

# The Position of the Child in the Juvenile Justice System

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## ABSTRACT

In the criminal justice system, the position of children in conflict with the law is very important, because children can be categorized as a vulnerable group and have the risk of their rights being violated by the parties involved in the juvenile criminal justice system. Legal protection must be given to children who are in conflict with the law with the aim of avoiding children and keeping children away from the settlement process through the examination process in court. Settlement through diversion is an effort that must be carried out by law enforcers, but in its implementation there are always obstacles so that diversion efforts fail to be realized. substance factor, structural factors and cultural factors of the community are the determinants of the realization of legal protection for children that can be carried out in accordance with the provisions of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

**Keywords:** *Children; Criminal.*

## 1. INTRODUCTION

The important role of a child in survival is as the next generation of the nation and family. Children are a gift from God Almighty, which does not only belong to a family, but also a country so that it must be protected by all parties. As a gift and a trust given to children, they must get good care and care from their parents. The responsibility of parents that should not be ignored is to maintain the survival of the child. Children have the right to protection, education, care, all of which are an inseparable part of a child's rights. The state has mandated in Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that: "every child has the right to live, grow and develop and has the right to protection from violence and discrimination"

The family is a group or collection of people who live together as a unit or the smallest unit of social and state life[1]. In the social sphere, children are a small group of people who are considered as weak and vulnerable groups so that they must be protected by their parents or other people and the community around their environment[2]. But in reality, children are often the subject or object of a potential crime or crime.

So important is the position of the child in the development and survival of the human generation and

the survival of a country. The government has given special attention to children with the enactment of the Law on Child Protection no. 35 of 2014. The birth of this legal instrument is very important in the development of law in Indonesia. Because of the importance of the child's position, legal protection for children must really be able to guarantee children's rights and can keep children away from all forms of violence. Another objective of the enactment of the law must be to ensure the fulfillment of the needs of a child so that he is able to live, grow, develop and participate in the best possible way in accordance with human dignity and protection, as well as obtain protection from violence and discrimination in order to create quality and noble Indonesian children[3].

It is undeniable that recently there have been many cases involving children. Various cases that threaten the sustainability of legal protection for children of course concern all circles of society and law enforcement officers. In Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, children who are in conflict with the law are children in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts.

In an effort to realize legal protection for the juvenile justice system, there are two forms of efforts to handle children that can be carried out by law

enforcement officers, namely formal efforts and non-formal efforts[4]. This is an effort to keep the position of a child in the criminal justice system equal to the position of a child in general, namely the fulfillment of children's rights as the smallest part in society and the state in order to realize prosperity, security and comfort in the lives of the nation's next generation.

However, as it is well known that problems regarding children, especially children who are in conflict with the law, the forms of protection provided cannot be implemented optimally and effectively by law enforcement officers, the obstacles faced are very diverse. This discussion will be limited to how the implementation of legal protection for children in order to guarantee the position of children in the criminal justice system. The goal to be achieved is to know the implementation of legal protection for children in order to guarantee the position of children in the criminal justice system.

## **2. RESEARCH METHOD**

The writing methodology used is the method normative-empirical legal research, namely empirical normative legal research (applied law research) is research that uses normative-empirical legal case studies in the form of legal behavior products[5]. The approach used in writing this research is adjusted to the problems to be studied. Therefore, the approach used includes a statute approach[5]. Another approach used in analyzing the problem is the case approach, with the aim of studying the application of legal norms or rules in legal practice. The method of collecting legal materials is by studying literature in order to obtain primary legal materials and secondary legal materials, as well as interviews and documentation.

## **3. RESULTS AND DISCUSSION**

Arrangements Talking about the position of children in the criminal justice system are a vulnerable group who have the risk of their human rights being violated by the parties involved[6]. However, currently in its implementation, efforts must be prioritized for the parties to be able to provide protection and provide guarantees for children's rights in the juvenile criminal justice system.

Children cannot protect themselves and without adequate protection from family, society and government. Therefore, the promotion and protection that favors children and upholds the principle of non-discrimination, the best interests of the child and the participation of the child in all matters concerning him/her are absolute prerequisites for effective child protection efforts[7].

Talking about legal protection in Indonesia began in 1977 in a seminar on child/adolescent protection held

by Prayuwana. There are two important things that must be considered in child protection, namely:

1. All efforts are made consciously by every person or government and private institution aimed at securing, controlling and fulfilling the physical, mental and social welfare of children and adolescents in accordance with their interests and human rights.
2. All joint efforts made consciously by individuals, families, communities, government and private agencies to secure, procure and fulfill the spiritual and physical welfare of children aged 0-21 years who are not and have never been married, in accordance with human rights and interests. in order to develop his life as optimally.

The position of a child in the criminal justice system is privileged. This can be seen from the form of justice that is specifically formed to resolve cases of children. Law enforcement officers in carrying out their duties, especially in resolving child cases, must be carried out by law enforcement officers who are competent and qualified in their fields

In Indonesia, legal protection for children in conflict with the law in the juvenile criminal justice system is an effort that must be continuously carried out by all parties. Efforts have been made by the government, namely the ratification of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which aims to be able to realize a court that guarantees legal protection for children by guaranteeing the best interests of children, especially children who are in conflict with the law (children in conflict with the law, children as witnesses in criminal acts and children) as a victim of a crime.

The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, the survival and development of the child, proportional, deprivation of liberty and punishment as a last resort and avoidance of retaliation.

Legal protection for children in the Juvenile Criminal Justice System, in the form of protection intended to protect and protect children who are in conflict with the law so that children can meet their future well and provide opportunities for children so that through coaching they will get their identity to become independent, responsible human beings, and useful for oneself, family, community, nation and state[8]. Child protection also includes direct and indirect activities from actions that harm children physically and/or psychologically.

As for the legal protection guaranteed by Law no. 35 of 2014 and Law no. 11 of 2012 the Juvenile Criminal Justice System states that the law provides special protection for children in conflict with the law, including:

- a. humane treatment by taking into account the needs according to their age;
- b. separation from adults;
- c. the effective provision of legal and other assistance;
- d. implementation of recreational activities;
- e. release from torture, punishment, or other cruel, inhuman and degrading treatment of dignity and status;
- f. avoidance of imposition of capital punishment and/or life imprisonment;
- g. avoidance of arrest, detention or imprisonment, except as a last resort and for the shortest time;
- h. providing justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
- i. avoidance of publication of his identity.
- j. providing assistance to Parent/Guardian and people trusted by the Child;
- k. providing social advocacy;
- l. giving of personal life;
- m. providing accessibility, especially for Children with Disabilities;
- n. providing education;
- o. provision of health services; and
- p. granting other rights in accordance with the provisions of the legislation.

Another thing that can be seen from the position of children in the criminal justice system is in the implementation of providing protection by law enforcement officers in handling cases of children in conflict with the law. The protection in question is legal protection to avoid and keep children away from the judicial process, so as to prevent children from being stigmatized and labeled as naughty children and it is hoped that children in conflict with the law can return to the social environment naturally[9]. In addition, the existence of legal protection for children in conflict with the law will be a means by which children can improve themselves and develop themselves into a better and useful generation for the nation and state[10].

Another form of legal protection for children in conflict with the law (children in conflict with the law), one of which is in the form of legal settlement through diversion which leads to efforts to realize Restorative Justice. The obligation for law enforcement officers to prioritize a restorative justice approach in dealing with children's cases[11]. The concept of diversion is an alternative solution that must be carried out in the current juvenile criminal justice system[12]. Based on the provisions of Article 5 of Law no. 11 of 2012 concerning

the Juvenile Criminal Justice System which expressly states that: (1) The Juvenile Criminal Justice System must prioritize the Restorative Justice Approach. The concept of restorative justice is known as the Diversion process. In essence, diversion is one way to prevent children in conflict with the law and keep children away from the formal court examination process[13].

In relation to legal protection for children who are in conflict with the law in the juvenile criminal justice system, the legal protection carried out must lead to Restorative Justice by realizing balanced justice, where children who commit crimes are given the opportunity to improve themselves and correct their mistakes without going through sanctions. criminal punishment. With diversion, it is hoped that children's rights can be more guaranteed and sanctions should be given to children in an effort to educate children, not with the aim of giving revenge, but with the aim of correcting and making children who have committed wrongdoing unable to make the same mistake again in the future.

The existence of diversion will be a form of Restorative Justice if the child who commits a crime is still held accountable for the actions he has committed, the child must be given the opportunity to replace his mistake with a form of kindness to the victim of his act, the victim participates is given the opportunity in the diversion process to find a solution In solving problems that have been carried out by child perpetrators, children are given the opportunity to be able to maintain good/family relations with the perpetrator/his family or the victim/his family, and the opportunity to carry out reconciliation and healing in the lives of people who have been harmed by the child who committed the crime. Although the child is not directly subject to criminal sanctions, The most important thing in the effort to provide legal protection for children in conflict with the law is the rehabilitation of perpetrators and victims to restore their condition to what it was before the crime occurred. So that there is no longer any retaliation by the victim to the perpetrator or the repetition of the crime committed by the perpetrator to the victim and other people.

Implementation of legal protection for children in conflict with the law, based on a number of specific statutory provisions, including the following:

- a. Law of the Republic of Indonesia No. 11 of 2012 concerning the Criminal Justice System for Children. Amendments to Law of the Republic of Indonesia No. 3 of 1997 concerning Juvenile Court;
- b. RI Law No. 35 of 2014 concerning Amendments to RI Law No. 23 of 2002 concerning Child Protection;
- c. RI Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law

- No. 23 of 2002 concerning Child Protection Becomes Law;
- d. Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years Old;
  - e. Supreme Court Regulation No. 4 of 2014 concerning the Implementation of Diversion in the Juvenile Criminal Justice System;
  - f. Attorney General Regulation No. 06/A/JA/04/2015 concerning Guidelines for Implementing Diversion.
  - g. Regulation of the Police Criminal Investigation Unit No. TR/1124/XI/2006, Procedures for Implementing Diversion for the Police.

Protection of children is a major milestone in Juvenile Criminal Justice. The implementation of the reform of the juvenile criminal justice system is applied to all processes and stages of criminal justice, which are interrelated and form a single unit, namely: Child Investigators, Child Public Prosecutors, Child Judges, and Child Correctional Officers[14].

As the first institution to handle children in conflict with the law, the police are obliged to provide legal protection. Before proceeding to the stage of investigating a child in conflict with the law, the investigator must seek diversion first in accordance with the provisions expressly stated in the Juvenile Criminal Justice System Act.

Guidelines for the rules on procedures for implementing Diversion for the police are based on the Regulation of the Police Criminal Investigation Unit Number: TR/1124/XI/2006, the Police have the authority to take actions that are really needed when handling cases of children who are in conflict with the law on the basis that according to their own judgment they can carried out in very necessary circumstances with due observance of the laws and regulations as well as the Professional Code of Ethics of the Indonesian National Police or the so-called Police discretionary authority based on the provisions of Article 18 paragraph (1) of Law No. 2 of 2002 concerning the Police, other actions Of course, this must be based on responsible law and does not conflict with the applicable laws in Indonesia.

In the Regulation of the Police Criminal Investigation Unit Number: TR/1124/XI/2006, Diversion has the meaning that it is a form of transfer of settlement from a formal criminal process to a settlement process in another form in the form of alternative settlements that are considered to have the best value for the interests of children who are in conflict with the law. Forms of diversion that can be applied to children[15], the police can look for new innovations in the form of developing models for the realization of restorative justice, for example, the supervision and responsibility

of children being returned to their parents, with or without warning and other obligations, mediating with parties related to criminal acts that have been committed. by children, deliberation with the families of perpetrators and victims and their families to find the best solution for the interests of the child, as well as other forms that are adapted to the conditions of the local community.

However, often the diversion efforts carried out by the investigators fail, so that the examination of children who commit crimes is continued to the investigation stage. Failure in diversion efforts is influenced by the lack of understanding of diversion among victims or their families. If the diversion attempt is unsuccessful by the investigator, the examination will then proceed to the investigation stage[16].

To find out the implementation of legal protection for children in conflict with the law at the investigation stage, the authors conducted interviews with members of the SatReskrim Unit PPA Gorontalo Police, Bripta Yolanda Uno, SH. criminal acts committed based on the provisions of Article 7 paragraph (2) of the Juvenile Criminal Justice System Law in the event that the crime committed is threatened with imprisonment for under 7 (seven) years and is not a repetition of a crime. However, in practice it is difficult to reach an agreement because of the public's understanding that people/children who commit crimes must be subject to criminal sanctions. Often when the victim's diversion is attempted or the victim's parents refuse, Other information the author obtained from the Satreskrim Unit IV member of the Gorontalo City Police Brigadier Zuhra Moha, the implementation of legal protection for children under investigation at the Gorontalo Police so far has been carried out in accordance with existing procedures, diversion will be sought first in cases of criminal acts committed by children, but its success depends on the parties involved in it. In the investigation stage, the diversion effort is based on the provisions of Article 7 paragraph (2) of Law no. 11 of 2012, but diversion efforts often fail because the parents refuse, they want criminal sanctions for the perpetrators. In every case handled by investigators at the Gorontalo Police, the success of diversion was not too significant.

Another resource person was Head of Unit IV PPA, SatReskrim Polres Bone Bolango. Aiptu Helpis Ntuiyo, SH., that: the case of criminal acts of children in the settlement will be attempted diversion first. The implementation of diversion involves the parties involved in conducting deliberations to find the best solution for the interests of the child perpetrator and victim. Deliberations are carried out with the help of other parties or not. In the jurisdiction of the Bone Bolango Police, diversion efforts are accompanied by community leaders around the local environment or accompanied by the village head. The diversion effort

carried out by the investigators at the Bone Bolango Police refers to the provisions of Article 7 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. However, efforts to approach restorative justice in the implementation of diversion have not been carried out optimally. Because in some cases of child crime sometimes the victim is not willing to forgive the perpetrator and make peace with the perpetrator, sometimes on the contrary the victim is willing to make peace, but the victim's parents are not willing to forgive the perpetrator. So that the handling of the case proceeds to the next stage.

In the next stage, namely the prosecution stage. Prosecution is the action of the public prosecutor to delegate a criminal case to a district court. The prosecution process for children's cases is different from the provisions in Law no. 11 of 2012 concerning the Criminal Justice System Article 42 provides specific provisions: Public Prosecutors must prioritize Diversion no later than 7 (seven) days after receiving the case file from the Investigator. Diversion is carried out no later than 30 (thirty) days. If the diversion is successful in reaching an agreement, the Public Prosecutor will submit the minutes of the Diversion along with the agreement, the Head of the District Court to make a determination. If the diversion fails, the Public Prosecutor is obliged to submit a diversion report and delegate the case to the Court by attaching a report on the results of the community research.

Guidelines for the implementation of Diversion by the Public Prosecutor, namely Government Regulation no. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 and the Regulation of the Attorney General of the Republic of Indonesia No. Per-006/A/JA/05/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level. The regulation contains guidelines for Public Prosecutors in resolving child cases at the prosecution level with the obligation to carry out diversion efforts based on restorative justice with the aim of creating a common perception and uniformity of technical and administrative standards for public prosecutors in carrying out diversion. Diversion efforts are carried out in the Special Diversion Room that is available at the Prosecutor's Office, which has been designed to be a child-friendly room, with a family atmosphere so as not to cause trauma to child perpetrators and victims.

To find out the implementation of legal protection for children who are in conflict with the law in the juvenile criminal justice system, the author has interviewed the Head of Subsidy for the Pre-Prosecution of General Crimes at the Gorontalo District Prosecutor's Office, based on the results of interviews with Santa N Christy, SH, that the prosecution stage is in accordance

with the provisions of the Law. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Article 41 stipulates that the prosecution of children's cases is carried out by the Public Prosecutor who is determined based on the decision of the Attorney General or other officials appointed by the Attorney General. The requirements to be appointed as a Public Prosecutor include: having experience as a public prosecutor; have interest, attention, dedication and understanding of children's problems. In principle, every State Prosecutor must have a Child Public Prosecutor, but in reality in the field there is still a minimum number of public prosecutors specifically for children, so that the prosecution of children's cases is still borne by the public prosecutor who carries out the duties and prosecution for criminal acts committed by adults. And if this is examined from the aspect of child protection, it can be said that children have not received proper protection. However, in its implementation, the Public Prosecutor at the Gorontalo District Attorney's Office has tried to adjust to the guidelines and procedures that have been set. The prosecution of child criminals is not far from the prosecution of adult criminals who are carried out according to the method regulated based on the Criminal Code (KUHAP).

The Head of General Crimes at the Bone Bolango District Attorney, Ahmad Muhtaram SH., MH also explained: the existence of the Child Public Prosecutor is still not available at the Bone Bolango District Prosecutor, the prosecution is given to public prosecutors who have experience in prosecuting criminal cases committed by criminals. adult. In the provisions of Article 41 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the prosecutor's office has a very important role considering that the prosecutor's office is the institution that determines whether a child should be examined by the court or not.

The obligation to seek diversion no later than 7 days after receiving the file from the Investigator. The understanding of the parties about diversion efforts with the concept of realizing restorative justice has not been maximally understood by the parties involved, because the parties involved have different understandings of diversion, the obstacle for the public prosecutor still has to explain about diversion to the parties. Against criminal acts of children whose criminal penalties are above 7 years, the public prosecutor has the obligation to continue the examination in court and no further diversion is required. With regard to facilities and infrastructure to carry out diversion efforts, a special room for diversion, a child-friendly room, has been provided.

At the next stage in the law enforcement process, the structure of the juvenile criminal justice system is the final structure, which is the judge who is in charge of

deciding cases of children dealing with the law. The examination at the juvenile court is carried out by the Juvenile Judge. Juvenile Judges are appointed based on the Decree of the Supreme Court on the recommendation of the Chief Justice of the High Court.

For criminal cases where the defendants are children, the handling of the case will be prioritized in terms of:

- a. The procedure for handling children takes precedence, this is because it is related to a shorter detention period than adult defendants, so they do not get out of legal provisions;
- b. Avoid press publications, so that children's mental and social are not disturbed.

The provisions of Article 13 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the judicial process against juvenile crimes will be continued in the event that:

- a. Diversion process does not result in an agreement
- b. Diversion agreement is not implemented.

In the trial, judges have the same obligations as investigators and public prosecutors to seek diversion in the handling of children's cases. Judges are obliged to seek diversion no later than 7 (seven) days after there is a determination of the Judge or Panel of Judges by the Chief Justice. Within a maximum period of 30 (thirty) days the diversion process can be carried out. The implementation of diversion is carried out in the Special Children's Room available at the local District Court, which is led by a judge or a panel of judges who have been appointed by the Chief Justice to examine children's cases. If in the diversion effort a peace agreement is reached, then an official report is made and the results of the agreement are submitted to the Chief Justice for determination.

In the implementation of diversion, judges are guided by the regulations issued by the Supreme Court, namely Perma No. 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, in this regulation determines the age limit for a child to be able to apply diversion which is 12 years old and not yet 18 years old or not yet 12 years old but not yet 18 years old and has been married. Also provisions regarding the obligation of judges in seeking diversion of criminal acts of children who are charged with imprisonment for under 7 years and for criminal acts that are punishable by 7 years or more in the form of subsidiary, alternative, accumulative, or combined indictments.

Interview with the Child Judge of the Gorontalo District Court, Ngguli Liwar Mbani Awang, SH., that judges as the pillars of the court have a very important role which is the last place for justice seekers who are

expected to be able to give a sense of justice as a reflection of the decisions handed down by judges for the seeker of justice. In the juvenile criminal justice system, the role of juvenile judges is very important and is considered strategic to tackle and prevent delinquency in children. Therefore, in its implementation, judges are required to be able to apply the law appropriately to children.

The last institution in the structure of the juvenile criminal justice system is: The Child Special Guidance Institution (LPKA) is an institution or place where children serve their criminal period. This is confirmed in Article 1 number 20 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which states that the Special Child Development Institution is a place for education and guidance for criminal children, state children, and civilian children. LPKA is obliged to provide education, skills training, coaching and other fulfillment of children in accordance with the provisions of the legislation. Children who are sentenced to a crime have the right to receive guidance, guidance, supervision, assistance, education and training and other rights in accordance with the provisions of the legislation. The role of LPKA in providing guidance to children who undergo criminal sanctions is very important, because children are given protection and guidance so that they can develop themselves and can meet a better future. Humans who are independent, responsible and useful for themselves, their families, communities and countries.

Head of Sub-section of the Guidance of the Gorontalo Child Special Guidance Institute, Deddy Abdul, Amd.Kep., SH that in LPKA there are 2 sub-sections:

- a. Sub-Section of Education and Community Guidance
- b. Care Sub-Section

The education and community guidance sub-section is tasked with guiding the personality development of children's potential through religious education, scouting and others, which are obtained through formal and non-formal education. Religious personality development is carried out with the aim of increasing and strengthening children's faith, especially understanding to children that the behavior and actions they have done are mistakes that must be corrected and can realize the consequences of their actions. The development of legal awareness is carried out by providing legal counseling which aims to achieve a high level of legal awareness as citizens and members of their community can understand their rights and obligations in order to participate in upholding law and justice. protection of the dignity of fellow human beings, order, peace, security and having behavior as law-abiding citizens. Students are educated to be able to

integrate themselves into the social life of the community so that they have positive values when returning to society can be well received in their environment[17].

#### 4. CONCLUSION

The position of children in the criminal justice system has privileges, including: the existence of laws and regulations that are specific in resolving child cases (*lex specialist derogate lex generalis*), fulfillment and guarantee of children's rights in full by law, In the process of resolving cases of children starting from the investigation stage to the stage of trial examination, diversion must be sought first through a Restorative justice approach, examination of children's cases is carried out by competent law enforcement officers in accordance with the provisions of the law, and there is a special institution that will investigate The task of fostering children is the Special Child Development Institute (LPKA).

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