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**RESEARCH ARTICLE**

## **APPLICATION OF DIVERSION AND RESTORATIVE JUSTICE OF THE CHILDREN CRIMINAL JUSTICE SYSTEM IN INDONESIA**

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### ***Abstract***

This research titled "Application of Diversion and Restorative Justice in the Children Criminal Justice System in Indonesia aims to determine the application of the principles of restorative justice in accordance with Law No. 11 Year 2012 on Child Criminal Justice System. Application of the principle of restorative justice in Indonesia according to Law No. 11 of 2012 has become effective but found few obstacles in its application that the understanding among law enforcement agencies are not the same on restorative justice, legal substance that impose limits on the types of crimes that can be applied restorative justice, facilitators and social workers who have not been adequate, as well as facilities such as LPKA, LPAS, LPKS are also inadequate.

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### **A. Background**

Kids are the future of the nation and as a generation of struggle. A troubled child means to be a problem of the nation and the state, therefore the best interests of the child must be a priority choice in dealing with children in conflict with the law. Attention to children has long been in line with human civilization, in the International United Nations (UN) declared the convention on children's rights (United Nation's Convention on the Rights of the Child) at the date of 20 November 1989.

Kids are the hope of the nation, children are the next generation of leaders which is a potential successor to the ideals of the struggle of a nation that has a strategic role and has the characteristics and special properties. Children need guidance and protection in order to ensure the growth and development of the physical, mental and social as a whole, harmonious and balanced.

Children need special training in order to develop properly. However, the development of life as it is today still a lot of children's rights are ignored so that the children lose the opportunity and also the object of extortion certain parties. This can result in children tend to perform acts that constitute crimes and violations.

Many extreme cases that can be watched on the situation of children sentenced while in custody. Indonesian Child Protection Commission (KPAI) states that as many as 18 (eighteen) of 32 (thirty-two) children inmates claimed to have been tortured during languishing in prison. It shows that children who fall into Police Custody, interact with other serious criminal offenders out of prison so that children have the ability to more serious crime. Children who fall into police custody and Penitentiary (Prison) also many who get abused, sodomy and exploitation by other prisoners. There are 31 (thirty-one) cases of children attempting suicide during the Year 2012.<sup>1</sup> Cases of violence<sup>2</sup> against children has increased from year 2010 as many as 2,413 cases, in 2011 as many as 2,508 cases and in 2012 increased to 2,637 cases.<sup>3</sup>

Increased legal proceedings against children in the country has led many people urged law enforcement put an end to the criminalization of children. Because, in addition to not work for the development of children, punishment of children is not the right step.

Secretary General of the Commission on Child Protection Arist Merdeka Sirait<sup>4</sup>, said "a portrait of the situation and the range of problems children in Indonesia have shown that the right to life of the child as an integral part of human rights, has been left unchecked, threatened without handling and solutions".

The facts demonstrate that children in conflict with the law are positioned as an object and the treatment of children in conflict with the law tend to harm the child, in violation of child rights and child mental damage in its growth.

A number of existing legal instruments have not been comprehensively provide special protection to children in conflict with the law. Therefore we need a paradigm shift in the treatment of children in conflict with the law as their roles and duties of the public, government and other state institutions are obligated and responsible for improving the welfare of children, and provide special protection to children in conflict with the law.

Issuance of Law No. 11 of 2012 on the Criminal Justice System Children in lieu of Law No. 3 of 1997 on Juvenile Justice which is expected to guarantee the protection of the best interests of the children<sup>5</sup> in conflict with the law and aims to repair or restore (to restore) deeds crimes committed by children with actions that are beneficial to the child, the victim and the environment.

There is some substance which is a new breakthrough in the treatment of children in conflict with the law explicitly prescribed in Act No. 11 of 2012 on the Criminal Justice System Children including the placement of children who undergo trials can be placed at the Institute for Development of Special Children ( IDSC ) and regulations explicitly about " Restorative Justice"

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<sup>1</sup> Head Line TV One. Tanggal 21 Desember 2012

<sup>2</sup> [www.sekitarkita.com](http://www.sekitarkita.com), dikutip oleh Rena Yulia. 2010. *Victimologi, Perlindungan Hukum Terhadap Korban Kejahatan*. Graha Ilmu. Yogyakarta. p. 6 menjelaskan kekerasan berasal dari Bahasa Latin yaitu violentia yang berarti kekerasan, keganasan, kehebatan, kesengitan, kebengisan, kedahsyatan, kegarangan, aniaya, perkosaan.

<sup>3</sup> Prime Time News Metro TV Tanggal 09 Januari 2013

<sup>4</sup> Arist Merdeka Sirait Dalam Muhammad Taufik Makarao, dkk. 2013. *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*. Rineka Cipta. Jakarta, p. 157

<sup>5</sup> Sistem Peradilan Pidana Anak adalah keseluruhan proses penyelesaian perkara anak yang berhadapan dengan hukum mulai tahap penyelidikan sampai pada tahap pembimbingan setelah menjalani pidana.

<sup>6</sup>and " Diversion " <sup>7</sup> which is intended to avoid and keep children out of the judicial process so as to avoid the stigmatization of children in conflict with the law and expected that children can get back into a normal social environment. The best interests of the child , the law enforcement officers are required to apply the approach to the principles of restorative justice in the juvenile justice system and the perception in the treatment of children in conflict with the law by using justice according to his conscience and regard for social justice in order to reach the highest award for fairness ( precise justice).

Based on the background described above, the authors considered important to assess a scientific paper entitled " *Application Of Diversion And Restorative Justice Of The Children Criminal Justice System In Indonesia* " .

## **B. Problems**

Referring to the background of the above problems can be formulated the problem is to what extent the application of diversion and restorative justice according to Law No. 11 of 2012 on the Criminal Justice System Children in Indonesia ?

## **C. Discussion**

### **1. . The Restorative Justice in Act No. 11 Year 2012 on Child Criminal Justice System .**

Law No. 11 of 2012 , promulgated on July 30, 2012 and take effect two years ( after promulgation ) on 30 July 2014. No immediate enactment of this law is intended to provide time for the law enforcement , government and the public to be able to understand new values contained in the Law on Child Criminal Justice System . This condition makes some juvenile criminal cases occur inconsistency in enforcing the provisions of the legislation .

Law Criminal Justice System of Children regulating restorative justice or justice -based deliberation as one of the paradigms and new perspectives in dealing with cases of children in Indonesia . Article 1 point 6 of Act System of Juvenile Justice said the settlement of restorative justice as a criminal case involving the perpetrator , the victim , the perpetrator's family / victim and others who related to jointly seek a fair settlement with the emphasis on restoring back to its original state and not retaliation.

Therefore, the restorative justice or justice-based consultation is a process of diversion that all parties involved in a specific criminal acts jointly solve problems and create an obligation to make things better by involving the victim, children and the community in seeking a solution to improve reconciliation and reassurance that are not based on retaliation.

The substance of restorative justice and diversion in the Law on Criminal Justice System Children existence and is important as a key substance. Aspects and dimensions is explicitly mentioned in the explanation part of Law Criminal Justice System Children menentukan that "substansi most fundamental in this legislation is setting firmly on restorative justice and diversion that dimaksudkan to avoid and keep children out of the judicial process so that can

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<sup>6</sup> Keadilan Restoratif adalah penyelesaian perkara tindak pidana dengan melibatkan pelaku, korban, keluarga pelaku/korban dan pihak lain yang terkait untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan kembali pada keadaan semula dan bukan pembalasan.

<sup>7</sup> Diversi adalah Pengalihan Penyelesaian perkara anak dari proses peradilan pidana ke proses diluar peradilan pidana.

avoid the stigmatization of children in conflict with the law and expected that children can get back into a normal social environment, therefore it is very necessary role of all parties in order to realize it. That process should be aimed at the creation of restorative justice both for children and for the victims.

If seen from a philosophical perspective, restorative justice in the Law on Child Criminal Justice System is based on the dimensions of the child, the protection of rights in the proceedings of which are conducted in the best interest of children so that children avoid negative stigma. Son of a mandate and the grace of God Almighty who has the dignity of human beings.

#### **a. North Jakarta Metro Police**

As a comparison in this paper, the authors also conducted research at the Women and Children Protection Unit in North Jakarta Metro Police. PPA Unit Head of North Jakarta Metro Police said that the case of children who are perpetrators of criminal acts since the enactment of Law Juvenile Justice System diversion process has not been implemented. It was said, for the reason that the average number of children who become actors on jurisdiction {North Jakarta Metro Police is a child who has several times or repeat offenses mostly muggings, assault, and brawl<sup>8</sup>.

Based on the statistical data on unit PPA North Jakarta Metro Police show that the number of cases of children in conflict with the law in the region of North Jakarta Metro Police is still very little that is not comparable to the crowds in North Jakarta. This is because the majority of cases that occurred in the region of North Jakarta more processed at the police level that includes several police in North Jakarta.

The number of cases as many as 10 cases are all processed up to the prosecutor's office and the only one that SP3 and no matter which repealed all the way to court. It shows that the implementation of diversion do not maximized and not even done in accordance with the mandate laws juvenile justice system.

#### **b. Jayapura City police station**

Head of the Women and Children Protection Unit of the Criminal Investigation Unit Resort Kota Jayapura say that basically the cases reported to the Police Jayapura town is not all the file transferred to the prosecutor . When the investigation is done sometime between the victim and the perpetrator did such a peace in 2012 as many as 40 cases , in 2013 as many as 72 cases and 84 cases in 2014 but the file submitted to the prosecutor only 97 cases during the period of three years<sup>9</sup>

Results of the research revealed that more cases resolved peacefully . This occurs because the peace support third parties such as traditional leaders or community leaders . Peace was usually accompanied by compensation which is marked by an agreement between the victim and the perpetrator . Sometimes the police are involved and not involved but if the matter has been resolved peacefully usually the victim , offender and community leaders or parties involved came to report to the police station Jayapura City . However, if the abuse cases where the victim

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<sup>8</sup> Wawancara dengan Kanit PPA Polres Meteo Jakarta Utara, Putu Diah K. Tanggal 4 April 2015

<sup>9</sup> Hasil Wawancara penulis dengan Kepala Unit PPA Satuan Reserse Kriminal Resort Kota Jayapura, Tanggal 2 Oktober 2014

or the victim's parents are not willing to make peace with the existence of a written statement signed by the victim's parents, the investigating authorities will continue to bestow this case to the prosecutor<sup>10</sup>.

At this stage the police authority in the redirect (diversion) case of a child for restorative justice has occurred where the collapse occurs in 2012 cases from 40 cases to 28 cases in 2013 from 72 cases to 42 cases and in 2014 from 84 cases to 29 cases. Means that there are 99 cases where their successful diversion and restorative justice resolved.

The number of cases were forwarded to the prosecutor's discretion can be said that the authority has not been used optimally for dealing with cases of children. This fact shows that the police have not used the authority of its discretion in handling cases of children in conflict with the law. The reason the police are not using discretionary authority to the maximum because there are some cases of children who required them forwarded to the prosecutor as the case of sexual abuse (rape) and Drugs. As for the minor criminal cases such as regular abuse cases, abuse or theft usual diversion.

As noted Jayapura City Police Chief Unit PPA that for diversion is usually done on minor criminal cases or cases of abuse or theft. Yet for all drug abuse cases or transferred. But usually the culprit was the son pursued peace. Peace suggested by investigators was held first by legal experts in Jayapura City Police Office and the decision taken in the meeting siding and usually there is no time limit for how long the peace process. Once peace is achieved then be made to the minutes of diversion and then signed by the offender and the victim<sup>11</sup>.

### **c. The Tana Toraja Polres**

The results of the study authors in Tana Toraja district police indicate that the number of children in conflict with the law throughout 2014 did not experience a significant increase both the children as victims of crime and children as criminals.

Based on the statistical data on Tana Toraja Polres show that the number of children as victims and perpetrators of criminal acts every month there are handled by the Police. The total number is based on the table above as many as 29 cases.

Based on interviews, Tana Toraja Police Chief Unit PPA said that every year the number of cases handled by the Police Tana Toraja increased slightly. Of the many cases handled by the Police Tana Toraja in this case investigator PPA is always selective to implement the provisions as stipulated in Law No. 11 Year 2012 on Child Criminal Justice System.

Implementation of diversion is done in the process of settlement of restorative justice. Of the total cases handled by the total of 29 cases, there were 7 cases that do versioned but experienced problems because only the successful cases of diversion and the case was discontinued.

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<sup>10</sup> Wawancara dengan anggota unit PPA pada Satuan Reserse Kriminal Resort Kota Jayapura, Tanggal 2 Oktober 2014

<sup>11</sup> Wawancara dengan Kanit PPA Polres Jayapura Kota, Tanggal 3 Oktober 2014

Further, he said that all the cases handled we offer diversion but the victims and their families who only look from the act of the perpetrator is not acceptable .<sup>12</sup>

More dominant families of the victims expect so that the perpetrators are punished in accordance with his deeds. Another obstacle is expected to strongly support but still minimal, among others, human resources still do not understand the process of diversion and settlement restorative justice, community socialization is very less, the extension was never made and the number of staff supervising community that only three people to handle one district with offices in Palopo Luwu the distance with Polres Office Tana Toraja far enough<sup>13</sup>.

Despite the many obstacles encountered in the process of the settlement of children in conflict with the law, but the investigators remained selectively to apply the principle of diversion and restorative justice.

## **2. Factors that affect the application of restorative justice in Indonesia**

### **A. The substance of the law**

The substance of the law is the written law, codified, norms, rules and all product legislation covering juvenile justice system and juvenile criminal procedural law, the decision and what is produced by people who are in the legal system. The law is an ongoing benchmark of juvenile justice, as it concerns legal certainty and proportionality law, because the law governing children, now scattered in various laws and regulations.

Efforts to realize the goal of protection of children in conflict with the law is determined by factors of a legal substance. The application of restorative justice to cases of children in conflict with the law is determined by the substance of the law. This is because the provisions regulating the restorative justice as mandated in the Convention on the Rights of the Child 1989, Beijing Rules, 1985, and which has been ratified in the Presidential Decree No. 36 of 1990, and implicitly also regulated in Law No. 3 of 1997 as enhanced in Act No. 11 of 2012 on the Criminal Justice System. In addition to these provisions is the enactment of the Code of Criminal Procedure applicable in general. This causes the applicable procedural law in Act No. 11 of 2012 on the Criminal Justice System Children may not be enforced fully considering the procedural law of a general nature can still be enforced. This has been one factor in the deprivation of the rights of children during the criminal justice process.

Law No. 11 Year 2012 on Child Criminal Justice System was approved and enacted into one product legislature Parliament and the Government of Indonesia in 2012 and has already become effective in August 2014.

As we know that the Law No. 3 of 1997 on Juvenile Court no longer fits with the times and even potentially become the legal basis for criminalizing the act brat so it is proper to be replaced with the Law on Child Criminal Justice System.

In Law Criminal Justice System Children age limit of children who could be prosecuted either formally or informally in the Law on Criminal Justice System Children raised from the age of 8

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<sup>12</sup> Wawancara dengan Kanit PPA Polres Tana Toraja (Bpk Marthen Manan) Tanggal 10 Januari 2015.

<sup>13</sup> Wawancara dengan Kanit PPA Polres Tana Toraja



years to 12 years old. This is according to the author is very precise due to the age of 8 years for a child is still very easy and the child still does not know what he was doing.

When the age of 8 years of a child faced with legal proceedings berdampak it will be very dangerous for the future of the child. Therefore the age of 12 years as stipulated in the Law on Criminal Justice System Children have made it possible for the child to find out what it was and how he was accountable.

In the Act the Criminal Justice System Children also introduced a concept of law enforcement, namely the application of the principle of restorative justice (restorative justice) which provide a major concern in the settlement of children in conflict with the law are the interests of the perpetrator, the victim and the community.

However, if examined in depth that the application of restorative justice in the Law on Child Criminal Justice System can be done through diversion. Diversion contained in Article 7 paragraph (1) of Law Number 11 Year 2012 regarding the juvenile justice system mandates that the level of investigation, prosecution, and the case investigation of children in the District Court shall be sought diversion.

The provisions of Article 7 paragraph (1) of the Law of the Child Criminal Justice System IMHO still diametrically opposed to juvenile criminal justice with the principle of restorative justice (restorative justice) and not reflect the actual restorative justice.

This was revealed several reasons based on the research literature that the authors do with reviewing and analyzing Article 7, paragraph ( 1 ) of the Act the Criminal Justice System Child, as follows :

- a) Diversion done at any stage of the investigation, prosecution and trial so that the diversion could not prevent a child from the negative stigma as a result of the formal process of the criminal justice system ;
- b) Diversion provided only one model without adjusting the degree of seriousness of an offense ;
- c) Diversion run tend to take quite a long time process and the cost is relatively expensive.

Application of the principle of restorative justice through diversion as mandated by Law No. 11 Year 2012 on Child Criminal Justice System came from The Beijing Rules which later became a law reform juvenile justice system in Indonesia. Renewal of criminal law do not be separated in order to attempt penanggulangan crime in society.

In conducting a legal reform should take into account the results of comparative studies. Conduct a comparative study would be known how the formulation in other countries in the world.

The principle of restorative justice as a renewal of the criminal justice system of children shall conform with the substantial formulation of international conventions is the embodiment of values, principles and legal norms contained therein stipulated in the national legislation of a country. In the formation of legislation governing juvenile criminal justice, the rights of the child is the basis of the establishment of such legislation. Juvenile justice system fair is the protection

of children's rights as a suspect, defendant or as an inmate. The protection of children is a major milestone in the juvenile justice system.

The principle of restorative justice according to Law No. 11 of 2012 on the Criminal Justice System Children contained in Article 1 paragraph (6) is the completion of criminal case involving the perpetrator, the victim, the perpetrator's family / victim and other relevant parties to work together seek a fair settlement with the emphasis on restoring back to its original state and not retaliation.<sup>14</sup>

The principle of restorative justice the next entry in Article 5 ( 1 ) which states that the juvenile justice system shall prioritize restorative justice approach . Article 5, paragraph ( 2 ) of the criminal justice system in paragraph ( 1 ) , include:

- a. Investigation and criminal prosecution of children are implemented in accordance with the statutory provisions , unless otherwise provided in this Act ;
- b. The trial of a child by a court general judicial environment ;
- c. Coaching , mentoring , supervision and / or assistance during the implementation process and after a criminal or a sentence or action.

Further confirmed in paragraph ( 3 ) that referred to in paragraph (2) letter a and b that in the juvenile justice system shall be sought diversion.<sup>15</sup>

The principle of restorative justice in Act No. 11 of 2012 on the Criminal Justice System Children is implemented in all the processes and stages of criminal justice are interrelated and constitute an integral and unified ie investigator children at the level of investigation, prosecution of children at the level of prosecution, the judge of children at the courts and prison staff children at the penitentiary.

The following will duraikan the inspection process of children in conflict with the law according to Law Number 11 Year 2012 on Child Criminal Justice System, as follows:

#### **a. Investigation level.**

In general explanation of Law No. 2 of 2002 on the National Police explained that each National Police officers have discretionary authority that is empowered to act in the public interest based on their own assessment.

Explicitly Article 7, paragraph (1) of the Act the Criminal Justice System Child provides that the investigator shall seek diversion. But in reality, investigators continued to pursue a discretionary advance because discretionary authority other than stipulated in Law No. 2 of 2002 on the National Police also stated in the Code of Criminal Procedure (Criminal Procedure Code).

Furthermore, in Article 29 paragraph (1) through (4) provides that:

- 1) The investigator shall seek diversion in a period of 7 (seven) days after the investigation started;

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<sup>14</sup> Lihat Pasal 1 angka (6) Undang-Undang Nomor 11 Tahun 2012 *tentang Sistem Peradilan Pidana Anak*

<sup>15</sup> Ibid. Pasal 5 ayat (1), (2) dan (3)



- 2) The process of diversion referred to in paragraph (1) shall be implemented no later than 30 (thirty) days after the beginning of diversion;
- 3) In the case of the diversion process fail to agree, the investigator delivering news events and their diversion dinersi agreement to the chairman of the District Court for the determination was made;
- 4) In the case of diversion fails, the investigator shall continue the investigation and to transfer perkarake Public Prosecutions by enclosing the minutes of diversion and community research report.

The stages of the investigation into the diversion can be described as follows: that the investigator receives cases of children based on reports, complaints and enable investigators to know for yourself. Together with investigators, officers Correctional Centres (Bapas) victims, the parents or society actors and NGOs held a consultation to determine the next course of action against the perpetrators of children in conflict with the law. Follow-up of this investigation is to determine whether the process needs to be forwarded to the public prosecutor or do versioned. In this prosecution should be no notification and agreement with their parents, guardians or other parties whose role is to determine how the treatment of child offenders. Agreement parent or guardian or other party was instrumental in determining the diversion process. When compared with other countries, the diversion is always accompanied with the agreement of their parents. If the perpetrators are children receive diversion program, the case of the child shall not be transferred to the prosecution, but if the filing of the idea of diversion is not accepted or rejected, so the case would be transferred to the court for prosecution and investigation at the Prosecutor.

#### **b. level Prosecution**

As the provisions of Article 7 paragraph (1) of the Act the Criminal Justice System Child, as the Attorney General Prosecutor clearly has the right to make that diversion mediation process can dilaksanakan diruang State Attorney.

Article 42 paragraph (1) through (3), provides that:

- 1) Public Prosecutor shall seek diversion in a period of 7 (seven) days after receiving the case file of the investigation;
- 2) Diversi referred to in paragraph (1) shall be implemented no later than 30 (thirty) days;
- 3) In the case of diversion fails, the public prosecutor shall assign the case to the Court to attach the minutes of diversion.

The stages of prosecution in which the prosecution diversion child after receiving the overflow diversion from the investigator to be decided whether to do or not do versioned diversion. If the above agreement by consensus of all parties to do the diversion of Public Prosecutions will include children in conflict with the law in the diversion program. Conversely if no versioned then immediately transferred to the Juvenile Court case.

#### **c. level trial**

Children in conflict with the law in any judicial process well when dealing with the police, prosecutors or when the trial in the Court basically has the right to be accompanied by a parent / guardian, the officer community of Bapas or assisted by Counsel / Advocate so that the rights of children as suspects can be protected.

In Act No. 11 of 2012 on the Criminal Justice System in Article 60 paragraph (3) states that before the verdict, the judge shall consider the report of the research community and if those reports are not considered in the decision then under paragraph (4) the decision null and void. Article 61 stipulates that the verdict carried in a session open to the public and can not be attended by the child. Article 62 establishes the court is obliged to provide excerpts of the judgment on the child or advocate, community mentors and judges.

The description briefly about the trials in the diversion is the judge of children received the delegation of the prosecution case child child 's immediate examination in court . The court after receiving the transfer case from the public prosecutor of the child then immediately examine the case of a bad boy . The judge can determine whether to do a diversion or a criminal case will be disconnected. If you determine to do versioned then determined diversion program is appropriate for the child and the case terminated. If the judge determines to be examined until the end of the brat then determined the right decision for the child in accordance with the act and the situation of children in conflict with the law.

The next phase of the implementation of decisions in which the builder diversion correctional institution can determine whether a child naughty child who had been made the judges will be trained in a correctional institution or a child with a diversion program implementation.

#### **d. Institutions Coaching of Special Children**

A common explanation of Law No. 11 of 2012 on the Criminal Justice System Son explained that the placement of children who undergo trials can be placed in the Special Children's Development Institute (LPKA) as a replacement for the Child Correctional Institution.

Article 63 states that the civic officers consist of:

- a) Supervising Community;
- b) professional social worker;
- c) social labor.

Article 65 letter d mention that Supervisor Society handles complaints, guidance and supervision of the child by a court decision sentenced or subjected to action.

Based on the above, the opinion of the author that the implementation of the principle of restorative justice through diversion in Act No. 11 of 2012 on the Criminal Justice System Children shall be pursued in all the processes and stages of the criminal justice system which is integrated and is a unity that is starting from the investigation, prosecution, trial until at Children's Correctional Institute.

It is contrary to the purpose of restorative justice (restorative justice) and not reflect the actual restorative justice. Meanwhile purpose juvenile criminal justice with restorative justice, among others:

- a) To strive for peace between perpetrator and victim;
- b) Giving priority to a settlement out of court process;
- c) Keep children from the negative influence of the judicial process;
- d) Instilling a sense of responsibility for the child;

- e) Realizing the welfare of children;
- f) Protects children from deprivation of liberty;
- g) Encouraging people to participate;
- h) Improve the skills of the child's life.<sup>16</sup>

If combined with Act No. 23 of 2002 on the Protection of the Child, especially Article 64, which describes one of the special protection for children in conflict with the law is the imposition of appropriate sanctions for the best interests of the child are sanctions that can support the development and protection of children. This seems inconsistent with the application of the principles of restorative justice through diversion pursuant to Article 7 paragraph (1) of Law Number 11 Year 2012 on Child Criminal Justice System.

Hope to keep children out of the judicial process and the child returned to the social environment naturally will not work because by doing diversion at every stage of the criminal justice process child authors believe that it is still causing stigmatization of children, deprivation of liberty and the child is difficult to get back into the social environment naturally associated with labeling that was inherent in him.

Similarly, efforts to protect the rights of children in conflict with the law in order to not become a victim in criminal proceedings and legal protection of children both activities that are directly or indirectly from acts which endanger the child's physical and / or psychic is not achieved by a process diversion at every stage of the juvenile justice system.

The research team of University of Indonesia criticize the category of violation committed by the child that the offenses committed by children is that a violation of the use of narcotics and psychotropic substances should be on decriminalization. Theft and crimes against property and mild persecution should not be done with formal processes, the offender is given the child enough warning and notified his mistake. If deemed inadequate, the child can be given a penalty to restore the loss to the victim. While crimes sufficiently serious sexual offenses, aggravated assault, and even murder cases in casuistry can be processed informally means completion amicably to avoid the stigma and Taruma in children, as well as the child's learning process to understand the mistakes that have been made that course in accordance with formal law by using special laws to hold juvenile justice that puts the best interests of the child.<sup>17</sup>

Special attention should also be given to girls , children of minority groups and lower social classes . These children are highly susceptible to a variety of dimensions and hardness . Treatment and special protection as the rights of certain groups have been expressed in various human rights instruments both at the national and at the international level . The detention of children in conflict with the legal opinion of the author should be excluded because this has many weaknesses as an instrument procedure for the organization of juvenile justice . Similarly, has provided space for law enforcement agencies in various levels of checks to not have to make an arrest of perpetrators of children in conflict with the law .

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<sup>16</sup> <http://hukum.ub.ac.id/jurnal-aenur>, diakses 25 februari 2015

<sup>17</sup> Tim peneliti UI dalam Muhammad Kemal Darmawan dkk yang dikutip oleh Suprpto *Op. Cit.*,p.

## **B. The Legal Structure**

The legal structure in handling children in conflict with the law in this regard include all law enforcement officers related to criminal law enforcement include: police, prosecutors, judges, correctional officers either in prison or under house arrest, including advocates through the institutions of legal aid which is a unity, and bound in a criminal justice system that is expected to berkeja an integrated manner, to work together for the realization of justice and truth against children in conflict with the law. The realization of an integrated judicial system among sub criminal justice system that deal with children in conflict with the law will provide legal safeguards and is therefore the best interests of the child will be realized. There are several factors associated with the legal structure of influence in handling children in conflict with the law include:

- a) Human resources Police officers
- b) Human resources officers Attorney
- c) Human resources Court (Judge)
- d) Human resources officer prisons / detention
- e) Bapas Human Resources Officer / Supervisor Community
- f) Diversion of resources facilitator
- g) The resources of professional social workers / social workers / community.

## **C. Legal Culture**

One of the obstacles hamper the implementation of diversion in Indonesia is the paradigm of the public who believe that any crimes committed there in return. So if there are children who perform deviant behavior they should be reported to the police for processing up to the court and punished accordingly with deeds.

Obstacles faced by the police in the process of diversion is the victims who did not attend the meeting or deliberation and the victim does not want to forgive the perpetrators for their huge losses experienced by the victims. This was stated by investigator PPA in Jayapura said that when investigators mennawarkan peace then the public has the notion that the investigator paid by the offender so that the perpetrators did not proceed the process to go to court, in case the peace efforts that are offered in accordance with the mandate of the law criminal justice system of children, the best interests of children and we as investigators must be careful in the peace process because the victim always thought that we were in favor of the offender. <sup>18</sup>

The same is disclosed by prosecutors investigating child in Jayapura District Attorney that the public and the victims are basically always negative when offered peace assessing the parties or when we make demands of light for the perpetrators, namely the suspicion that we are paid by the offender so we demand it lightly. <sup>19</sup>

Diversion currently not optimally applied by law enforcement officials. Especially investigators and prosecutors because there is no law in the internal paying these institutions after the enactment of Law Criminal Justice System Child.

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<sup>18</sup> Wawancara dengan Penyidik PPA Polres Jayapura Kota, Tanggal 10 oktober 2015

<sup>19</sup> Wawancara dengan Jaksa di Kejaksaan Negeri Jayapura (Bpk Makmur) Tanggal 12 Oktober 2015

Diversion is still not known by the people that will be challenged by the community itself and not just people who do not understand about diversion but enforcement hum own level of investigator and prosecutor also do not understand the sense of diversion. Some investigators diunit PPA North Jakarta Metro Police said that "does not know what it was versioned".<sup>20</sup>

Ignorance of the law enforcement officers to these terms by the author is very dangerous and it would be very detrimental tentunta children either as victims or perpetrators of crime so that the best interests of the child would not be realized.

#### D. CLOSING

Based on the description and analysis of the foregoing discussion , it can be concluded that the application of diversion and restorative justice in Indonesia according to Law No. 11 of 2012 has become effective but found few obstacles in its application that the understanding among law enforcement agencies are not the same on restorative justice , substance laws that impose limits on the types of crimes that can be applied to restorative justice, facilitators and social workers who have not been adequate , as well as facilities such as LPKA, LPAS, LPKS are also inadequate .

As the end of Tulian this and become contributing writer that is necessary to increase the resources of law enforcement officers involved in handling cases of children , education and specialized training in order to understand a form of restorative justice as outlined in the juvenile justice system so that the best interests of the child can be realized.

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<sup>20</sup> Wawancara dengan Penyidik PPA di Polres Metro Jakarta Utara.