

## LEGAL PROTECTION OF CHILDREN THROUGH CRIME RESTORATIVE JUSTICE APPROACH

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### ABSTRACT

Indonesia uphold human rights including the children's rights in accordance with the international convention on the rights of the child (Convention On The Rights Of The Children). The development of globalization and the information are not unstoppable bring negative impact on the social life of the community which is very influential for the value of the child's behavior resulting deviation behavior and tort. The data of the children's conflict with the law increased quantitatively, so it needs the new paradigm shift in the treatment of children who underwent the process of criminal justice. UU no. 11 In 2012 in lieu of Law No. 3, 1997 are intended to provide special protection to the children in conflict with the law. The fundamental substance in Law 11 Year 2012 is setting firmly on Restorative Justice and Diversion that prevent the children from the judicial process and the stigmatization of children in conflict with the law to be able coming back in social environment naturally. Need the participation of all parties involving the victim, the children and the community in seeking solutions, reconciliation and not by retaliation, should be carried out by special officer who understand the problems of the children and shall be pursued for the process of settlement out of court through Diversion based on approach for Restorative Justice.

Key words: Legal Protection , Children Crime, Restorative Justice and Diversion.

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### A. Introduction

A lot of things behind the occurrence of crimes against children both as victims and perpetrators. Often the children to run away from reality in search of freedom in order to vent his desires without being aware of all the risks facing the future life.

This fact as a proof that violence and crimes involving children of today is very exceptional in terms of both crime mode or index the crime which is constantly increasing, so we need the right treatment so that the case could be thoroughly investigated in accordance with applicable law, including the importance of legal protection for children.

The children are integral part of human survival and the survival of a nation. The children have a strategic role and the state guarantees the right of every children to survival. Therefore, a child needs to be protected from the influence of the negative impact of rapid development and social change lives masyarakat.<sup>1</sup> (Explanation of Undang-Undang No. 11 of 2012 on SPPA).

The emergence of cases of violence committed by children show more lack of parental role models. On the other hand, the children are more freely absorb information without any filter so that the internal cause of violence among the children are the decline in family functions should provide norms, values and culture. In general, the family just providing material needs and the external aspects of the GCC in the form of the onslaught of information very easily accessed by the children are free either to educate or not educate can affect the children to commit violence.<sup>2</sup> (Kompas, Saturday 10 October 2015).

The deviations of behavior and criminal activities by the children greatly affect the values and behavior of a child's life. Undang-Undang No. 3 of 1997 on Juvenile Court intended to protect and nurture the children in conflict with the law and provide an opportunity to meet their future. But in reality the child is often positioned as objects and treatment of children in conflict with the law tend to harm the child. So, we need a paradigm in the treatment of more serious child based on roles and duties of the public, the government and state institutions are obligated and responsible for improving the welfare and protection hukum.<sup>3</sup> (Explanation of Undang-Undang No. 23 of 1997 on Juvenile Court).

The principle of legal protection of the children shall conform with the convention rights of the children as it have been ratified by the government of the Republic of Indonesia by Presidential Decree No. 36 of 1990 on Ratification of the Convention on the Rights of the Children (Convention on the Rights of the Children). The Children Protection intended to guarantee and protect the children rights to be able to live, grow and develop and participated optimally in accordance with human dignity and protection from violence and discrimination.

The children protection effort need to be implemented as early as possible, since the fetus in the womb until the child was 18 years old, based on the principle as follows:

- a. Non-discrimination,
- b. Best interests of the children,
- c. Rights of life, survival, development, and
- d. Respect for the child's opinion.

In facing and tackling the various actions and behavior of the children to consider the position of the child in all of its unique characteristics and, although the child is able to determine its own step actions. Therefore, in the face of problems for the parents and the surrounding community are responsible for fostering the development of children's behavior.

Preparation of Undang-Undang No. 11 of 2012 on The Children Criminal Justice system as a complement and replacement Undang-Undang No. 3 of 1997. The substance is stipulated in Undang-Undang No. 11 of 2012 is the placement of children who undergo trials can be placed at the Institute for Development of Special Children (LPKA). And the most fundamental is explicitly setting the Restorative Justice and Diversion is to avoid and keep children out of the judicial process so as to avoid the stigmatization of children in conflict with law and children are expected to be back in the social environment in normally.<sup>4</sup> (Ibid, explanation of Undang-Undang No. 11 of 2012, Hal.3)

Restorative Justice is a process Diversion, that all parties involved in a criminal offense together to overcome problems and create an obligation to make things better by involving the victim, the child (actor), the parents and the community in seeking solutions to improve and reconcile that are not based on retaliation. Even if there are sanctions against children is determined based on the difference in age of the children, if they are less than / up to 12 years only subject to the action but if it is 18 years old and then may be subject to criminal action.

To provide protection to the children in conflict with the law, shall be tried in the juvenile criminal justice in general courts. But before entering the judicial process of law enforcers, families and communities are required to try the process out of court settlement is through Diversion based on approach Restorative Justice.

## **B. Formulation Of The Problem**

In normative rights of children are regulated in Undang-Undang No. 35 of 2014 on Child Protection. Government as the government is obliged to protect and fulfill the rights that every child can grow and live without fear and anxiety in the face of problems. For that to be worked out so that the younger generation has a pattern of behavior according to the norms prevailing in society.

In order to achieve the required effort - construction, maintenance and improvement of the welfare of children.

With the issue of how the problems in the criminal law protection of children through the restorative justice approach and limiting factor in the process of diversion.

## **C. Discussion**

### **1. The Concept and Objective of the Children Protection.**

Indonesia upholds human rights, including the rights of children are marked with the guarantee of the protection and fulfillment of children's rights as mandated in the 1945 Constitution.

Definition of a child in Undang-Undang No. 35 of 2014 is someone who is not yet 18, including unborn children. So that the children can grow and develop optimally both physically, mentally and socially necessary safeguards to actualize welfare.

In Section 1 item 2 Undang-Undang No. 35 of 2014 concerning the amendment of the Undang-Undang No. 23 of 2002 on the Protection of Children, mentioned that the children protection are all the activities to ensure and protect their right to live, grow, develop and participate optimally in accordance with human dignity and to protection from violence and discrimination. So the purpose of protecting the children are to provide security for actualize welfare by ensuring the fulfillment of rights - without discrimination.

Furthermore, described in item 15, special protection is a form of protection received by the children in certain circumstances to obtain a sense of security against threats endangering themselves and soul in growth. Special protection is given to children to consider:

1. Children in emergency situations,
2. Children in conflict with the law,
3. Children of minority and isolated group,
4. Children who are exploited economically and / or socially,
5. Children who are victims of drug abuse, alcohol, drugs and other addictive substances,
6. Children who are victims of pornography,
7. Children with HIV / AIDS,
8. Child abduction, sale or trafficking,
9. Children victims of physical violence and / or psychological,
10. Child victims of sexual crimes,
11. Child victims of terrorism networks,
12. Child victims of abuse and neglect,

13. Children with deviant social behavior, and
14. Children who are victims of stigmatization of labeling associated with the condition of their parents.

Government, local government and other state institutions are obliged and responsible to provide special protection to children in conflict with the law, through:

- a. Humane treatment with appropriate attention to the needs of the age,
- b. Separation from adults,
- c. The administration building of the legal and other assistance effectively,
- d. The implementation of recreational activities,
- e. Liberation and torture, punishment or other cruel inhuman and degrading treatment and rank,
- f. Avoidance of the imposition of the death penalty and / or life imprisonment,
- g. Avoidance of arrest, detention or imprisonment except as a last resort and within short time,
- h. The administration of justice in the justice of its objective, impartial and in a session closed to the public,
- i. Avoidance of publications and credentials,
- j. Giving assistance, parents / guardians and children who believed,
- k. Provision of social advocacy,
- l. Grant's personal life,
- m. Granting accessibility, especially for children with disabilities,
- n. Provision of education,
- o. The provision of health services, and
- p. Giving other rights in accordance with regulation.

In addition to the government of society participate in the protection of children, either individually or in groups in the form of providing input formulation of policies, reported the case of violations of children's rights, active role in the rehabilitation process, monitoring and supervision, providing infrastructures, plays an active role in removing the labeling negative against children and provide space for the children to participate and express their opinions. Therefore, any children who are victims entitled to apply to court the right to restitution is the responsibility of the perpetrators of crimes and in terms of improving the fulfillment of the children rights, the Indonesian children protection commission formed independently, have the duties :

1. Supervising the implementation of the protection and fulfillment of children's right,
2. Provide feedback and formulation in terms of the implementation of the children protection policies,
3. Collecting data and information on the children protection,
4. Receive and conduct a review of public complaints about violations of the children's right,
5. Intervening on the children right infringement dispute,
6. To cooperate with public institutions established in the field of the children protection, and
7. Provide reports to the authorities about the alleged violation of the Undang-Undang No. 35 in 2014.

## 2. Legal Protection for the Children in Crime through Restorative Justice Approach.

Children are a part of the younger generation as human resources is a potential successor to the ideals of national struggle, have the characteristics and special properties that require guidance and protection in order to ensure the growth and development of the physical, mental and social as a whole, harmonious and balanced.

To implement guidance and protection for the children both concerning to support necessary institutional and legal tools more steady and adequate. Therefore, the administration of justice for children needs to be done in special way.

Deviations behavior and illegal acts committed by children are caused by various factors, such as the negative impact on the development of rapid development, globalization in the field of communication and information, the progress of science and technology and lifestyle changes that bring in social change. Thus, in the face of a bad child should the parents and the surrounding community are responsible for coaching education and development of children's behavior.

For the sake of growth and mental development of children, a distinction needs to be determined in the treatment of procedural and criminal threat as stipulated in Undang-Undang No. 8 of 1981 about the Code of Criminal Procedure (Criminal Procedure Code). In legal proceedings a child execution detention determined in accordance with the interests of the children and there is a distinction penalty as the provisions of the Act - Penal (Penal Code), namely the imposition of criminal ½ (one half) of a maximum penalty of adults, and is not enforced imposition of the death penalty and life imprisonment. The differences in legal treatment intended to provide shelter and protection for the children, providing the opportunity to become a man of independent, responsible and useful for self, family, community, nation and state.

In the resolution of cases boy / child who commits a crime, the judge shall consider the report of research results to the public. The report is expected by the judge may obtain a right to give a verdict as fair - unfair because the judgment will affect the child's life further in delivering towards a good future for the development of ourselves as a responsibility of citizens. Juvenile courts intend for giving out the right direction in the development and protection for the children.

Undang-Undang No. 3 of 1997 on Juvenile courts intend to protect and nurture for the children in conflict with the law so that they can carry out their future and provide opportunities for children so that through coaching will be obtained identity to be human independent, responsible and useful for themselves, family, community, nation and state. However, in the implementation of the child is positioned as objects and treatment of children in conflict with the law tend to harm the child. The existence of Undang-Undang No. 3 of 1997 consider no longer appropriate to the needs of society and the law has not been comprehensively provide special protection to children in conflict with the law, based on the rules and duties of the public, government and other state institutions are obliged to improve welfare in providing special protection.

Preparation of Undang-Undang No. 11 of 2012 on The Children Criminal Justice System (SPPA Act) which came into force on 31 July 2014 in lieu of Undang-Undang No. 3 of 1997, with the aim to correct the judicial materialized virtually guarantees the protection of the best interests of children in conflict with law. SPPA regulate the placement of the children who undergo trials can be placed at the Institute for Development of Special Children (LPKA) and the substance is most fundamental in Law arrangement about Restorative Justice and Diversion namely to avoid and keep the children out of the judicial process, so that it can avoid a stigmatization of children in conflict with law expect to be back in a natural social environment.

The Restorative Justice is a process Diversion that all parties involved in a specific criminal acts together to overcome the problems and create an obligation to make things better by involving the victim, children, parents and the community in seeking solutions to repair and reconcile by retaliation. Diversion is the transfer of a child from the settlement of the criminal justice process to outside criminal justice. We summarize important things that stipulated in The Children Criminal Justice System Act (Act SPPA) as follows:

1. Act SPPA, defines minors as a child who has only 12 years old but not yet 18 years old and to distinguish those the children who are involved in a criminal offense into three (3) categories, namely:
  - a. Children who become the perpetrators of criminal acts (Article 1 paragraph 3 of Law SPPA),
  - b. Children who are the victims of crime (child victims, Article 1 paragraph 4 of Law SPPA), and
  - c. Kids who are witness of the crime (child witnesses, Article 1 paragraph 5 of Law SPPA).

In Article 1 paragraph 3 that children in conflict with the law, hereinafter called the child is a child over the age of 12 (twelve) years but under 18 (eight former) years allegedly committing a crime. Then, in Article 1 paragraph 4, explains that the children who are victims of criminal offenses, hereinafter referred child victims are children under 18 (eighteen) years who suffered physically, mentally and/or economic loss caused by a criminal act.

Furthermore, Article 1 point 5 states that the children who witness criminal acts hereinafter called the child witness is a child under 18 (eighteen) years to provide information for the purpose of investigation, prosecution and examination at the court on a criminal case to be heard, seen and/or experienced themselves. With the enactment of Undang-Undang No. 11 of 2012 has been a paradigm shift to handle children in conflict with the law, among others, based on the role and tasks of public, government and other state institutions are obligate and responsible for improving the welfare, and provide special protection to the children in conflict with the law.

Undang-Undang No. 3 of 1997 on the Juvenile Court did not distinguish between categories of child victims and child witnesses. Consequently, the child victims and witnesses did not get legal protection resulting in a criminal offense completely or even not reported because it tends fear of facing the criminal justice system.

The Children Criminal Justice System, the SPPA Act implemented by the principle:

- a. Protection,
- b. Justice,
- c. Non-discrimination,
- d. Best interests of the child,
- e. Survival and development of the child,
- f. Coaching and mentoring children,
- g. Proportional,
- h. Deprivation of liberty and criminal prosecution as a last resort, and
- i. Avoidance of retaliation.

Each child in criminal proceedings has the right to be treated humanely while addressing the needs according to age, separated from adults, to legal aid, conduct recreational activities, free from torture, punishment or other cruel, not sentenced to death and / or lifetime are not arrested, detained or imprisoned except as a last resort and within the shortest possible time. Obtaining justice in the face of juvenile justice objectively, unpublished identity, obtain the assistance of parents or guardians, obtaining social advocacy, obtain personal life, gain accessibility (disabled children), education, health care and other rights under the provisions of laws.

In the Children Criminal Justice System (SPPA) should prioritize using Restorative Justice, namely the completion of the criminal case involving the perpetrator, the victim, the perpetrator's family/victim and other relevant parties to corporate both looking for a fair settlement with the emphasis on restoring back to their normal way but not retaliation.

The process includes the juvenile criminal justice system, juvenile criminal investigation and prosecution carried out in accordance with the laws, unless otherwise provided in the Act SPPA. While the child is done by trial courts of general jurisdiction court environment and coaching, mentoring, supervision and/or assistance made during and after the implementation process or criminal action.

During the process of the criminal justice system the children must be pursued, namely the transfer of the settlement Diversion children from the criminal justice process to the outside of the criminal justice process.

Diversion aims:

- a. Achieving peace between the victim and children,
- b. Resolving cases children outside the judicial process,
- c. Preventing children from deprivation of liberty,
- d. Encouraging people to participate,
- e. Instill a sense of responsibility to the child.

Diversion process is done through consultations involving children and parents/guardians, community mentors and professional social workers based on approach Restorative Justice. Diversion process shall take into account:

- The interests of the victims,
- Welfare and responsibilities of children,
- Avoidance of negative stigma,
- Avoidance of retaliation,
- The harmony of society,

Decency, morality and public order. Investigators, prosecutors and judges in making Diversion should consider:

- a. Categories of offenses,
- b. Age Child,
- c. The results of the research for community in The Children Correction Institution (BAPAS), and
- d. Supporting of family and community environment.

Results Diversion can take the form of peace agreement with or without compensation, handing it back to the parent/guardian, participation in education or training in an educational institution or a maximum of 3 months LPKS or community service.

The agreements contained in the form Diversion agreement, delivered directly by the responsible officials at each level of scrutiny to the district court within the legal jurisdiction no later than 3 days since the agreement was reached to obtain confirmation.

Determination made within 3 days from the receipt Diversion agreement. Determination submitted to the supervising social, investigators, prosecutors or judges within a period of 3 days after enactment. Furthermore, juvenile criminal justice process is continued, in terms of:

- a. Diversion process does not produce an agreement, or
- b. Diversion agreement is not implemented.

Procedural provisions in the Criminal Procedure Code, applicable also in juvenile justice procedural law unless otherwise provided in the regulation. In handling cases of children, child victims and/or child witnesses, supervising civic, social workers, professional and labor social welfare, investigators, prosecutors, judges and lawyers or giving legal assistance shall take into account the best interests of the child and seek a family atmosphere is maintained. Investigators, prosecutors and judges are required to provide special protection for a child who was under investigation for a criminal offense committed in emergency situations. Special protection is implemented through the application of sanctions without burdening.

According to The Children Criminal Justice System (Act SPPA), a child offender be subject to two types of sanction that action to the criminal who is under 14 years of imprisonment and for criminal aged 15 years and over. As described in Article 69 paragraph (2) of the SPPA, as follows:

"Children who are not yet 14 years old (fourteen) years can only be subject to action".

The sanctions measures (Article 82 of SPPA Act) that can be imposed on children include:

- Returning to parents / guardians,
- Submission to someone,
- Taking care in a mental hospital,
- Treatment in LPKS, namely:
  1. The obligation to follow the formal education and / or training organized by the government or private entity,
  2. The revocation of driver's license, and / or
  3. Recovery from the crime deed.

Criminal sanctions that can be imposed on perpetrators of criminal acts of children, divided into basic and additional criminal punishment (Article 71 of SPPA Act), namely:

1. Capital punishment, consisting of:
  - Criminal warning,
  - Criminal with the condition, which consists of coaching outside agency, community service or supervision,
  - Work training,
  - Coaching in the institution,
  - Prisoning.
2. Criminal addition, consisting of:
  - Confiscation of gains derived from the crime, or
  - The fulfillment of customary obligation.

Article 21 explains that The Children Criminal Justice System (SPPA Act) is also set in terms of the child has not aged twelve (12) years of committed or suspected of committing a crime, Investigator, Supervisor of Community and Professional Social Workers took the decision to:

- a. Returning back to the parent / guardian, or
- b. Taking part in educational programs, coaching and mentoring in government agencies or agencies that deal with the Agency in the field of social welfare, both at the central and regional levels, not later than 6 (six) months.  
There is a driving factor causing children commit crimes or victims of crime, among other things:
  1. Violence in the family,
  2. Encouragement family,
  3. The dream of freedom,
  4. The influence of friends, and
  5. Want to have their own money.

In the event of a crime that a damaging impact on children, the Institute of Social Welfare Implementation (LPKS) need to provide assistance and protection advocacy at all levels of the judiciary with / without distinction of sex through the following ways:

1. To respect and ensure the rights of children,
2. Considering the main interest of the children,
3. Ensuring the protection of children,
4. Taking legislative and administrative measures,
5. Respecting for the responsibilities, rights and duties of parents,
6. The child has the right to life,
7. Warranty child not to be separated by their parents,
8. Warranty Repatriation (unification) family,
9. The child's right to express opinions freely,
10. Respect the rights of the child to freedom of thought,
11. Recognizes the right of children to freedom of assembly,
12. Guarantee personal rights of children,
13. Ensure the right of children to obtain information,
14. Recognizes the right of the child to education,
15. Protecting children from exploitation.

Presence of children in conflict with the law cause a sense of concern for all community. Therefore, it is necessary efforts to address the problem of children seriously by given protection, both physically and psychologically so the child can feel:

1. The feeling free of all disturbances (security),
2. There is a sense of certainty of all aspects of social life (surety),
3. The existence of feeling free from any worries (safety),
4. There is a sense of peace in the assistance of any person (peace).

### 3. The Prevention of Children Crime.

The efforts for preventing the children crime to commit a crime by law enforcement officers (police) by:

- a. Preventive  
Preventive methods are intended to prevent a security breach public order or eliminate the chance of harm by way of guarding / patrolling and controlling crime-prone areas.

- b. **Repressive**  
Efforts prosecution for perpetrators of crimes and brought to trial through the court of public prosecutor. The effort is intended to provide a deterrent effect offenders and creates fear before they do a crime.

The Court in examining, trying and deciding cases of children with attention to the rights of children and consider their future so that if any criminal prosecution should not be retaliatory / suffering. With reference to the provisions of laws. Article 4 of The Children Criminal Justice System (SPPA Act), children who are undergoing criminal past is entitled:

- a. having reduced criminal sentencing,
- b. obtaining assimilation,
- c. acquiring home leave,
- d. obtaining parole,
- e. obtaining leave towards free,
- f. obtaining conditional leave, and
- g. acquiring other rights in accordance with the provisions of laws.

Detention of children can only be done on condition that the child was aged 14 (fourteen years), or suspected of committing a crime with imprisonment of seven years. If the detention period mentioned has expired then the child shall be released from custody by law.

SPPA Act which makes it easy for the child victim or child witnesses in giving testimony in court. Witnesses / victims who could not be present to provide testimony before the court for any reason can testify outside the court by recording electronically done by the supervising local community, attended by investigators and public prosecutors and lawyers or giving legal help others involved in the case. Child witness / victim children are also allowed to provide information through remote diagnostics using audiovisual communication tools. At the time of this information any child must be accompanied by a parent / guardian, the supervising social or other companion. The children who engage in criminal acts are entitled to legal aid, without questioning the type of criminal offense committed at every stage of the examination both in the stage of investigation, prosecution and court trial examination (Article 23 of SPPA Act).

Child witness / victim shall be accompanied by a parent / guardian, the person who is trusted by the child or a social worker in every stage of the examination, but if the parents of the children is the perpetrator, parents / guardians are required to accompany (Article 23 paragraph (3))

Furthermore, the children who have not completed a criminal imprisoning in The Children Correctional Institution and have reached the age of 18 years was transferred to the The Youth Correctional Institution. As described in Article 61 of Undang-Undang No. 3 of 1997, as follows:

- (1) Children who have not served their criminal penal in The Children Correctional Institution and has reached the age of 18 years moved to The Youth Correctional Institution.
- (2) The crime as referred to in paragraph (1) who have reached the age of 18 years but has not reached the age of 21 years are placed in correctional institutions separate from who have reached the age of 21 years or more.

Nevertheless both The Children Criminal Justice System and The Juvenile Court have the same set that the placement of the child at the Correctional Institution is done by providing specific block for those who have reached the age of 18 years until the age of 21 years (a general explanation of Article 86 paragraph (2) SPPA Act and Article 61 paragraph (2) Juvenile Court Act).

#### **4. Constraints in the process of Diversion.**

Children as the next generation for the nation and resources for national development. Undang-Undang No. 11 of 2012 on The Children Criminal Justice System (SPPA) has the form of legal protection for children in conflict with the law in the juvenile justice system in Indonesia.

As one form of protection for children is done through the process of Diversion and through the decision making process for the child who has not aged twelve (12) years who commit a crime. Diversion process execution and decision making process for the child who has not aged twelve (12) years with fixed pay attention best interests for the children.

Diversion and decision-making to the children who have not aged twelve (12) years who had or were suspected of committing criminal offenses intended to avoid a public judicial process and stigmatization for children to get back into normal social environment.

Diversion process is a new mechanism in the criminal justice system in Indonesia, especially for children. In the process of settling disputes Diversion children diverted from the criminal justice process to the outside of the criminal justice process.

Diversion shall be pursued in the process at any stage of the criminal justice, starting at the stage of investigation, prosecution or examination before the court. Diversion process can only be carried out against children punishable by imprisonment under seven (7) years and not to children who have committed criminal offenses repetition both similar and dissimilar.

Children aged twelve (12) years can't be put on trial because based on the consideration sociological, psychological and pedagogical, the child is considered not able to account for his actions. Therefore, the child who has not aged twelve (12) years who had or were suspected of committing criminal offenses can be taken the decision to conduct education, coaching and mentoring by a parent / guardian or institutions / agencies and LPKS (social welfare institutions).

As for the guidelines for the implementation Diversion process, procedures and coordination of the implementation of the Diversion and the terms and procedures for decision-making to the child who is not 12 years old who had or were suspected of committing criminal offenses specifically been regulated in Undang-Undang No. 11 of 2012 together with Government Regulation No. 65 of 2015 on Guidelines for Diversion and handling of children who have aged twelve (12) years.

However, because of Undang-Undang No. 11 of 2012 on The Juvenile Justice System recently implemented it in practice have many constraints in the process of Diversion of children in conflict with the law, such as:

1. Parents / guardians and the community not many people know about the juvenile justice process, they are more in the nature passive way.
2. Less / limitations of the institution - social institutions / social worker professional potentially help the problems of children with problems of law. This is due to the general social institutions / social worker only in urban areas, whereas the victim / perpetrator child is not focused on one region can be occurred anywhere.
3. Limited for facilities and infrastructures to service and / or mentoring a child, for example, the issue of providing legal assistance / advocacy.
4. Limited for human resources (HR) / professionalism of law enforcement officials in handling cases of children.
5. Lack of involvement The Children Correctional Institution (BAPAS) in the process of Diversion.

Therefore, to provide services and the best protection for the children who are breaking the law, the implementation of the juvenile justice system should be pursued Diversion namely the transfer of the settlement of children from the criminal justice process to a process outside the criminal justice through consultations involving children, parents / guardians , victims or child victims, parents / or guardians, counselors and social workers professional community based on approach Restorative Justice.

Diversion agreements made by the investigator, the public prosecutor and the judge of Community Advisor recommendation. Results Diversion agreement subsequently in a form of a Diversion Agreement. Diversion process can be successful if :

- a. Diversion process does not produce Agreement, or
- b. Diversion Agreement not to be upheld.

In the case of Diversion process had not been successful, then the juvenile criminal justice process is continued. In accordance with the laws that exist with regard to the rights of children.

#### **D. Conclusion.**

1. That every issue of children in conflict with the law through the process of settling disputes be solved children begin phase investigation until the criminal stage after undergoing coaching. Sanctions imposed in the Children Criminal Justice System should be pursued even if the action should not be retaliatory punishment. Therefore, in the settlement process of the child needs to be pursued, namely the transfer of the settlement Diversion children from the criminal justice process to a process outside the criminal justice with regard to the interests of victims, children welfare, the negative stigma, propriety, decency and public order. By involving the victim, the parent / guardian, social agencies, community counselors, advocates and assistants. If in the process of Diversion had not been successful then the juvenile justice process continued with due regard to the rights of children.
2. That the constraints that exist during Diversion are: Parents / guardians and the community not many people know and understand the process of juvenile justice system, the lack of institutions - social institutions / social worker professional potentially help the problems of children in conflict with the law, limited facilities and infrastructures to service and / or mentoring a child (advocacy), limited human resources (HR) / professionalism of law enforcement officials in handling cases of children as well as the lack of involvement of The Children Correctional Institution (BAPAS) in the process of Diversion.

#### **Recommendation.**

Community involvement and government need optimally in handling legal issues with regard to children's rights as being protection of their lives. Start socializing the government regulations to improve inter-institutional human resources and professionalism in handling children.

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**Legislation :**

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- Act No. 11 of 2012 on Child Criminal Justice System.
- Government Regulation No. 65 2015 On Diversion and Treatment Guidelines for Children Aged 12 years old yet.