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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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## TABLE OF CONTENTS

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Front Page .....	i
Information of the International Seminar .....	ii
Committee Composition .....	iii
Preface.....	iv
Greeting From The Dean Faculty of Law .....	vi
<b>INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS</b>	
Prof. Simon Butt .....	1
<b>CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?</b>	
Prof. Dr. Hikmahanto.,S.H.,LLM .....	4
<b>AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.</b>	
Rohimi Shapiee.....	7
<b>STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020</b>	
Dr. Jawade Hafidz, S.H., M.H .....	11
<b>THE NETHERLANDS INGLOBAL CORRUPTION</b>	
Siti Malifah Marlou Feer, M.A. ....	28
<b>ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA</b>	
Laras Susanti.,S.H., LLM.....	33
<b>LEGAL STATUS OF AKTOR’S FOR CORRUPTION (In the Perspective of Islamic Law)</b>	
Sumarwoto Umar .....	37
<b>THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY</b>	
Lantik Kusuma Aji .....	46
<b>THE INDEPENDENCY OF THE INSTITUTION FOR THE PROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020</b>	
Khalid .....	55
<b>THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA</b>	
Siska Diana Sari.....	62
<b>THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST</b>	
Elis Rahmahwati.....	78
<b>DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT</b>	
Agung Widodo.....	87
<b>DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA (Studies in Multidisciplinary Perspective)</b>	
Muhammad Andri .....	102

<b>THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION</b> Yati Nurhayati.....	111
<b>MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS</b> Dr. Sukresno, SH, M.Hum .....	118
<b>CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency)</b> Haris Budiman .....	126
<b>CORRUPTION PREVENTION AND CONTROLS</b> INP Budiarta .....	133
<b>ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE</b> Sri EndahWahyuningsih .....	145
<b>JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION</b> Untoro .....	155
<b>CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED</b> Zulfiani.....	162
<b>THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE</b> Anis Mashdurohatun .....	171
<b>THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA</b> Muh. Afif Mahfud .....	181
<b>DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETION OF PLATO PHILOSOPHY</b> Adrianus M. Nggoro,SH.,M.Pd.....	189
<b>STUDY OF INDONESIA’S PARTICIPATION IN ICSID</b> Agus Saiful Abib.....	202
<b>NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE</b> Aris Yulia .....	211
<b>ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS</b> Ariyanto,SH.,MH.....	221
<b>SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA</b> Desy Maryani.....	232
<b>LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA</b> Endah Pujiastuti.....	244

<b>RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE</b> Pupu Sriwulan Sumaya .....	256
<b>THE APPLICATION OF CORRUPTION LAW TO WARD CRIMINAL ACT IN THE FIELD OF FORESTRY</b> Ifrani .....	267
<b>THE EFFORTS OF ERADICATION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUNDERING LAW AND RETURN ACTORS' ASSETS</b> Yasmirah Mandasari Saragih.....	276
<b>AFFIRM ROLE OF EXISTENCE <i>RECHTSVERWERKING</i> TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION</b> Rofiq laksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus.....	287
<b>ANTI-CORRUPTION EDUCATION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA</b> Ida Musofiana.....	304
<b>FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY</b> Dr. Tongat, SH., MHum., Said Noor Prasetyo, SH., MH.....	313
<b>UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT TO REALIZE INDONESIA TOWARDS THE SHAFT OF THE MARITIME WORLD</b> Dr.Lathifah Hanim, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla.....	319
<b>POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING</b> Lilik Warsito.....	325
<b>THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA</b> Sri Suatmiati.....	334
<b>ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT</b> Siti Zulaekha.....	344
<b>AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA</b> Supriyanto, Hartiwiningsih, Supanto.....	354
<b>JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION</b> Siti Rodhiyah Dwi Istinah.....	364
<b>THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG</b> Aryani Witasari.....	376
<b>SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA</b> Achmad J Pamungkas ( <i>Indonesia</i> ), Carlito Da Costa ( <i>Timor Leste</i> ) .....	390

<b>STUDYING THE WISDOM OF ZAKAT</b> Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia) .....	398
<b>HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON DIGNIFIED JUSTICE</b> Agus Winoto .....	410
<b>RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON WELFARE</b> Mohamad Khamim .....	420
<b>THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION</b> Sarbudin Panjaitan .....	429
<b>THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE AND MUT'AH IN DIVORCE CASE FOR JUSTICE AND WELFARE</b> Mustar .....	438
<b>JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE A NOTARY DEED</b> Subiyanto .....	446
<b>REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED ISLAMIC JUSTICE</b> Masduqi .....	452
<b>RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE</b> Kukuh Sudarmanto Alugoro .....	462
<b>ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE</b> As'adi M. Al-ma'ruf .....	472
<b>RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE</b> Christina N M Tobing .....	479
<b>THE LAW AND THE IMPACT OF MARRIAGE SIRRI</b> Sahal Afhami .....	489
<b>CRIMES AGAINST CHILDREN AS ACTORS</b> Muhammad Cholil .....	503
<b>RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW (KUHP) ABOUT THE DETENTION</b> Muhammad Khambali .....	512

<b>BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)</b>	
Esti Ningrum .....	520
<b>RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA</b>	
Urip Giyono .....	531
<b>IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)</b>	
Muhammad Yaman .....	539
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE</b>	
Hanuring Ayu Ardhani Putri .....	549
<b>REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR</b>	
Ansharullah Ida .....	556
<b>RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE</b>	
Teguh Anindito .....	569
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE</b>	
Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito .....	579
<b>IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW</b>	
Aji Sudarmaji .....	587
<b>FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)</b>	
Bachtiar Simatupang .....	594
<b>RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE</b>	
M. Hasyim Muallim .....	616
<b>RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW</b>	
Salomo Ginting .....	625
<b>LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA</b>	
Muhlas .....	639

<b>IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)</b> Ahmad Zaini .....	648
<b>IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT</b> Ruslan .....	658
<b>RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE</b> Jufri Ghalib .....	667
<b>RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE</b> Elpina .....	679
<b>RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE</b> Ramon Nofrial .....	693
<b>RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY</b> Hakim Tua Harahap .....	706
<b>RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE</b> Ulina Marbun .....	726
<b>RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE</b> Zaenal Arifin .....	740
<b>THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE</b> Abdul Kholiq .....	751
<b>THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA</b> Adi Mansar .....	767
<b>MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)</b> Mariah S.M. Purba .....	778
<b>POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)</b> Warman .....	790

<b>LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA</b> Sekhroni .....	798
<b>THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA</b> Indriyana Dwi Mustikarini .....	809
<b>PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM</b> Bambang Sulistyowati .....	816
<b>UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA</b> Adya Paramita Prabandari .....	826
<b>EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS</b> Alwan Hadiyanto .....	839
<b>SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA</b> Sulistyowati .....	852
<b>SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA</b> Sarjiyati .....	863
<b>CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN</b> Erna Trimartini .....	873
<b>AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA</b> Sukmareni .....	885
<b>PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA</b> Anis Rifai .....	903
<b>PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM</b> Sri Setiawati .....	913
<b>SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM</b> Achmad Sulchan .....	922
<b>MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION</b> Herwin Sulistyowati .....	932
<b>STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945</b> Ahmad Mujib Rohmat .....	944



<b>TAXES AND ALMS SEEN FROM ISLAMIC LAW</b>	
Mohammad Solekhan .....	954
<b>DIVERSION IN COURT (Case Studies in Karanganyar District Court)</b>	
Anita Zulfiani .....	964
International Seminar	
Photos.....	971

## **DIVERSION IN COURT** **(Case Studies in Karanganyar District Court)**

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### **A. Introduction**

Children are the future generation. But in society, children can make mistakes and errors, and sometimes those errors can be categorized as a criminal offense, thus making a Children in conflict with the law.

Child in conflict with the law should undergo the legal process. But children have different psychological maturity from adults, so Children should not be treated the same as adults when they in conflict with the law.

Concern for children as one of human resources, which is a potential successor to the nation's future, bringing awareness that children need special attention when dealing with the law. It encourages the establishment of rules on the treatment of children who commit criminal acts and must deal with the law.

Regulations on handling children who commit criminal acts is Act No. 3 of 1997 on Juvenile Court. This rule is considered not giving enough protection to the child in conflict with the law, then Act Number 11 of 2012 on Juvenile Justice System enforced. In these rules there is a relatively new thing, the rules regarding Diversion. Diversion procedure resembles mediation, conducted before the trial phase in the Court. If the diversion succeed, the case will be terminated and did not proceed to trial.

Diversion process aimed at realizing the restorative justice, where all the parties involved (victims, children, and the community) and jointly to solve the problems and create an obligation to make things better in seeking solutions to repair, reconciliation and reassurance, which not by retaliation<sup>1</sup>.

To achieve the restorative justice on the Juvenile Justice System, it is necessary to succeed the diversion process, at the level of investigation, prosecution, and examination in the courts, for the child in conflict with the law. Therefore, the author will attempt to find the answer of the questions: What is diversion? Why diversion should be pursued? How to succeed the diversion process? So that at the end of this writing, we can find conclusion about the things that can support the success of the diversion process.

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<sup>1</sup> Explanation for Act Number. 11 of 2012 on The Juvenile Justice System

## B. What Is Diversion? Why should Diversion be pursued?

According to the historical development of criminal law, the word "diversion" was first mentioned on the juvenile justice implementation report, delivered by Australian Crime Commission President in the United States in 1960 (Cunnen and White, 1995; 1).

Before the term diversion proposed, similar practices as diversion had existed before 1960, marked by the establishment of children's courts before the 19th century, it is diversion from the formal system of criminal justice, and the formalization of police cautioning<sup>2</sup>.

Article 1 point 7 Act Number 11 of 2012 on Juvenile Justice System mentioned Diversion is the transfer of child case settlement from the criminal justice process to outside the criminal justice process.

In Blacks Law Dictionary<sup>3</sup> diversion means is a deviation or alteration from the natural course of things. An act in violation of regulations or a criminal act, is processed by the criminal procedural law, which requires that the perpetrator be examined in court, diversion is a deviation or alternative, where the perpetrators doesn't undergoing examination at the trial which is a natural process of handling a criminal case.

In the criminal law, the sentencing theory are divided into three:

1. Absolute Theory (vergeldingstheorien) by Immanuel Kant which argues that the purpose of sentencing as a retaliation against the perpetrators for committing a crime that resulted in misery against another person or members of the public<sup>4</sup>.
2. Relative Theory (doeltheorien) based on the purpose (doel) as follows<sup>5</sup>:
  - a. Sentencing to make deterrent, the offender or convicted person is expected to be deterrent and doesn't repeat his actions, and the general public can understand that if done the deed will receive similar punishment.
  - b. Fixing the convict, with the treatment and education in the sentence, so that the convict felt sorry and will not repeat the act and return to the community as a good and useful person.

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<sup>2</sup> Marlina, 2008, at Hossiana M. Sidabalok, *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan Yang Dilakukan Oleh Anak* (Legal Protection for Children As Rape Victims by Children), (Varia Peradilan Year XXVII Number. 325, Desember 2012).

<sup>3</sup> Bryan A. Garner. 2002. *Black's Law Dictionary*. (United States Of America: West Publishing co. Page 491)

<sup>4</sup> Juhaja S. Praja, *Teori Hukum dan Aplikasinya* (Legal Theory and The Application) . (Bandung: Pustaka Setia, 2011, Page 89).

<sup>5</sup> *Ibid*

3. Combined Theory / Modern Theory (vereningingstheorien) that one of its adherents is Van Bemmelen and Grotius which emphasizes the absolute justice embodied in retaliation, but useful for society. The basic of every sentencing is severe suffering according to the severity of acts committed by the convict. But the sentencing limit and severity of acts committed by the convict, can be measured and determined by what is good for society<sup>6</sup>.

Another theory associated with criminal sanctions is the Utilitarianism theory proposed by Jeremy Bentham, that the punishment must be specific for each crime and the severity of punishment should not exceed the amount necessary to avoid the establishment of a specific attack. Punishment is only justified if it gives hope to avoid a greater evil<sup>7</sup>.

Based on some sentencing theories above, diversions have relevance to the child objective sentencing:

1. Diversion as the deviation of judicial process to non-judicial process, intended to avoid Children from the pricess of criminal law which often lead to a bitter experience in the form of prolonged negative stigmatization, dehumanization (alienation from society), and prevent children from the possibility of child gets transfer of crimes in the prison.
2. Deprivation of children liberty in the form of imprisonment or in the other form of deprivation through the mechanism of criminal justice gave a traumatic experience for children, so the child development and the growth of children's soul can be disturbed. The bitter experience of contact with the justice world will be the dark shadow in the children's life which is not easily forgotten;
3. Diversion prevent children from criminal law enforcement, which in many theories have been postulated as one of the kriminogen factors, also prevent children from the possibility of being recidive, and prevent people from possibility of becoming a crime victim.
4. Diversion will provide two (2) benefits to the child, first: the child can stay in touch with their environment, so they don't need to make social adaptation after the crime occurrence. Second: children are protected from the negative impacts of prissionisation which can be a transfer of crime.

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<sup>6</sup> Amir Ilyas, 2012, at Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).

<sup>7</sup> Darji Darmodoharjo & Sidharta, 1999, at Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).

In line with the objective of child sentencing, the purpose of Diversi mentioned in Article 6 of the Juvenile Justice System Act, are:

1. Achieving peace between victims and children;
2. Resolving cases of children outside the judicial process.
3. Prevent children from deprivation of liberty.
4. Encouraging people to participate; and
5. Instill sense of responsibility to the child;

The success of the diversion process of is very important, because the success of the diversion would reduce the potency of Children In Conflict With The Law become worse off, after undergoing criminal proceedings and sentencing in jail.

### **C. Implementation of Diversion in Karanganyar District Court**

Based on Act Number. 11 of 2012 on the Juvenile Justice System, the diversion process began to be applied to the case being examined by investigators from the date of July 30, 2014. thus, the case examined before the date of July 30, 2014 do not apply the process of diversion.

During the period of July 2014 to November 2016, in Karanganyar District Court there are two (2) Children's case through the diversion process in court. In 1 (one) case the diversion process did not succeed so that the case investigation continued into the proceedings, and 1 (one) case the diversion process has been successfully so that the case investigation was not continued the proceedings.

Below is the children case, which go through the diversion procedure, in Karanganyar District Court during the period July 2014 to November 2016:

1. Case Number: 01/Pid.Sus.Anak/2014/PN.Krg, the diversion process did not success, the case proceeded to trial proceedings.

A 15-year-old child charged with the persecution of victims who are still children (called the Child Victim). The diversion process is run in the presence of Diversion facilitators (Judge), Registrar, General Prosecutor, Supervisor Community from BAPAS Surakarta, The defendant (called Child), Child surrogate, Child Victim, Parent of the Victim, and the head village.

The process of diversion are as follows:

- Children are willing to apologize and promised not to repeat his actions again, child surrogate promised to nurture and educate Child with surveillance assistance from Local Village Government, and willing to pay compensation to the Child

Victim, and promised if in future the Child doing persecution again, or do other things that harm Child Victims, Child disposed to prosecuted and account for his actions before the law.

- The head village expressed that basically wants Child to take responsible for his actions against Child Victims, because the villagers have urged the Government to solved this problem legally.
- The Child Victims Parents feel unfair if the problem resolved peacefully because he was worried the same thing would happen to other children, therefore, he requested the case be resolved legally.
- The diversion process failed to reach an agreement because the head village and Child Victim Parents do not want the case solved in diversion process, and wants the case resolved legally, which means that the case proceed to trial.

After the trial conducted, the judge decides that: Child proven legally and convincingly guilty of committing a criminal offense: “together commit violence against Child Victims” then dropping imprisonment for 1 (one) year with probation for 1 (one) year and 6 (six) months, and convict to the Child to undergo job training for 3 (three) months

2. Case Number. 03/Pid.Sus.Anak/2014/PN.Krg, diversion process succeed in the court A 15-year-old boy were charged with theft. Diversion process carried out in the presence of Diversion Facilitator (Judge), Registrar, General Prosecutor, Supervisor Community BAPAS Surakarta, Child, Child Parents, Child Legal Counsel, Victims, and Chairman of environment.

The results of the diversion process:

- Child admitted stealing, feel sorry, then apologize to the victim, and promised not to repeat his actions again.
- The victim stated forgive, and approve the process of the case was suspended on condition that the victim's belongings be returned in good condition as before.
- Child promise to meet the requirements of the victims.
- If the agreement is not implemented within a period of 1 (one) month from the signing of this agreement, the inspection process is continued in the trial process.

The diversion process has reached an agreement because both Child and the victim, as well as all parties involved in this process, wants the case did not proceed to court

proceedings, and after the agreement executed, the judge issued a Determination of Termination examination of the case, so that this case did not proceed to trial.

From the description above, it can be concluded for the successful of diversion process required the following circumstances:

1. The good faith of the Child and the parent / guardian to apologize to the victim.
2. The willingness of victims to forgive and make requirements.
3. The positive support of the parties involved in the diversion process.
4. The Requirements Fulfillment by Child and / or parent / guardian.
5. Judges, investigators, and prosecutors who ensoul the diversion process.

From the elements above, it can be concluded that the success of diversion determined by the positive subjective will of the parties involved in the diversion, to resolve cases outside the criminal proceedings, and requirements compliance of the agreement.

#### **D. Conclusion**

Diversion is the transfer of child case settlement from the criminal justice process to outside the criminal justice process.

The success of the diversion process of is very important, because the success of diversion would reduce the potency of Children In Conflict With The Law become worse off, after undergoing criminal proceedings and sentencing in jail.

For the successful of diversion process required the following circumstances:

1. The good faith of the Child and the parent / guardian to apologize to the victim.
2. The willingness of victims to forgive and make requirements.
3. The positive support of the parties involved in the diversion process.
4. The Requirements Fulfillment by Child and / or parent / guardian.
5. Judges, investigators, and prosecutors who ensoul the diversion process.

After understanding the things that can affect the success of the diversion process, hopefully more and more Child cases can be resolved in diversion psocess, so it will reduce the number of child which should undergo a trial process in court, and / or undergoing punishment in prison, which can adversely affect the mental development of children.

## BIBLIOGRAPHY

- Amir Ilyas, 2012, at Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).
- Bryan A. Garner. 2002. *Black's Law Dictionary*. (United States Of America: West Publishing co. Page 491).
- Darji Darmodoharjo & Sidharta, 1999, at Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).
- Juhaja S. Praja, *Teori Hukum dan Aplikasinya* (Legal Theory and The Application) . (Bandung: Pustaka Setia, 2011, Page 89).
- Kusno Adi, 2009, at Abintoro Prakoso, 2013, dalam Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).
- Marlina, 2008, at Hossiana M. Sidabalok, *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan Yang Dilakukan Oleh Anak* (Legal Protection for Children As Rape Victims by Children), (Varia Peradilan Year XXVII Number. 325, Desember 2012).
- Setya Wahyudi, 2011, at Sofian Parerungan, *Penerapan Diversi Dalam Persidangan Anak* (Diversion Implementation In Child Trial), (Varia Peradilan Year XXX Number. 347 Oktober 2014).
- Indonesia Act Number 3 of 1997 on Juvenile Court.
- Indonesia Act Number 11 of 2012 on Juvenile Justice System.