Diversion approach as an alternative case resolution son of the conflict with the law on child criminal justice system (case study of Merauke)

M J Alputila¹, M A Tajuddin¹ and Kahar²
¹Faculty of Law, Musamus University, Merauke, Indonesia
²Faculty of Law, Hasanuddin University, Makassar, Indonesia

E-mail: marlyn@unmus.ac.id

Abstract. In terms of providing protection to children in conflict with the law, the government has made efforts to protect one of them is with the birth of Law No. 11 of 2012 on the Criminal Justice System Child. Where the Criminal Justice System Child is a whole process of settlement of children in conflict with the law, starting from the inquiry stage to the stage after undergoing criminal coaching. The protection of children in conflict with the law in the integrated justice system emphasizes child by placing the child in a special coaching institute child (LPKA). From the data in the hall correctional noted that native son of Papua committing an offense for the year 2018 as many as 52 children and for 2019 to the month of May as many as 24 children, so it can be seen that the crimes or offenses committed by children Papuans very much. Therefore, this study to the purpose to see how the diversion as an alternative approach to settling disputes children in problems in the law on juvenile criminal justice system. The research method is a method of Juridical Empirical legal research done by looking at the facts or issues raised in the public and subject it to the rule of law. In the implementation of diversion level, the police have not been too many who managed to carry out the process of diversion that of the number of cases of children in 2017 as many as 34 cases and succeeded in running a diversion which 7 cases, in 2018 the number of cases of children native Papuans were 52 cases and successfully execute diversion of as many as 11 cases was in 2019 until the month of May were 22 cases and conduct a successful diversion 1 case. the number of cases managed to do more with turnover versioned loss in the form of a sum of money, but at the level of the prosecutor to date, only one case recently successfully implemented in a court diversion and no one has succeeded in carrying out the diversion process. so that the need the recommendation of the government to do legislatief the reviews related to the terms implementation of diversion, especially the crime of the threat of 7 years but there are no victims in the criminal alleged to the child that needs a special assistance prepared by the local government to the children of the indigenous Papuan conflict with the law.

1. Introduction
Child is the dream of every family is a mandate and the gift of God Almighty in which children also has human dignity as a whole, so as human beings who have the dignity of the child needs to get the best legal protection.

Legal protection to children deserve more attention from the government that a special nature protection, especially protection within a criminal justice system prevailing in Indonesia. Protection to children sebanarnya has been done by the government, namely with the enactment of Law No. 37 Year 1997 on Juvenile Court but as the times then the rule of law has been unable to meet the legal needs of
children because not comprehensively provide protection to children in conflict so that necessary any rule changes that better address the needs of bias and may give protection to children in conflict with the law.

Indonesia as a country that is party to the children's rights convention (convention on the rights of the child) that plays an important role in the principle of legal protection of children have an obligation to provide special legal protection to children in conflict with the law. Therefore it is necessary to provide a breakthrough in terms of providing the best protection for children as the next generation the ideals of the nation.

In terms of providing protection to children in conflict with the law, the government has made efforts to protect one of them is with the birth of Law No. 11 of 2012 on the Criminal Justice System Child. Where the Criminal Justice System Child is a whole process of settlement of children in conflict with the law, starting from the inquiry stage to the stage after undergoing criminal coaching.

The problems faced by the children of deviant behavior in violation of the rule of law. Irregularities by children is also the negative impact of globalization in the field of telecommunications and information and advances in technology and science, in addition to the divergence done by children is also caused by factors from outside of the child resulting from a lack of parental, social life of children and also social conditions faced by the child. For the protection of children in conflict with the law is very important.

The protection of children in the law in the integrated circuit of justice system accent child by place the child in a special coach institute child (LPKA). The objective of child protection is to provide protection for restorative justice and diversion avoid and keep children out of the judicial process, thereby reducing the negative stigma against children in conflict with the law so it is expected that children can return to a reasonable social life.

The process of diversion is the process in which all parties involved in a specific criminal acts jointly resolving problems as well as creating an obligation to make things better by engaging victims, children and the community in seeking solutions to repair, reconciliation and reassurance that do not perform a vengeance.

In terms of the process of the desired diversion of the willingness of all parties to carry out the process with a full sense of responsibility, familial and consensus in order to promote justice for all parties. It is also expected to occur in the diversion process conducted by law enforcement officials in cases experienced by a child in problems in Merauke Regency, Papua based in particular indigenous children integrated justice system of children.

What is meant by the indigenous people of Papua under Law No. 21 of 2001 Article 1 letter (T) indigenous Papuans are those originating from the Melanesian race group consisting of native tribes in the province Papuadan / or people who accepted and recognized as the Papuans the Papuan indigenous peoples " [2].

Papuans children are children who come from the descendants of the indigenous Papuan people and or children who have been accepted and recognized as an indigenous people of Papua by indigenous Papuans. In terms of quality and quantity of any criminal act that recently occurred in the case of Merauke many criminal offenses committed by children's children both migrants and native Papua children. From the data in to the hall correctional noted that native son of Papua committing an offense for the year 2018 as many as 52 children and for 2019 to the month of May as many as 24 children, so it can be seen that the crimes or offenses committed by children Papuans very much.

1.1 Formulation of Problem

Based on the background above, it is presented the formulation of the problem namely:
1) How Process approach as an alternative Diversion Case Settlement Children in conflict with the law on juvenile criminal justice system?
2) What constraints faced by law enforcement officers in cases penyelodokan children through the diversion approach?

2. Method
Research on Approach diversion as an alternative to the settlement of children in conflict with the law in the criminal justice system of children, using research methods Juridical Empirical namely legal research methods were done by looking at the facts or issues raised in the public and subject it to the rule of law in society composed of primary data obtained through interviews directly in the field with sources that are tailored to the title of the study consisted of employees of Correctional Institute in this regard Supervising community, children as perpetrators, children as victims and families and that secondary data laws applicable law related to the research question are Law No. 11 of 2012.

3. Result and Discussion
3. 1. Process approach as an alternative Diversion Case Settlement Children in conflict with the law on integrated justice system of children.

3. 1.1. rights of the Child. Protection of children's rights in the Criminal Justice System Law Children under Article 2 through Article 8 of Law No. 11 of 2012 on Child Criminal Justice System[3] which can be broadly described as follows:
1) Kids are entitled to welfare, treatment, care and guidance based on affection either in their families or in special care;
2) Kids are entitled to services to develop skills and social life;
3) A child is entitled to maintenance and protection, either from within the womb and after birth;
4) Children's right to the protection of the environment that may harm or inhibit the growth and development with a reasonable;
5) In jeopardy, first is the children who are entitled to help, assistance and protection;
6) Children who do not have both parents are entitled to care by the state or any person or entity;
7) Children who are not able to entitled to the assistance to be in a family environment to grow and develop reasonably;
8) Children who experience behavior problems by the service and care that aims to help to overcome the obstacles that occur in growth and development, and also given to children who have been found guilty of a violation of law by the judge's decision.
9) Disabled Children are entitled to special services to achieve the level of growth and development capability and capacity limits as far as children are concerned;
10) Assistance and services, aimed at the welfare of the child to be the right of every child, without distinction of sex, religion, the political establishment, and social standing.

3. 1.2. diversion. Diversion is a transfer of settlement of cases of children who are suspected of certain crimes from the criminal process formally to a peaceful settlement between the suspect / accused / offender with the victim facilitated by family and/or community, mentors community of children, police, prosecutors or judges [4]. Tujaun does diversions are [1]:
1) Achieving peace between the victim da nana
2) Resolving cases of children outside the judicial process
3) Prevent children from deprivation of liberty
4) Encouraging people to participate
5) Instill a sense of responsibility to children.

The implementation process of diversion can be done at this stage of the investigation, prosecution up to the child in the court case investigation, the process of diversion should be done with a full sense of responsibility. Diversion process can not be done or can not be executed if in the case of the
criminal offense committed is punishable by imprisonment under the 7 (seven) years and not a repetition of criminal acts.

Implementation of diversion is done through a process of consultations involving the child and parent/guardian, victim and/or their parents/guardians, community mentors and professional social workers based restorative justice approach. If necessary, consultations may involve social welfare personnel, and/or community. Diversion process shall take into account: the interests of the victim, and the responsibility of child welfare, avoidance negative stigma, ensure the harmony of society, and decency, morality and public order.

In terms of doing the diversion of the investigator, the public prosecutor, and the judge in making Diversi have to consider things that are very important that category of offense, age of the child, the research community from correctional centers, as well as the support of family and community environment. In addition, in doing things, it is necessary diversion agreement with the approval of the victim and/or family child victims as well as the willingness of the child and family.

The result of the diversion agreement can be: peace with or without compensation, handing it back to the parent/guardian, participation in training and education in educational institutions or LPKS than 3 (three) months of community service. Results pour agreement in the form of a diversion agreement.

During the diversion process lasted until the diversion agreement implemented, mandatory social counselor mentoring, coaching and supervision.

3.1.3. Integrated Criminal Justice System Children. The term juvenile justice system or an integrated justice system of children is a translation of the term The Juvenile System are all elements related to the criminal justice system in the handling of cases of delinquency. Integrated justice system of children who will be covered only about the stage of pre-adjudication and ajudiksi stage.

1) pre-Adjudication
Pre-adjudication is a stage of the commencement of an investigation into juvenile delinquents by the police. Investigation on the case of children carried out by investigators established under Decision RI State Police or other officials appointed by the Chief of Police Neraga RI. Examination of the child victim or witness child carried by the investigator. Investigators requirement to set as follows: a. has experience as an investigator, b. has an interest, attention, dedication, and to understand the problems of children, and c. have followed technical training on juvenile justice. In investigating the case of children, the investigator shall ask for consideration or advice from mentors society.

In the pre-adjudication stage of the social counselors begin performing their duties which is making social research reports (Litmas) at the request of police investigators. With the results of the research kemesyarakatan it will be very useful for the next step up in the level of the prosecutor in making demands and judges in making decisions for children in conflict with the law.

In the case of a research report civic, social counselors play a very important and strategic as a researcher. In the case melakukanpenelitian in the field, supervising community is required to find data, facts, and information accurately, precisely and objectively about the background and personal problems of the brat became kliennya family and social environment of the child to socialize. In carrying out the duties and responsibilities attendant supervising social perform the steps that have been determined in prosesdur standards of a research report community (Litmas) which includes: information gathering, the information collection supervising community to identify the sources of information in accordance with the purpose of making a report, conducting interviews.

2) adjudication
After the report of the supervising social completed the report will be submitted investigators from the police who will then be made in a file and transferred to the Public Prosecutor at the Court shall make public Negeri.Penuntut Diversion of 7 (seven) days after receiving the case file investigator. Diversi made no later than 30 (thirty) days. in the case of Diversion process to reach an agreement, the prosecution delivered the news event along Diversion Diversion agreement to the chairman of the district court for a determination is made. In the development of terms of diversion fails, the public...
prosecutor is obliged to submit the minutes of the Diversion and transferred to the Court by attaching
the report empirically [3].

In terms of the process of the public prosecutor If the prosecutor has finished the examination of the
naughty child, then the next will be registered for the proceedings in the Court to decline in the
determination of the trial. In a court hearing in children or children in conflict with the law shall be
accompanied by Community Advisors (PK). As diarur in Article 55 of Law No. 11 of 2012 on the
Criminal Justice System Child, namely: "In siding child, the judge shall instruct parents / Guardian or
companion, advocate or aid other law, and Advisor Community to assist the Child".

Juvenile justice system started in the first, the investigator in this case the police as an institution
when the brat formal first contact with the criminal justice system, which will also determine whether
the child would be released or processed further. Second, prosecutors and parole agencies will also
determine whether the child would be released or processed to juvenile justice. Third, the juvenile
court, the stage when the child will be placed in the choices, ranging from freed up to be included in
the institution of punishment.

Table 1. Number of Cases Children Papuans, and the completion of Diversion

| Year       | Papua native Number of Children in conflict with the law | Diversion |
|------------|---------------------------------------------------------|-----------|
| 2017       | 34                                                      | 7         |
| 2018       | 52                                                      | 11        |
| 2019 (Jan May) | 22                                               | 1         |

Source: Bapas Merauke

as long as there have been social services despite the attention of child protection agencies but this
condition has not really give a positive impact for the street children because still foul and evil
continually and repeatedly. Papuans child in conflict with the law consisting of the child as perpetrator,
children as victims and children as witnesses.

In addition, from the data contained in the Central Penitentiary regarding the number of cases of
children there are also data on the type of case or cases committed by native son of Papua is the case
varied and relatively heavy such cases most often committed by children, so bring the children in
conflict with the law, namely cases / lawsuits Intercourse minors were classified as cases of the most
numerous and most often committed by minors, then burglary, cases of physical violence against
children, beatings and cases were classified as severe was also done by children that is obscene acts
against children minors, aggravated assault, and Murder.

The process of diversion approach itself since children begin to arrest until sentencing and
supervision for children in conflict with the law punished.In the implementation of diversion level, the
police have not been too many who managed to carry out the process of diversion that of the number
of cases of children in 2017 as many as 34 cases and succeeded in running a diversion which 7 cases,
in 2018 the number of cases of children native Papuans were 52 cases and successfully execute
diversion of as many as 11 cases was in 2019 until the month of May were 22 cases and conduct a
successful diversion 1 case. the number of cases managed to do more with turnover versioned loss in
the form of a sum of money, but at the level of the prosecutor to date, only one case recently
successfully implemented in a court diversion and no one has successfully implemented the diversion
process.

3. 2. What constraints faced by law enforcement officers in cases penyelelesaian

In terms of the constraints faced by law enforcement agencies in the settlement of children through the
diversion approach there are several factors that affect the delays in the implementation diviersi
namely, the clients and families of victims, law enforcement officers, and the factor of the rule of law
itself.

3. 2. 1. The client and the victim's family. Son of a mandate given by God in every family's that need
to be guarded, guided and given affection from each parent. However Along with the times a lot going
on crimes committed by a child this case, due to the much less attention and affection from parents, children who are under life are classified as poor and also children who are influenced by promiscuity, and social life is not good. it also happens to the children of Papuan. In a criminal case the indigenous Papuan child victim's family had agreed to the diversion of the compensation amount of money but yet because of the amount of nominal money so large that the perpetrators pihal also not able to make the turn loss it is also quite difficult for offenders and families.

However there are some offenses do not require the consent of the victim to carry out diversions are regulated in Article 9 paragraph (2) of Law Criminal Justice System Child ie no criminal should get an exemption from informed consent of the victim adala criminal offense in the form of a violation, a misdemeanor, criminal offenses without victims or victim loss value is not more than the value of the local provincial minimum wage.

3.2.2. Law Enforcement Officials
One inhibiting factor does diversion: the role of law enforcement itself where the lack of perception or outlook in terms of treatment of children in conflict with the law in which law enforcement officials still view children as objects guilty sehingga should be penalized jam the lack of coordination law enforcement officials this is a major factor of diversion are seen obstacles. Besides the investigating authorities in conducting a case of diversion of the children still make mistakes in the procedure because it is not through a court warrant this result of many investigators who have not followed the Child Criminal Justice System Training. Whereas the human resources are not trained bias hindering efforts to diversion.

Besides the main factors inhibiting the diversion of hard to do that because of legal threats from the criminal act committed by a child where the offense committed by the child can not be implemented, namely the diversion of criminal offenses hukumnya threat more than 7 years in prison. This is the reason most commonly cited reason to diversi difficult. To need the recommendation of the government to conduct a review legislatief related terms implementation of diversion, especially with the threat of a criminal offense 7 years but there are no victims in the alleged criminal to the child.

4. Conclusion
1) Diversion is a transfer of settlement of cases of children who are suspected of certain crimes from the criminal process formally to a peaceful settlement between the suspect / accused / offender with the victim facilitated by family and / or community, mentors community of children, police, prosecutors or judges

2) The process of diversion approach itself since children begin to arrest until sentencing and supervision for children in conflict with the law punished.In the implementation of diversion level, the police have not been too many who managed to carry out the process of diversion that of the number of cases of children in 2017 as many as 34 cases and succeeded in running a diversion which 7 cases, in 2018 the number of cases of children native Papuans were 52 cases and successfully execute diversion of as many as 11 cases was in 2019 until the month of May were 22 cases and conduct a successful diversion 1 case. the number of cases managed to do more with turnover versioned loss in the form of a sum of money, but at the level of the prosecutor to date, only one case recently successfully implemented in a court diversion and no one has successfully implemented the diversion process

3) A major factor inhibiting the diversion of hard to do that because of legal threats from the criminal act committed by a child where the offense committed by the child can not be implemented, namely the diversion of criminal offenses hukumnya threat more than 7 years in prison.

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