

The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia

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TABLE of CONTENTS

INTRODUCTION	75
THE POLICY OF DIVERSION AND RESTORATIVE JUSTICE FORMULATION IN THE PERSPECTIVE OF LAW NUMBER 11 OF 2012 ON THE JUVENILE CRIMINAL JUSTICE SYSTEM	76
DIVERSION AND RESTORATIVE JUSTICE FORMULATION IN THE PERSPECTIVE OF SUPREME COURT REGULATION NUMBER 4 OF 2014 ON GUIDELINES FOR THE IMPLEMENTATION OF DIVERSITY IN THE CRIMINAL JUSTICE SYSTEM OF CHILDREN	78
CONCLUSION	86
REFERENCES	41

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Children are a younger generation successor to the nation that must be protected. In some cases children can do a mischief that fall into the categories of offenses and called as children in conflict with the law. Children in conflict with the law have different in terms of handling the criminal offenses committed by adults. Currently with Law Number 11 of 2012 on the Criminal Justice System of Children (SPPA) which has sought diversion and restorative justice in terms of handling child conflict with the law. From the results of this study concluded that the policy formulation the concept of diversion and restorative justice pursuant to Law Number 11 of 2012 on the Criminal Justice System of Children (SPPA) and its implementation rules have been set regarding policy concept of diversion and restorative justice with the aim that children who commit acts the criminal is no longer confronted in the judicial process but through an alternative solution, namely the completion of which is the restoration to its original state (restorative justice) will but of formulating the policy is still not perfect because it found some weakness. While in the implementation of diversion and restorative justice in the settlement of children in conflict with the law in Pati District Court already sought remedies which reflect restorative justice approach by implementing law enforcement diversion and restorative justice but there are still many obstacles occurred in the settlement of children in conflict with the law in Pati District Court.

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INTRODUCTION

ONE of the main elements of a lawful state is equality before the law. Article 27 Paragraph (1) of The 1945 Constitution of the Republic of Indonesia states that: All citizens shall have equal positions in law and government and shall uphold such law and government with no exception. Given the equal status before the law and government, every citizen who is found to be in violation of applicable law will get sanction according to the deed done. It can be said that the law does not see who it is officials, civilians or the military. If it violates the law will get sanction according to the deeds done. But the law provides a special view in the application of law to children. There are special approaches that are conducted solely for the child's own interests and welfare (Djamil 2013; Bouffard, Cooper, and Bergseth 2016; Hirschi 2017).

Children are part of the young generation and as one of the human resources that is the bud, the potential and successor ideals of the struggle of the nation in the future, and has a strategic role. Furthermore, it has special characteristics that guarantee the continuity of the existence of nation and state in the future. Every child will be able to assume the responsibility. Therefore, children need to get the widest opportunity to grow and develop optimally both physically, mentally and socially, and morals. Protection needs to be done as well as to realize the welfare of children by providing guarantees to the fulfillment of all rights and recognition without discrimination (Djamil 2013; May, Osmond, and Billick 2014). Childhood is the period of seed sowing, the establishment of piles, making the foundation that can be called as well as the period of character formation, personality and character of a human self. Aiming that they will have the strength and ability, and stand tall in life (Gultom 2008; Arifin 2018; Burfeind & Bartusch 2015).

One of the prevention and prevention efforts of children facing the law today through the implementation of the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak*, SPPA). The purpose of organizing the criminal justice system is not only to impose criminal sanctions, but to focus more on the accountability of perpetrators of victims of crime, commonly referred to as the restorative justice approach. The purpose of restorative justice is for the welfare of the child concerned, without prejudice to the interests of the victims and the community.

In Indonesian context, Law Number 11 of 2012 on SPPA which entered into force in July 2014 has had permanent legal force to be implemented after it was ratified. In the law referred to in Article 6 to Article 15 there is a diversion provision which is a renewal in the child criminal justice system. Diversion is an act or treatment transferring a case from formal to informal process, or placing out child offender from SPPA (Marlina 2009; Hardjaloka 2015; Davies & Robson 2016). This means that not all child matters in conflict with the law must be resolved through the formal justice system and provide alternative solutions by using restorative justice

approaches for the best interests of the child and considering justice for the victims and the community (Friedlander 2013; Siegel & Welsh 2014; Wahyudi 2009; Maskur 2012).

Currently, one of the efforts to prevent and overcome children in conflict with law is through the criminal justice system of children. This is expected to give maximum protection for the interest of children who should live as the best interests for the survival of mankind (Wahyudi 2010; Shoemaker 2017; Petrisono et.al 2013). The purpose of organizing the juvenile justice system is not only to impose criminal sanctions on the perpetrators. However, more focused on the premise that the imposition of sanctions as a means of supporting and realizing the welfare of children of criminals. Therefore, handling of cases of children in conflict with the law (ABH) must be distinguished from handling to adults. There should be special approaches in solving child cases against the law, and mainly using a restorative-based or recovery approach.

THE POLICY OF DIVERSION AND RESTORATIVE JUSTICE FORMULATION IN THE PERSPECTIVE OF LAW NUMBER 11 OF 2012 ON THE JUVENILE CRIMINAL JUSTICE SYSTEM

WITH the existence of Law Number 11 of 2012, the concept of diversion and restorative justice has been regulated in this law that is in Chapter II which specifically regulates the provision of diversion based on the approach of restorative justice from Article 6 to Article 15 means that there are 10 articles regulates the diversion provisions at all stages of examination from investigation, prosecution and trial in a court of law in the settlement of cases of children in conflict with the law.

A formal criminal law, also called a criminal procedural law, is a law governing how a country with its equipment intermediaries exercises its right to impose criminal sanctions (Sudarto 2009). Thus the procedural law of child criminal justice is a regulation that arranges for abstract child criminal law applied in concrete (Djamil 2013). In Law Number 11 of 2012 regarding the criminal justice of children in Chapter III from Article 16 to Article 62 means there are 47 articles regulating the Juvenile Criminal Procedural Law, and there are diversion arrangements at every level of investigation, at the level of investigation, prosecution and examination in court.

Basically, Law Number 11 of 2012 on Child Criminal Justice System has regulated the efforts of diversion and restorative justice approach in settling cases of children in conflict with the law. However, in the law also found some weaknesses in its implementation are:

- 1) Regarding the provision of diversion in Article 7 paragraph (2) subparagraph a of Law Number 11 of 2012 regarding the Criminal Justice System of the Child which determines the requirement that a diversion process be conducted in the event of a criminal offense is punishable by imprisonment under 7 (seven) years. This provision automatically precludes attempts of child-diverting in cases where a criminal offense is punishable by imprisonment of 7 (seven) years or more. This article is a reflection of the concept of the concept of the SPPA law in understanding the protection of the child in which the philosophical foundation of the protection of the child is to remember that the child has a lack of physical and cyclical power so that to be criminally liable for the deed done, a child has not been able because his lack of mental stability to understand the deeds he performed. So in the case of handling children in conflict with the law must be handled specifically. The tendency in child-handling practices in conflict with the law is often seen as a miniature of adults so that the application of transfer efforts through the outer court through diversion and restorative justice still uses an indicator of the severity of the criminal threat perpetrated by the offending child. This has led to discrimination in handling the settlement of cases of children in conflict with the law by applying different treatment in the case of children subject to imprisonment under 7 (seven) years and children who are punishable by imprisonment of 7 (seven) years or more. This provision does not reflect the approach of restorative justice in the settlement of children in conflict with the law.
- 2) Referring to Article 108 of Law No. 11 of 2012 on the Criminal Justice System of the Child that this law is valid after 2 (two) years as from the date of promulgation. Therefore, the obligation as regulated in Article 105 of Law Number 11 of 2012 on Child Criminal Justice System is in the case of preparing facilities and infrastructure and human resources of special law enforcers of children, it can be implemented at the latest 5 (five) years after the law, this law is in force. However, the absence of clear regulation on the obligations of the government to prepare and build facilities and infrastructure of law enforcement supporters for children committing crimes during this transitional period. For example, there is no National Prisons (BAPAS) in every regency or city, there is not yet the availability of supporting infrastructure for the implementation of diversion such as special room for diversion, and the limited human resources of law enforcers who specifically handle, have the interest and ability to resolve cases of children in conflict with the law in every the level of the criminal justice system.

DIVERSION AND RESTORATIVE JUSTICE FORMULATION IN THE PERSPECTIVE OF SUPREME COURT REGULATION NUMBER 4 OF 2014 ON GUIDELINES FOR THE IMPLEMENTATION OF DIVERSITY IN THE CRIMINAL JUSTICE SYSTEM OF CHILDREN

JUDGING from the perspective of constitutional law especially in the practice of governing the government and the system of laws and regulations, the position of the Supreme Court Regulation of the Republic of Indonesia (PERMA RI) has several functions. *Firstly*, as a filler of legal vacuum, supplementing the lack of law and legal discovery, where the provisions of legislation are not or have not been regulated so that PERMA RI can be complementary to the laws and regulations. *Secondly*, as law enforcement and legal source because PERMA RI is a concretization of judicial practice with aim for legal certainty, justice and expediency (Mulyadi 2014).

PERMA RI Number 4 of 2014 on Guidelines for Implementation of Diversity in the Child Criminal Justice System, was born to fulfill vacuum and law enforcement in the context of the practice of organizing the regulatory system (Mulyadi 2014). Furthermore, substantially PERMA RI Number 4 of 2014 consists of V (five) Chapters regulating General Provisions, Diversion Duties in Courts, Transitional Provisions and Closing Provisions.

Basically, PERMA RI Number 4 of 2014 serves to fill the void and law enforcement for the practice of governance and the system of legislation referring to the consideration of letter b of PERMA RI Number 4 of 2014 stated that Law Number 11 of 2012 on System The Child Criminal Court has not yet clearly set out the procedures and the stage of diversion. Therefore, there are some things that have not been regulated in the SPPA Act and then regulated in PERMA No. 4 of 2014, as a function of fulfilling legal vacuum and law enforcement, which is described as follows:

- 1) Pursuant to Article 1 of the General Provisions of the definition of deliberative deliberation as a consensus between the parties involving the child and the parent/guardian, the victim and/or parent/guardian, the social guidance counselor, the professional social worker, the community representative and other parties involved to reaching a diversified agreement through a restorative justice approach. The diversion facilitator is a judge appointed by the chief judge to handle the child's case. In addition, the provision of 'Caucus' is a separate meeting between the Facilitator of Diversion with one of the parties known by the other party. A diversion deal is a consensus of the result of a diversity deliberation process that is set forth in the form of a document and signed by the parties involved in the diversionary deliberation, in which the day is a working day.
- 2) Subject to the provisions of Article 3 it is stipulated that:

“A Child Judge shall seek diversion in the case of a child charged with a criminal offense punishable with imprisonment under 7 (seven) years and shall also be charged with a criminal offense punishable by imprisonment of 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combined indictments”.

The provisions of Article 3 PERMA, especially the sentence editorial, "A criminal offense punishable with imprisonment of 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combined indictment". Thus PERMA concerning the specifically specific versions of the sentence, "Is punishable by imprisonment of 7 (seven) years or more", this substance is broader than the provision of Article 7 paragraph (2) letter a of the SPPA Law because the diversion is made against, *“the offense committed is threatened with imprisonment under 7 (seven) years”.*

- 3) With this PERMA regulates the standard format of the letter of determination of deliberative deliberation meetings, the report of the event of either failed versions of the beginning or the unsuccessful version, the diversion agreement and the letter of appointment of the Chairman of the District Court if the verdict succeeded in court. The format is contained in attachment PERMA No. 4 of 2014 on Guidelines for Implementation of Diversion in the Criminal Justice System of Children.

Diversity in Perspective of PERMA RI Number 4 of 2014 as a function of fulfilling legal vacuum, law enforcement for justice and expediency Article 3 PERMA has expanded and flexed the diversion provisions that are normatively regulated in SPPA Law and accommodate in cases where the parties in the child's case agree to diversify against a child subject to a criminal offense of 7 (seven) years or more so that it is possible to be diverted under the terms, *“The child is charged in the form of a subsidiary, alternate, cumulative or combined indictment”*, although on the other hand the provisions of Article 7 paragraph (2) The SPPA Act is not possible.

DIVERSION AND RESTORATIVE JUSTICE FORMULATION POLICY IN THE PERSPECTIVES OF GOVERNMENT REGULATION NUMBER 65 OF 2015 ON GUIDELINES FOR THE IMPLEMENTATION OF DIVERSITY AND HANDLING OF CHILDREN UNDER TWELVE

GOVERNMENT Regulation of the Republic of Indonesia Number 65 of 2015 on Guidelines for the Implementation of Diversity and Handling of Children Under 12 (twelve) Years, was born as a technical guidance of law enforcement officers in the implementation of the diversion process previously set in Law Number 11 of 2012 on System Child Criminal Court. Subsequently, the Government Regulation of the Republic of Indonesia

Number 65 of 2015 consists of VII (seven) Chapter regulates General Provisions, Guidelines for the Implementation of Diversity Process, Procedures and Coordination of Diversity Implementation, Handling of 12-Years Old Child, Funding, Transitional Provisions and Closing Terms.

In essence, the Government Regulation of the Republic of Indonesia Number 65 of 2015 serves to provide technical guidance on the implementation of the diversion process in the regulatory system which refers to the consideration to implement the provisions of Article 15 and Article 21 paragraph (6) of Law Number 11 of 2012 regarding the System Child Criminal Court, it is necessary to stipulate a Government Regulation on Guidelines for the Implementation of Diversity and Handling of Children Under 12 (twelve) Years. So from the provisions of Government Regulation No. 65 of 2015 it can be seen that the implementation guidelines and coordination procedures between law enforcement agencies such as Police, Attorney and Courts as implementers in the implementation of diversion is clearly described in Government Regulation No. 65 of 2015. Whereas the provisions on terms and procedures for the diversion and handling of cases of children not yet 12 (twelve) years in line with Law Number 11 of 2012 on the Criminal Justice System of the Child.

IMPLEMENTATION OF THE CONCEPT OF DIVERSION AND RESTORATIVE JUSTICE APPROACHES IN HANDLING CHILDREN'S CASES IN CONFLICT WITH THE LAW AT PATI DISTRICT COURT

DIVERSION shall be strived at the level of investigation, prosecution and examination of children's cases in the District Court. Implementation of the concept of diversion in the examination of cases of children in the District Court in the form of settlement of cases outside the juvenile criminal justice system or non-litigation path in the form of dispute resolution in the family (restorative justice). This provision is provided for in Article 7, Article 14 and Article 52 of the SPPA Law which may be detailed, the diversion shall be made at the examination level in the ordinary children's court in practice carried out through the following steps:

- 1) Upon receipt of the case file from the public prosecutor, the District Court Chairman shall determine the child's judge or the judge of the child to handle the child's case no later than 3 (three) days after receiving the file of the case.
- 2) The Judge shall endeavor to be a maximum of 7 (seven) days after being stipulated by the President of the District Court. In judicial practice, a diverging judge is referred to as a diversion facilitator of a child judge appointed by the chief judge to handle the child's case. Diversion is conducted through deliberation by involving related parties and done to reach the diversion agreement through restorative justice approach.

- 3) If the perpetrator or the victim agrees to be diverted then the child's judge, social guardian, and professional social worker begin the process of conversion of the case by involving the relevant parties. The diversion process shall be carried out no later than 30 (thirty) days, beginning with the establishment of a judge of the child or judge of the child on the determination of the day of diversion and the diversion process may be carried out in the mediation court of the District Court after it has been made of the proceedings of the diversion process, either successful or failing as the format of the minutes is attached in Attachment I, II, III and IV of PERMA Number 4 of 2014.
- 4) If the successful conversion where the parties reach an agreement, then the agreement is set out in the form of a diversion agreement. The result of the diversion agreement and the news of the diversion shall be submitted to the President of the District Court for determination. The Chief Justice shall issue a determination within a period of no more than 3 (three) days from the receipt of the diversion agreement. Such determination shall be submitted to the child counselor and the judge of the child who handles the case within a maximum of 3 (three) days since it is stipulated by the President of the District Court. Subsequently, upon receipt of the determination of the Head of the District Court on the diversion agreement, the child's judge or the judge of the child issues the stipulation of a hearing and shall also contain the editorial "ordering the accused to be removed from detention", against the child who is in custody of the case.
- 5) If the failed versions of the case proceed to the trial stage. Furthermore, the judge continues the proceeding in accordance with the trial procedure for the child.

In the Pati District Court from 2014 until February 2016 there were 638 criminal cases entered. It consists of 275 cases in 2014, 309 cases in 2015 and 54 cases up to February 2016. Of the 638 criminal cases within 2014 to February 2016 there are 17 cases of conflicted children with laws handled by the Pati District Court. From these data shows that a very prominent increase occurred in 2015 with 13 cases, which previously in 2014 only amounted to 3, whereas in the year 2016 until February there were only 2 cases of children in conflict with the law. Based on the table in the period of two years 2 months starting from 2014 to February 2016 there are 17 (seventeen) types of crimes committed by children, namely Extortion and assault as much as 1 (one) case, beating 2 (two) cases, Theft as many as 5 (five) cases and Wanton as many as 9 (nine) cases. So from the data there is the fact that the case of children in conflict with the law handled Pati District Court at most is a case of immorality.

From these data it can be concluded that the number of children in conflict with law from 2014 to February 2016 amounted to 17 (seventeen) cases of children. However, of the 17 (seventeen) cases undergoing a diversion there are only 2 (two) cases, one case in 2015 and one case at the beginning of

2016. From the fact that there are not all cases of children in conflict with the law in the Pati District Court through a process of diversion.

According to the interview with Etri Widayanti, as one of the judges of the facilitator diversion in Pati District Court, it is because children who commit criminal acts in the jurisdiction of Pati District Court on average are threatened with high criminal penalty that is above 7 (seven) years. In addition, the indictment of the public prosecutor of the children who was transferred to the Pati District Court on average contains charges with threats of 7 years or more. Moreover, the judge in Pati District Court cannot apply alternative settlement procedure (non-litigation) in the form of diversion. The judge in conducting the examination of the child in court is a funnel of the law if the SPPA Article 7 Paragraph (2) letters (a) and (b) clearly state that 'diversion is exercised in the event that a criminal offense is punishable by imprisonment under 7 (seven) years and not a repeat of a crime. Based on the aforementioned article, the diversion can only be done with a limitative indicator of a criminal penalty under 7 (seven) years. Consequently, the consequences are criminal acts committed by a child threatened with 7 (seven) years or more, and the judge does not have the authority to undertake non-litigation settlement efforts in the form of diversions due to the sound of the article in the event that the conditions of settlement through diversion and restorative justice are very clear. Thus, judges find it difficult to pursue alternative solutions by way of diversion, although both parties either the perpetrator or the victim have a wish or consent that the case can be attempted for a diversified settlement (Widayanti 2017).

Since Law Number 11 of 2012 on the Juvenile Justice System came into force on July 31, 2014 to date, there are 2 (two) children in conflict with the law at the Pati District Court pursuing the settlement process through diversion and resort-justice procedures. The first case is related to the criminal act of beatings, against the child charged with Article 80 paragraph (1) of Law no. 23 of 2002 in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code. The second case, also related to the criminal act of beatings, against the child was accused of First Article 170 paragraph (1) of the Second Criminal Code Article 76 C *jo* Article 80 paragraph (1) of Law no. 35 Year 2014 *Subsidiar* Article 76 C *jo* Article 80 paragraph (1) of Law no. 35 of 2014 *jo* Article 56 of the Criminal Code. Therefore, the child who is in conflict with the law based on the relevant laws and regulations must be pursued the settlement procedure through the diversion by the judge of Pati District Court. And settlement efforts through diversion with the restorative justice approach have been made to both cases but none have succeeded in reaching a peace agreement through diversion.

Furthermore, the implementation of the concept is diversified according to the restorative justice paradigm. It is based on the same procedure diversion with forms of settlement efforts using several methods and approaches that reflect the paradigm of restorative justice in efforts to

solve cases of children in conflict with the law at the Court of Pati ([Widayanti 2017](#)).

The forms of settlement efforts offered by restorative justice based methods and approaches in Pati District Court are as follows:

- 1) Mediation;
- 2) Conciliation followed by reconciliation;
- 3) Restitution;
- 4) The apology of the perpetrator;
- 5) Regretful acts by perpetrators;
- 6) The perpetrators' accountability;
- 7) Guarantees from the perpetrator's parents for the future to educate and supervise the child not to repeat his actions again;
- 8) Recovery of the original condition of both victims and perpetrators;
- 9) Service to the victim;
- 10) Recovery of perpetrators through community elements, which may take the form of community education, social work or leave it to religious-based educational institutions to restore the behavior of child offenders;
- 11) It is expected that the final outcome will be a consensus-based agreement approved by all parties involved in the diversion and restorative justice procedures.

Parties involved in the diversion process with the restorative justice approach at the Pati District Court:

- 1) Victims and families of victims. The involvement of victims in the settlement of restorative justice is quite important. This is because during this time in the criminal justice system, the victim is not involved when the victim is a party directly involved in the conflict (the aggrieved party). In the deliberation the interests of the victim are important to be heard and are part of the decision to be taken. In addition, the victim's family needs to be involved because in general the core issue is from the family especially if the victim is a minor.
- 2) Actors and families. The perpetrator's family is an absolute party because remembering the age of the immature perpetrator is also considered very important because the family will be part of the settlement agreement, such as in the case of compensation payments or the implementation of other compensation in accordance with the consensus agreement.
- 3) Community representatives are important parties to represent the interests of the environment where the criminal incident occurred. The goal is that the interest of the public nature is expected to remain represented in decision-making. The criteria of local community leaders are village heads, village heads and other figures who have legitimacy as community representatives and have no interest in the cases faced.

The Pati District Court in settling cases of children in conflict with the law has endeavored the procedure of diversion and restorative justice in accordance with the provisions of legislation for 2 (two) cases of children in conflict with the law at the Pati District Court. The settlement efforts by

bringing together both parties of the family of the perpetrator and the victim's family with the model of settlement using the methods of mediation, conciliation and restitution simultaneously. Thus the case of children in conflict with the law at the Pati District Court has been attempted to avoid the judicial process (litigation) and diverted outside the judicial process (non-litigation) carried out through a diversion procedure with a restorative justice-based approach.

THE BARRIERS & PROBLEMS IN THE IMPLEMENTATION OF DIVERSION

ACCORDING to the data of the research that has been discussed in the previous problem formulation shows that there are only 2 (two) diversion attempts made by the Pati District Court and 2 (two) cases that are attempted to diversion and even fail to meet an agreement. From the data, it is found an obstacle in implementing the concept of diversion and restorative justice in settling cases of children in conflict with the law in Pati District Court that is as follows:

- 1) Low community understanding of diversified concepts and restorative justice approaches;
- 2) Child Criminal Justice System;
- 3) The success of the diversion process and the restorative justice approach depends largely on the family and community on which the child is returned;
- 4) It is very difficult to prevent children from retributive justice punishment in the event of a very serious offense;
- 5) Law enforcement apparatus of diversion and restorative justice implementation

According to the interview to Etri Widayanti, as one of the Judges of Diversion Facilitator at Pati District Court, the main obstacle in seeking diversion and restorative justice is located on the side of the victim or the family of the victim who does not accept the perpetrator's actions and wants revenge in the form of criminal the judge;s decision in the trial or the victim wants to make peace through the diversion channels provided that the offender is able to pay the claim for material damages high enough.

To overcome obstacles in the implementation of diversion and restorative justice in the Pati District Court, the authors point to the efforts put forward by [Pranis \(1998\)](#) that in order to provide an understanding of the course of the diversion process with the restorative justice approach, there are several steps to build community involvement in taking the initiative of restorative justice, such steps are:

- 1) Training and information on restorative justice and models that can be applied in the community;

- 2) To provide education independently to the restorative justice implementing legal apparatus about the condition and condition of the community;
- 3) Identify capable and influential leaders in their respective communities through information or records concerning such persons;
- 4) Understand the role of community groups that enable them to work together;
- 5) Explain to the public the purpose of implementing restorative justice clearly and openly to the public. The explanations conveyed are the importance of restorative justice, its implementation process, the benefits gained, and other important things of restorative justice;
- 6) Embracing potential supporters in criminal justice and educating leaders about restorative justice;
- 7) Good cooperation with community leaders to explore existing and growing needs, and to invite community participation in every program they undertake;
- 8) Any recruitment of mediators shall be endeavored to involve community members;
- 9) Continuing to exchange information with members of the community by accommodating their opinions, especially from components of community groups that are not always involved in making restorative justice decisions;
- 10) Attempt to the maximum extent possible to involve every member of the community in any process, especially parties required in the process, such as victims, perpetrators of youth organizations, mosque organizations, or other organizations;
- 11) Provide basic training on justice, restorative justice of conflict resolution and community environment development to staff of criminal justice system and community members and make reference of system and order of implementation.
- 12) Describe the responsibilities of each party involved in implementing restorative justice to the community. So that necessary cooperation and good understanding between law enforcement agencies with the parties ie perpetrators, victims and families of perpetrators or victims of the concept of diversion and restorative justice.

Thus efforts to implement diversion and restorative justice in the settlement of children in conflict with the law not only focus on the perpetrators and victims only. The role of the community and law enforcement officers is instrumental in ensuring that perpetrators can be avoided from the retributive justice process. However, it changes to the nature of restorative justice (recovery), and achieves the ultimate goal of the Child Criminal Justice System, which is solely for the best interests of the child.

CONCLUSION

LAW Number 11 of 2012 on Child Criminal Justice System and its implementation rules have regulated the policy of the concept of diversion and restorative justice with the aim that children who commit crimes are no longer faced in the judicial process but through alternative settlement, that is by completion which is restorative justice. In fact the policy of SPPA Act is still not perfect because found several points of weakness that is as follows:

1. Regarding the provisions of the diversion in Article 7 paragraph (2) subparagraph a of the SPPA Act precludes the diversionary effort that can be made to a child in the event that a criminal offense committed is punishable by imprisonment of 7 (seven) years or more. This article does not accommodate the spirit of child protection where the basic philosophy of child protection in the CRC set forth in the preamble is "the child needs special protection because of physical and mental inadequacy" so that the efforts of non-formal alternative settlement through diversion and restorative justice should be done as much as possible in the children's case and retributive justice retaliation should begin to be abandoned and replaced by the application of restorative justice to the best interests of the future and avoiding negative stigma against children in conflict with the law.
2. The existence of regulatory inequalities regarding the child's criteria or criteria can be attempted to diversify between the SPPA Act and the Supreme Court's PERMA. In this case PERMA Supreme Court provides extension of provisions on criterion of criminal threat of 7 years or more can be attempted to diversion if the child is indicted in the form of indictment *subsidiar*, alternative, cumulative or combination (combination).

Implementation of the concept of diversion and restorative justice in efforts to resolve cases of children in conflict with the law at the Pati District Court has been seeking the diversion of child cases under the SPPA Act for diversion and restorative justice approaches in order to safeguard the interests and rights of the child. However, not all parties, especially from the victim or the victim's family, agree with the perpetrator or the family of the perpetrator and ultimately the victim or the victim's family still insist that the child (perpetrator) be processed during the hearing in court and sanctioned by the judge.

Constraints that occur in the implementation of the concept of diversion and restorative justice in settling cases of children in conflict with the law in Pati District Court, namely:

1. Lack of divergence and restorative justice approaches, especially by the victim or the victim's family.

2. Diversion is considered a bargain place of peace that is measured only by the amount of material compensation but not the coaching and restoration of the original state according to the concept of restorative justice
3. Lack of limited training and human resources in resolving conflicts and techniques facilitating or leading mediation in diversified execution with restorative justice approaches

Therefore, diversion and restorative justice efforts must be made against children in conflict with the law regardless of the severity of the criminal threats perpetrated by the child so that in the end there is no treatment of different settlement efforts in the handling of conflict resolution efforts with the child, especially in the level examination in the District Court so as to achieve the goal of a good Criminal Justice System. In the implementation of the diversion will inevitably relate to the concept of restorative justice which emphasizes restoration of the child's case in conflict with the law so that the focus is not on retributive justice.

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