikan* (pre investigation) in matters and in the manner laid down in the Law of the Republic of Indonesia Number 8 of 1981 on the Criminal Procedure Code or KUHAP in orde to search for and collect evidence which will makes certain and clear that a criminal offense has occurred and to determine the suspect. Prior to the investigation, the Police (investigator) was also authorized by law to conduct a pre investigation which is termed as *penyelidikan*.

It is interpreted in the Indonesian Criminal Procedure Code (KUHP) that investigation is a series of investigative actions taken by police officers of the Republic of Indonesia who are authorized by the Criminal Procedure Code to search for and find an alleged criminal offense before determining whether or not an investigation is to be conducted according to the procedures set forth.

Meanwhile, road traffic transportation accidents, is an accident involving vehicles with or without other road users, resulting in human casualties or property losses. Stanard Boker in his *Traffic Accident Investigator Manual for the Police* has explained that traffic accidents are accidents occurring on public roads caused by unauthorized users and result in wounded casualties, minor injuries, or deaths<sup>4</sup>.

Referring to the UU-LLAJ, a traffic accident is an unexpected and unintended road traffic transpor accident involving a vehicle with or without other road users resulting in human casualties and property loss. The Article 229 UU-LLAJ contained a formulation that the road traffic transport accident will be divided into: a. mild traffic accidents. This accident cause damage to vehicles and/or goods; b. road traffic transport which cause minor injuries and damage to vehicles and/or goods; c. severe road traffic transport accidents. This last type of accident resulted in death or serious injury.

Traffic accidents are also regulated in Articles 310, 311 and 312 of the UU-LLAJ. It is formulated in Article 310: (1). Any person who drives a motor vehicle which due to its negligence causes a traffic accident with damage to the vehicle and/or goods ... shall be punished with imprisonment of six months and/or a maximum fine of one million rupiah; (2) Every person who drives a motor vehicle which due to negligence causes a traffic accident with minor injury and damages of vehicles and or goods ... shall be punished with imprisonment of a maximum of one year and/or a maximum fine two million rupiah ; (3) Any person driving a motor vehicle who due to his negligence resulted in a traffic accident with a seriously injured person ... shall be subject to a maximum imprisonment of five years and/or a maximum fine of ten million rupiah; (4) In the case of an accident ... which

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4. The old PC-HPG Traffic Investigation.

results in another person dies, shall be subject to a maximum imprisonment of six years and/or a fine of up to twelve million rupiah.

Furthermore, Article 311 contains the provision that: (1) Any person who deliberately driving a motor vehicle in a manner or circumstances that is harmful to a life or property shall be subject to a maximum imprisonment of one year or a fine of not more than three million Rupiah; (2) In the case of an act ... resulting in traffic accidents with damage to vehicles and/or goods ... the offender shall be punished with imprisonment for a maximum of two years or a maximum fine of four million rupiah; (3) In the case of the acts ... result in traffic accidents with minor injuries and damage to vehicles and/or goods ... the offender shall be sentenced to a maximum imprisonment of four years or a fine of at most eight million rupiah; (4) In the case of an act ... resulting in traffic accidents with serious injured persons ... the offender is charged with a ten year old imprisonment or a fine of at most twenty million rupiah; (5) In the case of an act .. resulting in another person dies, the offender shall be punished with a maximum imprisonment of twelve years or a fine of at most twenty-four million rupiah.

It is also mentioned in Article 312 that: Every person who drives a motor vehicle involved in a traffic accident and intentionally does not stop his vehicle, does not provide assistance or does not report traffic accidents to the nearest Police of the Republic of Indonesia ... without reason is subject to imprisonment of a maximum of three years or with a maximum of seventy five million rupiah.

In order to enforce the criminal provisions in the field of the road traffic transport as listed above, the criminal process (the litigation process) commences from the stage of investigation of traffic accidents. As it has been stated above, the investigation is starting from the pre-investigation stage, or as the above mentioned KUHAP nomenclature, namely *penyelidikan*. At this stage, the regulation seems to allow a peaceful settlement of the cases or disputes, and it could be said that this is the place where the spirit of diversion as a form of dignified justice could be used to solve or settle disputes or cases alternatively in the Pancasila Legal System.

The pre-investigation stage starts from the time of the crime scene (Place of the Case Genesis). After receiving reports of a traffic accident, the Traffic Police officer immediately prepared the equipment to go to the scene of the traffic accident. After arriving at the scene, the officer immediately secured the scene.

The purpose of securing at the scene, is: (a). Keep the scene intact unchanged as seen and found by the officer who took first action at the scene; (b). Prevent the emergence of new problems such as the occurrence of traffic accidents and traffic congestion; (c) To provide assistance to the victim and secure for the officer performing the duties at the crime scene and other road users; (d) To protect the existing evidence from being lost or damaged; (e) To obtain information and facts as further investigation material.

Activities carried out at the scene of the crime scene are the processing of traffic accident accidents by officers, starting from measuring, photographing, noting the identity of witnesses and victims, securing evidence, and making TKP Sketches or sketch scene. In *Vademikum* Traffic, the what so called sketch scene is used as a guideline in the manufacture of the case file. The sketch is a collection of facts that describe events in the spot of accident.

From the Sketch image the investigator can determine the cause of the occurrence of traffic accidents (*laka lintas*). The investigator would then determine who is the suspect in order to convince the judge in deciding the criminal case. The researcher believes that at this stage, from the dignified justice perspective this seems to allow a short of discretionary power of the police officers to set aside provisions of the UU-LLAJ and settle a case based on consensus. This is not in conflict with the spirit of the diversion known in the Pancasila Legal System, provided that this is in accordance with the laws and regulations.

Diversion, or penal mediation or whatever its name as long as it is in accordance with the legal principle of consensus deliberation (*musyawarah mufakat*), may be justified in the Pancasila Legal System, insofar as it is not contrary to applicable laws and regulations. With regards to the settling of a case or disputes, and in this case the road traffic transport accident in the Pancasila Legal System, the Investigator may also use his discretionary power as the law to settle cases that are in the spirit of diversion.

The settlement of cases by consensus is possible because it is a legal principle in the Pancasila Legal System, which in the perspective of dignified justice is the soul of the nation (*Volksgeist*) and is also in line with the arrangements

in the Criminal Procedure Code. In addition to the philosophical dimension, consensus deliberation, or mediation of penal, or other similar concepts initiated in this research, the diversion is possible because in the case of children faced with the law known in the Pancasila System Law it has also been recognized as a settlement method with a legitimate cause.

To elaborate what has been stated above as a procedures in settling the cases or disputes on road traffic transport accident, after carried out the activities at the scene, the investigation process is terminated. The investigator will do at the scene, among others include activities such as consolidation, opening of crime scene, and undertake a *Visum et Revertum* (VER) request against traffic accident victims. The process at this scene will be ended with the making of the Minutes of Examination at the scene (BAP TKP). In addition to the Minutes of Examination at the scene the investigators will make News Shooting Events at the scene.

Officers must also coordinate with the social insurance company called *Jasa Raharja*. This is made in order to speed up insurance claims for injured and dead victims. This researchers will argue that such a stage is a short of peaceful settlement stage which is in line with the spirit to mitigate a case. Since insurance claim is a non public law settlement. This can also be viewed as having a relationship with the spirit in the diversion which is based in consent as regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 16/PMK.010/2017 on the Large Compulsory Funding of Road Traffic Accident.

Subsequently activities of the officers returned to the office and start the next stage, namely the investigation of traffic accidents. The process of investigation is done by making the news event. The making of the minutes in the process of traffic accident investigation can be done in the form of a short examination report and ordinary examination report.

For traffic accidents with victims of death and/or severe injuries made in ordinary hearings (Articles 152 through 202 KUHAP), whereas traffic accidents with minor injuries and/or material loss are made in a brief inspection event (Articles 203 to Article 204 KUHAP).

The process of investigating traffic accidents, in addition to solving criminal problems there are also civil issues that must be resolved. In handling this civil matter, it must be implemented properly if it will not leaving problems later on. In *Vademicum* Traffic, the issue of civil handling, especially in terms of the settlement of compensation by the owner to the victims of traffic accidents is as follows: a. If a traffic accident causes harm to others under Article 1365 of the Civil Code, then the offending party shall be entitled to claim harm; b. The legal relationship between the driver and the employer has not been regulated in Indonesian law, but the employer's relationship with the driver is only based on the work provided for in Article 1376 Civil Code.

Furthermore, c. The employer under Article 12 of the UULAJ shall be responsible for vehicles operated on the road and shall comply with the roadworthiness; d. For the losses of the accidents caused by the non-fulfillment of the road worthy elements, the employer or owner is responsible because under Article 1367 Civil Code between employer or owner and driver based on employment relationship.

Therefore, in every investigation of traffic accidents causing the death toll, research involving LLAJ and Road Development institutions is an absolute requirement for legal interest, especially in relation to the LLAJ agency, as a witness who is required to request testimony to account for the legal action caused by the vehicle owner. This is stipulated in the Article 53 UULAJ (1) and its explanation *jo* Article 120 of the Criminal Procedure Code.

#### **An Overview of the Term Diversion:-**

As mentioned above, diversion is a method of settle case or disputes on the violation of the road traffic transport laws and regulation which ended up in accidents. The word diversion comes from English diversion which means evasion<sup>5</sup>. Diversion is generally known as the settlement method in settling cases at the juvenile courts which began to be known from 1985.

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5. Nandang Sambas, *Updates Punishment System Children In Indonesia*, Graha Science, Yogyakarta, 2010, p. 25.

This was stated in the *United National Standard Minimum Rules for The Administration of Juvenile Justice (The Beijing Rules)*. In the Pancasila Legal System, one of the guidelines for investigators to conduct diversion appears to be possible at the stage of investigation. This implied rule of law is found in the Article 18 of Law Number 2 of 2002.

The definition of diversion is also contained in the *United National Standard Minimum Rule of Administration of Juvenile Justice (The Beijing)* item Rule 11.1. It was formulated there, that diversion granting the authority or the law enforcement officials to take policy actions, or in this research is termed as discretionary power in dealing with or resolving child abuse issues by not taking formal roads, among others, stopping or not proceeding the criminal further towards the litigation means. In this case the investigator is authorised to take a diversion action since it is supported by the community to impose forms of social service activity to a crime perpetrator.

Implementation of the diversion program similar to restorative justice programme in criminal procedures. In the investigation stage, firstly it implements a form of social control. The law enforcers present the perpetrators with the responsibility of supervising and observing with the help of the community, with the adherence to the consent of the perpetrators and victims. Secondly, social services sanctions is imposed by the community against the perpetrator. In this case the diversion is carry out the function of supervising, interfering, improving and providing services to the perpetrators and their families so that the public can interfere with the perpetrator's family to provide repair or service.

Thirdly, diversion is an effort to invite the people to obey the law and enforce the law of the country. Its implementation is still consider as the sense of justice. The perpetrator of the offence is given priority besides opportunity to take the non criminal path like compensation, social work or supervision of his or her parents<sup>6</sup>.

Diversion is maily used in the child litigation process. It is considered that children who violate the law or commit a crime are strongly influenced by some other factors outside the child. To make the protection of children from the influence of the formal juvenile justice system, then the resulting human thought or jurists and humanity to make a formal rule actions issued to be removed. A child who have violated the law or commit criminal acts, in the judicial process is provided with alternative settlement methods that considered better for children.

Based on these thoughts, it gives birth to the concept of diversion. This concep is now populer and recognised in the Pancasila Legal System. The main principle of the implementation of the concept of diversion is a persuasive action or approach and giving the opportunity to the perpetrator to change. The clerk, including the police investigators, the prosecutors and particularly judges must show the importance of obedience to the law by way of persuasion and avoid arrest by using violence and coercion to implement diversion.

The concept of diversion begins with the establishment of juvenile justice in the nineteenth century that aims to exclude children from the adult justice process. The idea is that children are no longer required equality treatment as with adults. The main principle of the implementation of the concept of diversion is persuasive or non-penal approach. These provides an opportunity for a person to do a short of self correcting errors. The officer in carrying out the diversion shows the importance of obedience to the law and the rules of law. Officers who previously must undertake repressive efforts with force and coercion is then necessarily to divers them by means of a persuasive approach and avoid arrests that use such action<sup>7</sup>. This method is called the law as a way of making human as human being (*nguwongke wong*) in term of the dignified justice theory.

Generally diversion means transferring the handling of cases of children suspected of having committed a crime of a formal process with or without conditions. It is required in the *Commentary Rule 11* of UN Resolution 40/33, the *UM Standard Minimum Rule for the Administration of Juvenile Justice*. Diversion is very important to be considered in handling child offenders. Diversion can prevent children from the process of stigmatization that usually occurs in the process of punishment of children through the criminal justice system of children<sup>8</sup>. Forms

<sup>6</sup>Marlina, *Application of the Concept Diversion in which Kids as Perpetrators Against the Law of Criminal Justice System for Children*, Journal Equality, Vol. 13 No. February 1, 2008, p. 97.

<sup>7</sup>Marliana, *Diversion and Restorative Justice as an Alternative for the Protection of Children Who Faced By law*, study and Child Protection Center, PKPA, Terrain, 200, p. 83 .

<sup>8</sup>*Ibid.*

of diversion are as non intervention; informal warning; formal warning; replacing errors with good/restitution; and the opportunity to take community service as sanctions<sup>9</sup>.

Any transfer involving reference to community services or other services will require the consent of the juvenile, or the guardian's parent. Provided that the decision to refer to the case is subject to the review of the competent authority on the request.

According to an international standard, diversion can be done at any stage of the judicial process. It is possible to be done at the stage of investigation, prosecution, investigation hearing, and the implementation of the verdict. Although the law in the Pancasila Legal system dictates that the implementation of the diversion is done on the level of investigation. It means that the authority such as the police, prosecutors, the judiciary, or existing correctional Institutions may use it, and it is governed by the Law No. 11 of 2012.

The existence of this version is necessary because through diversion the criminal punishment process and the child's criminal track-record also the child stigmatization does not occur. Diversion efforts can be implemented at all levels of the judiciary with the aim of freeing suspects a child, or even to transfer with the aim that children avoid further legal proceedings. Diversion is a policy that is needed to avoid the perpetrator of the system juvenile punishment. Diversion is performed to provide protection and rehabilitation to the perpetrator in an attempt to prevent children from becoming adult criminals.

Diversion in an effort to urge people to obey and enforce the law while considering the sense of justice as a priority in addition to providing the opportunity for offenders to improve themselves. Diversion does not aim to disregard the law and justice, but the diversion is a new way for the state to minister justice in society. Implementation of diversion to avoid the use of coercion to make people obey the law, meaning that the principles of justice uphold the rule of law is no exception when the application of the principles of diversion are implemented<sup>10</sup>. Justice and diversion concept is an attempt to get the value of honesty, equal treatment of all people and demanded the clerk does not discriminate against people with different actions.

Diversion implementation aimed at realizing justice and law enforcement properly by minimizing criminal execution. Generally known that diversion is the authority of law enforcement officers who deal with criminal cases to take action on proceedings or to stop a case, to take certain actions in accordance with the policies held by the law. Based on this matter there is a policy whether the case is forwarded or stopped. If the case is passed on, then it will go to the formal criminal justice system and there will be criminal sanctions to be executed.

But if the case is not passed, then from the early stages of the investigation the case will be stopped in the interests of both parties in which the principle restore relationships that occur because of the offense for the benefit of the future for both sides. This is the principle of why diversion is done especially for child crime, in which to realize the welfare of the child itself. Through diversion can provide an opportunity for the child to become a new figure clean of criminal records and not to be a recidivist.

The world of law in recent years has changed the way of view of the handling of children who perform delinquency and unlawful acts. Many countries are beginning to abandon the repressive juvenile justice mechanisms due to the failure of the system to improve behavior and reduce crime rates by children.

The expert, including law of policy maker have started thinking of alternative and a more appropriate solution in handling child offence by paying more attention to involve them directly in the resolution of problems. This method is in contrast with the action of adults. This is due to the increased awareness that the child is not a miniature adult.

Childhood is a vulnerable period in a psychiatric condition where the child is not self-sufficient, not yet fully conscious, unstable personality, or not yet fully formed. In other words a child is a psychological unstable,

<sup>9</sup> Lilik Mulyadi, *Face Juvenile Justice System*, Alumni, Bandung, 2014, p. 111.

<sup>10</sup> Marlina, *Introduction to the Concept of Diversion and Restorative Justice in Criminal Law*, USU Press, Cet. First, 2010, p. 22.

dependent and easily affected human. These conditions led to a deed which is done by children that is not fully accountable by itself, because children as actors is not a pure perpetrators but also as victims. Kids are not supposed to be exposed to the juvenile justice system if that better in the best interest for the child to handle children act offending the Law.

Violent acts of arrest bring about the nature of coercion as a result of law enforcement. The avoidance of arrests by force and coercion is the goal of the implementation of the diversion. The goal is to enforce the law without using violence and men yakitkan to provide an opportunity for someone to make amends without going through the criminal penalties by the state that have full authority. Diversion in an effort to urge people to obey the law and its apparatus, implementation is still considering the sense of justice as a priority in addition to providing the opportunity for offenders to take the path of non-criminal such as compensation, social work or the supervision of their parents.

Diversion not aiming to perpetuate law and justice at all, but trying to use the element of coercion as minimally as possible to get people to obey the law. The principle of justice remains upheld in law enforcement. It is no exception when applying the principles of diversion. Justice is exercised by puts the same honesty and treatment towards everyone. Officers are required not to discriminate by changing the principle and different actions. Diversion exercise aims to bring about justice and law enforcement properly by minimizing criminal coercion.

Diversion done with a reason to give an opportunity to offenders to be good. It is expected that the perpetrator is back through non-formal pathways involving community resources. Diversion seeks to provide justice to cases of children who have already committed criminal acts up to law enforcement officers as law enforcement authorities. Diversion process is done in an attempt to take the opportunity to issue or divert a case depending on the legal basis or criteria that exist in practice.

Program versioned provide benefits to the community in the early and rapid handling of the misbehavior. The initial treatment also saves costs expenses incurred by local law enforcement. The benefits of the implementation of the program of diversion for child actors, can be found as follows: 1. To help children learn from their mistakes through intervention as soon as possible; 2. Fixing injured because of the incident, to the families, victims and the community; 3. Cooperation with the parents, caregivers and advised of everyday life; 4. Complete and raise children make the decision to take responsibility; 4. Trying to raise funds for resitusi to victims; 5. Give the child responsibility for his actions, and provides lessons on the opportunity to observe the consequences and effects of such cases ; 6. Provide an option for the offender to have the opportunity to keep it clean on health record; 7. Reduce the burden on the judiciary and the prison; 8. Control of evil children/adolescents<sup>11</sup>.

In Indonesia, the purpose of diversion is to avoid the stamp of evil or labeled as criminals, to improve life skills for the actors, so that the perpetrators responsible for their actions, in order to prevent the repetition of criminal acts, to propose interventions necessary for victims and perpetrators without formal process, a program of diversion will avoid the child to follow the processes of the juvenile justice system. Further steps will the program will remove children from the influences and negative implications of such proceedings.

With regards to the offences of the road traffic trasport regulaton which result in accidents, it has been put forward the definition of infringement as: a. Act that contrary to what is expressly stated in the criminal law; b. Offences is a criminal offense that is lighter than the evil deeds and punishment. Traffic violation is a violation of the provisions of the laws of traffic and road transport in force, committed by a person on the street either using motorized vehicles or non-motorized , and pedestrian way that is easy to prove.

Traffic in Article 1 paragraph 2 of the UU-LLAJ is defined as the movement of vehicles and people in and across the street. That understanding of traffic in the broadest sense is the relationship between people with or without actuator from one place to another by using the street as a space motion. The violations referred to above are as set out in Article 105 of the UU-LLAJ: anyone who uses the road shall: a. behave orderly; and/or; b. prevent things that could obstruct, endanger the security and safety of the traffic and road transport, or which can cause damage to the road.

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<sup>11</sup> *Ibid.*



It is a traffic violation if an action or actions are contrary to the provisions of legislation of traffic and road transport. The requirements that must be met as the driver, according to Article 106 Traffic and Transportation Law: a. Any person driving a motor vehicle road shall drive a vehicle with a reasonable and concentration; b. Any person driving a motor vehicle on road shall give priority to the safety of pedestrians and bike; c. Any person driving a motor vehicle shall comply with the technical requirements and road worthy; d. Any person who drive motor vehicles on the road shall comply with the following provisions: 1. Government signs or signs for restrictions; 2. Road markings; 3. Signaling device; 4. Movement of traffic; 5. Stopping and parking; 6. Warning by sound and light; 7. Maximum or minimum speed.

Traffic accident is an event that is very difficult to predict when and where it happened. Accidents do not just caused trauma, injury, or disability but can lead to death. Traffic accident is also defined as an event that is unexpected or unpredictable and undesirable caused by a vehicle motor, occurred on the highway or in open spaces that serve as a means of traffic and cause damage, injuries, human deaths and losses property.

Characteristics of traffic accidents according to the number of vehicles which involved classified into: a) Accident single, that accident only involved one vehicles and involves no users other way, such as hitting a tree, the vehicle skidded and overturned due to a tire, b) double accident, ie an accident involving more than one motor vehicle or pedestrians who had an accident at the same time and place.

Impact caused by traffic accidents can happen all at once or only some of them only. The following conditions were used to classify traffic victims. a. Leaving the world are victims of traffic accidents were confirmed died from traffic accidents within a maximum period of thirty days after the accident. b. Serious injury is the victims of accidents due to wounds suffered permanent disability should be treated in the hospital or at home within a period of more than thirty days after the accident. An event is classed permanent disability if limbs missing or can not be used at once and can not be recovered forever (permanent disability/life).

c. Minor injuries are victims who suffered injuries that do not require hospitalization or should be hospitalised for more than thirty days. Tackling crime using a variety of means as a reaction that can be given to the perpetrators of crimes, such as means of criminal and non-criminal can be integrated with each other. If the criminal means are called to overcome evil, means will be implemented politics of criminal law.

Implementation of criminal politics must go through several stages of the policy is as follows: a. Formulation stage, the stage of enforcement of criminal law *in abstracto* by the law-making body. In this stage of the legislature conducting choose the values that correspond to passage and the rescent situation and situation that will come, and then puts it in the form of criminal legislation to achieve most good legislation in the sense of qualifies fairness and efficiency. This stage is called a legislative policy.

b. Application stage. The stage of law enforcement by officers, ranging from the police to the court. In this stage, law enforcement agencies tasked with enforcing and implementing regulations on criminal law that have been made by legislators. In carrying out this task, the authorities of law enforcement must hold to the values of fairness and efficiency. This phase can be referred to as a stage in the judiciary. c. The execution phase. The phase of enforcement (execution) by criminal executive officers. In this stage of criminal enforcement officers tasked with enforcing criminal laws have been made by legislators through the application of criminal that has been set in the court judgment. In carrying out the criminal prosecution that has been set in the court ruling, the criminal law enforcement officers in his duties should be guided by the rules of criminal law made by the legislature and the values of fairness of usability.

In order to tackle crime against a variety of means as a reaction that can be given to the perpetrators of crimes, such as criminal means (*penal*) and non-criminal (*non penal*), which can be integrated with each other. If the criminal means are called to overcome evil, mean will do criminal law policy, which is to hold elections to achieve penal legislation in accordance with the circumstances and the situation at a time and in the years to come.

Besides the criminal policy is also an integral part of social policy. Social policy can be interpreted as an attempt rational to achieve public welfare, and thereby covering the protection of society. In short it can be said that the ultimate goal or primary purpose of the criminal policy is the protection of society to prosper. Rational efforts to control or solve crimes or crime policy use two means, namely: a. Criminal Policy by Means of Penal Facility is to

prevent repetition of crimes by using criminal law with two central issues, namely: 1. The act of what was supposed to be a criminal offense: 2 . What sanctions should be used or imposed on violators. b . Criminal Policy with Non Penal Facility.

Crime prevention policy by means of a non penal only covers the use of social means to improve social conditions, however indirectly affect efforts to prevent crime. Renewal of criminal law in essence must be taken with the policy-oriented approach and at the same time value-oriented approach because it is part of a policy steps.

Similar situation is also needed in the road traffic transport accident laws and regulations. It is need a policy, such as the formulation of express provision related to the diversion as a method to settle the offence of the road traffic transport laws and regulations which result in accidents. In the policy formulation the difficult cases of accidents is minimised.

In order to tackle crime against a variety of means as a reaction that can be given to the perpetrators of crimes, such as criminal means (*penal*) and non-criminal (*non penal*) all can be integrated with each other. Criminal law equipment called to tackle crime, political means of criminal law will be implemented. Besides the criminal policy is also an internal part of a social policy. Social policy can be defined as a rational effort to achieve public or social welfare policy and also includes the protection of society or social defense policy. In short it can be said that the ultimate goal or primary purpose of the criminal policy is the protection of society to prosper.

Moreover, crime policy prevention could also be the means apart from the policy formulation of diversion. This could be achieved by means of a non-*penal* can covers the use of social means to improve social conditions. Although it does not directly affect all efforts to prevent crime, in essence, however, it must be taken with a definite policy oriented approach as well as definite value oriented approach and being part of a policy formulation and enforcement, especially in the issue of settling cases or disputes related to the violation of the road traffic transport laws and regulated that result in accidents.

### **Conclusion:-**

From the perspective of the dignified justice theory, these researchers believe that at the stage of pre-investigation, regulation on the road traffic transport of the Pancasila Legal System appears to allow a short of "breach" of the provisions of the laws regarding road traffic transport which resulted in accidents. In this "breach" discretionary power to use diversion can be used as a means to resolve or seek for justice through consensus in the disputes or cases related to the road traffic accidents. This method is not going against the grain i.e. the spirit of the diversion known in the Pancasila Legal System.

Diversion, penal mediation or whatever name they might be, as long as they are methods of settling cases or disputes that are in line with the legal principle of consensus, they can justifiably be utilised within the Pancasila Legal System, in so far as they do not conflict with the laws and regulations in force. In the Pancasila Legal System, the investigators, and probably the public prosecutor or judges also can use discretionary power entrusted at their disposal to settle cases or disputes as a manifestation of the spirit of diversion.

The fact that traffic accidents are still problematic since many were ended up of being black numbers, these do not mean that that is caused by the law enforcement officers using the method of diversion to worsen the black numbers. There are need of specific law or regulation at the level of an Act that governing the method of diversion on settling the road traffic transport accidents. The diversion impliedly regulated in the Law Number 22 of 2009 must be made certain with an express stipulation as to allow justice, in the meaning of make man a man or make humas humane when the using of diversion in settling the disputes or cases related to the violation of the road traffic transport law which cause accidents in the Pancasila Legal System.

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