

Diversion in Solving Child Cases (A Research in East Aceh– Indonesia)

Dr. ImanJauhari¹, Liza Agnesta Krisna², Siti Nurlailissyifa,³

Lecturer of Law Faculty Syiah Kuala University Darussalam–Banda Aceh and Dean of Law Faculty Samudra University Meurandeh-Langsa, Indonesia

²Lecturer of Law faculty Samudra University Meurandeh-Langsa, Indonesia

³Research Team of Law faculty Samudra University Meurandeh-Langsa, Indonesia,

Abstract: *The purpose of this study was to determine and assess the rationale investigators in performing diversion, implementation of diversion in the settlement child cases, to find out barriers, alternatives solution, and overcoming obstacles encountered by investigator in the implementation of diversion in children cases. The method used in this study is an empirical law approach using literature research and field research and analyzed qualitatively. Basic considerations commit diversion investigator is based on the general provisions in Act Number 11 of 2012 on the Criminal Justice System Child, internal regulations Minimum Service Standards and Standard Operating Procedures Police and specifically to Aceh Qanun(law) Number 9 of 2008 concerning Indigenous and Indigenous Development. Implementation of diversion is done through discussion by involving the parties concerned, namely the perpetrators, victims, families of victims / perpetrators, supervisor of community and public figures such as geuchik (village head), tengkuimum (imam). Barriers faced is the legal substance which do not accommodate full implementation of the concept of diversion, the legal awareness of the families of the victims are still being rigid and unwilling to forgive and community participation are not maximized, difficulty in obtaining information about the crime that occurs in a child offender. Alternative countermeasures against barriers that investigators should be able to fill the void of substance law, professional attitude investigators to ascertain the purpose of diversion successfully implemented*

Keywords: *application, diversion, solving children cases.*

I. Introduction

The child is an important part of a country, because they are the future leader of a nation. This has encouraged the struggle on the enforcement of children's rights continue to be made, whether it is from the family, society, government and the country continues to seek to ensure the protection of children. Forms of children protections, for example, protection of economic, social, educational, health, and legal.

Legal protection is an effort to legal protection to various freedoms and human rights of children (fundamental right and freedoms of children) as well as many reasons related with children welbeings. So children protection for children covers large scope.⁴

Legal protection is the provision of human rights violated by others and the protection given to society in order to enjoy all the rights stated by the law.⁵ Basically actions contrary to the Criminal Law (Crime) can be done by anyone, both adults and children. Influenced by internal and external factors child can commit criminal acts. But children have unique characteristics/distinctive and specific needs, such as the world of play, the world's imagination and identity development needs to be considered, cherished, guided, trained and supervised.

Therefore, when the child is in conflict with the law, it is necessary to adopt a regulation that the unique characteristics/distinct and their development needs, including psychological support arrangements so that children are not caught up in stigma "evil". In the development of juvenile criminal justice system in Indonesia has undergone some changes, at first put forward retaliation and punishment for juvenile offenders to switch on a fair settlement by emphasizing recovery and improvement in its original state, known as restorative justice or the concept of restorative justice system. "For the purpose of punishment is sometimes a failure, because it becomes a recidivist offender and community action mimics crimes".⁶

[1]. ⁴Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana*, PT Citra Aditya Bakti, Bandung, 1998, pg 153.

[2]. ⁵Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, pg 54.

[3]. ⁶Marlina, *Peradilan Pidana Anak di Indonesia Pengembangan Konsep Diversidan Restorative Justice*, PT Refika Aditama, Bandung, 2009, pg 17.

Legal protection for children can be interpreted as an effort to legal protection against a wide range of freedoms and rights of children (fundamental rights and freedoms of children) as well as the various interests related to child welfare. So the issue of legal protection for children covers a very broad scope.

The Indonesian Law governing children in conflict with the law is Act Number 11 of 2012 on the Criminal Justice System Children who previously regulated in Law Number 3 of 1997 on Juvenile Justice. Consideration of the enactment of the Children's Act or the Criminal Justice System that:

Law Number 3 of 1997 on Juvenile Justice is no longer appropriate to the development and needs of the community because it has not comprehensively provide protection to children in conflict with the law, so that the necessary reforms in the field of law, including criminal law reform substance principal and supplementary punishment for children dealing with the law in order to avoid a retributive approach.⁷

Act Number 11 of 2012 regulates all provisions relating to the child, when the child is facing legal issues starting from the investigation stage to the examination in court. The most interesting thing in Law Number 11 of 2012 is known as the term diversion, diversion, namely the transfer of the settlement of the child to the criminal justice process outside the criminal justice process.

Based on early research data in East Aceh District against children in conflict with the law, the result that children in conflict with the law, especially children as perpetrators of criminal acts from 2013 to 2014 a number of 6 (six) cases. Of these cases, two cases could be resolved by diversion, namely:

- 1) Case File Number LP/144/X/2013/SPKT. Name: Ism, age 13 years old. Case: Sexual harassment against the victim named IQM, aged 7 years old. Diversion in this case was not successful, continued at the level of prosecution.
- 2) Case File NO LP/01/I/2014/SPKT. Name: Sfd, age 16 years old. Case: Sexual harassment against the victim named Nad, aged 2 years old. Case was suspended (SP3 - suspended, not enough evidence).
- 3) Case File Number LP/19/III/2014/SPKT. Name: Sam, aged 11 years old. Case: Sexual harassment against the victim named Ssh, aged 4 years old. Diversion in this case was not successful, continued at the level of prosecution.
- 4) Case File No LP/56/V/2014/SPKT. Name Raj, aged 11 years old. Case: An assault to the victim name Mtj, aged 4 years old. The case was successfully diverted.
- 5) Case File Number LP/64/VII/2014/SPKT. Name: Mus, aged 15 years old. Case: Theft in PT Bumi Flora. The case was successfully diverted.
- 6) Case File Number LP/82/IX/2014/SPKT. Name: Isl, age 17 years old. Case: an assault against the victim called RFS, aged 11 years old. The case was resolved at the village level courts.

Diversion is done at every level of the criminal justice process children (ranging investigation until the trial examination). Not all criminal offenses committed by children can be resolved through diversion. There are several considerations and regulations governing the case. Law Number 11 of 2012 as a basis for law enforcement in resolving the case through child versioned. The interesting thing is applicable specifically to Aceh Qanun Number 9 of 2008 concerning Indigenous Development And Customs is also used as the basis of considerations of law enforcement in the implementation of diversion.

II. Formulation of the Problems

Based on the background of the problem, the issues discussed in this study is what the basic consideration for investigator to do diversion, how the implementation of diversion in case involving children, and what the obstacles ndalternative countermeasures against barriers and obstacles faced by investigators in the implementation of diversion for children.

III. Researcht Methods

This study is descriptive with juridical sociological approach. Namely direct field research in order to obtain the data and also by interviewing informants and respondents. The selected research locations are in the jurisdiction of East Aceh Police district. Population is the whole object or individual or the entire unit are examined in this study, while the sample is representative of the population studied is done by using purposive sampling method, which takes samples were selected based on considerations based on the purpose of the problems studied. The sample used was: children investigator, children as criminals, parents of children as victims of crime, community leaders and Assistant Child.

Analysis of the data used is the qualitative way that explains everything about the diversion which is the principle of settling disputes settled by child investigators as an instrument of enforcement of Law Number 11 of 2012 on Criminal Justice System for Children. The collected data are arranged in chronological order,

[4]. ⁷Liza AgnestaKrisna, *HukumPerlindunganAnak, PanduanMemahamiAnak yang BerkonflikdenganHukum*, Internal teaching module, Faculty of Law University of SamuderaMeurandeh, Langsa, 2014, pg 101.

with suggested facts and data obtained from the research field informants and respondents who declared in written or orally, and analyzed in depth for answers and conclusions that are useful in resolving the case of children.

IV. Theoretical Framework

The child is part of a younger generation that has a strategic role and has the characteristics and special properties. Therefore, a child is in need of protection in order to ensure the growth and development of the physical, mental and social as a whole, harmonious harmony, and balance.

Children in conflict with the law, previously termed as a bad boy, taken from the term Juvenile delinquency. Juvenile delinquency is "An act or acts committed by a child who is considered to be contrary to the legal provisions in force in a country and by the people themselves perceived and interpreted as misconduct".⁸ Using the term "bad boy" and not "evil child" with the consideration that when a child is actually doing something naughty child is the victim of an adult, the environment and culture in which he grew up. There are internal factors and external factors that allow children to do mischief. Therefore retributive approach is not the best way to improve a child's behavior. Given the child still mememiliki very long future in the development of the nation.

The most appropriate thing is to use a restorative justice approach (restorative justice). British criminologist Tony F. Marshall in his writing suggests that the definition of restorative justice is: "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future".⁹

One means of achieving restorative justice in the case of a child is to do a diversion. According to Black's Law Dictionary, diversion is a turning aside or altering the natural course or the route of a thing (a rotation to the side or change the natural path or the path of something). In Article 1 Point 7 of diversion is defined as the transfer of the settlement of the child to the criminal justice process outside the criminal justice process.

Purpose of diversion under Article 6 of Law Number 11 of 2012, namely:

1. Achieving peace between the victim and the child
2. Complete the case of children outside the judicial process
3. Protects children from deprivation of liberty
4. Encouraging people to participate; and
5. Instill a sense of responsibility to children

Retorative justice approach is assumed as the most cutting-edge shift of various models and mechanisms that work in the criminal justice system in handling cases-criminal cases. Although this movement has already begun in the 1970 in North America and Europe that marked by the presence of the Victim Offender Reconciliation Program in Ontario, then in Indiana and the UK,¹⁰ and 14 of the last century with the presence of Islam, has introduced the principle of "Love" and "Qisos" which is replaced with "Diyat" is to forgive and be forgiven.¹¹

V. Result and Discussion

1. Basic Considerations for Investigators In Doing Diversion

The basic principle of law enforcement officials must own in handling cases dealing with children either as perpetrators, victims, and witnesses is that the investigator should be able to understand the physical and mental of a child who is still unstable and weak and require attention and protection from all sides. Therefore, when a child commits a crime, he certainly will face a judicial process. But the criminal justice process in general is not appropriate to apply to a child, because that takes the criminal justice system specifically set up to resolve the cases of children in conflict with the law.

The process of implementation of the criminal system in terms of criminal law, it is not convinced that criminal punishment against juvenile delinquents can be implemented optimally, even tend to harm from the effects of sentences of imprisonment, especially in the form of stigma or labeling as the "bad boy". Not to mention in prison which is a gathering place for criminals of various types of crimes that would be influential for the formation of a new crime education will be obtained during the conviction of a child in prison.

[5]. ⁸Romli Atlasasmita, *Problema Kenakalan Anak-anak dan Remaja*, Armico, Bandung, 1984, pg 23

[6]. ⁹Tony F. Marshall, *Restorative Justice an Overview*, Minnesota: University of Minnesota: Centre of Restorative Justice and Mediation, Social Works, pg.1

[7]. ¹⁰Marwan Effendy, *Teori Hukum dari perspektif Kebijakan, Perbandingan dan Harmonisasi Hukum Pidana*, Gaung Persada Press Group, Jakarta, 2014, pg. 130

[8]. ¹¹Marwan Effendy, *Teori Hukum dari perspektif Kebijakan, Perbandingan dan Harmonisasi Hukum Pidana*, Gaung Persada Press Group, Jakarta, 2014, pg. 130

Therefore, a process known as transfer or diversion that is mandated by Law Number 11 of 2012 to the investigators, especially law enforcement officials is the appropriate action to address the issue of the case against the child, so the punishment is a final effort (*ultimumremedium*) after other previous efforts in the face of the completion of the criminal offenses committed by children and restorative justice that puts the restoration and improvement of the original state can be realized and felt by all parties concerned. This is in accordance with the principles contained in Article 2 of Law Number 11 of 2012.

There are ten principles in the law namely:

- a Protection
- b Justice
- c non-discrimination
- d best interests of the child
- e respect for the opinions of children
- f survival and development of the child
- g coaching and mentoring children
- h proportionate
- i deprivation of liberty and criminal prosecution as a last resort; and
- j avoidance of retaliation

Article 7 paragraph (1) Law Number 11 of 2012 requires that every level of the criminal justice process do diversion to children in conflict with the law. Either at the level of investigation, prosecution and examination of children in court cases. The authority given to the police as investigators to conduct diversion in the settlement of criminal cases committed by children is based on the position of the police as a law enforcement agency first and direct contact with the public. Investigators basically have such great potential to change the culture of the society. Power and authority when packaged dynamically investigator will be a mean for the police in building society.

According to BambangSetiawan, before application of Act Number 11 of 2012, implementing diversion conducted by investigators is the authority that has been granted by law to waive criminal proceedings children in conflict with the law, juvenile delinquency justice process towards the outside of the judicial process that is by using discretionary authority possessed by the investigator to be able to provide the best solution for the child and avoid the physical and mental trauma to the child.¹²

This is justified by BambangSetiawan which states that the basic consideration in implementing the provisions of diversion investigators that is prior to the application of Law Number 11 of 2012, in addition by the authority as an investigator, is also the policy of the leadership of the National Police and the Minimum Service Standards and Standard Operating Procedures which has existed. Minimum service standards are set by the policy of the Aceh Regional Police for all sectors of the local police in Aceh are adapted to the environment, the culture and the people of Aceh. Meanwhile, the standard operating procedures are policies that must be executed by any member of the police in the country of Indonesia.¹³

Furthermore, BambangSetiawan added that after Law Number 11 of 2012 was enacted he saw criminal cases in children that can be resolved by diversion guided by Article 7 paragraph (2) which provides that a criminal act punishable under the 7 (seven) years and not a repetition of criminal acts. It also adds further criteria for criminal acts that can be completed diversion that should be purely criminal, the crime did not involve other people's lives and the crime did not result in a greater impact than the children do. Addition of criminal acts criteria that can be completed diversion conducted by BambangSetiawan obviously there is the addition of a provision that had been set previously in Article 7 paragraph (2). Because according to BambangSetiawan is based on investigator consideration that is in the best interest for the child and perform his duty as law enforcement officers.¹⁴

In accordance regulated in Article 9 Law Number 11 of 2012 that investigators, prosecutors and judges must consider several things in the application of diversion, such as: categories of offenses committed by children, age of children as actors, the research community of Bapas(prison) and the support of family and community environment.

The basis of the above considerations is the basis for general consideration by investigators in Indonesia because the base under the provisions of Law Number 11 of 2012, the Minimum Service Standards

[9].¹² Interview with BambangSetiawan, Head of Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015

[10].¹³ Interview with BambangSetiawan, Head of Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015

[11].¹⁴ Interview with BambangSetiawan, Head of Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015

and Standard Operating Procedures Police. But specifically for the Aceh region added a guideline which is used as a basis for consideration of diversion by investigators, the Qanun Number 9 of 2008 concerning Indigenous Development Life and Customs. Consideration of the establishment of the regulation Number 9 of 2008 is that the customs and traditions that developed in the life of the people of Aceh since the first until now spawned cultural values, customary norms and rules that are in line with Shari'ah and the nation's cultural wealth that needs to be nurtured, developed and preserved. Besides, coaching, development and preservation of customs and traditions that need to be carried out continuously from generation to generation so that they can understand the traditional values and culture that flourished in the lives of the people of Aceh.

In Qanun Number 9 of 2008 provisions are taken into consideration investigators Chapter VI of dispute resolution/dispute under Article 13 stated there were 18 criminal offenses which can be resolved through traditional justice. Where the principle of customary justice is reaching consensus and avoid criminal proceedings.

The Eighteen criminal offenses in question are:

- a. discord in the household
- b. disputes between families associated on faraidh (inheritance)
- c. disputes between citizens khalwat and mesum (adultery)
- d. disputes over property rights
- e. theft in the family (minor thefts)
- f. property disputes sehareukat (join business)
- g. minor theft
- h. domesticated cattle theft
- i. customs violations of livestock, agriculture, and forests
- j. disputes in the sea
- k. disputes on the market
- l. light maltreatment
- m. forest fires (in small-scale harm indigenous communities)
- n. harassment, slander, and defamation hasut
- o. environmental pollution (light scale)
- p. threatening (depending on the type of threat); and
- q. Other disputes that violate the customs and mores.

Based on the qanun then the eighteen offenses mentioned above must be completed by custom, the investigator in this case is not justified for processing such offenses in the realm of criminal law, with the exception of indigenous settlement did not find any bright spots. Indigenous settlement has the same principle with the settlement diversion. Namely the completion of the transfer of cases from the criminal justice system outside the criminal justice system.

2. Implementation of Diversion on Child Case Settlement

Implementation of diversion is essentially an attempt to divert from the criminal justice process towards resolution by consensus, which is basically the soul of the nation of Indonesia, to resolve the problems faced by the familial form of deliberation and consensus with the parties. This is in accordance with the Five Principle of Indonesia number 4 which reads "Democracy, led by the inner wisdom of deliberation and representation".

The essence of the meaning of number 4 if associated with the application of diversion is meeting the consensus in decision-making in the context of the completion of criminal cases committed by children. Consensus is the process by sitting together to discuss issues involving relevant parties in order to reach an agreement together. Meeting the consensus is carried out as a way to get a decision that is equal, fair and mutual for both parties.

The process of inquiry and investigation are very important in criminal procedural law, because in practice often have to allude degrees and / or dignity of individuals who are in conjecture, therefore one important motto in criminal procedural law is "The essence of criminal case investigation is to clarify the issue, to pursue the perpetrators, as well as prevent innocent people from unnecessary acts".¹⁵

According Ferhansyah, during the process of deliberation the implementation of diversion takes place it as the investigator is only able to provide advice and other considerations about what if the children who commit criminal offenses are given alternative sanctions other than punishment. But he still fully devolve to the

[12].¹⁵Andi Sofyan dan Abd Asis, *Hukum Acara Pidana (Suatu Pengantar)*, Kencana Prenadamedia Group, Jakarta 2014

litigants, as well as providing the opportunity for the parties, either the victims or their families, community leaders, and escort the child to give his opinion during the deliberation process takes place.¹⁶

Investigators for children cases as a facilitator and mediator in the deliberations of diversion shall also give an opportunity to children who commit criminal acts to be heard defense and society leaders who attended also gives an overview of how the child's behavior and background of the offender is not only children, but also children who are victims criminal act. Because investigators are required to not only think about the interests of victims of crime but also the interests of the offender.

According Ferhansyah implementation of diversion with *muyawarah*(discussion) way by involving the parties concerned, namely the perpetrators, victims, families of victims/offenders, community counselors and community leaders such as *geuchik* (village head), *tengkuimum*(imam) very necessary so several different parties opinion does not continue fighting and obtain the expected settlement by considering the future of children. Therefore, in the process of diversion required humility and sincerity yourself and throw the nature of their egos.¹⁷

Settling disputes through negotiation aimed at harmonization or harmony in society and not to burden the state with as much as possible keep the atmosphere of peace between the two sides that were litigants.¹⁸

Mechanisms or procedures by investigators in the implementation of diversion began after investigators determine the occurrence of criminal acts well known directly (caught) or via reports, the complaint of the victim or the community, then when it was also the investigator can call a child who is alleged to have committed the crime for questioning the actions that have been done. Investigators provide opportunities for children to tell clearly and in detail the actions that have been done. After hearing the testimony of the police of the child, then the next investigator can deduce whether the child is found guilty of the alleged offenses or not.

In the process of investigation and inquiry investigator for children suspected of committing a crime, investigators are very adhered to the provisions stipulated in Law Number 11 of 2012, that during the investigation the child should be accompanied by parent/guardian and companion. It is intended that the child will not feel intimidated to testify at the inquiry and investigation process can be run properly.¹⁹

Furthermore, in the process of implementation of the diversion is carried out by the investigator, the investigator must seek diversion for 7 (seven) days after the investigation began, and no later than 30 (thirty) days and prepare minutes of the diversion agreement must get approval from victims and / or families of victims and the willingness of the child and family in accordance regulated in Article 9 paragraph (2) of Law Number 11 of 2012, the new *kemudiaan* requesting the adoption or approval by the local district court to obtain permanent legal force for the parties.

If the process of implementing diversion conducted by investigators fail to be achieved and can not find the solution, then the criminal justice system will still run as mandated in Article 29 of Law Number 11 of 2012, and investigators are required to immediately collect the files and tools the evidence required in the process of investigation that will be useful for the public prosecutor in organizing prosecution and investigators later must attach the minutes of diversion which failed to be achieved in the process of investigation and reports.

In order that the child who has committed a criminal act dealing with the prosecution, the public prosecutor is also still required to implement the settlement in the form of diversion similar to that carried out by investigators in accordance with the provisions of Article 7 (1) which is either at the level of investigation, prosecution and examination The court also law enforcement officials concerned shall seek diversion efforts against child case. With the proviso criminal offense set forth in paragraph (2) in the same chapter.

Furthermore, according to Muhammad Jafar as representatives of victims of PT. Bumi Flora after a meeting facilitated by the investigator and briefed about the importance of child protection, then he was willing to forgive the acts committed by children who have tried to steal latex rubber from his company with the transfer of sanctions; from criminal sanctions to be returned to their parents/ guardians for better monitoring and was accompanied by a written agreement which obliges the children not to repeat their actions.²⁰

With the provisions stipulated on the duty of every law enforcement agencies in pursuing the idea of diversion is a right thing, so that the law enforcement officers involved in the juvenile criminal justice system can not intimidate and force that it is incompatible with its role as an investigator in handling child case because it involves the community leaders and the Legal Aid child as a companion during theconsultation process

[13].¹⁶ Interview with Ferhansyah, Aide Investigator at Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015.

[14].¹⁷ Interview with Ferhansyah, Aide Investigator at Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015.

[15].¹⁸Interview with TengkuUsmanHasan, TengkuImum(imam) DusunSukaJadivillage of UleeJalansub-district of Banda Alamdistrict of East Aceh, Thursday 15 January 2015.

[16].¹⁹ Interview with Ferhansyah, Aide Investigator at Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015.

[17].²⁰Interview with Muhammad Jafar, Representative from PT. Bumi Flora as a victim in a crime conducted by child, Friday 16 January 2015.

carried diversion and play an active role to provide opinions and input related to the settlement of criminal acts that have been committed by children.

3. Barriers and Alternative Countermeasures in Kids Case

a. Obstacles faced by Investigators to Conduct Diversion on Cases Involving Children

1) Law substance which has not accommodated the full implementation concept of diversion

Law substance governing the implementation of the concept of diversion for law enforcement officers, especially for investigators has not been regulated significantly. Proven by the absence of government regulation as a derivative of Act Number 11 of 2012, It is very unfortunate because considering the concept of diversion is a good thing to be applied in the treatment of children in the criminal justice system. So that law enforcement officers are still very difficult to implement the provisions of diversion without any real guidelines governing how it is done at the stage of investigation, prosecution and at the trial though, even though the judge has had the Supreme Court Regulation Number 4 of 2014 on Guidelines for Diversion. However, the Government Regulation is still required for other law enforcement officers, because Supreme Court Regulation particularly only for the internal use of judges only.

According to BambangSetiawan, the investigator, in implementing diversion, is guided only by the rules of the Criminal and the Criminal telegram about dispute resolution outside the court (Alternative Dispute Resolution), even before Act Number 11 of 2012 applies, she has frequently carry out a similar concept to the diversion, but more can be said as mediation between victims and offenders without involving the community as mandated by Law Number 11 of 2012.²¹

The Supreme Court responded to the enactment of Law Number 11 of 2012 with the Supreme Court participated issued Regulation Number 4 of 2014 on guidelines for the implementation of diversion in the criminal justice system of children, but it is unfortunate that the Supreme Court Regulation simply loaded procedures of diversion during the examination in court only, while the mandate of Law Number 11 Year 2012 concept settlement diversion process must be undertaken from the beginning of children undergoing judicial proceedings. Furthermore Ferhansyah added that background the establishment of Law Number 11 of 2012 only refers to areas in Indonesia, such as Jakarta, Bali and North Sumatra regions with different circumstances in East Aceh. Because only three regions that have the Special Child Development Institution is as a child serving his sentence, while in Aceh itself is not yet available. So that children who have obtained a judge's verdict in jail, had to be placed in adult Public Detainment Institution, although the room is separated.²²

2) Rigid legal awareness of the families of the victims and unwilling to forgive and Low community participation

Public view of the person who committed the crime must remain imprisoned somehow influence the child when committing a crime. Society sometimes are less aware and concerned about the importance of the protection of a child's mental, so that when a child is committing a crime that even if they can be solved by way of deliberation and provide alternative sanctions other than criminal prosecution can not be accepted by society. This was supported by Sam, child perpetrator who said that although he had apologized and regretted his actions, the parents of the victims did not want to forgive him and demanded that he remains incarcerated and serve his sentence.²³

Investigators sometimes must take this fact to continue to process reports that have been received by the victims or their families, and even though the diversion process is failed then the investigator still required to continue the case until the level of prosecution. This is because the role of the investigator is to facilitate and provide, but the decision is entirely up to both parties.

3) The difficulty of obtaining information about the crime that occurred on child offenders

A child who committed the crime is often difficult for questioning about criminal acts he has done since the child is worried about going to jail and subjected to violence during the criminal justice process is executed. As a result, investigators took a long time to collect information and evidence relating to criminal offenses committed by children.

Based on interviews with Ferhansyah, he often had difficulty in getting information from children who committed criminal acts especially regarding the chronology of what the child had done. He found it difficult to assess whether the child was guilty or not, as a result, implementation of diversion process becomes inhibited.²⁴

[18].²¹ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

[19].²² Interview with Ferhansyah, Aide Investigator at Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015.

[20].²³ Interview with Sam, A child perpetrator at the Child and Women Protection Unit East Aceh, Thursday 15 January 2015.

[21].²⁴ Interview with Ferhansyah, Aide Investigator at Children and Women Protection Unit, District Police of East Aceh, Wednesday, 14 January 2015.

Children always think that the examination conducted by the police will lead to imprisonment. This intimidated the child, even though they did not commit such offenses. In fact, examination for children who committed the crime is not the same as for adult. Investigators create family atmosphere when getting information from a child so that they feel comfortable so that any investigation process can run smoothly.

Another obstacle faced by investigators in the implementation of diversion are: different point of view and lack of cooperation in the handling of children in conflict with the law among law enforcement officers (investigators, prosecutors, judges and social counselors), lack of socialization on the application of the concept of diversion at every level justice for law enforcement officers.

According to BambangSetiawan, there are law enforcement officers who do not know about the existence of the settlement the child through the process of diversion. As the result, when having a child who committed a crime, there would be intervention on the implementation of diversion conducted by the investigators diversion.²⁵

Furthermore, BambangSetiawan also added that limited facilities and infrastructure in the handling of children in conflict with the law during the investigation process coupled with the jurisdiction of East Aceh Police are still includes rural areas and underdeveloped, it is difficult for investigators in the investigation process and takes a long time.²⁶

b. Alternative countermeasures against obstacles faced by investigators in the implementation of the settlement of diversion for children

- 1) Investigators child should be able to give an explanation to the public and the parties involved in the criminal events on the importance of the protection of children and provide opportunities for children to improve himself.

According to BambangSetiawan it as a child investigator is required to clarify the concept of diversion as a new concept in the criminal justice system in children in detail and in a language that is easily understood and understandable by rural communities due to extensive rural areas in the jurisdiction of East Aceh.²⁷

Therefore, it is proper an investigator as law enforcement officials to seek peace for the people with such efforts to disseminate relevant laws on child protection society to prevent criminal acts on children and pay attention to the child as a person who deserves to be protected from things which is not good and the effect on the behavior of children in the future.

- 2) Children investigator are required to provide special protection to children during the investigation process with the atmosphere that makes the child not afraid to provide testimony.

According Ferhanyah that to obtain information from a child who committed a crime, the children investigator in East Aceh Police made the atmosphere in the room where the child can testify as comfortable as possible and a separate room away from the main office, so that the child does not need to feel pressured when he was at the police station.²⁸

Furthermore Ferhanyah added that during the investigation process lasted child, he did not use the official police uniforms and indirect forcibly compel a child to tell about crime he has committed, but first make the child as comfortable as possible for the family atmosphere and get to know the characters as well The child's psychological. Then it slowly to make children tell how these criminal events has occurred.²⁹

However, investigators still have to be assertive with child with their limitations as law enforcement officers so that the people do not consider that law and justice can be ruled out. Thus, the children investigator should be able to explain to the families of the victims and the parties concerned that the implementation of diversion is not merely disregard justice and the existing laws, but rather provide the best problem solving between victims and perpetrators together to avoid injustice to one parties, prevent revenge, prevent labeling children as "brats" and imprisonment of children.

To maximize these efforts, police role is indispensable. Children investigators, as one of the main elements of the criminal justice system of children, are social institution which undertakes the function of social

[22].²⁵ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

[23].²⁶ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

[24].²⁷ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

[25].²⁸ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

[26].²⁹ Interview with BambangSetiawan, Head of Children and Women Protection Unit of District Police of East Aceh, Wednesday 14 January 2015.

justice for children. Overall these functions both as an element of the criminal justice system of children or tool of social control with regard to the role of the child as the principal investigator of the police in preventing and combating crime. Thus the operation of the police in society is always on the side opposite of the rules of criminal law relating to children and the law of criminal procedure in force, while on the other side to do the enforcement of penalties in the form of formal social reaction against the crimes that have been committed by children.³⁰

To be able to understand and undertake an assessment of the operation of children investigator, it can be seen in the following three aspects: (1) The nature and extent of crime in the community both reported and noted by the child as part of the police or known through the mass media or other means such as surveys of victims and others. (2) The environment in which the child investigator operates including the attitudes and perceptions of the degree of humanity as well as the image of a police criminality and resource-community resources. (3) Factors child's internal investigators as part of the police which includes organizational structure, management, administration, allocation and distribution of power, income information and communication systems, continuity of field operations such as patrols, surveillance, investigation and the relationship with other agencies fellow officers Law enforcement in the criminal justice legal system in children.

VI. Conclusion

Basic considerations in conducting diversion is to consider the policy of the leadership of the Police and minimum service standards of the Aceh Regional Police as well as the standard operating procedures of the Criminal Police, Law Number 11 of 2012 with reference to Article 7 (2), privileges Aceh region since the enactment of the regulation, the investigator should also consider the Qanun Number 09 of 2008 concerning Indigenous Development Life and Customs in Aceh that contains 18 cases that can be solved by the device Gampoeng (village). Implementation of diversion by way *muyawarah* by involving the parties concerned, namely the perpetrators, victims, families of victims/offenders, community counselors and community leaders such as *geuchik* (village head), *tengkuimum*, child investigators act as a facilitator in the implementation of diversion. Barriers faced is the legal substance not accommodate the full implementation of the concept of diversion, the legal awareness of the families of the victims are still being rigid and unwilling to forgive and community participation are not maximized, difficulty in obtaining information about the crime that occurs in a child offender. Alternative countermeasures against barriers that investigators should be able to fill the void of substance law, professional attitude investigators to ascertain the purpose of diversion successfully implemented.

References

- [1]. Andi Sofyan dan Abd Asis, *Hukum Acara Pidana (Suatu Pengantar)*, Kencana Prenadamedia Group, Jakarta 2014.
- [2]. Anonimus, *Pedoman Penulisan Skripsi, Edisi Revisi III*, Fakultas Hukum, Universitas Samudra Langsa, 2011.
- [3]. Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana*, PT Citra Aditya Bakti, Bandung, 1998.
- [4]. Marlina, *Peradilan Pidana Anak di Indonesia Pengembangan Konsep Diversi dan Restorative Justice*, PT Refika Aditama, Bandung, 2009.
- [5]. -----, *Pengantar Konsep Diversi dan Restorative Justice Dalam Hukum Pidana*, Usu Press, Medan, 2010.
- [6]. Marwan Effendy, *Teori Hukum dari perspektif Kebijakan, Perbandingan dan Harmonisasi Hukum Pidana*, Gaung Persada Press Group, Jakarta, 2014.
- [7]. Romli Atmasasmita, *Problema Kenakalan Anak-anak dan Remaja*, Armico, Bandung, 1984.
- [8]. Ronny H. Soemitro, *Metode Penelitian Hukum*, Jakarta, Ghalia Indonesia, 1983.
- [9]. Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000.
- [10]. Soemitro dan Ronny Hanitijo, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1988.
- [11]. Liza Agnesta Krisna, *Hukum Perlindungan Anak, Panduan Memahami Anak yang Berkonflik dengan Hukum*, Bahan Ajar Untuk Kalangan Sendiri, Fakultas Hukum Universitas Samudra Meurandeh, Langsa, 2014.
- [12]. Muladi, *Makalah Restorative Justice Dalam Sistem Peradilan Pidana disampaikan dalam seminar IKAHI*, Tgl 25 April 2012.
- [13]. Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Qanun Nomor 09 Tahun 2008 tentang Pembinaan Kehidupan Adat dan Adat Istiadat.

[27].³⁰ Interview with Rina Sulistia, Children Associate from LBH Lhokseumawe, Thursday, 6 January 2015.